

CHAPTER 2

PRE-ACQUISITION, MIP AND HUD-OWNED ACQUISITION PROCEDURES

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- 2-1 Introduction. This chapter provides management policies and procedures covering the period Prior to acquisition of a project and a brief description of MIP and HUD-owned acquisition policy.
- 2-2 Pre-Acquisition Expenditures on Behalf of a Project with a HUD-Held Mortgage.
- A. Unless HUD is MIP, expenditures cannot be made or authorized, or obligations incurred except for expenses directly related to the foreclosure process, such as:
1. Physical inspection required to establish repair needs and costs for a foreclosure sale;
 2. Foreclosure Appraisals; and/or
 3. Foreclosure Architect and Engineering expenses.
- B. Vouchers for payments for allowable expenses must be forwarded to MIAS, Attention: Multifamily Notes Servicing Branch. The request for payment must include a cover memorandum of explanation which clearly identifies the project name and FHA number and must be accompanied by an Optional Form 347 (OF-347) and the original invoice.
- 2-3 Mortgagee-in-Possession (MIP). HUD, as mortgagee, may take possession of a multifamily project as part of initiating foreclosure to protect the health and safety of the residents and to preserve the asset. Approval to become MIP must be obtained from the RHD. MIP occurs in one of the following ways:
- A. Voluntary. The owner (mortgagor) should execute a written agreement with HUD upon approval from the RHD. APPENDIX 2-1 is the Model MIP Agreement. *
- B. Court Appointment. HUD may petition the Court to appoint the Secretary MIP. This usually occurs when the owner has filed for bankruptcy to halt a foreclosure action or in circumstances where HUD determines that court approval is warranted because of the owner's opposition or other factors. Housing
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staff should consult local counsel for further information.

- C. Assumption of MIP Status by Unilateral Action. The Regulatory Agreement entitles HUD to take possession of the project without court approval or mortgagor consent in the event of a default under that Agreement. In addition, the mortgage itself may entitle HUD to become MIP upon a violation of a mortgage covenant. Abandonment of the project by the mortgagor would constitute an actual or anticipatory breach of the Regulatory Agreement. Field Counsel must be consulted in cases of technical default under the terms of the Regulatory Agreement or to review the definition of abandonment under state and /or local statutes.

2-4 Acquisition of Projects. Multifamily projects are acquired by HUD through foreclosure and non-foreclosure procedures.

- A. Acquisition through foreclosure procedures.

1. There are four types of foreclosures:
 - a. Federal Judicial Foreclosure;
 - b. Federal Nonjudicial Foreclosure;
 - c. State Judicial Foreclosure; and
 - d. State Nonjudicial Foreclosure.
2. Generally, foreclosures extinguish all liens and other contracts and agreements on the property. There are exceptions to this rule where HUD may be held to previous deed restrictions and contracts. Field or Regional Counsel must be consulted if question exists concerning HUD's obligations after foreclosure.

- B. Acquisition through non-foreclosure procedures.

1. Non-foreclosure procedures do not extinguish the liens, contracts and agreements on the property. Therefore, when these methods are used, care must be taken to review the terms of acquisition and assure that HUD does not become responsible for unforeseen liens or activities.
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2. In all cases where HUD does not foreclose, proof of clear title is required. There are three procedures for acquisition where HUD does not foreclose:
 - a. Mortgage conveyance to HUD after mortgagee foreclosure;
 - b. Mortgage conveyance to HUD after the mortgagee takes a deed-in-lieu of foreclosure; and
 - c. HUD accepts a deed-in-lieu of foreclosure on a HUD-held mortgage. An owner, usually wishing to avoid a foreclosure, may offer conveyance of a project to the Secretary. If certain administrative and legal requirements are met, the deed is accepted and recorded.
 - (1) A deed-in-lieu of foreclosure must receive prior written approval of the RHD. The RHD may approve acquisition by deed-in-lieu provided:
 - (a) A current title opinion and mortgagee's title insurance policy are obtained.
 - (b) There are no liens, encumbrances or restrictions on the project other than the HUD lien or HUD restrictions.
 - (c) An audited, certified financial statement is obtained from the owner.
 - (2) Meeting the above requirements may take considerable time. Acquisition by deed-in-lieu may take more time than a foreclosure action. The required time frame for acquisition, foreclosure procedures and deed-in-lieu procedures should all be considered before a decision is made to take a deed-in-lieu.