

CHAPTER 10. PROCESSING FOR PLANNED - UNIT DEVELOPMENTS (PUD)

10-1. PROCESSING.

a. Feasibility Analysis.

(1) Preliminary Conference with Sponsor: Prior to the sponsor's filing Application for Subdivision Feasibility Analysis, FHA Form ASP-1, HUD-FHA should hold a preliminary conference to inform him of the objectives of the program, the means of organization, the general plan for development and operation, and the safeguards to the purchasers which must be established. Specific points to cover in this conference are:

- (a) The meaning of land-use intensity.
- (b) The formation of a homes' association with articles of incorporation, by-laws, and declaration of covenants, conditions and restrictions. At this conference, copies of suggested documents, FHA Form 1400, should be given to the sponsor's attorney.

The necessity of conveying the common area in fee simple to the homes' association free and clear of encumbrance prior to the conveyance of the first lot to a purchaser.

- (d) The need for completing all improvements in the common area prior to insurance of any residential unit or for providing for them by an escrow.
- (e) The need for beginning assessment of the annual maintenance charges on all lots on the first day of the first month following the conveyance of the common area.
- (f) Making the sponsor aware of the importance of the legal documents and the time required for their preparation, review and recordation. The sponsor should be prepared to begin their preparation as soon as the proposal has been sufficiently delineated and agreed upon by HUD-FHA and the sponsor.

(10-1) (g) The meaning and use of a staged development, including the requirement for submission of a general plan.

(2) Site Analysis: Upon receipt of FHA ASP-1 and its

accompanying exhibits, the ADSF/CU will assign appropriate staff members to visit the site to determine feasibility and the land-use intensity to be assigned.

(3) Land Planning Analysis: All proposals for Planned Unit Developments should receive HUD-FHA land planning analysis.

b. Interim Report on Application for Subdivision Feasibility Analysis: The Special Procedures described in Reference (9) of the Foreword will be employed in all PUD cases as modified in the handbook. The Letter of Feasibility (Form ASP-6) cannot be released until HUD-FHA, VA and the sponsor have agreed upon the basic land planning concept which will be employed throughout the development, the responsibilities of the homeowners' association, and the approximate monthly fees for these services. The sponsor will be advised by way of an Interim Report on Application for Subdivision Analysis (ASP-5) of any question that must be resolved before a Feasibility Letter can be issued. The Land Use Intensity rating will always be furnished to the sponsor in accordance with ASP-5 instructions. Such a letter may include the following requirements in addition to those incorporated in FHA Form ASP-5:

- (1) A requirement that the sponsor arrange for a conference with HUD-FHA if there was no preliminary conference. The sponsor may have his Land Planner and Attorney at this meeting.
- (2) A requirement that the sponsor should submit a description of the services to be offered by the homeowner's association and estimate of the approximate monthly cost per unit for the operation of the association. This should include a description of all the common area and/or facilities to be maintained by the association.

4/73

Page 10-2

HUD-Wash., D. C.

4140.2

- (10-1) (3) A letter of feasibility. If the proposal is found to be acceptable, a feasibility letter is issued (ASP-6). The resulting ASP-7, List of Exhibits Required for Preconstruction Analysis, should be expanded to include any of the following information that may be found appropriate:
- (a) The presentation of the pre-sale requirements, if any.
 - (b) A requirement for credit exhibits, even if conditional commitments only are contemplated, since the buyer/sponsor must be financially capable of

building the models and common areas and paying maintenance assessments for a reasonable period of time on unsold units.

- (c) A requirement that the dedication sheet of the subdivision plat has proper dedication of the common areas for use by the homeowners.
- (d) A requirement for submission of draft of the proposed management agreement, if there is to be one.
- (e) A requirement for submission by the sponsor of an itemized estimate of the annual maintenance cost and anticipated assessment per living unit.
- (f) A statement of requirements related to the creation of the homes' association, including:
 - 1 An acceptable program for activating the homes' association, developing homeowner leadership and transferring control of the association gradually to the home owners; see data in Reference (10) of the Foreword.
- (g) A statement of requirements for an information program for home buyers, including, but not necessarily limited to, the following:

