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# MBA DOCUMENT CUSTODY CONFERENCE

## Documents Extraordinaire

# Manufactured Housing

Jeff Larsen

### What is a Manufactured Home?

Any dwelling unit built on a **permanent chassis** and attached to a **permanent foundation** system.

Other factory-built housing (**not built on a chassis**), such as:

- Modular
  - Prefabricated
  - Panelized
  - sectional housing
  - is not considered manufactured housing.
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### Agency Eligible Properties

- Built after June 15, 1976
  - 1 Family Unit
  - Classified as “Real” property
  - The Land owned by the borrower in fee simple unless located in a co-op or condo project.
  - Minimum 12 ft wide and 600 square feet
  - Permanent Foundation
  - Permanently connected to Utilities
  - Evidence of property tax records
-

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### Origination Documents

- Underwriting
  - Appraisal
  - Title
  - Mortgage/Deed of Trust
  - Other Documents
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### Agency Delivery Requirements

- Special Feature/Characteristic Codes
  - DU/LP Underwriting case numbers
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### **Servicer Requirements**

- Unique to the Servicer
  - Agency Requirements
-

### Custodial Requirements

- Fannie Mae
  - Freddie Mac
  - Ginnie Mae
  - Private Investors
-



# COOPERATIVES

Owen Robinson

### What is a Cooperative?

#### **Stock and Proprietary Lease vs. Deed:**

- A purchaser of a cooperative unit receives shares of stock and a proprietary lease as opposed to a purchaser of real property who receives a deed.
  - Stock – Shares of the cooperative corporation which owns the building.
  - Proprietary Lease – Entitles owner to use of a particular unit in the building.
  - Treated both as personal property and real property in different contexts, i.e. judgments, transfer taxes.
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### Security Agreement vs. Mortgage

- A cooperative Loan Security Agreement conveys borrower's rights in the Stock and Proprietary Lease to lender as security and is not recorded.
- Mortgage conveys borrower's interest in real property and is recorded with the county clerk.

### Board of Directors

- Composed of shareholders of the coop. Responsible for the operation of cooperative corporation usually in conjunction with a managing agent.
  - Review the applications of prospective purchasers, interview and approve or disapprove their purchase.
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### What is the difference between a cooperative and a condominium?

- ***Coop ownership is reflected by Stock Certificate and Proprietary Lease; UCC-1 filed with county clerk evidences lender's security interest in the stock and lease.***
  - Condo ownership is reflected with a deed; a mortgage recorded with the county clerk evidences lender's security interest in the real property.
  - ***Cooperative's lien for maintenance is superior to the lender's security interest.***
  - Condominium's common charge lien is subordinate to the lender's first mortgage and superior to a second mortgage.
  - ***Cooperative requires Board approval of any purchaser.***
  - Condominium may have a right of first refusal of a purchase.
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### Cooperative Documents

#### Stock Certificate -

- Reflects ownership of a certain number of shares of the cooperative corporation.
- Issued by the corporation in the name of the borrower.
- Each unit is allotted a certain number of shares at the time of the creation of the cooperative corporation.

#### Proprietary Lease -

- Entitles the borrower to exclusive use of a particular unit in the building.
  - Occasionally, leases are assigned from prior owners; must have a complete chain of consents to assignment by cooperative, assignment from seller to purchaser and acceptance of assignment by purchaser.
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### Cooperative Documents (continued)

#### Uniform Commercial Code Form 1, Cooperative Addendum and Assignments -

- UCC-1 and Cooperative Addendum prefiled prior to closing to insure that it is of record when the closing occurs. Provides notice of lender's security interest.
- UC-3 Assignment filed to reflect new secured party when loan is assigned.

#### Recognition Agreement -

- Widely accepted form known as an "AZTECH" form.
  - Memorializes and recognizes the lender's security interest in the borrower's stock and proprietary lease.
  - Executed by Lender, Borrower and Cooperative Corporation
  - Provides for notice to the lender in the event of a default by borrower in paying maintenance or other non-monetary defaults under the lease.
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### Cooperative Documents (continued)

#### Stock Power of Attorney -

- Signed by borrower in blank. Enables transfer of stock after default and UCC Article 9, "foreclosure.

#### Assignment of Lease -

- Signed by borrower in blank. Enables assignment of proprietary lease after default and foreclosure.

