

Table of Updates

**** CHANGES ARE IN RED THROUGHOUT THE GUIDE ****

Change Date: 05-18-2005	
Section of Guide	Change Description
State Licensing	<ul style="list-style-type: none"> State-specific licensing information has been removed. Please see Section 200 of Chapter 500 for complete licensing details.
103 – Acceptable Visas	<ul style="list-style-type: none"> Updated to include additional visa descriptions and eligibility!

**** PREVIOUS CHANGES RECENTLY MADE ****

Change Date: 02-04-2005	
Section of Guide	Change Description
404.02 – Ineligible Types of Subordinate Financing	<ul style="list-style-type: none"> Updated to state that seller held seconds are ineligible.

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Information contained herein is provided to assist real estate professionals and is not an advertisement to extend consumer credit as defined by Section 226.2 of Regulation Z.

100 – Borrower Criteria

The borrower(s) executing the Note must be natural persons of legal age in the state in which the property is located. An Inter-Vivos Revocable Trust established by a natural person, for the benefit of that person is acceptable provided all the criteria of trust eligibility are met.

Life estates, partnerships, corporations, land trusts or a real estate syndicates are not acceptable as borrowers.

101 – Permanent Resident Alien

101.01 – Permanent Resident Alien Guidelines

Permanent resident aliens have been granted the right to work and live in the United States on a permanent basis. Loans to resident aliens are on the same terms (LTVs, loan amounts, loan types, etc.) available to U.S. citizens.

Permanent resident aliens must have a green card or other documentation evidencing permanent status has been granted. A copy of any of the following documents is acceptable evidence of residency and must be included in the loan file.

- Alien Registration Receipt card (INS Form I-551 commonly known as a “green card”) with a 10 year expiration on the front, but no expiration date on the back.
- After March 30, 1996, an INS Form I-151 with a receipt showing that an application on INS Form I-90 for an INS Form I-551 has been filed.
- Conditional Alien Registration Receipt card (INC Form I-551), accompanied by an unexpired Petition to Remove the Conditions of Residency (INS Form I-751) filing receipt.
- A current passport (containing a stamp that is not expired) signed by an INS agent and bearing an additional INS red stamp (seal) reading “Processed for I-551. Temporary Evidence of Lawful Admission for Permanent Residence. Valid until (MMDDYY). Employment Authorized.”

102 – Non-Permanent Resident Alien

102.01 – Non-Permanent Resident Aliens

Mortgage loans to person who have diplomatic status may not be eligible for financing. Check the borrower’s visa to determine if the visa “immunities” include “civil action immunity”. If so, the loan is not eligible under any product.

102.02 – Agency Products:

Non-permanent resident aliens are granted the right to live and work in the United States on a temporary basis. Some aliens are in the process of applying for permanent status while others will return to their native country upon expiration of their temporary status.

Loans to non-permanent resident aliens that work and reside in the U.S. are on the same terms (LTVs, loan amount, loan types, etc.) and are subject to the same documentation and underwriting criteria as U.S. citizens.

Acceptable evidence of temporary residency can be a copy of any unexpired resident alien documentation issued by the INS including any of the following documents and must be included in the loan file.

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- Temporary Resident Card, I-688, issued to aliens granted temporary resident status. It is valid until the expiration date stated on the face of the document.
- Employment Authorization Card, I-688A, issued to applicants for temporary resident status after an interview for legalization. It is valid for a period of six months from issuance and has the expiration date stated on the face of the card.
- Arrival-Departure Record, I-94, issued to non-immigrant aliens and attached to an unexpired foreign passport. An individual in possession of this document may only be employed if the document bears an employment authorization stamp. The expiration is noted on the face of the document. In addition to the I-94 Arrival-Departure Record, the applicant must evidence an acceptable Visa as shown in Section 103 of this Chapter.

102.03 – Non-Agency Products:

Guidelines are the same as agency products if a non-permanent resident alien signs the mortgage note as a co-borrower with either a U.S. citizen or lawful permanent resident alien.

If ALL borrowers are non-permanent resident aliens, check the applicable product guide for requirements.

