
CHAPTER 4. INITIAL ENDORSEMENT

4-1. TYPES OF "CLOSINGS."

- a. Distinction between Insurance of Advances and Insurance Upon Completion. This Chapter deals only with initial closing of loans involving the insurance of advances during construction. In this type of loan there are two insurance endorsements or "closings," the initial endorsement for insurance which normally occurs prior to the commencement of construction and the final endorsement for insurance which takes place after completion of construction. The instructions relating to final endorsement are set forth in Chapter 6 of this Handbook.

NOTE: Insurance upon completion differs materially from insurance of advances insofar as HUD-FHA procedures are concerned. There is only one insurance endorsement and this takes place after construction has been completed. The closing instructions pertaining to insurance upon completion are set forth in Chapter 6, paragraph 6-26., of this Handbook.

- b. Management Type, New Construction. This type loan involves a cooperative mortgagor corporation on whose behalf the project is being constructed. The project will continue to be owned by the cooperative after construction has been completed. The cooperative is composed of stockholders or members who, while they do not obtain "title" to their dwelling units, have a right to permanently occupy same pursuant to the terms of an Occupancy Agreement (sometimes referred to as a proprietary lease) and By-Laws.

NOTE: For the convenience of HUD-FHA personnel as well as the other parties to the transaction, a check list showing the documents required in closing this type of loan has been issued as FHA Form 3257-A.

- c. Management, Type Purchasing an Investor Sponsor Project Under Section 213. After the Investor Sponsor mortgage transaction has been closed and construction is under way, it is contemplated that the parties involved will come forward for HUD-FHA approval with proposed forms of Certificate of Incorporation, By-Laws, Information Bulletin, Subscription Agreement and

will not ordinarily be called upon to approve these papers until after the closing of the Investor Sponsor mortgage transaction. For HUD-FHA purposes, the closing of the cooperative loan will, in effect, be an insurance upon completion transaction.

- d. Management Type Purchasing an Investor Sponsor Project Under Section 221(d)(3). As pointed out above, this transaction will not involve any additional insurance endorsement. however, it will be incumbent upon the Field Office Director, before authorizing release of the escrow representing the builder's profit to determine that all requirements have been complied with.
- e. Management Type Purchasing an Existing Construction Project. Under Commitment Form 3248-A, which involves interim advances to effect repairs or improvements, there will be both an initial and final endorsement. The closing check list applicable to initial endorsement is FHA Form 3257-B. Under Commitment FHA Form 3248, there will be no interim advances and only one insurance endorsement.

4-2. PREPARATIONS FOR CLOSING.

- a. The Appropriate Closing Check List described in the preceding paragraph should be furnished to the parties involved in the closing. The parties may also be furnished with a copy of this Chapter to advise them of the proper procedures.
- b. As Far in Advance as Possible but at least 5 Days Before Closing, the attorneys for the mortgagor and mortgagee should supply the Closing Attorney with drafts of the documents so he may examine same prior to the actual closing. (See Forms Appendix II.) This is a highly desirable practice inasmuch as a number of parties will be present at the closing and there may be little opportunity to carefully consider the papers at that time. Moreover, if any errors or inaccuracies are discovered in the documents (and this is often the case), the closing attorney will be in a position to notify the parties involved in time to have the necessary corrections made without interfering with and delaying the closing. If this suggestion is followed, at the actual closing the Area Counsel need concentrate only on obtaining all the required

forms and seeing to it that they are properly executed. In some cases, the facts or typed-in conditions of the commitment may require documents in addition to those usually obtained. It will be the closing attorney's responsibility to see that such documents are obtained and are properly executed.

- c. The Closing Date should not be set Until the Field Office is satisfied that all parties will be ready to close. The closing attorney should be notified of prospective closings as far in advance as possible and kept informed of any change.

4-3. REVIEW OF WORKING DRAWINGS AND TRADE PAYMENT BREAKDOWN.

