

## **HR 3700: Requirements for Qualifying and Applying for FHA Certification**

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If you think the requirements for obtaining FHA certification are a moving target, you are not alone. There have been a number of changes in the requirements to both qualify for and apply for FHA certification since the FHA published its comprehensive Condominium Project Approval and Processing Guide in June 2011. Some of these changes have imposed greater burdens on condominium associations seeking FHA certification, while others have made FHA certification a little easier to obtain.

The most recent changes were announced by The White House on Friday, July 29, 2016, when it confirmed that President Barack Obama had signed H.R. 3700, the Housing Opportunity through Modernization Act ("Act") into federal law.

The Act is designed to help condominium associations seeking to obtain FHA certification or recertification in the following ways:

1. The Act requires the FHA to revise the process for applying for recertification to make the process less burdensome for associations.
2. The Act proposes decreasing the frequency by which associations must reapply for FHA certification. Right now, FHA certification expires after two years. This means that associations wishing to maintain certification must reapply to the FHA every two years.
3. The Act proposes that the application process be changed to enable previously certified associations to update documentation that was formerly provided. Currently, the FHA requires associations to resubmit all required documentation, including governing documents, even if there have been no changes to these documents.
4. The Act requires HUD field offices to handle requests for exemptions to the current FHA commercial space requirements and to consider factors relating to the economy of the locality in which the projects are located when doing so. In the past, it appears that requests for exemptions were forwarded to HUD headquarters for consideration.
5. The Act mandates that FHA adopt the existing standards of the Federal Housing Finance Agency (FHFA) relating to encumbrances under private transfer fee covenants to the same extent and in the same manner as the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac). Further, the Act requires the FHA to either adopt any future changes to FHFA standards or disregard them with an explanatory notice within 90 days. (Currently, the FHFA only allows FannieMae and FreddieMac to deal in mortgages on properties subject

to covenants providing for private transfer fees if the transfer fees are paid to a homeowners association, condominium, cooperative, or qualifying tax-exempt organization and the proceeds directly benefit the property. With some exceptions, this limitation only applies where the covenant was created on or after February 8, 2011.)

6. The Act requires the FHA to issue guidance regarding the percentage of units that must be owner occupied in order for a condominium to be eligible for FHA mortgage insurance. If the FHA fails to issue this guidance within 90 days of the Act becoming law, the owner occupancy percentage shall be set at least 35%. However, the FHA will have the ability to increase the owner occupancy requirement on a project-by-project or regional basis based on economic factors.

While the Act intends to make FHA certification easier for associations to obtain, it only provides general direction to HUD. Accordingly, we will have to wait for HUD to comply with the Act to know specifically how the Act will impact the certification and re-certification process, as well as the owner occupancy qualification requirements.