103 – Acceptable Visas

Non-permanent resident aliens presenting an I-94 Arrival-Departure Record must also provide evidence of one of the following visas:

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Visa	Classification	Description	Mortgage Eligibility
A-1/A-2	Non-Permanent Resident	Foreign Diplomatic Personnel: Individuals in the US as employees of a foreign government (e.g. ambassador, diplomat, and minister). This status typically has diplomatic immunity	Ineligible
A-3	Non-Permanent Resident	Employee of Foreign Government Official: Attendants, servants, or personal employees of foreign government officials.	Ineligible
E-1	Non-Permanent Resident	Treaty Trader: Individuals in the US to conduct trade under a treaty between their country and the US, and key employees of companies trading under such treaty.	All Programs
E-2	Non-Permanent Resident	Treaty Investor: Individuals in the US to develop or direct the operations of an enterprise in which they have invested substantial investments. Must be based on a treaty between visa holder's country and the US.	All Programs
G-1 through G-4	Non-Permanent Resident	Representative of International Organization: Individuals in the US as representatives of an international organization and their dependents.	All Programs
G-5	Non-Permanent Resident	Personal Employee of G-1 through G-4 Visa Holder	Ineligible
H-1A	Non-Permanent Resident	Registered Nurse: Individuals in the US to perform professional nursing services for a specific employer for a specified period of time.	All Programs
H-1B	Non-Permanent Resident	Temporary Worker in a Specialty Occupation: Individuals in the US to perform professional services in a specific position for a fixed period of time.	All Programs
I	Non-Permanent Resident	Representative of Foreign Information Media: Individuals in the US as journalists or representatives of international media and their dependents.	Ineligible
K-1	Non- Resident	Fiancé/Fiancée of a US Citizen	All Programs ONLY if US Citizen is also on loan.
L-1	Non-Permanent Resident	Intra-Company Transferee: Individuals in the US who have been transferred from a subsidiary, affiliate, or branch office overseas to the US to work in an executive, managerial, or specialist capacity.	All Programs
L-2	Non-Permanent Resident	Dependent of L-1 Visa Holder	All Programs ONLY if L-1 is also on loan.
P-1	Non-Permanent Resident	Internationally Recognized Athlete, Entertainment Group, or Essential Support Personnel	All Programs
P-4	Non-Resident	Dependents of P-1, P-2 or P-3 Visa Holder	All Programs ONLY if P-1 is also on loan.
R-1	Non-Permanent Resident	Religious Worker	All Programs
R-2	Non-Permanent Resident	Dependent of an R-1 Visa Holder	All Programs ONLY if R-1 is also on loan.
TN	Non-Permanent Resident	Trade NAFTA: Professional from Canada or Mexico who enters the US under the NAFTA agreements. Individuals in the US to perform professional services from a sponsoring employer in a specific position for a fixed period of time.	All Programs
TD	Non-Permanent Resident	Dependents of TN Visa Holder	All Programs ONLY if TN is also on loan.

104 – Foreign National

104.01 – Foreign Nationals Not Eligible

A foreign national is a citizen of another country who periodically visits the U.S., and purchases property for his/her use during those visits. Foreign nationals are non-resident aliens that do not reside or work in the United States. Foreign nationals are not considered to be non-permanent resident aliens and are not eligible for financing.

104.02 – Diplomatic Immunity

Due to the inability to compel payment or seek judgment, transactions with individuals who are not subject to United States jurisdiction are not eligible. This includes embassy personnel with diplomatic immunity.

105 – Separated Borrowers

When the Borrower indicates that he/she is separated, it must be determined whether it is a legal separation.

If the Borrower is legally separated, a copy of the legal separation agreement must be provided to determine the division of assets, liabilities and potential obligations. If there is no legal separation, a letter from the attorneys of both parties involved specifying the proposed settlement terms must be provided. If no documentation can be obtained to verify the division of assets and liabilities, the Loan will generally be considered an unacceptable risk.

If the Borrower states there are no plans for a legal separation, no further documentation is necessary; he/she is legally married and qualified accordingly.

106 – Inter Vivos Revocable Trusts

An *inter vivos* revocable trust will be considered an eligible borrower if, (i) the mortgage loan is secured by a one-family principal residence or a second home, and (ii) The inter vivos revocable trust must have been established by a natural person. It may be established solely by one individual or jointly by more than one individual.

