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Chapter 7. Second Notice of Intent: Voluntary and Mandatory Sales

- 7-1. Introduction. Within 30 days of receiving information from HUD, in accordance with Chapter 5, the owner must submit a Second Notice of Intent (NOI) if it wishes to sell the project. LOG date received This Chapter describes what Loan Management staff must do when it receives a Second NOI to sell the project, whether through a voluntary or mandatory sale process. It also describes the owner's role in this process and includes information about advertising the project for sale and accepting bona fide offers.
- 7-2. Review for Accuracy. Within five days of receipt of a Second NOI, Loan Management staff must review it for accuracy and compliance with the regulations. This review includes, but is not limited to, ensuring that the owner selected an appropriate option based on the comparison of Transfer Preservation Rent (TPR) and the Federal Cost Limit (FCL) and stated its requirements for an earnest money deposit. If the Second NOI is not complete or accurate, Loan Management staff should return it to the owner indicating that the NOI must be returned to HUD within the 30-day deadline if it is to be considered. LOG date returned To meet the 30-day deadline, the owner must deliver a complete and accurate Second NOI to the Loan Management Branch and distribute it in accordance with the instructions on form HUD-9609, Second Notice of Intent in Appendix 6A and Chapter 6.
- 7-3. Notification to Qualified Purchasers. HUD staff must take certain actions to notify potential qualified purchasers, defined in Chapter 1, Paragraph 1-15, of the availability of the property for sale. LOG date notifications begin The owner must also take certain actions under this notification process. Following is a list of required actions:

- A. Within five days of determining that the Second NOI is complete and accurate, Loan Management staff will:
1. Send written notification, which contains the data cited in Paragraph 2.a. through e. below, about the sale of the property to any known potential qualified purchasers, including potential purchasers identified in accordance with Paragraph B.1.e. below:
  2. Provide the Preservation Division in Headquarters (Preservation Division) with:
    - a. The name and address of the property;
    - b. The name and address of the owner and any owner representatives;
    - c. The sizes, types and number of units;
    - d. The amount of earnest money deposit required;
    - e. The Transfer Preservation Value (TPV) of the property;
    - f. The names and addresses of major general circulation newspapers in the project area; and
    - g. The names and addresses of minority newspapers and newsletters in the area.
  3. Provide the Resident Initiative Specialist (RIS) with the information in Paragraphs 2.a. through e. above.
- B. Within five days of receiving the information from the Loan Management Branch, the Preservation Division will:
1. Contract for services to place notices in the major local newspapers in the project area and the regional edition of

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the Wall Street Journal. If several projects are available for sale at the same time, the notices may list more than one project. Each notice will include:

- a. The information contained in Paragraphs A.2.a. through e. above;
  - b. All timeframes during which potential purchasers may submit offers to purchase the project in accordance with Paragraph 7-4;
  - c. The procedure for submitting an expression of interest to the Loan Management Branch in accordance with Paragraph 7-5;
  - d. Brief information about use restrictions and submission of a POA;
  - e. A statement advising potential purchasers that they may place their names on a general mailing list, being developed by the Preservation Division, to receive copies of future notices; and
  - f. The address of the Preservation Division where the mailing list is being developed.
2. Ensure that notices are placed at least once weekly and Sunday at each of the times shown below or until the owner accepts a bona fide offer. Some projects may be advertised more often if group advertisements are used. The Preservation Division should place the advertisements:
- a. Within 25 days of receipt of a Second NOI;
  - b. Six months after receipt of a Second NOI; and

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- c. 12 months after receipt of a Second NOI.
  - 3. Place notices in the local minority newspapers and newsletters in the project area at the times and manner shown in Paragraphs B.1. and 2. above.
  - 4. When appropriate, place notices in the national edition of the Wall Street Journal or other national newspapers in the same manner as specified in Paragraphs B.1. and 2. above. Generally, national advertisements will be used only for large projects that will generate more than local interest and when group notices are used.
  - 5. Send the mailing list, developed in accordance with Paragraph B.1.e. above, to appropriate Loan Management staff.
- C. Within five days of receiving the information from the Loan Management Branch, the RIS will mail notices that provide the information shown in Paragraphs A.2.a. through e. above, in the form of Appendix 7-2, Notification to Nonprofit Organizations of the Availability For Sale of a Multifamily Housing Project, to the following organizations:
- 1. Any known Resident Council (RC), community-based nonprofit organization or housing sponsor in the project's community;
  - 2. Other nonprofit organizations; and
  - 3. Nonprofit clearinghouse networks.
- D. Owners may use any other means they wish to advertise the project. If the owner uses a broker, the costs may not be included as allowable costs in the POA. However, the broker may be paid by the owner from the net proceeds of the sale.

