



Naming A Designated Entity For Transfers Under the Loan Agreement – An Overview

Purpose of naming a Designated Entity for Transfers

The purpose of naming Designated Entities for Transfers is to determine which entities, in addition to the Borrower, are subject to restrictions on transfers of ownership interests.

What is the effect of being named as a Designated Entity for Transfers?

A Designated Entity for Transfers cannot make any transfer that the Borrower cannot make under the Loan Agreement. (See the end of this document for the current descriptions of transfers, as set forth in Section 7.02 of the Loan Agreement.)

If an entity is not named as a Designated Entity for Transfers, then there is no requirement for that entity to obtain Lender's approval to a transfer of ownership interests in that entity. (Note: a transfer of the property or the transfer of a managing interest or more than 50% of a non - managing interest in the Borrower always require Lender's approval.)

Why did we make this change?

With the introduction of the new Loan Agreement on September 1, 2011, the Designated Entity for Transfers replaces the prior concept that subjected owners of a Controlling Interest (a "Controlling Entity") to the same transfer restrictions as the Borrower.

The definitions of a Controlling Entity and Controlling Interest were circular and confusing. It was difficult to determine which entities could freely transfer the ownership interests in that entity and which ones were restricted. For example, "Controlling Interest" was defined as anyone with a 50% or greater direct or indirect interest, even if that ownership was totally passive. Moreover, the definition of Controlling Interest included an entity with less than 50%, if the owners actually "Controlled" the business and affairs of the entity. So an entity with less than a 50% interest could have been the Controlling Entity but it wasn't clear.

We anticipate that by identifying Designated Entities for Transfers at loan origination, it will be clearer to everyone at the time of a transfer -- including the Servicer -- which entity can have their ownership interests freely transfer and when a transfer would be an event of default without Lender's consent.

Who is a Designated Entity for Transfers?

The Designated Entity for Transfers must be an entity in the organizational structure of the Borrower.

We are still looking at "control" of the Borrower – we are just doing so in a slightly different manner – specifying particular entities whose ownership may not change without Lender's approval, versus trying to define a class of such entities.

There can be more than one Designated Entity for Transfers. To help decide who to name as a Designated Entity for Transfers, we should ask: Which entity/entities do we want to stay in the deal and to retain relatively the same ownership structure?

Each entity with a general partnership interest or a managing interest will be a Designated Entity for Transfers.

In general, an entity with a 25% or larger equity interest that exercises some control over the Borrower (even if just to vote on major decisions such as bankruptcy) probably will be a Designated Entity for Transfers.

An entity with a 25% or larger equity interest that has a purely passive position in the Borrower probably will not be a Designated Entity for Transfers.

A Guarantor with a direct or indirect ownership interest in the Borrower will also be a Designated Entity for Transfers.

A Guarantor that does not have an ownership in the Borrower or in another Designated Entity for Transfers will not be a Designated Entity for Transfers.

In most cases, the Designated Entities for Transfers will be the same entities previously identified as “Required Borrower Principals” in the Commitment or Early Rate Lock Application.

When will the Designated Entity for Transfers be identified?

The Designated Entity for Transfers will be listed in Exhibit B, Item 3 of the Commitment or Early Rate Lock Application where we previously listed Required Borrower Principals.

We expect that the decision of which entities to name as a Designated Entities for Transfers will be a collaborative one (between the Seller/Borrower and Freddie Mac). While at the moment we are not requiring the Preliminary Legal Issues Memo from Seller/Service counsel to identify the Designated Entities for Transfers, the Sellers and their counsel are encouraged to suggest whether a certain entity should -- or should not -- be named as a Designated Entity for Transfers.

Identifying the Designated Entity for Transfers early in the process will encourage a dialogue between the Seller and Freddie Mac if there is disagreement as to the identity of the Designated Entity for Transfers. It will be helpful for this dialogue for Seller or Seller’s counsel to review the organizational documents of the Borrower, or speak with the Borrower’s counsel, to determine which entities have control over key decisions such as bankruptcy.