The borrower's Attorney (legal counsel) certifies the trust (i) satisfies all of the requirements set forth in requirements 1 thru 5; and (ii) is valid under the laws of the jurisdiction in which the real property is situated, and complies with all applicable state law requirements for the purpose of obtaining a mortgage.

1. The settler of the trust is also the trustee or co-trustee of the trust.
2. The trustee is authorized to borrow money on behalf of the trust.
3. The trustee is authorized to purchase, construct, and/or encumber realty on behalf of the trust.
4. The settler has the power to revoke or alter the trust.
5. The beneficiary of the trust does not have to grant written permission for the trust to borrow money, OR if such permission is required, the beneficiary has granted such permission for the purpose of the mortgage.

In addition to the criteria stated above, the requirements outlined in Exhibit U08 of the Partner Guide must be met.

200 – Additional Applicant Requirements

201 – Co-Borrower

Generally, co-borrowers/co-mortgagors are applicants who will occupy the property (if primary residence or second home), be obligated for the debt and take title to the property. Co-borrower(s), in general: 1) Required to take title to the property, 2) Co-Borrowers income can not be used for qualification purposes unless they sign the Note, 3) Required to meet the same occupancy requirements as the borrower, 4) May not be an interested party to the property sales transaction, such as the property seller, the builder, or real estate broker.

202 – Non-Occupant Co-Borrower

When allowed, the non-occupant co-borrower does not need to be a family member. There should be, however, an established relationship and motivation not including equity participation for profit and/or may not be an interested party to the transaction, e.g. property seller in a purchase transaction.

202.01 – Agency Products

Lender allows non-occupant co-borrowers on all conforming (Agency) conventional loan programs. If there is a non-occupant co-borrower, the owner-occupant must meet the following requirements:

- Purchase Transactions – If the LTV is greater than 80% and the non-owner occupant's income is used to qualify, the owner-occupant must have 5% of the purchase price in their own funds.
- Qualifying Ratios – The owner-occupant must qualify at 35%/43% maximum ratios, regardless of the LTV unless otherwise approved by an eligible Automated Underwriting System.

202.02 – Non Agency Products

Refer to the individual loan program guidelines for eligibility.

203 – Co-Mortgager

See Co-Borrower topic in this section.

204 – Non-Borrowing Domestic Partners/Spouse

To perfect a lien under governing state law when a married applicant purchases a property without involving their spouse, the Lender requires the spouse to sign the security instrument--and any other applicable documentation--to confirm they are relinquishing all rights to the property. As required by state jurisdiction, the Lender will accept different documentation provided the Lender is guaranteed a lien position that is superior to that of the non-purchasing spouse.

205 – Pending Litigation

If application, title, or credit documents reveal that the applicant is presently involved in a lawsuit or pending litigation, a statement from the applicant's attorney may be required. The statement must explain the circumstances of the lawsuit litigation and discuss the applicant's liability and insurance coverage. A copy of the complaint and answer may also be needed. The title company closing the loan must be informed of the lawsuit or litigation and provide affirmative coverage of our first lien position. This exception can only be given on primary occupancy, purchase or rate/term refinance.

300 – Occupancy Considerations

301 – Primary Residence

A primary residence is a 1-4 family residential property (including condos, PUDs, and co-ops) physically occupied by the borrower as his principal domicile. The underwriter should look for the following indications that a property is – or will be – an owner-occupied property.

- The borrower occupies the property, or states his intention to occupy the property within 60 days of closing, as his primary residence.
- The borrower has claimed the property as his/her homestead, if applicable.
- The subject property is in a location relatively convenient to the borrower's principal place of employment.
- For a refinance, the address of the property is the same as that used on the borrower's federal tax returns, bank statements, pay stubs, auto registration, etc.
- The borrower maintains, or will maintain, homeowner's insurance on the residence in lieu of a renter or tenant's policy.
- For a refinance, the residence is not currently for sale or under a listing agreement.

If the underwriter identifies any inconsistencies with the documentation in the loan file, he/she should obtain an explanation from the borrower.