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7-4. Attempt to Sell the Project. Owners may accept bona fide offers, in accordance with Paragraph 7-8, only from certain categories of purchasers during the timeframes shown below. Except for RCs which purchase the project by prepaying the mortgage with a grant under a Resident Homeownership Program, all purchasers will be required to maintain the low-income affordability restrictions for the remaining useful life of the project,

- A. Offer For Sale to Specific Priority Purchasers. For the first six-month period beginning on the date that HUD receives a complete and accurate Second NOI reflecting the owner's intention to sell the project, the owner may accept a bona fide offer only from:
1. A RC that is organized to develop and implement a Resident Homeownership Program in accordance with Chapter 9. The RC must demonstrate that tenants representing at least 50 percent of all units and 75 percent of the occupied units, have expressed an interest in participating in the Resident Homeownership Program to be developed by the RC. They must evidence this interest by submitting a certified list of project tenants who have shown an interest in participating. A RC seeking to purchase the project as a Limited Equity Cooperative, whether it assumes the mortgage or receives a grant to pay off the mortgage, will be treated as a RC seeking to purchase under a Resident Homeownership Program.
  2. A RC incorporated as a nonprofit organization intending to purchase the project and retain it as rental housing. The RC may demonstrate, by a resolution of the Board of Directors and a petition signed by tenants representing a majority of the occupied units, that it has the support of a majority of the tenants.

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3. A qualified community-based nonprofit organization, as defined in Chapter 1, Paragraph 1-15. Such groups may demonstrate by a resolution of the RC (if one exists) and a petition signed by tenants representing a majority of the occupied units that it has the support of a majority of the tenants. These groups may only purchase the project to use as rental housing.

B. Offer For Sale to All Priority Purchasers. For the second six-month period, an owner may also accept an offer from a State or local housing agency or any other nonprofit organization that agrees to maintain the low-income affordability restrictions for the remaining useful life of the project.

C. Offer For Sale to All Qualified Purchasers. During the next three-month period, the owner may offer the project for sale to any qualified purchaser.

7-5. Expression of Interest.

A. Priority Purchasers. During the initial 12-month period, any priority purchaser seeking to make an offer to purchase the project must submit a written expression of interest (EOI) to the Loan Management Branch. The EOI from priority purchasers must contain all of the following:

1. A statement identifying the priority purchaser as a RC, a nonprofit organization (whether or not community-based), or a State or local government agency;
2. If the purchaser is a RC or a nonprofit organization, a copy of its articles of incorporation, charter or bylaws, and a list of officers or directors;
3. If the purchaser is a nonprofit organization, proof that the organization is, or has applied to be, a tax exempt organization under Section 501(c) of the Internal Revenue Code;

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4. A statement as to whether the purchaser is affiliated with any other entity for purposes of purchasing the project; and
  5. If applicable, a statement from a community-based nonprofit organization or State or local government indicating that a separate subsidiary has been established to purchase the project.
- B. Non-priority Purchasers. For-profit qualified purchasers are not required to submit written EOIs to HUD, but may do so if they wish. The EOI should contain all relevant information about the offering entity and include a statement as to whether any Low-Income Housing Tax Credits (LIHTCs) may be awarded in connection with the purchase of the project.

7-6. Information from HUD:

