

## U.S. Department of Housing and Urban Development

## INSTRUCTIONS TO CLOSING ATTORNEY

(Fire Safety Equipment Loans Insured Under Section 232(i) of the National Housing Act)

Federal Housing Administration

## I. Instructions Pertaining to Security Instrument

In the majority of Fire Safety Equipment Loan cases, the note will be secured by either a mortgage or deed of trust. (All other cases will be referred to the Central Office for processing on a case-by-case basis.) The security instrument form to be utilized for this program will be the State HUD-approved corporate form with the following modifications.

1. In the habendum clause, the warranty language stating that the property is "free and clear of all liens and encumbrances" should be struck.

2. The following clauses should be added to the Security Instrument if not already contained therein:

## (a) Prepayment

"That the Mortgagor will promptly pay the principal of and interest on the indebtedness evidenced by the said note, and this security instrument, at the time and in the manner therein provided; but privilege is reserved to pay the debt in whole, or in an amount equal to one or more monthly payments on the principal that are next due on the note on the first day of any month prior to maturity; provided, however, that written notice of an intention to exercise such privilege is given to the holder of the note secured hereby at least thirty (30) days prior to prepayment."

## (b) Prohibition against creation of liens.

"That the party of the first part will not voluntarily create or permit to be created against the property subject to this Deed of Trust any lien or liens inferior or superior to the lien of this Deed of Trust without the prior approval of the Secretary of HUD."

## (c) Option to cure default under prior mortgage.

"That, in the event of default in the performance of any prior mortgage (may be specifically described) covering the mortgage premises, the holder of this mortgage may, at its option, proceed to cure such default by the payment of all or any part of the indebtedness secured by the prior mortgage and the holder hereof shall be subrogated to the lien of the prior mortgage to the extent of such payment, or, at the option of the holder hereof, such default under a prior mortgage shall be deemed to be a default hereunder and shall entitle the holder hereof to foreclosure of this mortgage or such other remedies as provided by law. The Mortgagor hereby waives notice of the exercise of such option and consents to the assignment of any prior mortgage to the holder of this Mortgage."

## (d) The terms "mortgage insurance premium" and "mortgage insurance contract", as used herein, shall be deemed to mean "loan insurance premium" and "loan insurance contract", respectively.

3. Delete the following clauses identified as (b) and (c)(ii) below. These clauses contain MIP and payment language found in the MIP and payment paragraph of the corporate Mortgage or Deed of Trust forms.

(b) A sum equal to the ground rents, if any, next due, plus the premium that will next become due and payable on policies of fire and other property insurance covering the premises covered hereby, plus water rates, taxes and assessments next due on the premises covered hereby (all as estimated by the party of the third part) less all sums already paid therefor divided by the number of months to elapse before one month prior to the date when such ground rents, premiums, water rates, taxes and assessments will become delinquent, such sums to be held by the party of the third part in trust to pay said ground rents, premiums, water rates, taxes, and special assessments;

(c)(ii) ground rents, taxes, special assessments, water rates, fire and other property insurance premiums.

4. Paragraphs dealing with hazard insurance and reamortization should be struck.

5. Any questions regarding other provisions of the corporate form which you consider inconsistent with the Section 232(i) program or which a prior or proposed mortgagee considers to be unacceptable should be addressed to the Multifamily Mortgage Branch, Office of the General Counsel.

## II. Instructions Pertaining to Note

1. Cases in which no security instrument is proposed to be used should be brought to the attention of the Multifamily Mortgage Branch of the Office of the General Counsel for instructions regarding necessary amendments to the Note.

2. The State corporate note form is to be utilized with the following modifications:

(a) a reasonable prepayment charge provision may be inserted in the Note by the Mortgagee with the approval of the Secretary.

(b) Any language in the Note form pertaining to prepayment charges by the Secretary should be struck.

## III. Instructions Pertaining to Regulatory Agreement

1. The attached FHA Form No. 2466-fae is to be utilized as the Regulatory Agreement for all FSE Loans.

2. A legal description of the property must be attached to the Regulatory Agreement.

3. The names of all mortgagors, whether an individual, corporation, or partnership shall be set forth in the first unnumbered paragraph of the Agreement in the space provided for listing the entity name. If the mortgagor entity is a trust, the beneficiaries of the trust must be recited in the space as well as the name of the trustee and his designation as trustee. If the person executing the Agreement is doing so as a trustee, or in any other representative capacity, his title or designation shall be indicated below his signature at the end of the Agreement.

## IV. Instructions Pertaining to Form of Mortgagor

Other types of mortgagors and points to ascertain regarding their general organizational powers and ability to execute the Regulatory Agreement are as follows:

1. Corporate Mortgagor - any form of Corporate Charter may be used which:
  - (a) contains nothing inconsistent with the Regulatory Agreement;
  - (b) gives the corporation powers necessary to operate the project and execute the note and mortgage, if any; and
  - (c) specifically authorizes the execution of the Regulatory Agreement.
2. Partnership Mortgagor - Unless all partners execute the Regulatory Agreement, a copy of the partnership agreement should be furnished and should be examined to determine that it contains nothing inconsistent with the Regulatory Agreement. It should further contain a provision substantially as follows:
 

"The partnership is authorized to execute a note and mortgage, if any, in order to secure a loan to be insured by the Secretary of Housing and Urban Development and to execute a Regulatory Agreement and other documents required by the Secretary in connection with such loan. Any incoming partner shall as a condition of receiving an interest in the partnership property agree to be bound by the note, mortgage, if any, and Regulatory Agreement and other documents required in connection with the FHA insured loan to the same extent and on the same terms as the other partners. Upon any dissolution, no title or right to possession and control of the project, and no right to collect the rents therefrom shall pass to any person who is not bound by the Regulatory Agreement in a manner satisfactory to the Secretary, subject to the rights of the mortgagee under any prior mortgage approved by the Secretary.
3. Trust - any Trust Agreement before it is finally accepted generally should:
  - (a) give the trustee the powers necessary to execute the note and mortgage, if any;
  - (b) specifically authorize the execution of the Regulatory Agreement;
  - (c) contain nothing inconsistent with the Regulatory Agreement;
  - (d) prohibit the transfer of beneficial interest unless the new beneficiary assumes and agrees to be bound by the Regulatory Agreement and unless the transfer is approved by the Secretary; and
  - (e) require that the Secretary be advised ten (10) days prior to any proposed transfers of beneficial interests.

## V. Instructions Pertaining to Commitment

The printed commitment form for the FSE Loan program, FHA Form No. 2418, should be checked for any special condition or any amendments which would affect the normal closing procedures or instructions.

The commitment, under "Special Conditions", should contain a list of any and all prior liens against the project along with the requirement that the borrower will not incur any additional liens beyond those listed and approved by the Secretary except for the project fire safety equipment loan. You should check the liens listed in the special conditions against those listed in the title policy to ascertain that there are no conflicts or that additional liens have not been placed against the project subsequent to the commitment.

## VI. Instructions Pertaining to Closing Checklist

Attached is FHA Form No. 2423, a closing check list for the Section 232(i) FSE Loan program.

Please note that Item 15 refers to a Security Agreement and Financing Statement, if necessary. If there is any question whether equipment is to be affixed to the property as a fixture, the HUD closing attorney must obtain these instruments to protect the interests of the Secretary.