- a. The Final Working Drawings and Specifications should be submitted ten days before the scheduled closing date, and when found acceptable, the Chief Underwriter or Assistant Director for Technical Services will so inform the Director by memorandum. Coupled with this processing will be the review of the "Contractors and/or Mortgagors Cost Breakdown," FHA Form 2328 which the general contractor will have prepared based on his own estimate of costs. When apportionments are found to have been reasonably made, acceptance of the breakdown by HUD-FHA will be indicated by appropriate signatures in the spaces provided. The completed form will then be forwarded to the mortgagor for photostating so that the required number of copies may be made available at closing.
- b. Drawings and specifications, at closing, must be complete in all respects. The master set of drawings and specifications to be retained in the Field Office during the course of construction and one year thereafter, must be identified on the title sheet and initialed on the reverse side of each sheet by the proper representatives of the mortgagor, the contractor, the architect, and the bonding company or indemnitors, if any. The HUD-FHA Design Representative is responsible for the adequacy and completeness of the drawings and specifications, including incorporation in the specifications of the standard form, current edition, of the American Institute of Architects "General Conditions of the Contract for Construction" and the "Supplementary Conditions of the Contract for Construction" (FHA Form 2554). The Director will ascertain that the latter two items have been included in the specifications.

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- 4-4. COMMENCEMENT OF CONSTRUCTION PRIOR TO INITIAL ENDORSEMENT. Construction must not commence before formal closing and recordation of the insured mortgage except with the prior approval of the Field Office Director. Permission will not in any case be given to start construction prior to issuance of a commitment.
- a. In Cases Where a Commitment has been Issued, and where the Director has satisfied himself that: (1) there are valid reasons why an immediate closing is not practicable; (2) on-going construction will be conducive to a successful sales

program; and (3) early start of construction will not act to the detriment of the Assistant Secretary-FHA Commissioner's interest, permission to start construction may be granted by execution of FHA Form 3265 provided that the form has been executed by the contractor, mortgagor and mortgagee, and provided that no additions, deletions or alterations of any kind are made in the form. Permission to start construction should not, of course, be granted in any case where closing drawings and specifications have not been filed with and accepted by the Field Office.

- b. In Any Case Involving an Early Start of Construction, when requirements for closing have been met, the office should estimate the time required to complete construction and establish a date for commencement of amortization accordingly.

4-5. COST CERTIFICATION REQUIREMENTS. Fifteen or more days prior to closing, or in connection with an early start of construction, an Agreement and Certification, FHA Form 3305 (Form 3306 in cases where a Sponsor's and Builder's profit and risk are involved), will be executed by the mortgagor, mortgagee and HUD.

4-6. MORTGAGE DOCUMENTS.

- a. Printed Forms of Mortgages (or Deeds of Trust) and Mortgage Notes have been issued for use in each of the 50 states and Puerto Rico. The name of the state is printed on the form itself. As to project mortgage transactions, the numbering of the mortgages and mortgage notes is in the 4100 series. The mortgage and note should be dated the date of closing or an earlier date.

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- * b. The Area Counsel will be responsible for determining that the proper form has been used and that the proper amortization and other provisions provided for herein have been inserted. The responsibility for supplying the necessary information to complete the form rests with the HUD-FHA Director. *

4-7. MAXIMUM INTEREST RATE. The interest rate may not exceed the maximum rate specified in the FHA Regulations. The amount of the monthly installment of principal and interest is obtained from the commitment which in turn is predicated on the Basic Amortization Plan. If the amount of the commitment has been amended since its original issuance, the Field Office will determine the amount of the new monthly payment,

4-8. PREPARATION OF THE MORTGAGE FOR FUTURE SUPPLEMENTARY LOAN. In all Section 213 Management Type cases the mortgage must contain a clause satisfactory to the Area Counsel which expects secondary

lien instruments required for the insurance of a supplementary loan under Section 213(j) from the mortgagor's covenant not to create inferior liens. A clause must also be added to the mortgage form in such cases excepting alterations made in connection with supplementary loans from the mortgage covenant requiring the consent of the mortgagee to any alteration.

4-9. MORTGAGE NOTE. In Section 213 cases, the FHA prescribed form (Series 4100) will be used. The form number varies with each jurisdiction. The blank space in the endorsement panel on the reverse side of this instrument should be filled in with the numbers. "213". The date of issuance of the commitment should be inserted in the blank space in the endorsement panel following the words "In effect on." The blanks in the lower half of the endorsement panel will not be filled in until final endorsement. The Closing Attorney will be responsible for seeing to it that the credit instrument repeats such mortgage provisions as the law of the jurisdiction requires.