302 – Second Homes

302.01 – Agency Products:

A second home is a 1-unit property (including condominiums, and PUDs) occupied by the borrower for some portion of the year for his/her exclusive use and enjoyment and is suitable for year-round occupancy. A second home must meet the following criteria:

- Located in an area where second homes are customary.
- The property must be remote in distance or time of travel from borrower's primary residence, or in an area of special geographic consideration (i.e., a borrower may live and work in the city, but may own a beach house located on the waterfront).
- The property may not be subject to an annual or long-term lease agreement.
- The property may not be subject to any timesharing or mandatory rental pool agreements.
- The borrower may not use rental income from the subject property to qualify.

Acceptability of more than one second home should be evaluated in relation to the borrower's profile.

The underwriter should have a level of comfort that the property is occupied by the borrower for the required portion of the year. For example, if the borrower reports rental income on Schedule E indicating that the property was rented for a substantial portion of the prior year, the property may actually be an investment property.

302.02 – Non-Agency Products:

Same as Agency products

303 – Investment Properties

An Investment property is a 1-4 family property that the applicant does not intend to occupy whether or not the property produces revenue. The borrower may not be affiliated with the builder, developer or seller of the property.

The expenses relating to the borrower's current primary residence must be used in calculating the borrower's housing ratio.

Gift funds and temporary buydowns are generally not permitted.

If rental income is used to qualify the borrower, a rent loss insurance policy that covers the gross monthly rent for six months is required for all 2-4 unit investment properties.

If rental income is used to qualify the borrower, a rent loss insurance policy that covers the gross monthly rent for six months is required for a single unit investment property as follows:

- Purchase and no cash-out refinances – the LTV/CLTV is greater than 75%
- For cash-out refinances – the LTV/CLTV is greater than 70%

Other limitations or guidelines apply based on the product type. Check the applicable product guide for requirements.

400 – Transaction Types

401 – Purchase Transactions

401.01 – General Information

A purchase transaction is one in which title transfers at the time of closing from the seller to the buyer. In all cases, there should be an agreement or contract containing the terms and conditions of the transfer provisions. Some forms of transfer agreements or contracts include the following:

- Sales contract or purchase agreement
- Settlement agreement or property settlement and divorce decree
- Will or court-ordered probate
- Land contracts

The sales contract should be thoroughly reviewed and meet the following requirements:

- Names of the sellers of the property must be compared to the title owners of the property. If all owners are not in agreement to sell the real property; the sales contract is invalid.
- Names of the buyers of the property must be on title after the closing.
- Property address and legal description must match the Title and Mortgage/Deed of Trust, and the appraisal.
- Fully executed signatures of all buyers and sellers.
- Sale price.
- Downpayment or earnest deposit indicated.
- Mortgage financing requirements, if indicated.
- Sales concessions, if any.
- All parties initial revisions.
- Addendums referred to in agreement are attached.
- Amendments, if any, require an amended contract.

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If it appears that the property is the subject of a "flip-sale" (a property sold twice with an inflated value on the second sale) a pre-funding audit will be performed (regardless of loan type or LTV) if one of the following characteristics is evident:

- The subject property is owned and being sold by an entity other than an individual [excluding builders, recognizable financial institutions (e.g. Bank of America), and secondary marketing entities (e.g. HUD, VA, Freddie Mac, Fannie Mae)]. However, an audit is required if the builder, financial institution, or secondary marketing entity has assigned title to the subject property to another entity which then, in turn, is selling the property to the borrower.
- The subject property has been sold in the past 12 months and the new appraised value is greater than 10% of the last sales amount unless there is documented evidence for the increased appraised value (e.g. renovation, home improvement, increased value due to market).

See also Section 407 "Flip Transactions" for additional requirements.

402 – Limited/No Cash-Out Refinances

402.01 – General Information

A refinance transaction involves originating a new mortgage on the subject property by the current owner for one or more of the following reasons: 1) Changing the term of the loan, 2) Funding home improvements, 3) Paying off a construction loan (take-out financing), 4) Buying out another parties interest, 5) Obtaining cash for any purpose.

Under a cash-out refinance transaction, the subject property may not be currently listed nor may it have been listed for sale within the previous six months. Under a limited/no-cash-out refinance transaction, the subject property may not be currently listed or listed within 90 days preceding the date of loan application. In the event of a conflict between a product guide and the guidelines noted above, the more restrictive guidelines must be followed.