4140.2

- (10-1)
 - 1 An acceptable brochure or written statement to be used in the sales program to inform all home buyers about the homes' association, its common properties, its services, its operations, and the rights and obligations of lot owners.
 - 2 Specific information which must be covered in the brochure is given in Paragraph 10-4, below.
- (h) A statement that the organizational documents and information brochure must be drafted and submitted to the Field Office for review by the General Counsel (except as provided for in Subparagraphs 1 and 2 below). The sponsor should be advised to submit this information as soon as it is available since it must be reviewed, corrected, and recorded before ASP-9 is issued and before conditional commitments can be issued. (See Legal Documents, Paragraph 10-5 below for a possible exception which would permit their recordation shortly thereafter.)

- 1 If the common property is privately owned but only a minor element of the development and no value is attributed to it, or if there is no common property the development is processed under regular subdivision procedures rather than Planned Unit Development procedures. If there is no common property and the association does not perform substantial services for the homeowner, mandatory assessments are not needed. In this type of subdivision legal documents are not reviewed by the Office of the General Counsel but should be reviewed by the Field Office, following the guidelines in Subparagraph 10-5.e. below.
- 2 If the common property is publicly-owned and maintained, the development is processed under regular subdivision procedures rather than Planned Unit Development procedures. The homes may be on relatively small lots with compensatory

4/73

Page 10-4

HUD-Wash., D. C.

4140.2

(10-1)

open space concentrated in a public park. In such cases, HUD-FHA accepts the public maintenance, and the primary function of the homes association is usually to conserve the common scheme of development by effective administration of the recorded covenants, including architectural control after the development period. Where association activity involves only covenant administration and the customary periodic news letter to members, the association's typical expenses are relatively small and may be covered by mandatory assessments or by voluntary contributions of homeowners, as determined originally by the developer and established in the recorded covenants. Where the association performs substantial services for the homeowner such as exterior maintenance of the homes, mandatory assessments may be needed. In this type of subdivision legal documents are not reviewed by the Office of General Counsel but should be reviewed by the Field Office following the technical guidelines in Paragraph 10-5.e. with an attorney on the staff of the Field or Regional Office doing the review instead of the Office of the General Counsel.

- c. Preconstruction Stage Processing: As soon as the draft of the legal documents and the sales brochure information are received, they are reviewed and forwarded to the General

Counsel's office in accordance with instructions found in Chapter 10, Legal Documents, of this Handbook. The sponsor should be notified whenever his proposal is transferred from the Field Office to the Regional or Central Office. Any preliminary preconstruction exhibits the sponsor may wish to have examined may also be reviewed informally as workload permits. As soon as the remaining required exhibits have been submitted by the sponsor, the Preconstruction Stage of processing as described in Reference (9) of the Foreword should be completed. If the Preconstruction Analysis results in a favorable finding, the Letter of Preconstruction Analysis (ASP-9) should be expanded to include the following:

Page 10-5

4/73

HUD-Wash., D. C.

4140.2

- (10-1) (1) Requirements and conditions to be complied with prior to start of construction.
- (a) The Architectural Section will be notified three days before the date construction of community facilities is expected to start. (The plans and specifications for these facilities must have been previously approved.)
 - (b) Complete organizational documents that include filing data and recording information must be submitted unless a condition requiring acceptance by the General Counsel before insurance is made a part of each commitment. The organizational documents must conform to all requirements of the General Counsel's office.
 - (c) A final copy of the Sales Brochure including the information as approved by the General Counsel must be submitted.
- (2) Requirements to be complied with prior to endorsement for insurance:
- (a) Submit written evidence that the annual maintenance assessment amount to be levied against each property conforms to that previously agreed upon.
 - (b) Submit an executed conveyance, carrying recording data, evidencing that all common areas have been conveyed to the home's association. Also, there must be evidence in the form of a title policy or attorney's opinion that the title has been conveyed and is free and clear of encumbrances.
- d. Application for Commitment. Before individual applications are accepted, the subdivision title should be reviewed to insure that all required conditions have been met. A

conference with the sponsor may be advisable in some cases.

- (1) Processing: Processing of individual applications for mortgage insurance follows prescribed procedures except as modified in Reference (3) of the Foreword.

