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FOREWORD

\* This Handbook provides detailed policies and procedures to be followed by HUD/FHA Field Offices in processing construction complaints and the disposition of requests for special financial assistance under Section 518(a) and 518(b) of the National Housing Act. Chapter 1 sets forth the policies and procedures to be followed in processing construction complaints on proposed

or existing construction. Chapter 2 describes procedures for processing homeowner requests for financial assistance under Section 518(a) of the National Housing Act. Chapter 3 addresses processing claims submitted under Section 518(b). \*

Where specific procedures are beyond the scope of this Handbook, reference is made to HUD publications containing such procedures.

References:

- (1) 4310.5 - Property Disposition Handbook 1 to 4 Family Properties
- (2) 4045.1 - Fiscal Administrative Handbook
- (3) 4320.1 - Property Disposition Contracting Handbook

Cancellation: This Handbook supersedes HUD Handbook 4070.1 Rev., dated November 1974 and Transmittals 1 through 8.

CONSTRUCTION COMPLAINTS - INTRODUCTION

- \*1. POLICY STATEMENT. A basic policy statement of the Department \*  
of Housing and Urban Development - Federal Housing  
Administration (HUD-FHA) is to enable the borrower to acquire a  
home which is planned, located and constructed to serve the  
present and predictable needs of the family and to encourage the  
\* homeowner in the maintenance and preservation of their \*  
investment. Fulfillment of this policy extends HUD-FHA  
\* assistance and service to the original owner and to successors.\*  
This requires prompt and courteous response to owners' inquiries  
and aggressive action to service insured mortgages  
expeditiously and satisfactorily. Under normal circumstances,  
\* the strength of the homeowner's desire to retain ownership will  
depend largely upon continuing satisfaction with the home.  
Dissatisfaction arising from any cause lessens motivating  
interest in ownership and increases mortgage risk. In handling  
construction complaints, HUD-FHA must exercise impartial  
judgment. Its requests to builders and other parties for  
corrective action must be justifiable and sound. Section 518(a)  
is not intended to substitute for insured protection plans.  
Where such plans are in effect, the company must assume  
responsibility for construction warranties and insurance  
agreements.
2. SCOPE.
  - a. Chapter 1 of this Handbook provides instructions and  
procedures for handling of construction complaints under  
home mortgage programs.

- b. Chapter 2 provides instructions and procedures applicable to the correction of structural defects pursuant to Section 518(a) of the National Housing Act.
  - c. Chapter 3 provides instructions and procedures applicable to the correction of structural defects pursuant to Section 518(b) of the National Housing Act (applicable only to Section 235 existing properties).
  - d. This Handbook is not applicable to complaints involving HUD-FHA acquired properties which are subsequently sold and financed with an insured or Secretary-held mortgage. (See Reference 1 of the Foreword.)
3. DEFINITIONS. For the purpose of carrying out these policies and procedures and establishing HUD-FHA responsibility, the following definitions are applicable: \*

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- \* a. Proposed Construction. A property approved for mortgage insurance or loan guaranty prior to the beginning of construction and inspected during the construction period by HUD-FHA, Veterans Administration (VA) or Farmers Home Administration (FmHA).
- b. Compliance Inspections. Inspections are made during the construction period to determine that construction is completed in accordance with:
  - (1) The specific conditions of the commitment.
  - (2) The drawings and Description of Materials.
  - (3) Applicable HUD Minimum Property Standards (MPS).
  - (4) Acceptable construction practice in the area.
- c. Builder's Warranty. The seller or builder of a 1-to-4 family dwelling, approved for mortgage insurance prior to the beginning of construction, is required to deliver to the purchaser or owner of such property a warranty that the dwelling is constructed in substantial conformity with the plans and specifications on which HUD-FHA has based its valuation of the dwelling.
  - (1) Builders may furnish their own form of warranty or guaranty in addition to Form HUD-92544, Warranty of Completion of Construction in Substantial Conformity with the Approved Plans

and Specifications, if they so desire, provided such additional warranty or agreement does not amend or void any provisions of the HUD Form. The warranty may be assigned by the original purchaser to subsequent purchasers. The warranty must be fully completed with property address, names of purchasers, dated, signed by the builder or seller and, if signed with a corporate signature, executed by an authorized agent or officer of the corporation.

- (2) The date indicated in the last paragraph of the warranty "Notice to Purchaser" may be any one of three dates as follows: If the sale of the property is after completion of construction and before occupancy, the date of conveyance of title to the purchaser will be the appropriate insert; if construction is completed but title has not been conveyed and the dwelling is occupied, the date of initial occupancy will be the \*

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\* appropriate insert; if title to the property has been conveyed to the purchaser prior to completion of the dwelling, the appropriate date for insertion will be the date of completion of the dwelling or initial occupancy, whichever is the earlier.

