



Change of Ownership

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Introduction

The *Section 232 Handbook 4232.1 REV-1, Section III, Asset Management, Chapter 7, Change in Ownership: Transfer of Physical Assets*, outlines the procedures that all parties are to follow to ensure that new participants with ownership interests in entities with FHA-insured mortgages are appropriately vetted and obligated to perform the duties and responsibilities required by HUD.

What is a TPA?

A **Transfer of Physical Assets (TPA)** involves the sale and conveyance by deed of title to a property that has a mortgage insured or held by HUD and necessitates a substitution of Borrowers.



The Back Story

Historically, we have always referred to all transactions that involve a change of participants as a ***Transfer of Physical Assets*** or a ***TPA***. There were 5 different transaction types that we grouped into this category, although the terminology really only fits just one transaction type.

The Back Story

(continued)

The 5 different transactions that are grouped under the “TPA” umbrella are:



Full TPA

Modified TPA

Light TPA

Change of Operator

Change of Management Agent

The Back Story

(continued)

Some found early versions of the TPA checklist confusing.

Full and Modified Transfer of Physical Assets (TPA) & Lessee/Operator/ Management Agent Change Submission Checklist
Pursuant to Section 232

U.S. Department of Housing and Urban Development
Office of Residential Care Facilities

Warning: HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties. (18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802)

Project Name:

Project Number:

Note: Items shaded in YELLOW are to be reviewed by OGC.

Exhibit	Full TPA	Modified TPA	Operator/ Lessee	Mgmt. Agent
PRELIMINARY APPROVAL (two complete sets)				
1. TPA Application HUD 92266-ORCF. Letter fully explaining transaction if Modified TPA	<input type="checkbox"/>	<input type="checkbox"/>	N/A	N/A
2. Consent by the Mortgagee	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	N/A
3. Contact Sheet (HUD 92266-ORCF)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>



The Current State

Currently, we have 5 categories for **Change of Participant** transactions:

1. **Full Change of Participants** (historically called a *Full Transfer of Physical Assets or Full TPA*) involves the sale and conveyance by deed of title to a property that has a mortgage insured or held by HUD, requiring a substitution of Borrowers. This type of transaction may also include a Change of Operator and/or Management Agent in conjunction with the TPA transaction.
2. **Modified Change of Participant** (historically called *Modified TPA* because it requires a modified level of review) involves the transfer of certain interests in entities owning properties. Examples include, but are not limited to, a transfer of partnership interests in excess of 50%; addition or substitution of a managing member in a LLC; transfer of stock of corporate general partner of a partnership.

The Current State

(continued)

3. ***Light Change of Participants*** (historically called a *TPA Light* because it requires a fairly light level of review) include, but are not limited to, transactions with a change of Internal Revenue Services (IRS) Reporting Structure (e.g., a Borrower converts from a limited partnership to a limited liability company, but all principals remain the same and the Tax Identification Number (TIN) is not changing).
4. ***Change of Operator*** involves the change of the Operator entity with no change to the ownership of the asset. This transaction may also include a Change of the Management Agent in conjunction with the Change of Operator transaction.
5. ***Change of Management Agent*** involves a change of the Management Agent only; there is no change to the Borrower or Operator entities.



The Current State

(continued)

In the current state, we no longer call all 5 of the change of participant transactions “TPAs” since only one transaction is a true transfer of the physical asset to a new Borrower.



In fact, in the current state, we have moved away from using the term “*TPA*” and/or “*Transfer of Physical Assets*” and instead refer to these transactions as a “*change of participant*” transactions.

Although the current state documents offer more clarity than historical, there has still been some confusion surrounding the “full,” “modified,” and “light” terminology and the transaction fee structure.

The Future State

Our goal is to further simplify these change of ownership transactions, starting with eliminating the “full,” “modified,” and “light” terminology. Transactions would fall into 1 of 3 categories:

1. Change of Ownership
2. Change of Operator
3. Change of Management Agent



The Future State

(continued)



The level of ORCF review and submission documents required for approval will be determined by the applicants response to a few **Key Questions**.

The applicants response to these **Key Questions** would also determine if an application fee is required for approval of the transaction.

Application Submission

Submission requirements include, but are not limited to, the following:

1. Nature of the transaction
2. Organizational charts that describe the transaction
3. Applicable checklists and appendices
4. The project's current physical and financial condition.
5. Special considerations such as accounts receivable financing and/or master lease requirements
6. Experience of the parties managing the project (i.e., the Borrower and its principals, Operator, and Management Agent, as applicable

Why a Review is Required

The review ensures that HUD rules are enforceable and that the FHA Lender has a first position on collateral or perfected security interest.

A review of the experience and qualifications are to protect HUD's interest in the facility by ensuring the new participant has expertise to successfully own or manage the facility.

Determining When There is a Change in Control

The best way to determine if there is a change in control is to compare the Current and Proposed Organizational Chart of the entity and its principals. These charts must include:

- Clearly show all tiers of the ownership structure
- Show All Participants, not just those the Lenders considers to be principals
- Show percentages of ownership and role in the entity (e.g., Limited Partner, General Partner, Managing Member, etc.)
- Include natural person/people and not just entities.

Determining When There is a Change in Control (continued)

The best way to determine if there is a change in control is to compare the Current and Proposed Organizational Chart of the entity and its principals. These charts must include:

- Each entity must be shown on a separate organization chart (e.g., Borrower, Operator, Management Agent, Master Tenant, etc.).
- This method provides a view of all changes, including changes in control. It also may define what additional steps are required in the review.
- The key is to provide a clear, succinct chart that someone unfamiliar with the transaction can quickly understand.

Questions?