402.02 – Agency Products

Rate/Term Refinances for conforming loan amounts must be first lien mortgages used to pay off an existing mortgage, in order to reduce the interest rate, loan term, or principal balance and monthly payment. The loan proceeds may be distributed as follows:

- Payoff of the unpaid principal balance of the existing first mortgage, including any prepayment penalty.
- Payoff of the unpaid principal balance of any exiting subordinate mortgage that was used in it's entirety to purchase the subject property, including any prepayment penalty.
- Closing costs (including prepaid expenses).
- Incidental cash back to the borrower of no more than the lesser of 2% of the new loan balance or \$2,000.

There is no seasoning requirement for liens to be paid off in a rate/term refinance. In any case where a subordinate lien is being paid off, the loan file must contain verification that proceeds were used to purchase the subject property. A HUD-1 Settlement Statement from the original purchase transaction is acceptable verification. LTV is established based on the current appraised value.

402.03 – Buying out another party's interest

Buying-out the equity of an ex-spouse or joint heir or joint devisee is permitted as a limited cash-out, provided that the following requirements are met:

- The amount of equity held by the other party who is to receive the cash has been established and is documented (e.g. a copy of the divorce decree or will).
- The HUD-1 reflects that the funds were disbursed to the other party and title was conveyed from the other party to the borrower.
- The value is based on the current appraised value.

402.04 – Non-Agency Products:

See individual product guide for requirements.

403 – Cash-out Refinance

The new loan amount can include any of the following: 1) The outstanding unpaid principal balance of the existing first mortgage, 2) Closing costs, 3) Prepaid items, 4) Subordinate liens (regardless of age), 5) Cash to the borrower for any purpose.

Cash-out may not be used to pay off revolving debt to qualify when maximum financing is obtained.

403.01 – Agency Products:

- No cash-out for properties in Texas.
- Property can not have been listed for sale in the past six (6) months.
- If the property has been owned for less than six (6) months, the lesser of the original sales price or appraised value will be used to calculate the LTV.
- Borrowers must be on title for a minimum of six (6) months before any cash-out (either payoff of consumer debt or cash in hand) is permitted.
- Cash proceeds can be used for any reason.

For "M" series ARM products, See individual product guide for requirements.

403.02 – Non-Agency Products:

Value is based on the current appraised value unless the property has been owned less than 12 months. If owned less than 12 months, value is based on the lesser of:

- The original purchase price (plus documented home improvements which contributed to an increase in value, if applicable), or
- The current appraised value.

404 – Loans Subject to Secondary Financing

404.01 – General Guidelines

A copy of the Promissory Note for the subordinate financing must be obtained and reviewed to verify compliance with the requirements in this guide or the product guide. The product guide will specify other secondary financing requirements regarding loan-to-values or occupancy, whether seller-held seconds are permitted and if the mortgage may be subject to a temporary buydown.

If the subordinate financing will record concurrently with the first mortgage, copies of the properly executed closing documents for the subordinate lien must be obtained and included in the first mortgage loan file.

If the loan is a refinance with subordinate financing to remain in place, it must be re-subordinated to the new mortgage and comply with the stricter of the requirements in either this guide or the product guide.

The terms of the subordinate financing must be disclosed to the appraiser.

Subordinate financing is not permitted for condo-hotels or co-ops.

404.02 – Ineligible Types of Subordinate Financing

A subordinate lien that permits negative amortization or contains a wrap-around agreement that combines the first mortgage and the subordinate financing. Seller held seconds are ineligible.

404.03 – Financing Terms

The subordinate lien may include a prepayment penalty.

For closed-end financing, if the repayment terms of the subordinate lien provide for a variable interest rate, the monthly payment must remain constant for each 12 month period. The change in the monthly payment at the end of each 12 month period cannot represent more than a 1% increase in the interest rate. If the financing will not fully amortize, the balloon or call option maturity date must not be less than five years after the Note date of the first lien mortgage.

For equity lines of credit, the repayment terms must provide for regular monthly payments sufficient to meet the interest due. The terms may provide for a balloon or call option within the first five years after the Note date of the first lien mortgage.

405 – Construction Loans (Construction to Perm)

For non-arm's length transactions see "Construction to Permanent" topic in the "Non Arm's Length Transaction" section below.

405.01 – General Information

"Two Time Close" loans only.