- (3) The purchaser, owner, or subsequent purchaser has one year from the date inserted in the warranty within which to exercise rights under the warranty.

d. Existing Construction. A property accepted for mortgage insurance after the beginning of construction.

- (1) A property accepted at any time during the construction period, in which event the remaining construction is subject to compliance inspection, or after completion of all construction. No "Builder's Warranty" is required.
- (2) A property on which construction has been completed, which has been previously occupied and accepted after appraisal by HUD-FHA, VA or FmHA.

e. Justifiable Complaints. These are separated as follows:

- (1) Proposed Construction. Complaints which involve proposed construction where it is admitted by the participant or determined by HUD-FHA that defective material, workmanship or equipment have been used or that there have been unacceptable deviations from the applicable Minimum Property Standards, or from the accepted drawings and specifications.

(2) Existing Construction.

- (a) Complaints which have resulted either directly or indirectly from the failure of some item or condition covered by a warranty or guarantee, regardless of whether the warranty or guarantee was provided to the homeowner or HUD, provided such failure occurred and was reported to HUD within the specified period of the warranty or guarantee.
- (b) Complaints which are found to have resulted from incorrect or improper contractor's certification that the work is acceptably completed. \*

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- \* (c) Complaints which are found to be directly or indirectly related to a fraudulent act on the part of the seller, warrantor, guarantor, certifying contractor or mortgagee.
  - (d) Complaints which are eligible for corrective action under the provisions of Section 518(b), if an existing property and insured under Section 235.
  - (e) Complaints resulting from repair requirements imposed by HUD and improperly approved by HUD.
- (3) In any of the above categories, complaints related to but beyond the expiration period of warranties, guarantees or certifications may be considered justifiable when there is evidence of accelerated deterioration of structural soundness or material failures in advance of normal life expectancy and the exact nature of the reported deficiency can be ascertained to be the responsibility of the seller, builder, warrantor, guarantor or certifying contractor or mortgagee. However, the likelihood that such complaints will be justifiable will diminish rapidly after the property is occupied for more than one year.

f. Other Complaints.

- (1) Those complaints involving properties which are not or have been subject to warranties, guarantees or certifications during the period of ownership by the homeowner.

- (2) Those complaints which involve expired warranties, guarantees or periods of certifications whether provided to the homeowner or HUD.
- (3) Those complaints which involve a lack of maintenance on the part of the homeowner or are clearly the homeowner's responsibility as an item of maintenance.
- (4) Those complaints which are beyond the scope of authority of HUD, such as maintenance of streets, public sewerage systems, drainage canals, etc.
- (5) Those complaints handled by the Assistant Secretary for Fair Housing and Equal Opportunity pursuant to legal requirements of civil rights statutes and Executive Orders.

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- \* (6) Complaints handled or investigated by the Office of Inspector General.
  - g. Initial Occupancy. The date of first occupancy of the dwelling, whether it is occupied by the purchaser or by a tenant.
  - h. Maintenance. This is the normal upkeep and repair of the property, which is the responsibility of the mortgagor. Included therein, and ineligible for handling as justifiable complaints, are items such as maintenance of drainage swales and patterns as originally provided; periodic inspection and cleaning of individual sewage disposal systems, eaves and downspouts; periodic servicing of mechanical equipment; normal protective measures such as painting and grouting to prevent accelerated deterioration of material; repairs of cracks attributable to normal curing or settlement; leaky faucets; broken glass, etc.
  - i. Beginning of Construction. The "beginning of construction", as used in the National Housing Act and in HUD-FHA Regulations, means the placement of the first permanent construction, normally the placing of footings.
  - j. Homeowner. The original borrower or any subsequent borrower under a HUD-FHA insured mortgage or insured home improvement loan. Contract purchasers under equity accumulation plans and buyers under assumption agreements are also considered homeowners.

- k. Dwelling. All improvements and appurtenances within the property lines as set forth in the legal description and plans and specifications.
- l. Plans and Specifications. All drawings, calculations, notes, and the Description of Materials (Form HUD-92005) with attachments, including amendments or changes which have been accepted by HUD-FHA, FmHA or VA as a basis for valuation.
- m. Defect. Substantial nonconformity in materials, construction, and workmanship with the plans and specifications and the applicable Minimum Property Standards.
- n. Communication. When necessary, all communications with the claimants shall include a Spanish Language warning advising them to communicate with the Complaint Officer if they do not understand the letters and forms.