4/73

Page 10-6

HUD-Wash., D. C.

4140.2

- (a) The ADSF/CU is responsible for coordination between disciplines on all Planned Unit Developments.
 - (b) The annual maintenance assessment must be clearly separated from the estimate of maintenance and repairs for individual residential units on the underwriting reports and commitments. A separate entry shall be made for each.
 - (c) If a pre-sale requirement is involved, the commitment must contain a special condition reciting the precise requirements (See Paragraph 10-4 below).
- (2) Conversion Commitment. The mortgage credit processing of applications of purchasers for credit approval follows the procedures outlined in References (4 and 5) of the Foreword.
 - (3) Endorsement for Insurance. The procedure is the same as for regular 203(b) cases.
 - (4) Correspondence. A copy of all correspondence between the Field Office and Regional or Central Office elements will be sent to the Director, Unsubsidized Insured Housing Programs, Attention: Director, Single Family and Land Development Division.

10-2. SERVICING INSURED LOANS.

- a. General. For information relating to insurance endorsement see Reference (6) of the Foreword.
- b. Relationship with the Homes' Association and the Homeowner.
 - (1) Since the common area and its facilities are not a part of the mortgage security, HUD-FHA does not have voting or other rights in the homes' association. Nevertheless, HUD-FHA can exert influence for the good of the association and the homeowner by persuasion.
 - (2) The required reviews for acceptability of the information bulletin or brochure and legal documents provide opportunities to advise and counsel the sponsor. The information contained in these exhibits must clearly instruct the prospective purchaser as to his

responsibilities, rights, and privileges.

Page 10-7

4/73

HUD-Wash., D. C.

4140.2

c. HUD-FHA Relationship with the Mortgagee.

- (1) This relationship is essentially the same as that which exists under other HUD-FHA insured programs, being based upon a contract of mortgage insurance. The maintenance of a close liaison between the mortgagee and HUD-FHA takes on added importance, however, because of the great impact the quality of lack of quality of the community features have upon value.
- (2) It is essential that the association be financially capable of maintaining the common area and facilities. If available funds are inadequate, maintenance will suffer and the mortgage security will be impaired. Suggestions should be made to the lender that he collect for the payment of the association assessment as he does for taxes and fire insurance.
- (3) Reference (7) of the Foreword provides that insurance benefits may include charges for the administration, operation, maintenance or repair of community-owned property or the maintenance and repair of the mortgage property paid by the mortgagee. Insurance benefits may not include assessments levied by association which do not own any property or which do not perform maintenance or repair of residential property.

10-3. THE COMMON AREA.

- a. Conveyance to the Association. The common area must be conveyed to the association before the first lot is conveyed to a home buyer. The insuring office should require the developer to produce a title policy or attorney's certificate of title as evidence that the association holds a fee simple title, free and clear of all encumbrances other than approved utility easements. Conveyance of the common area subject to a mortgage or other liens is not acceptable.
- b. Completion of Common Facilities. All improvements to the common area must be completed prior to the insurance of a mortgage on any residential unit. If it is impracticable or inadvisable to complete the improvements for reasons beyond the control of the developer, instructions for

4/73

Page 10-8

HUD-Wash., D. C.

assurance of completion of off-site improvements may be employed. (Reference (12) of the Foreword) Inability to pay for the improvements is not an acceptable reason for delay in completion of improvements. If it appears that the proposed improvements are extensive, the development may be staged so that the improvements for each stage will be completed prior to the insurance of a unit in that stage; however, no value will be given for facilities which have not been completed and conveyed to the association.

- c. Undivided Interest in the Common Area. In any subdivision or PUD, the common property may be owned by a homeowners' association, or each homeowner may own an undivided interest in the common property. If the common property is held by means of an undivided ownership, a pre-sale requirement of 80% is mandatory. where circumstances warrant, consideration may be given to a waiver of the 80% pre-sale requirement upon approval of the Director, Unsubsidized Housing Programs, Attention: Director, Single Family and Land Development Division.

10-4. PRE-SALES.

