

WFG Underwriting Bulletin



To: All Policy Issuing Agents of WFG National Title Insurance Company
From: Underwriting Department
Date: October 24, 2016
Bulletin No. NB 2016-11
Subject: Solar Contracts, Notices & UCC-1 Filings

Companies across the country are promoting the benefits of adding solar-electric panels to residential and commercial properties, and are providing homeowners and others with various means of financing those improvements. Often some evidence of the financing or business relationship with the solar panel provider gets recorded in the land records and must be dealt with by title professionals in the course of a sale or refinancing.

The relationship between the property owner and the solar provider usually takes one of three forms:

1. The solar provider owns the solar panels and related equipment, and is paid back in some combination of lease payments, payments based on electricity provided, or other fixed or variable payments.
2. The property owner becomes owner of the panels and related equipment and finances the purchase through a loan and UCC-1 fixture Filing; or
3. The property owner becomes owner of the panels and related equipment without any loan or financing, or subsequently acquires the panels and related equipment as part of an option agreement. The solar provider role (if any) is to provide ongoing service and maintenance.

Our lender and buyer customers need to know anytime their borrower/seller does not own the valuable solar panels on the roof. If the borrower/seller doesn't own the panels, the lender and buyer do not want to factor that value into their appraisals or purchase price.

The Lender may have additional duties imposed by FNMA¹ and others regarding solar panels, so it is especially important for them to know about them. Pertinent portions of the FNMA selling guide are attached.

Even when the solar panels are owned by the seller or borrower, the test for whether the solar panels are so firmly attached as to be part of the real estate is very fact specific in most states, and not something we are in a position to affirmatively insure.

¹ Selling Guide Fannie Mae Single Family August 30, 2016, §B2-3-04, Special Property Eligibility Considerations, <https://www.fanniemae.com/content/guide/sel083016.pdf>

The Underwriting Standards:

1. If your search reveals:
 - a. A Statutory Notice of Solar Contract (such as those mandated in California);
 - b. A recorded Solar lease under which the solar company expressly retains ownership;
 - c. A recorded solar contract under which the solar company retains ownership; or
 - d. A recorded financing agreement and/or a UCC-1 (also called a UCC-1 Financing Statement) filed expressly stating the solar company retains ownership, or has a “Lease” as to the solar fixtures. These sometimes also have language stating “this is not a lien or encumbrance,” this is a “bailment” and the like.

Then include this exception in the commitment and in any owners’ policy and loan policy.

“Rights to the ownership of any solar photovoltaic energy system and related equipment located on the Land including a right to enter upon said Land to install, operate, maintain and remove said system as set forth in the document recorded [date/book/page].”

(see WFG Bulletin <http://wfgunderwriting.com/download/national/bulletins/NB2016-11.pdf> Link])

WFG believes this exception is consistent with the requirements of the Fannie Mae Single Family Selling Guide §B2-3-04.

2. If your search finds a UCC-1 that references a loan secured by or a lien on the Solar fixtures, (which is the traditional use of a UCC-1 fixture filing), or is not clear as to what interest is being claimed or who owns the solar panels, then include this exception in the commitment and in any owners’ policy and loan policy.

“UCC-1 Financing Statement from _____ to _____, recorded in Official Records Book _____, page _____.”

Most lenders will not accept an exception for a UCC-1 fixture financing statement that may have priority ahead of the mortgage, so, after discussion of lender requirements, you should include a requirement for the release/termination of the UCC-1.

The language used in solar panel agreements, notices and filings is often confusing. If you find something “weird” or confusing, ask underwriting.

The secondary market standards for lending against properties having third party owned solar panels have been and continue to evolve. If your lender has questions, please do not hesitate to share this bulletin with them.

Excerpts from Selling Guide Fannie Mae Single Family, August 30, 2016

<https://www.fanniemae.com/content/guide/sel083016.pdf>

B2-3-04, Special Property Eligibility Considerations

Properties with Solar Panels

Fannie Mae will purchase or securitize a mortgage loan on a property with solar panels. If the property

owner is the owner of the solar panels, standard eligibility requirements apply (for example, appraisal, insurance, and title).