- A. To Priority Purchasers. Within 30 days of receipt of each EOI from a priority purchaser, until a bona fide offer has been approved by HUD, Loan Management staff will:
1. Determine the eligibility of the priority purchaser in accordance with Paragraph 7-4;
  2. Notify the owner in writing of the purchaser's EOI;
  3. Direct the owner to provide the potential purchaser with any relevant information necessary to complete the sale, including but not limited to: access to any expense analyses, operating income, and rehabilitation estimates for the project; and
  4. Provide the potential purchaser with:  
LOG date information sent
    - a. A list of all possible assistance available from HUD, in accordance with Paragraphs 8-17 and 8-21 to facilitate the transfer of the project;
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- b. Copies of all appraisal reports performed by HUD's or the owner's appraiser;
  - c. Loan Management Branch's determination as to the priority status of the purchaser and whether it qualifies as a RC, community-based nonprofit organization or State or local government entity;
  - d. Information about the level of the earnest money deposit required upon submission of a bona fide offer in accordance with the calculations computed using the worksheet in Appendix 7-1 or about the owner's waiver or an agreement to accept a reduced earnest money deposit in the Second NOI;
  - e. A statement about its right to inspect the property; and
  - f. Any other relevant financial information Loan Management Branch has about the project, including information the owner received in response to the Initial NOI.
- B. To Non-Priority Purchasers. If the Loan Management Branch receives an EOI from a for-profit purchaser, they must hold it until the end of the 12-month period. Loan Management staff should process the EOI only if the owner has not accepted a bona fide offer from a priority purchaser by the end of that period. At the end of the 12-month period, Loan Management staff will send the information listed in Paragraphs A.4.a. through f. above, with the exception of Paragraph 4.c.

7-7. Bona Fide and Other Offers. Any qualified purchaser, who is eligible to make an offer during the timeframes specified in Paragraph 7-4, may submit a bona fide offer to the owner and must

submit a copy to the Loan Management Branch. Loan Management staff is not required to review all offers submitted by qualified purchasers. It must review only those offers accepted by the owner and maintain a file of the other offers to review in the event that questions arise about the manner in which the owner handled the acceptance. LOG date offer received In the case of mandatory sales, offers which are not bona fide may in some cases be acceptable in accordance with Paragraph B.2. below. A qualified purchaser may submit such an offer to the owner. However, the purchaser need not submit a copy of its offer to HUD because Loan Management staff is not required to maintain or review this type of offer to determine whether it is bona fide. If the owner accepts the offer, then Loan Management staff will review it, in accordance with Paragraph 7-9, to determine its acceptability. A bona fide offer must include:

- A. A Contract for Sale signed by the purchaser which includes a provision that acceptance of the contract by the owner is contingent upon Loan Management Branch's approval of the offer as a bona fide or otherwise acceptable offer and later approval of a POA.
  - B. Offering Price.
    - 1. Voluntary Sale. The offering price may not exceed the TPV of the project.
    - 2. Mandatory Sale. The offering price of the project must equal the TPV. The owner may accept, at its option, an offer which is not bona fide because the offering price is lower than the TPV. For such an offer to be acceptable, it must meet all other conditions of a bona fide offer.
  - C. An Earnest Money Deposit.
    - 1. Purchasers Other Than RCs Purchasing under a Resident Homeownership Program.
      - a. Purchasers must submit an earnest money deposit in the amount of the lowest of:
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- i. one percent of TPV;
    - ii. \$50,000; or
    - iii. \$500 per unit
  - b. Loan Management staff should use the Earnest Money Deposit Worksheet, Appendix 7-1, to determine the amount of the required earnest money deposit if it has not been waived in accordance with Paragraph c. below.
  - c. The owner, at its option, may waive all or part of the earnest money deposit in its Second NOI or during the sales process for all qualified purchasers except for RCs intending to purchase the project pursuant to a Resident Homeownership Program. If an owner decides to waive or decrease the amount of the earnest money deposit during a selling period, rather than with the Second NOI, the RIS must notify all potential purchasers that it contacted, in accordance with Paragraph 7-3.C., and Loan Management staff will notify the Preservation Division and all qualified purchasers who have already submitted EOIs. Future newspaper notices also must contain this information.
- 2. Resident Councils Purchasing under a Resident Homeownership Program.
  - a. RCs, purchasing under a Resident Homeownership Program, must submit an earnest money deposit of \$200 for each unit of the required 75 percent of the occupied units. Loan Management staff should use the Earnest Money Deposit Worksheet, Appendix 7-1, to determine the amount of the required earnest money deposit.

- b. A waiver of the earnest money deposit is not allowed for RCs. However, the owner, at its option, may accept an assignment of the portion of the security deposits to be returned with a minimum of \$200 from each prospective purchasing tenant, in lieu of the earnest money deposit, if allowed by State and local law.
  
  - D. A RC, purchasing under a Resident Homeownership Program, must identify itself as such. It must also submit a certified list of tenants who have expressed an interest in purchasing a unit and represent at least 50 percent of all units in the project AND 75 percent of the occupied units.
  