4-10. AMORTIZATION CLAUSE. In most jurisdictions, the amortization clause in Section 213 management and sales type cases will read as follows:

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"Interest alone payable monthly on the first day of _____, _____, and on
(month) (year)
the first day of each month thereafter up to and including _____.
(month) (year)
Thereafter, and commencing on the first day of _____, _____, monthly
(month) (year)
installments of principal and interest shall be paid in the sum of _____ Dollars
(_____), each, such payments to continue monthly thereafter on the first day of each succeeding month until the entire indebtedness has been paid. In any event, the balance of principal (if any) remaining unpaid, plus accrued interest, shall be due and payable on _____.
(month) (year)
The installments of interest and principal shall be applied first to interest at the rate of _____ % per annum on the principal sum, or so much thereof as shall from time to time remain unpaid, and the balance thereof shall be applied

on account of principal."

4-11. LEASEHOLDS.

- a. The Model Form of Ground Lease, FHA Form 3258, is used in cases where leaseholds are permitted. A leasehold will normally be permitted only in localities where leaseholds are marketable as determined by the Field Office. Ground leases are acceptable in sales type cases only upon the specific approval of the Office of Underwriting Standards. *
- b. All Significant Suggested Changes in the model form other than those provided for below must be submitted in advance to the Office of Underwriting Standards, accompanied by the recommendations of the HUD-FHA Director and an opinion of the Area Counsel having jurisdiction. *

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- c. It should be Noted in leasehold cases the maximum mortgage amount is reduced in an amount equal to the capitalized value of the ground rent.
 - (1) HUD-FHA Option to Purchase. The model form of lease grants to the Secretary the right to acquire the fee title for a fixed price should he or his successor in office become owners of the leasehold estate. Such price may not exceed the value of the land as established by the Field Office in the Project Income Analysis and Appraisal, FHA Form 2264.
 - (2) Waiver of HUD-FHA Option to Purchase. A footnote in the Model Form indicates the circumstances under which HUD-FHA's option in this regard may be waived in exceptional cases.
 - (3) Term of the Lease. The term should commence on the day of initial closing, or shortly before such date, and should end ninety-nine years later.
 - (4) Annual Rental Amount. The maximum ground rent to be inserted in Section 2 of Article 1 of the lease is determined by multiplying the interest rate of the insured mortgage against the HUD-FHA estimate of land value.
 - (5) Effect on other Closing Documents. In leasehold cases it will be necessary to adjust the language in other closing documents, such as the mortgage and building

loan agreement to reflect that a leasehold estate rather than a fee simple is vested in the mortgagor.

4-12. TITLE REQUIREMENTS.

- a. Nature of Title Required. A mortgage to be eligible for insurance must constitute a first lien on real estate held in fee simple, or in areas designated by the Assistant Secretary-FHA Commissioner, on the interest of the lessee under an acceptable lease.
- b. Nature of Assurance Required. In all cases, a title policy in an amount equal to the mortgage amount will be required unless other evidence of title has been approved by the HUD-FHA Director. The policy will be in L.I.C. or A.T.A. standard

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- (4-12) mortgagee form in favor of the mortgagee and the Secretary as their interest may appear. The acceptability of the title company is the responsibility of the HUD-FHA Office Director. The Area Counsel should be furnished with an interim binder in advance of the closing so that the provisions thereof can be carefully examined.
- c. Title Reservations or Restrictions. There should, of course, be no encumbrances other than those approved by HUD-FHA and no conditions, reservations or restrictions, the violation of which could cause a reversion or forfeiture, or which prohibit the type or use of the structure proposed. Any items listed in Schedule B of the policy should be carefully scrutinized.
 - d. Easements. Some easements will be acceptable and some will not, depending upon the nature and location thereof. Utility easements, when properly located, are generally advantageous. A favorable location would be the rear few feet of the lot where no buildings are to be located. On the other hand, an easement over or under an area where buildings are to be located would be unacceptable.
 - e. Unpaid Taxes. An exception which is unobjectionable is, taxes not yet due and payable.
 - f. Limitation of Title Insurance to Disbursements. A provision along the following lines is often inserted to which there is no HUD-FHA objection:

"Pending disbursement of the full proceeds of the loan secured by the deed of trust to be insured, our title

policy will insure only to the extent of the amount actually disbursed, but will increase as each disbursement is made in good faith, and without knowledge of any defects in or objections intervening between the date of the policy and the date of such disbursement."

- g. Unacceptable Exceptions. Illustrations of Schedule B exceptions which would be unacceptable are the following:
- (1) "Any state of facts that an accurate survey would show." Since a survey is required, there is no reason why such an exception should be permitted.
 - (2) Mechanics', materialmens' or judgement liens.