Organizational Chart /Organizational Structure of the Borrower must include all Designated Entities for Transfers (sample entities are available at the end of this document):

- As always, Freddie Mac must receive an organizational chart of the Borrower as part of the underwriting package (or at some time prior to the issuance of a Commitment or submission of an Early Rate Lock Application). Freddie Mac will use the organizational chart to determine which entities will be the Designated Entity/Entities for Transfers.
- We understand that the organizational structure of the Borrower is often not finalized until late in the process, so we will not insert an organizational chart into the Commitment/ERLA at the time the Commitment is issued or the ERLA is submitted.
- Once the organizational structure of the Borrower is finalized, but prior to origination of the loan, the Seller must submit to Freddie Mac an accurate and detailed organizational chart of the Borrower (or text identifying the organizational structure), in the form of an Amendment to the Commitment/ERLA. This same organizational chart/information must be attached as an exhibit to the Loan Agreement.
- If the organizational chart submitted with the Amendment differs significantly from the organizational chart submitted at underwriting, Freddie Mac may specify an additional entity or entities as a Designated Entity for Transfers. If Freddie Mac determines that there is an additional Designated Entity/Entities for Transfers after the Commitment is issued or the ERLA is accepted, such designation will not be considered a material modification and in the case of an ERLA, will not entitle the Borrower to the return of the Good Faith Deposit.

Where will the Designated Entity for Transfers be identified in the Loan Agreement?

The Designated Entity/Entities for Transfers will be listed on an Exhibit to the Loan Agreement. Once listed in the Loan Agreement, each Designated Entity for Transfers (and owners of a Designated Entity for Transfers) will be subject to the prohibitions on certain types of transfers during the term of the loan.

The concept of a Borrower Principal still exists. The term is used in the Loan Agreement and the MF Guide and credit policies. We need to know who Borrower Principals are for purposes of:

- providing us with certain information ([via Form 1115](#), credit reports, etc.) and
- checking the Office of Foreign Assets Control (OFAC) specially designated nationals list.

A Borrower Principal is:

- (i) any general partner of Borrower or another Borrower Principal (for a partnership),
- (ii) any limited partner that owns directly or indirectly 25% or more of the partnership interests in Borrower,
- (iii) any manager or managing member of Borrower or another Borrower Principal (for a limited liability company),
- (iv) any member that owns directly or indirectly 25% or more of the membership interests in Borrower,
- (v) any shareholder that owns, directly or indirectly, 25% or more of the voting stock of the corporation (if Borrower is a corporation), or
- (vi) any Guarantor of all or any portion of the Loan or of any obligations of Borrower under the Loan Documents.

One or more Borrower Principals will be a Designated Entity for Transfers; however, not all Borrower Principals will necessarily be a Designated Entity for Transfers.

Examples:

- A Guarantor will be a Borrower Principal, but a Guarantor that is not in the organizational structure of the Borrower will not be a Designated Entity for Transfers, since the Transfer provisions do not apply to an entity that is not in the organizational structure of the Borrower.
- Someone who owns 25% or more of the Borrower is a Borrower Principal, but may not be a Designated Entity for Transfers. (see above examples)

Transfers Under the Loan Agreement (Section 7.02)

A Transfer or series of Transfers of any legal or equitable interest of any Guarantor that result(s) in such Guarantor no longer owning any direct or indirect ownership interest in Borrower.

A Transfer or series of Transfers of any legal or equitable interest since the Closing Date that result(s) in a change of more than 50% of the ownership interests in Borrower or any Designated Entity for Transfers.

A Transfer of any general partnership interest in a partnership or any manager interest (whether a member manager or nonmember manager) in a limited liability company that is a Borrower or a Designated Entity for Transfers.

If Borrower or any Designated Entity for Transfers is a corporation other than a real estate investment trust, whose outstanding voting stock is held by 100 or more shareholders, one or more Transfers by a single transferor within a 12-month period affecting an aggregate of 10% or more of that stock.

The grant, creation or existence of any Lien, whether voluntary, involuntary or by operation of law, and whether or not such Lien has priority over the Lien of the Security Instrument, on either of the following:

- (i) The Mortgaged Property (other than the Lien of the Security Instrument or, if this Loan Agreement is entered into in connection with a Supplemental Loan, the Lien of the Senior Instrument, or any other Lien to which Lender has consented).
- (ii) The ownership interests in Borrower or any Designated Entity for Transfers.

Sample Organizational Structures

The following exhibits illustrate the naming of a Designated Entity for Transfers under the Loan Agreement. Click on the hyperlinks below to review the five fictional organization charts:

1. [Forest Woods Apartments](#)
2. [Broadstone at Bent Tree Apartments](#)
3. [Casa Del Gato](#)
4. [Freddie Farms Apartments](#)
5. [Whimsical Pigs Apartments](#)