  - E. A RC or a community-based nonprofit organization intending to retain the project as rental housing must include a resolution of the RC, if one exists, or a petition signed by tenants representing a majority of the units in the project to demonstrate tenant support for the purchaser.
- 7-8. Receipt and Acceptance of an Offer.
- A. Owner's Decision to Accept Offer.
    - 1. Voluntary Sale. The owner may accept any offer at or below the TPV. The owner is also free to reject any offer. Loan Management staff should tell owners whose Transfer Preservation Rent (TPR) exceed the Federal Cost Limit (FCL) that they may have to reduce the purchase price in order to achieve preservation project rents, as defined in Chapter 1, Paragraph 1-15, that do not exceed the FCL.
  
    - 2. Mandatory Sale. The owner is obligated to accept the first bona fide offer it receives to purchase the project unless an offer at a lower price has already been accepted. The owner is not obligated to accept any offer at less than the TPV.
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B. Purchase Price.

1. Loan Management staff will use the purchase price to determine the level of incentives. The purchase price of the project shall not exceed the lower of TPV, or the purchaser's offering price if lower than TPV. Any residual receipts for the project, which are retained by the owner, must be deducted from the purchase price of the project.
2. For example, if the offering price for the project is \$1,000,000 and there are \$20,000 of residual receipts being retained by the owner, the purchase price may not exceed \$980,000.

C. Acceptance or Rejection of the Offer.

1. Within 30 days of receipt of a bona fide offer, the owner must reject or accept the offer, conditioned upon HUD's certification that the offer is bona fide. For mandatory sales, the owner, at its option, may also accept any offer at less than the TPV so long as a bona fide offer has not already been received. In the latter case, the owner may choose to wait as long as it wishes to respond to the offer. However, if the owner accepts the offer, Loan Management staff must still review and determine whether the offer is acceptable.
  2. If an owner rejects an offer or Loan Management staff finds that the offer is not bona fide or not acceptable, the owner must return the earnest money deposit with the rejection letter.
  3. If an offer is rejected, it will continue to be considered an offer and the owner may notify the potential purchaser that the offer may be reactivated. The potential purchaser
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may then choose to renew its offer. It may do so by resubmitting the earnest money deposit within 30 days of the owner's notification that the offer will be reactivated, or within 60 days if the offer is being reconsidered because another sales transaction was terminated.

- 7-9. HUD's Determination of Acceptability of Offer.
- A. Owner Submits Acceptance to HUD. The owner must notify the Loan Management Branch when it accepts an offer subject to HUD's certification that it is bona fide. LOG date owner accepted offer
  - B. HUD's Review of the Offer. The Loan Management staff will review the offer to determine if it meets the requirements of a bona fide offer or is acceptable in accordance with Paragraph 7-7. Within 30 days of receipt of the owner's notice of acceptance, the Loan Management staff must notify the owner in writing to advise whether or not the offer is bona fide or acceptable. LOG date owner notified
    - 1. Loan Management's determination that an offer is bona fide or acceptable does not constitute an approval of the transaction, the POA, or the Transfer of Physical Assets.
    - 2. If the Loan Management staff determines that an offer is not bona fide nor acceptable and accordingly notifies the owner, the offer will be null and void. The letter to the owner must list the deficiencies which made the offer not acceptable. Loan Management staff must send a copy of the letter to the potential purchaser.
- 7-10. Final Acceptance of the Contract of Sale. Within ten days of receipt of HUD's determination that an offer may be accepted, the owner must send the potential purchaser a final acceptance of the
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Contract for Sale, contingent upon satisfactory completion of the POA requirements referenced in Paragraph 7-11. The owner must also send the Loan Management Branch a copy of this letter. LOG date letter received

7-11. Submission of a Plan of Action. The owner and the purchaser must jointly submit a POA to the Loan Management Branch. The requirements for a POA and the conditions for approval are contained in Chapter 8, Sections A, C, and E. The POA must be submitted within the following timeframes:

- A. Under the voluntary sales process, within six-months of acceptance of an offer by the owner; or
- B. Under the mandatory sales process, within six months of the owner receiving an offer from the purchaser.

7-12. Failure to Consummate Sales Transactions. If an owner accepts an offer and the sales transaction is terminated for any reason, the owner must immediately notify the Loan Management Branch of the termination. Failure to close a transfer within 90 days of POA approval will be treated as a terminated sales transaction, and the provisions of Paragraph 7-8.C.3. must be followed. Previous offerors who were rejected due to the acceptance of the offer will be notified by the owner of the renewed availability of the project for sale and will be given a minimum of 60 days to resubmit an offer in accordance with Paragraphs A. and B. below. The time period in which the sales transaction fell through will determine what action the Loan Management Branch must take.