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- (3) Taxes which are due and payable.
 - (4) Encroachments.
- h. Title Defects. The HUD Area Counsel should call the attention of the Director to any defect in the title, and point out to him the legal effect thereof. It then becomes the ultimate responsibility of the Director to pass upon the acceptability or unacceptability thereof.
- i. Title Covered in Favor of Cooperative corporation. As indicated above, the title policy must protect the mortgagee and the Assistant Secretary-FHA Commissioner as their interest may appear. Representatives of cooperatives are urged to take steps to be specifically included in the title coverage, which can be accomplished either by endorsement to the policy or by an owner's policy.
- 4-13. BUILDING LOAN AGREEMENT, FHA FORM 2441.
- a. In Management Type Projects, changes in the terms of paragraph 18 deemed necessary by the mortgagee or the title insurer in order to conform the instrument to the laws of the state having jurisdiction may be made, provided the basic requirements are not modified. The form number to be inserted in this paragraph is 3305. The word "extent" should be inserted between the words "same" and "as."
 - b. The Figures to be set forth in paragraph (7) should coincide with the Financial Requirements for Closing, FHA Form 2283c, or FHA Form 2283, in Investor Sponsored cases.
 - c. The Exhibits "A" and "B" to be attached to this agreement are

the description of the property and trade payment breakdown. The breakdown is prepared by the general contractor and approved by HUD. After approval by HUD, the trade payment breakdown is photostated and appended to the building loan agreement and construction contract.

- d. In Paragraph (2) the time for completion should be one month less than the time required for amortization to commence as set forth in the commitment.

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- 4-14. ON-SITE CONSTRUCTION CONTRACT. HUD prescribes two forms of Construction Contract for use in multifamily programs: Construction Contract--Lump Sum (FHA Form 2442) and Construction Contract--Cost-Plus (FHA Form 2442-A).
- a. Generally, where no identity of interest between the mortgagor and the builder exists, a "lump sum" contract may be used at the discretion of the mortgagor. If the Director determines that an identity of interest exists between the mortgagor and the builder the "cost-plus" form of contract must be used.
 - b. In Consumer-Initiated Projects, or those sponsored by labor, religious, fraternal, veteran or other organizations independent of the builder established for the purpose of representing the cooperative, a lump sum or cost-plus contract may be used at the discretion of the contracting parties.
 - c. A cost-plus fixed fee contract with an upset price as hereinafter described shall be used in any case under the following circumstances:
 - (1) When one or more of the officers or directors of the mortgagor is also an officer, director or stockholder of the general contractor.
 - (2) When any officer or director of the mortgagor has any financial interest whatsoever in the general contractor.
 - (3) When the builder or his associates, either directly or indirectly, form the mortgagor corporation and/or select its officers or directors.
 - (4) When the proposed contract amount exceeds the HUD estimate for the work as shown on the Project Income Analysis and Appraisal, FHA Form 2264. (This provision may be waived at the discretion of the Director upon request of the mortgagor corporation in cases where the Director has determined that no identity of interest exists.)

- d. A copy of the Contractor's and/or Mortgagor's Cost Breakdown (FHA Form 2338) must be attached as an exhibit to the contract. The total for all improvements shown on the cost breakdown must equal the amount to be paid to the contractor pursuant to Article 3 of the lump sum contract or the upset price set out in Article 3 of the cost-plus contract.

- e. The Time for Completion to be set forth in the construction contract should be at least one month earlier than the completion date set forth in the Building Loan Agreement. The contract time normally should not exceed the number of months on which the computation of interest is based for purposes of estimating replacement cost in FHA Form 2264. However, in cases involving an early start of construction the time may vary according to the nature of the early start. For example, the builder may intend only to construct model units prior to initial closing. After completion of the units it may take several months to achieve a sufficient number of sales to close the loan. During those several months no work may have been done. Although the commitment may have contemplated a 12-month construction period, the actual time required to complete the project (i.e., the time from early start approval to project completion) may be several months longer. Therefore, instead of a completion date certain in Article 2, the contract may provide for completion no later than the first day of the second month next preceding the date prescribed by HUD for commencement of amortization of the cooperative's mortgage loan. In other words, HUD may determine at the time of initial closing that six months' work remains to be done. With a two-month "rent-up," amortization would begin the first day of the ninth month from the month in which the closing is scheduled. Completion under the Building Loan Agreement would be required by the first day of the eighth month and completion under the construction contract by the first day of the seventh month.
- f. Both FHA forms of construction contract provide for liquidated damages in the event the contractor does not complete on time. This provision may be deleted in any case where the contractor has undertaken, by another agreement incorporated in the construction contract giving broader benefits by indemnifying the cooperative against cost overruns.
- 4-15. CONSTRUCTION CHANGES. The HUD-FHA construction contract forms also provide for construction changes equal to two percent (plus or minus) of the contract amount without HUD approval. In management type cooperative cases, this provision should be modified to require HUD approval of any proposed construction changes.