#### Loan Security Agreement

#### Note

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### Other Issues -

- **Filing Assignments**
  - **UC – Article 9 – “foreclsoures”**
  - **Foreclosure of cooperative’s underlying mortgage**
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# **New York Consolidation, Extension and Modification Agreement (NY CEMA)**

Diana Harrison

## **What is a NY CEMA?**

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### **The CEMA Consolidates into one document:**

- The terms of prior Notes and Mortgages related to the security property
  - The advanced “new money” amount, if any
  - The terms of a new Note and Mortgage
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## **Why consolidate?**

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### **What are the functions of a CEMA?**

- Rate & Terms Vs. Cash-Out Refinance
  - Modification
  - Assumption
-

## **Different Versions of CEMAs**

- Non-standard CEMA
  - 3172 Standard CEMA 7/86
  - 3172 Standard CEMA 1/01
  - 3172 Standard CEMA 1/01 Revised 5/01
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### **3172 CEMA 7/86**

- Consolidates all of the underlying Notes and Mortgages into one document
  - States repayment terms for the consolidated indebtedness in the CEMA
  - References each of the underlying Notes and Mortgages
  - Recorded to consolidate all underlying mortgages into one mortgage lien
-

### **3172 CEMA 1/01**

- Borrower executes a “new money” or Gap Note and Mortgage
  - Borrower executes a Consolidated Note for the entire indebtedness
  - Repayment terms and reference to underlying Notes and Mortgages are removed from CEMA and added to Consolidated Note
-

## **3172 CEMA 1/01 Rev. 5/01**

- Most current version of the CEMA
  - Exhibits added as actual pages to the CEMA
  - Specific language inserted at the top of the Consolidated Note for ARM, fixed rate and balloon loans
  - Specifies documents required for delivery if sold to FHLMC or FNMA
-

## **3172 1/01 Rev 5/01 Exhibits**

- EXHIBIT A: List of obligations being consolidated, modified and extended
  - EXHIBIT B: Property description of mortgaged premises
  - EXHIBIT C: Copy of complete Consolidated Note and any Addenda
  - EXHIBIT D: Most current version of NY Security Instrument and any Riders
-

## **NYCEMA Delivery Package to FHLMC or FNMA**

### **Original Old Money Notes**

- Must include any CEMAs from prior consolidations
  - Each note must be an original with live signatures from the Borrower(s)
  - Endorsed in blank
  - Seller/Servicer must verify all consolidation documents are included in the package
-

## **Original New Money “Gap” Note**

- Only if new funds are advanced to the Borrower(s) at time of consolidation
  - Must be original Gap Note with live signatures from the Borrower(s)
  - Endorsed in blank
-

### **Consolidated Note**

- Original note with live signatures from the Borrower(s)
  - Endorsed in blank
  - Must be current version of uniform Note
  - All blanks completed and applicable Addenda included
  - Must have required verbiage at top of Note for fixed rate, ARM and balloon loans
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### **NYCEMA**

- May be a certified copy if original submitted for recording
  - If copy delivered, must be certified true and correct by Seller
  - Lender must send custodian original recorded document when received back from recorder's office
  - Complete set of NYCEMA Exhibits
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### **Assignment**

- Unrecorded, but in recordable form
  - Assigns mortgages listed in CEMA (or schedule A to the CEMA) and new money mortgage (if applicable)
  - If new money mortgage registered in MERS, no assignment required
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### Key Points for Custodial Review

- **NYCEMA:**
    - » Must be a current version of the NYCEMA, 3172 1/01 Revised 5/01
    - » NYCEMA makes non-uniform instruments acceptable for prior mortgages
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### Key Points for Custodial Review

- **PRIOR NOTES:**

- Lender may be different entity if borrower refinanced with new institution
  - Property address must match NYCEMA.
  - Proper chain of endorsement
  - May have different borrower names if mortgage was assumed
  - Endorsed in blank by Seller/Service.
  - May be a non-uniform instrument
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### Key Points for Custodial Review

- **NEW CONSOLIDATED NOTE:**
    - Must be signed by Borrower(s)
    - Endorsed in blank by the Seller/Service
    - Principal amount must match the amount of total UPB of mortgages listed in Exhibit A
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### Key Points for Custodial Review

- **NEW GAP NOTE:**
    - Must be signed by Borrower(s)
    - Endorsed in blank by Seller/Service
    - MUST be a uniform instrument
-

### Key Points for Custodial Review

- **ADDENDA AND RIDERS:**
    - Applicable Addenda and Riders must be attached to the Consolidated Note and Consolidated Mortgage respectively
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# **Endorsements & Assignments**

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# **Questions & Answers**

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