

that the lessee is current on all rents due, the lessee is not in default of any lease provision and no event has occurred which, with the passage of time, would be a default under the lease.

- F. Organizational Documents. Organizational documents for the mortgagor entity are required to be submitted at closing. They must expressly indicate that the duration of the ownership entity is at least ten years longer than the term of the FHA-insured mortgage, that the terms of the Regulatory Agreement take precedence in the event of any conflict with the terms of the organizational documents, that the ownership entity has authority to enter into the transaction and to comply with the requirements of the insurance program and that unless approved otherwise by HUD, the mortgagor is a single asset entity.
1. The operating or partnership agreements, Limited Liability Corporation documents, or articles of incorporation for the mortgagor entity must include provisions stating that:
    - a. If any of the provisions of the organizational documents conflict with the terms of the note; mortgage, deed of trust or security deed; security agreement or HUD Regulatory Agreement ("HUD Loan Documents"), the provisions of the HUD Loan Documents will control.
    - b. No provision required by HUD to be inserted into the organizational documents may be amended without prior HUD approval, so long as HUD is the insurer or holder of the note.
    - c. No provision in the organizational documents that results in any of the following will have any force or effect without the prior written consent of HUD:
      - (1) Any amendment that modifies the term of the mortgagor entity;
      - (2) Any amendment that activates the requirement that a HUD previous participation certification be obtained from any additional member;
      - (3) Any amendment that in any way affects the note, mortgage, deed of trust or security deed, and security agreement on the Project or the Regulatory Agreement between HUD and the mortgagor entity;
      - (4) Any amendment that would authorize any member other than the Manager/General Partner or pre-approved Successor Manager/General Partner to bind the mortgagor entity for all matters concerning the project which require HUD's consent or approval;
      - (5) A change in the Manager/General Partner or pre-approved Successor Manager of the mortgagor entity; or
      - (6) Any change in a guarantor of any obligation to the Secretary.
    - d. The mortgagor entity is authorized to execute a note, mortgage, deed of trust or security deed and security agreement in order to secure a loan to be insured by the Secretary and to execute the Regulatory Agreement and other documents required by the Secretary in connection with the HUD-insured loan.

- e. Any incoming member/partner/owner must as a condition of receiving an interest in the Company agree to be bound by the note, mortgage, deed of trust or security deed, security agreement, the Regulatory Agreement and any other documents required in connection with the HUD-insured loan to the same extent and on the same terms as the other members.
  - f. Notwithstanding any other provisions, upon any dissolution, no title or right to possession and control of the Project, and no right to collect the rents form the Project, shall pass to any person who is not bound by the regulatory Agreement in a manner satisfactory to the Secretary.
  - g. The members, partners, officers and directors and any assignee of a member/partner are liable in their individual capacity to HUD for:
    - (1) Funds or property of the Project coming into its possession, which by the provisions of the Regulatory Agreement, the person or entity is not entitled to retain;
    - (2) Its own acts and deeds, or acts and deeds of others which it has authorized, in violation of the provisions of the Regulatory Agreement;
    - (3) The acts and deeds of affiliates, as defined in the regulatory Agreement, which the person or entity has authorized in violation of the provisions of the Regulatory Agreement; and
    - (4) As otherwise provided by law.
  - h. The company shall not voluntarily be dissolved or converted to another form of entity without the prior written approval of HUD.
  - i. The company has designated [insert name] as its official representative for all matters concerning the project which require HUD consent or approval. The signature of this person will bind the company in all such matters. The company may from time to time appoint a new representative to perform this function, but within 3 business days of doing so, will provide HUD with written notification of the name, address, and telephone number of its new representative. When a person other than the person identified above has full or partial authority of management of the project, the company will promptly provide HUD with the name of the that person and the nature of the that person's management authority.
2. Corporate Mortgagor
- a. Copy of Articles of Incorporation and Code of Regulations or Bylaws and all amendments thereto, certified by jurisdiction where filed;
  - b. Certificate of Good Standing. A certificate of good standing from the state where the project is located and, if the mortgagor is a foreign corporation, the state of incorporation or an opinion from mortgagor's attorney that such certificate is not required in that jurisdiction;
  - c. Enabling resolution which authorizes the loan and designates the appropriate officer(s) to execute the loan documents; and

- d. Incumbency Certificate certified by corporate officer.
  - e. Corporate articles of incorporation and bylaw provisions which make the corporation responsible for indemnifying its officers and/or board members are not acceptable, except to the extent mandated by state law and/or to the extent that such indemnification is limited to liability insurance coverage or distribution approved by HUD from residual receipts or surplus cash.
3. Partnership Mortgagor
- a. Certified copy of Partnership Agreement and all amendments thereto;
  - b. Copy of Certificate of Partnership, if applicable, which has been recorded in the appropriate jurisdiction, if required. If the mortgagor is a foreign partnership and the application for registration as foreign partnership, and an indication that it is qualified to do business where the project is located.
  - c. Copy of the "Full Force and Effect" Certificate or Certificate of Good Standing or like certificate, if any, provided by the state; and
  - d. If less than all the general partners are signing the loan documents, a partnership resolution which authorizes the loan and designates the appropriate partner for signing.
4. Limited Liability Company Mortgagor
- a. Certified copy of Articles of Organization and Operating Agreement or Code of Regulations and all amendments thereto;
  - b. Certificate of Continued Existence. If the mortgagor is a foreign limited liability company holding a license as a foreign LLC under laws of the state in which the project is located, a certified copy of said license, and Continued Existence from the state of organization, or a legal opinion from an attorney licensed to practice in the state in which the project is located, that the company is qualified to do business and hold title to real estate in that state;
  - c. Enabling resolution which authorizes the loan and designates the appropriate manager or member to execute the loan documents; and
  - d. Incumbency Certificate with authorized member's signature.
- G. Mortgage or (Deed of Trust) and Security Agreement
1. MORTGAGE (OR DEED OF TRUST). Must be a first lien on the entire property. Where permitted by local and state law and by the Section of the Act under which the project is insured, e.g., Section 232 projects, the property includes all nonrealty equipment and furnishings whether financed by mortgage proceeds or sponsor's funds. The property also includes major kitchen appliances financed from mortgage proceeds in projects insured under other sections of the Act. The Mortgage (or Deed of Trust) Form must be that approved by the Assistant General Counsel for Multifamily Mortgage Insurance.
  2. Security Agreement and Financing Statement. The appropriate Uniform Commercial Code documentation (Chattel Mortgage where applicable) must be used as the