- A. Sales Transaction was Terminated During 15-Month Offering Period. The owner must resume offering the project for sale and accepting offers for the remainder of the 15-month period in accordance with Paragraph 7-4 or 60 days, whichever is longer.
  - B. Sales Transaction was Terminated after the 15-Month Offering Period. The owner must offer the project for sale for an additional 60-day period.
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7-13. Acceptance of Subsequent Offers. Offers received under the provisions of Paragraph 7-12 will be handled in the same manner as offers received in accordance with Paragraphs 7-4 through 7-11. However, if a sales transaction for a project advertised in accordance with 7-12.B. is terminated because a sale was not closed within 90-days after POA approval, due to circumstances wholly beyond the owner's control, the provisions of Paragraph 7-15 will apply. If the sale was not closed due to circumstances wholly or partially within the owner's control, the project must be offered for sale in accordance with Paragraph 7-12.B.

7-14. If there is no Purchase of the Project.

A. Voluntary Sale:

1. Owner Decides to Retain Project with Incentives.

a. If the owner makes the decision to retain the project within six months of receiving the information from HUD in accordance with Paragraph 5-11, it may submit a POA for incentives in accordance with Chapter 8, Sections C and D within that six month period. LOG date received

b. If the owner does not receive, or receives but does not accept a bona fide offer within the sixth to the fifteenth month of the offering period, it may, after waiting an additional six months, submit a new Initial NOI to request incentives to retain the project and extend the low-income affordability restrictions. LOG renewed eligibility

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2. Owner Decides to Prepay Project.

- a. If the owner does not receive a bona fide offer to purchase the project within the 15-month offering period, it may, at its option, prepay the mortgage and terminate the low-income affordability restrictions;
- b. An owner, who meets the criteria of Paragraph 2.a. above and wishes to prepay its mortgage, must submit its written request to the mortgagee with a copy to the Loan Management Branch. LOG date request received . If it is a HUD-held mortgage, the owner will write to the Multifamily Notes Servicing Branch in Headquarters in lieu of the mortgagee. The letter will notify them of the date of anticipated pay-out and request the pay-off amount. The Loan Management Branch will notify the Preservation Division that they have received the request and recommend approval. The mortgagee or Multifamily Notes Servicing Branch must obtain approval from the Preservation Division before sending a reply to the owner. Loan Management Branch will accept prepayment in accordance with Chapter 11. The termination of the low-income affordability restrictions is subject to compliance with the provisions of Chapter 10 covering displaced tenants.

3. The owner's final alternative is to allow the Initial NOI to lapse and do nothing.

B. Mandatory Sale: If an owner does not receive a bona fide offer within the 15-month offering period, it may, at its option:

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1. Prepay the mortgage and terminate the low-income affordability restrictions. An owner, who meets the above criteria and wishes to prepay its mortgage, must submit a written request to the mortgagee with a copy to the Loan Management Branch. LOG request received . If it is a HUD-held mortgage, the owner will write to the Multifamily Notes Servicing Branch in Headquarters in lieu of the mortgagee. The letter will notify them of the date of anticipated pay-out and request the pay-off amount. Loan Management Branch will notify the Preservation Division that the request has been received and recommend approval. The mortgagee or Multifamily Notes Servicing Branch must obtain approval from the Preservation Division before sending a reply to the owner. The Loan Management Branch will accept approval in accordance with Chapter 11. The termination of low-income affordability restrictions is subject to compliance with the provisions of Chapter 10 covering displaced tenants.
  2. After waiting an additional six months, submit a new Initial NOI to request incentives to retain or sell the project in accordance with Chapter 3. LOG expiration of six months ; or
  3. The owner's final alternative is to allow the Initial NOI to lapse and do nothing.

7-15. Termination of Low-Income Affordability Restrictions Due to Not Closing the Sale. If the owner accepts an offer submitted during the 60-day period specified in Paragraph 7-12.B., jointly submits a POA with the purchaser, and does not consummate the sale within 90 days of HUD's approval of the POA due to circumstances wholly beyond its control, the owner may prepay the mortgage and terminate the low-income affordability restrictions. Prepayment will be accepted in accordance with Chapter 11. The

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termination of low-income affordability  
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provisions of Chapter 10 covering displaced  
tenants.

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