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4-16. FORM OF CONTRACT - MANAGEMENT TYPE CASES.

a. The Agreement and Certification, FHA Form 3305, requires that the mortgagor certify the relationship, if any, between the mortgagor and the general contractor and any known subcontractor or any of their officers, directors or stockholders. It is the responsibility of the Director to determine from the information provided whether "the mortgagor is also the builder" in order to determine the form of construction contract that will be acceptable.

- (1) A cost-plus fixed fee contract with an upset price as hereinafter described shall be used in management type cases under the following circumstances:
- (a) When one or more of the officers or directors of the mortgagor is also an officer, director or stockholder of the general contractor.
 - (b) When any officer or director of the mortgagor has any financial interest whatsoever in the general contractor.
 - (c) When the builder or his associates, either directly or indirectly, form the mortgagor corporation and/or select its officers or directors.
 - (d) When the proposed contract amount exceeds the HUD estimate for the work as shown on the Project Income Analysis and Appraisal, FHA Form 2264-B. (This provision may be waived at the discretion of the Director upon request of the mortgagor corporation in cases where the Director has determined that no identity of interest exists.)
 - (e) Where such identity is indicated, FHA Form 3223, Construction Contract Cost-Plus, must be used. Where no such identity is indicated, FHA Form 3222, Construction Contract-Lump Sum, or the Cost-Plus form of contract may be used.

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- (4-16) (2) In consumer-initiated projects, or those sponsored by labor, religious, fraternal, veteran, or other organizations independent of the builder established for the purpose of representing the cooperative, a lump sum or a cost-plus fee contract may be used, according to the wishes of the contracting parties.
- (3) Where a project is initiated by a builder and processed to the point of commitment, a lump sum or a cost-plus fee contract may be used, according to the wishes of the contracting parties, provided that the cooperative corporation is formed and serviced by persons, groups, foundations, trusteeships, or other organizations, all of whom are independent of the builder.
- (4) Despite the determination which might be made under the foregoing criteria, where a democratic meeting of the cooperative subscribers is held on the subject, the members may at such meeting determine whether a cost-plus or lump-sum contract is to be used and this decision will be given effect by the HUD-FHA, provided that:
- (a) At least 50 percent of the units have been sold and the subscribers therefor have been approved as to credit by the HUD-FHA.
 - (b) A certification is received, satisfactory to the Field Office Director, that a notice of meeting has been mailed to each of said subscribers.
 - (c) Said notice states that the reason for the meeting is to determine whether a cost-plus or lump-sum contract is to be used.
 - (d) A representative of HUD-FHA Field Office is present at the meeting to be available to explain the differences between these two types of contracts (the HUD-FHA representative should not urge adoption of either form of contract, but should explain their differences insofar as the effect on the cooperative, the other parties and cost certification is concerned).

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- (4-16) (e) In the event the cooperative elects to enter into a lump-sum contract, the Field Office should regard the cooperative's decision as determinative only in

those cases where the lump-sum amount is less than the upset figure which would otherwise be acceptable to the contracting parties on a cost-plus basis.

- (5) If it is found by the Director that an identity of interest exists between the mortgagor or any of its officers, directors or stockholders and any subcontractor or material supplier, the mortgagor and the general contractor must certify on FHA Form 3608, prior to final endorsement of the mortgage for insurance, that the amounts paid to such subcontractor or material supplier were not more than those prevailing in the locality for similar type labor and materials.
- b. Construction Contract, Lump-Sum, FHA Form 3222. If Article 13 is used, the dollar amount to be inserted shall be the total shown for the listed items on FHA Form 2283c, Financial Requirements for Closing, as finally revised prior to endorsement. It is important that the estimates be as realistic as possible so that the Contractor will receive additional reimbursement only when his efficiency has in fact benefited the cooperative.
 - (1) The time for completion to be set forth in the construction contract should be one month less than that stipulated in the Building Loan Agreement.
 - (2) In Article 13, line 7, change the word "contractor" to "contract."
 - c. Construction Contract, Cost-Plus FHA Form 3223. The time for completion is determined in the same manner as set forth above relating to the lump-sum contract.
 - (1) The figure to be inserted in the first blank space of Article 3 will be the fee agreed upon between the mortgagor and general contractor but not to exceed the amount shown for Builder's Fee on the Project Income Analysis and Appraisal, FHA Form 2264.
 - (2) The second blank space specifies the amount of the upset sum.