If the solar panels are leased from or owned by a third party under a power purchase agreement or other similar arrangement, the following requirements apply (whether to the original agreement or as subsequently amended).

Requirements for Properties with Solar Panels that are Leased or Covered by a Power Purchase Agreement

The solar panels may not be included in the appraised value of the property.

The property must maintain access to an alternate source of electric power that meets community standards.

The monthly lease payment must be included in the debt-to-income (DTI) ratio calculation unless the lease is structured to

- provide delivery of a specific amount of energy at a fixed payment during a given period, and
- have a production guarantee that compensates the borrower on a prorated basis in the event the solar panels fail to meet the energy output required for in the lease for that period.

Payments under power purchase agreements where the payment is calculated solely based on the energy produced may be excluded from the DTI ratio. The lease or power purchase agreement must indicate that

- any damage that occurs as a result of installation, malfunction, manufacturing defect, or the removal of the solar panels is the responsibility of the owner of the equipment and the owner must be obligated to repair the damage and return the improvements to their original or prior condition (for example, sound and watertight conditions that are architecturally consistent with the home);
- the owner of the solar panels agrees not to be named loss payee (or named insured) on the property owner's property insurance policy covering the residential structure on which the panels are attached. As an alternative to this requirement, the lender may verify that the owner of the solar panels is not a named loss payee (or named insured) on the property owner's property insurance policy; and
- in the event of foreclosure, the lender or assignee has the discretion to
 - terminate the lease/agreement and require the third-party owner to remove the equipment;
 - become, without payment of any transfer or similar fee, the beneficiary of the borrower's lease/agreement with the third party; or
 - enter into a new lease/agreement with the third party, under terms no less favorable than the prior owner.

Any exceptions to coverage on the title insurance policy for recorded instruments relating to the solar panels must comply with B7-2-05, Title Exceptions and Impediments.

B4-1.3-05, Improvements Section of the Appraisal Report (09/29/2015)

Solar panels that are leased from or owned by a third party under a power purchase agreement or other similar arrangement are to be considered personal property items and are not included in the appraised value of the property. See B2-3-04, Special Property Eligibility Considerations, for additional eligibility requirements for properties with solar panels. Page 614

Selling Guide Announcement SEL-2015-08

Policy for Leased Solar Panels In December 2014, Fannie Mae published a policy regarding the eligibility of loans on properties with leased solar panels. Since publication, Fannie Mae has received questions requesting clarification of the policy and was asked to expand the circumstances that would permit solar lease payments to be excluded from debt-to income (DTI) ratios. Fannie Mae worked with industry stakeholders to respond to these requests and conducted additional research.

As a result, the Guide has been updated as follows:

- Lease payments may be excluded from the DTI ratio calculation if certain lease provisions are met.
- Property casualty and title insurance requirements have been streamlined to reduce complexity.
- Overall, the leased solar panel policies have been clarified.

Selling Guide Announcement SEL-2014-16

Solar Panels Fannie Mae has clarified its current policy and implemented a new policy with respect to homes with solar panels. While not explicitly stated, Fannie Mae currently purchases loans on properties with solar panels when the borrower owns the equipment under standard Selling Guide requirements. With these revisions, the Selling Guide has been updated and this policy has been expressly stated. Additionally, in recognition of more prevalent financing options and financial agreements available in the marketplace, such as solar leases and power purchase agreements, Fannie Mae has developed a new policy that provides requirements when the homeowner has obtained solar panels through one of these methods.

Updated Selling Guide Topics

- B2-3-04, Special Property Eligibility Considerations (Properties with Solar Panels)
- B4-1.3-05, Improvements Section of the Appraisal Report (Energy Efficient Improvements)
- B7-3-02, General Property Insurance Coverage (Coverage Requirements) Effective Date This change is effective immediately.

NOTE: The information contained in this Bulletin is intended solely for the use of employees of WFG National Title Insurance Company, its title insurance agents and approved attorneys. Disclosure to any other person is expressly prohibited unless approved in writing by the WFG National Title Insurance Company's Underwriting Department.