405.02 – Take-out Financing (Two Time Close)

Conversions of construction only loans into permanent financing secured by a single family residence may be considered either a purchase or a refinance and are subject to the following:

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405.03 – Loans closed as purchase transactions

- The borrower receives no proceeds from the settlement.
- The permanent loan is closed within 180 days of property completion. If the transaction occurs more than 180 days after the completion of the construction, then it **must** be considered a refinance.
- The LTV/CLTV ratio must be computed base on the lesser of the appraised value at the time the loan is closed or the purchase price/acquisition cost.
- Borrowers may not receive any cash back at closing.
- The required downpayment/investment must be verified.

405.04 – Loans closed as rate/term refinance transactions

- The borrower owned the land prior to the start of construction.
- The interim construction loan is in the borrower's name(s).
- A refinance transaction has no time limitation. However, if the transaction occurs more than 180 days after the completion of the construction, then it **must** be considered a refinance.
- The LTV/CLTV ratio is computed from the current appraised value as long as the borrower does not receive any cash reimbursement for construction costs, etc.

405.05 – Acquisition cost is determined as follows:

- Interest and points on the construction loan may be included as long as their total is 5% or less of the outstanding principal value.
- To document acquisition cost the borrowers must provide copies of receipts, bills, lien waivers, lot purchase agreement, etc., in addition to an acceptable itemized cost breakdown.
- No sweat equity, "value of labor" or trade of labor or goods from buyer to builder is permitted. No prepaid items may be included in the calculation of the construction costs.

405.06 – Construction Modification (One-Time Close)

One time close "Construction to Permanent" loans are not eligible.

406 – Land Contracts

406.01 – General Information

A land contract, also known as an installment land contract or a contact for deed, is a real estate agreement between a buyer and seller, whereby the buyer may use and occupy the property. However, the grant deed from the property seller to the buyer is not recorded until all or a specified part of the sales price has been paid. The buyer does not obtain the transfer of title until the land contract is paid; however, if the land contract is recorded, it should be reflected in the chain of title in the title report.

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406.02 – Payoffs of Installment Land Contracts

When the proceeds of a mortgage transaction are used to pay off the outstanding balance on an installment land contract (or contract or bond for deed) that was executed within the 12 months preceding the date of the loan application, we will consider the transaction to be a purchase money transaction. The loan-to-value ratio for the mortgage should be determined by dividing the unpaid balance of the mortgage by the lesser of the total acquisition cost (defined as the purchase price indicated in the original land contract or contract or bond for deed, plus any cost the purchaser incurs for rehabilitation, renovation, or energy conservation improvements) or the appraised value of the property at the time the new mortgage is closed. The borrower must fully document the expenditures included in the acquisition cost.

When the installment land contract (or contract or bond for deed) was executed more than 12 months before the date of the loan application, we will consider the transaction to be a limited cash-out refinance transaction. In this case, the loan-to-value ratio for the mortgage should be determined by dividing the unpaid principal balance of the mortgage by the appraised value of the property at the time the new mortgage is closed.

406.03 – Agency Products

A land contract or a contract for deed is an agreement to transfer title to a property once the conditions of the contract have been fulfilled. The agreement must have been executed at least 12 months prior to the date of the application by the borrower.

The transaction may be considered as either a purchase or a refinance transaction.

If the transaction is treated as a purchase all of the following conditions apply:

- All of the loan proceeds are used to pay the outstanding balance under the contract
- No cash is disbursed to the borrower
- The LTV is based on the lesser of the appraised value, **or** the total acquisition cost (that is, the purchase price indicated in the original land contract or contract for deed, plus any cost the borrower has expended for rehabilitation, renovation, refurbishment or energy conservation improvements). The file must contain documentation to fully support the additional expenditures.

If the transaction is treated as a refinance, the LTV is based on the appraised value.

The file must also include all of the following:

- A copy of the fully executed agreement that specifies all terms and conditions.
- Canceled checks or other similar documentation that reflects a 12-month payment history.
- Any lump sum payments made by the borrower in the last 12 months must be documented (including the acceptability of the source).

Agreements entered into less than 12 months prior to the date of application will be considered on a case-by-case basis and must be approved by the Underwriting Manager. If approved, the LTV must be based on the lesser of the sales price or appraised value.