- a. Definition of Pre-Sale Requirements. A pre-sale requirement means that no insurance endorsement will be made until a stated percentage of the properties in a project have been sold to qualified buyers. These buyers need not be HUD-FHA-assisted purchasers.
- b. Use of Pre-Sale Requirements. Serious consideration must be given to a pre-sale requirement in all cases where privately-owned common property is an essential or major element of the development. If the proposed development has extensive common facilities, HUD-FHA would be required to issue more commitments to support these facilities than we would in a regular subdivision. In such a case, if there is any question about the ready market acceptance of the individual units, a pre-sale requirement is mandatory. If there is no question about the ready market acceptance of the units, a pre-sale requirement is not mandatory.
 - (1) Although a pre-sale requirement must be considered in all cases, the number of pre-sales required will vary with the circumstances involved. After considering

the market, physical design, and interdependence of the homesites and the common facilities, the ADSF/CU will recommend the number of pre-sales. The pre-sale requirement may vary up to a maximum of 80% except in

those cases where the homeowners own an undivided interest in the common property. In such cases, a pre-sale requirement of 80% is mandatory.

- (2) The pre-sale requirement is set forth in (1) the initial feasibility letter, ASP-6, (2) the Preconstruction Analysis Report, ASP-9, and until the condition is met, (3) each conditional and (4) firm commitment. Until the condition is met, no mortgage on any individual properties may be endorsed for insurance. The pre-sale requirement shall be stated as follows:

"Closing papers may not be submitted for insurance endorsement without prior approval of the office. Such approval will be given upon submission of evidence that _____ properties have been sold to owner-occupants."

10-5. INFORMATION BROCHURE.

- a. Content. The nature of the homeowners' association and the probable cost of operating common facilities owned by it are not normally discernible by the layman purchaser. An information brochure written in simple terms must be prepared for use in the sales program to inform all home buyers about the homes' association and the rights and obligations of lot owners. A copy of the organizational documents is not sufficient for this purpose because of the technical language employed in the documents. Specific information which must be included in the brochure included:

- (1) Organizational structure of the association.
- (2) Membership and voting rights of homeowners and the developer.
- (3) Requirements for annexation, merger and dissolution.
- (4) The maximum amount of assessments, the assessment lien, and the method of enforcement.

4/73

Page 10-10

HUD-Wash., D. C.

4140.2

- (5) Method of changing the maximum assessment.
- (6) User fees, if any.
- (7) Nature of common property, including improvements.
- (8) Services provided by the association.
- (9) Exterior maintenance of dwellings, if any.

(10) Architectural control.

- b. Copies. A copy of the proposed publication must be forwarded with the legal documents for review and approval by the Office of the General Counsel as part of the normal processing for HUD-FHA approval.

10-6. LEGAL DOCUMENTS.

- a. Models. HUD-FHA and VA have prepared model legal documents for use with Planned Unit Developments. Since they were prepared for nationwide use, sponsors and their attorneys should conform these documents to local law and the particular development.
- b. Instructions plus Documents. The complete set of three model documents is published in appendixes hereto, preceded by instructions on use, as follows:
- (1) Instructions - Appendix 1
 - (2) Declaration of Covenants, Conditions and Restrictions, - Appendix 2
 - (3) Articles of Incorporation - Appendix 3
 - (4) By laws - Appendix 4
- c. Content. The proposed draft of the legal documents and a copy of the information brochure must be reviewed by the Office of the General Counsel prior to the issuance of the letter to the sponsor concluding the Preconstruction Analysis (ASP-9). The submission to the Office of the General Counsel should also include the following information:

4140.2

- (10-6)
- (1) A plot plan showing the location of lots, streets, common areas and common facilities. This plan must be adequately labeled and/or color coded so that the common areas can be easily identified.
 - (2) A copy of the Application for Subdivision Feasibility Analysis (ASP-1), and any subsequent ASP forms that may have been processed or drafted in conjunction with the processing of this application.
 - (3) A list of the services and facilities offered by the homeowners' association.
 - (4) An estimate of the homeowners' association fees and the insuring office recommendations as to the adequacy of this amount.

