

CHAPTER 4. PRE-CONVEYANCING REQUIREMENTS

4-1. RELEASE OF PROJECT LIENS.

- a. Discharge of Project Mortgage. The FHA Regulations require that any insured project mortgage be paid in full or the contract of insurance voluntarily terminated prior to insurance of the unit mortgages, unless the Secretary determines that his interests and those of the family unit purchasers are best served by not requiring the termination of the project mortgage insurance.
- b. Termination of Project Mortgage Insurance. Normally, any blanket mortgage on the premises will be discharged. However, it is permissible for the mortgagee, if the parties so desire, to surrender the project mortgage insurance and to retain an uninsured blanket mortgage on the premises and to release the individual units from the lien of such mortgage as individual loans are closed. In any case, however, the entire property must be converted to the condominium ownership plan. Where the blanket mortgage is retained it should be amended to cover property which has been divided into separate condominium units. The owner under the blanket mortgage is subject to the condominium plan of ownership.
- c. Retention of Project Mortgage Insurance on Unsold Units:
 - (1) In certain rare situations it may be in the interests of the Secretary and the individual subscribers to permit the insured project mortgage to remain in effect on the unsold units. Approval should be given by the Field Office Director only in such cases where there have been a substantial number of individual unit sales and it is assured that there will be no equity payments to the sponsorship until the project mortgage has been paid in full.
 - (2) Where the project mortgage insurance is to be maintained, it will be necessary that the provisions of the project mortgage be reformed to permit release of the individual units from the lien thereof, and the property description must be modified to conform with the condominium description.

- (3) To assure that no equity payments are disbursed to the sponsor, the Field Office must establish the amounts to be applied against the project loan at the time of unit spin-offs.

- (4) Finally, it must be required that the project mortgage title insurance coverage be extended to cover the mortgage, as modified, pursuant to the foregoing.

4-2. SECURITY INSTRUMENTS (NOTE AND MORTGAGE OR DEED OF TRUST)
- (SECTIONS 234(c) and 235).

The home mortgage individual note (9100 Series) and mortgage or deed of trust (2100 Series) forms are used in Sections 234, and 235 individual mortgage insurance programs. However, to meet the particular requirements of this program, the following additional provisions must be added to these forms at appropriate places:

"The mortgagor further covenants that he will pay his share of the common expenses or assessments and charges by the Association of Owners as provided in the instruments establishing the condominium."

"The Regulatory Agreement executed by the Association of Owners and attached to the Plan of Apartment Ownership (Master Deed or Enabling Declaration) recorded on (date) in the Land Records of the County of _____, State of _____, is incorporated in and made a part of this mortgage (deed of trust). Upon default under the Regulatory Agreement by the Association of Owners or by the mortgagor (grantor) and upon request by the Federal Housing Commissioner, the mortgagee, at its option may declare this mortgage (deed of trust) in default and may declare the whole of the indebtedness secured hereby to be due and payable."

"As used herein, the term 'assessments', except where it refers to assessments and charges by the Association of Owners, shall mean 'special assessments' by state or local governmental agencies, districts or other public taxing or assessing bodies."

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4-3. ENDORSEMENT FOR INSURANCE OF INDIVIDUAL UNIT MORTGAGES.

- a. General Requirements. Before the credit instrument is endorsed the following shall have been received by the Field Office, in satisfactory form:
 - (1) Copies of the Plan of Apartment Ownership is recorded, together with copies of the By-Laws, Regulatory Agreement and Subscription and Purchase Agreement.
 - (2) Evidence that the pre-sale requirement, as established by the Field Office, pursuant to paragraph 1-4. of this

Handbook has been met.

- (3) The commitment and its certifications signed by the mortgagee and the borrower.
- (4) The original note, bond, or other credit instrument and one copy thereof.
- (5) One copy of the original mortgage or other security instrument.
- (6) One copy of the statement of closing charges to the mortgagor.
- (7) Assignment of the commitment, if any, to a HUD-FHA approved mortgagee.
- (8) In the case of new construction, evidence that the owner of the multifamily structure has assigned to the Association of Owners described in the Plan of Apartment Ownership and to the members of such association and their successor in interest, as their interests may appear, all assurances against latent defects required by HUD-FHA in connection with the insurance of the mortgage covering the multifamily structure and copies of the plans and specifications.
- (9) In the case of new construction, evidence that working capital for the condominium has been deposited with a depository satisfactory to HUD-FHA in an amount equivalent to 1% of the total HUD-FHA valuation of the units in the condominium.

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- b. Execution and Recordation of Condominium Documents. Before endorsement, the entire docket should be referred to the HUD Area Counsel for his examination, in order that he may determine that the "Master Deed or Declaration," The Regulatory Agreement (FHA Form 3278) and other related exhibits have been properly executed, acknowledged and recorded. This procedure may not be necessary after the closing of the first case in a project. However, it will be incumbent on the HUD Area Counsel to advise the Field Office Director whether subsequent dockets should be referred to him.

NOTE: Upon completion of the foregoing review, copies of the Plan of Apartment Ownership, as recorded, together with copies of the By-Laws, Regulatory Agreement and Subscription and Purchase Agreement should be placed in the Washington Docket.

- c. Associations Working Capital Requirement. It is the responsibility of the Field Office Director to determine that the working capital fund has been established by the Association of Owners as required by the commitment for insurance. The total of the working capital fund should be not less than 1% of the total valuation of the units.

Working capital funds should be used only to cover unanticipated needs which may arise in the first year of operation and any balance thereafter remaining should be deposited in the Replacement Reserve.

- 4-4. APPLICABILITY OF - MORTGAGE INSURANCE FOR CONDOMINIUM HOUSING INSURED UNDER SECTION 234(d) OF THE NATIONAL HOUSING ACT. (See Reference (1) of the Foreword. All basic condominium documents including, Series Development with Off-Site Facilities, an explanation of how condominiums are created, management requirements, and document review are contained in the referenced handbook. It should be used in conjunction with this Handbook.