If it appears that the property is the subject of a “flip-sale” (a property sold twice with an inflated value on the second sale) refer to [Section 401 “Purchase Transactions”](#) for additional information.

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406.04 – Non-Agency Products

Unless specifically permitted by the applicable product guide, land contracts are not acceptable.

407 – Non-Arm's Length Transactions

407.01 – Definition

A non-arm's length transaction is one where the parties to the Loan and/or sale transaction are related, such as family members, employer/employee, or principal/agent. This relationship may influence the transaction.

For Second home and Investment property transactions, the borrower(s) may not be affiliated in any way with the builder, developer or property seller.

407.02 – Additional Risk

With non-arm's length transactions it is difficult to determine the specific details of the transaction. The additional risks that may occur with non-arm's length transactions, include:

- Absence of equity or down payment
- The purchase price may not represent actual consideration given
- Financial bailouts or attempts to hide poor credit
- Occupancy concerns
- Financing of unsold builder inventory, especially in soft real estate markets

407.03 – Types Of Non-Arm's Length Transactions

Common types of non-arm's length transactions include:

- Family sales
- Property in an estate
- Corporate sales or transfers (Employer/Employee sales)
- Construction to Permanent financing. Mortgagors employed in the real estate or construction trades who are involved in the construction, financing, or sale of the subject property
- Some transactions involving principals or a seller or other vendor (such as an appraiser, settlement agent, title company, etc.) who is involved in the lending process of the subject property

407.04 – Family Sales

This is a transaction where one family member is selling to another family member. Often there is no real estate agent involved or the agent may also be a family member. These transactions carry the potential for high risk as they may be bailout situations (e.g. the selling party has financial problems and is unable to refinance).

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407.05 – Special Guidelines For Family Sales

On a case-by-case basis, family sales may be considered when the borrower is purchasing the property for **primary** occupancy. The following are generally required to consider the Loan:

- Full documentation of the borrower's income, employment, and assets.
- Borrower must provide copies of canceled check(s) to verify that earnest money has been paid to the seller.
- If the LTV is greater than 80% the borrower must contribute 5% of their own funds for downpayment.
- Standard gift guidelines apply. If the LTV is less than 80% then no downpayment is required.
- Verification that the borrower is not now, nor has previously been, in title to the property.
- Borrower must provide a written explanation that states the relationship to the seller and the reason for purchase.
- The underwriter must be satisfied that the transaction makes sense and that the borrower will occupy the property as a primary residence.

407.06 – Construction to Permanent Financing

When the Loan represents a non-arm's length transaction, as in the case of a Borrower/builder, or an employee, relative or business associate of the builder, the Partner must document the cost of materials and labor plus the Value of the lot. Builder's profit is not an allowable cost in a non-arm's length transaction. If the lot was purchased less than twelve (12) months prior to the date of the Loan application, the Value of the lot will be based on the lower of the purchase price or land Value as indicated on the appraisal report.

The Loan-to-Value will be based on the lower of the documented acquisition cost or the appraised Value. The Partner may still process the Loan under the three methods described above, but in all cases the Value will be based on the lower of the documented acquisition cost or the appraised Value.

407.07 – Gift Of Equity

Gift equity in the subject property is an acceptable source of down payment, as long as the amount of equity has been verified. The donor must provide a gift letter. 5% of the sales price must be verified as being **saved** by the borrowers (these funds do not have to be used toward the down payment).

407.08 – Employer/Employee Sales

This is a transaction in which a builder or developer is selling a property to one of its employees who does not hold a principal ownership interest. These Loans are not subject to any special requirements, and may be treated as normal purchase transactions if the borrower intends to occupy the subject as his primary residence. This scenario would not be acceptable for a Second home or Investment property.

408 – Flip Transactions

A flip transaction is generally defined as a purchase transaction for a property that has recently been acquired by the seller and is being sold for a quick profit.

Flip transactions are ineligible as there may be inflation of the sales price, a financial bailout, misrepresentation and/or straw buyers. A flip transaction is evident if the title reveals several changes in ownership in the course of a few months. If the seller is not in title at the time the purchase contract is executed, the contract may not be valid.

See also Section 401 "Purchase Transactions" for additional requirements.