- (5) A statement advising the General Counsel of any specific conditions included in or possibly affecting the legal documents which have come to the attention of the Field Office.
- (6) A copy of the proposed sales brochure, information and any other material which describes the nature and scope of the development and aids the reviewing attorney in understanding the intent of the developer and the application of the document provisions.

The Office of the General Counsel performs its individual review, corresponds directly with the Field office, and provides copies to HUD Office of Technical and Credit Standards and VA.

- d. Conditional Commitments. Prior to the issuance of ASP-9, Preconstruction Analysis Letter, the draft of the legal documents must have been reviewed by the General Counsel and the sponsor advised of any needed revisions. Based upon the sponsor's expressed willingness to make the required corrections, conditional commitments may be issued in those cases where the required corrections are limited in nature. Every effort should be made to get them corrected, accepted by the General Counsel, and recorded before the first conditional commitment is issued; in any case, they must be recorded before the first clear final inspection report can be issued. Acceptance by the General Counsel must be made a condition of any commitment issued before final legal review.

4/73

Page 10-12

HUD-Wash., D. C.

4140.2

- (10-6) e. Review by Field Office. If the subdivision contains no common areas, or contains only minimal common areas for which no value is attributed to the homes, as defined in Paragraph 10-1.b.(3)(h)1 and 2, above the Field Office should review the legal documents using the following guidelines:

Subdivisions with no common area.

- (1) There must be an adequate legal description of the property subjected to the covenants.
- (2) The association must have the power to levy, collect, and disburse assessments.
- (3) The activities for which assessment funds may be used must be specified.
- (4) The assessments must be uniform. The developer should not be exempt from payment.

- (5) If the assessment is a lien on the homeowner's property, it must be subordinate to the home mortgage.
- (6) Lot owners must automatically be members of the association and have voting rights therein.
- (7) There must be a reasonable plan for passage of control of the association from the developer to the homeowners.
- (8) The homeowners must have the right to inspect the books of the association.
- (9) The covenants must be enforceable by the association and the individual homeowners.
- (10) Amendments to the covenants must be approved by HUD-FHA/VA while the developer retains control of the project.

Additional requirements for subdivision with limited common area for which no value is given:

- (11) The homeowners must have a right of enjoyment of, and easement in and to, the common area.

4140.2

- (12) The association must be incorporated and title to the common area conveyed to it free and clear of liens and encumbrances prior to the sale of the first lot.
- (13) Assessments must commence upon conveyance of the common area to the association.

NOTE: The Home Mortgage Section, Office of the General Counsel, will provide assistance on any legal questions encountered in the review.

10-7. INTERDEPARTMENTAL COOPERATION.

- a. Veterans Administration. There is particular need for inter-departmental cooperation with the Veterans Administration in processing any proposed development. The procedures for coordination with the Veterans Administration are prescribed in Reference (9) of the Foreword. Coordination on all technical decisions is mandatory. Any technical matter that cannot be resolved will be referred to the Director, Office of Field Support.
- b. Either or both. In many instances, developers of PUDs desire both HUD-FHA and VA approval in order to have both types of financing available for marketing purposes. In other instances they may desire only HUD-FHA approval and in still

other instances only VA approval. Developers should be urged to make submissions to both agencies simultaneously if they desire both types of financing. This will facilitate review and coordination of all aspects of the Field and Central Office levels of both agencies. In addition, from both the home purchasers' viewpoint as well as the government's, initial approval by both agencies will facilitate resales of individual units with either HUD-FHA or VA financing.

- c. Sequence of Submissions. With a few relatively minor exceptions VA and HUD-FHA administrative policies and legal requirements are identical. VA does not review proposed submissions from the administrative and legal aspects unless the developer submits the proposed development for its approval. Hence, coordination of submission of proposed PUDs with the VA will be limited to technical matters in those instances in which

4/73

Page 10-14

HUD-Wash., D. C.

4140.2

- (10-7) the developer submits his proposal to HUD-FHA only and indicates he does not desire VA participation. Where the developer desires both types of financing coordination with the VA shall be accomplished on all aspects before issuing an approval of the proposed development. VA will follow the same policy on proposed developments submitted to it.

Page 10-15 (and 16)

4/73

HUD-Wash., D. C.