- (3) The total of the trade payment breakdown to be attached to the construction contract should equal the upset sum, including the cash fee.

4-17. OFF-SITE CONSTRUCTION CONTRACT. There is no HUD-FHA prescribed form. However, it is suggested that the on-site contract form be

used as a starting point, eliminating inapplicable provisions and making such other changes as may be appropriate.

- a. Leaseholds. Where the mortgagor owns only a leasehold estate in the property and HUD-FHA has evaluated the ground on an improved basis, it should not be the responsibility of the mortgagor to pay for off-site utilities and in cases the mortgagor's monetary obligation to support the contract should be limited to a nominal consideration, for example, \$1 or \$10.
 - b. Required Provisions. In identity of interest cases, the contract should contain "cost certification" provisions patterned after those contained in the on-site cost-plus contract, FHA Form 3223.
- 4-18. PREVAILING WAGE REQUIREMENTS. Detailed instructions on the subject of prevailing wage requirements are set forth in Reference (5) of the Foreword and must be adhered to. Prevailing Wage requirements are applicable to Management Type, Sales Type, Investor and Non-profit Sponsor Type projects.
- a. Section 212 of the National Housing Act provides that HUD-FHA shall not insure any mortgage under the Sections referred to therein unless the requisite certificates have been received.
 - b. The determination of the Secretary of Labor in regard to prevailing wages must have been made prior to initial endorsement for insurance and must be current. The issuance and expiration dates of the prevailing wage determination are shown in the upper right hand corner thereof. If the expiration date has been passed, a new determination must be obtained and be in hand before the loan can be endorsed.
 - c. The Following Documents are required at initial closing:
 - (1) Contractor's Certification Governing Labor Standards and Prevailing Wage Requirements, FHA Form 2482.
 - (2) Subcontractors' Certification Concerning Labor Standards and Prevailing Wage Requirements, FHA Form 2482-A.

4-19. DISBURSEMENTS OF LEGAL, ORGANIZATION AND MARKETING FEES.

- a. Management Pre-Sale Cooperatives Involving Insurance of Advances. Before an initial closing can be held in such cases, the cooperative must have met its presale requirement. The commitment requires that members for a given percentage of the units in the project (97% in Section 213 and 90% in Section

221(d)(3) BMIR or MIR and Section 236 cases) must be procured and found acceptable as to credit by the Assistant Secretary - FHA Commissioner. In certain circumstances, outlined in Chapter 1 of this Handbook, the Field Office Director may waive or modify presale requirements and permit an initial closing where a lesser percentage of credit approvals have been obtained.

- b. Disbursements Schedule for Approved Sponsorship Organizations Using Separate Cooperative Agency Agreements (see Sponsorship Criteria in Reference (1) of the Foreword). It is important that the sales program in a cooperative be continued and monitored for drop-outs from the time the mortgage instrument is initially endorsed for insurance and the final endorsement for insurance is made. Unreasonable holdback of marketing fees will, therefore, have an adverse rather than a beneficial effect on the insurance risk. The following schedule has been established for disbursements:

(1) Disburse at Initial Endorsement:

- 75% Allowance for legal fee.
- 75% Allowance for organization fee.
- 50% Development Service fee allowance.
- 50% Marketing fee allowance plus proportionate amount of allowance attributable to the credit approved sales of all unit memberships in excess of 50% of the unit memberships but not to exceed 90% of the total allowance.

The balance of all allowances will be drawn from mortgage proceeds but will be retained by the mortgagee under a suitable escrow agreement until disbursed in the following manner:

The escrowed marketing fee (difference between the amount paid at initial endorsement and 90% of the total marketing fee) will be paid on a monthly basis as sales progress until 100% of the unit memberships have been sold and approved as to credit.

(2) Disbursed at Final Endorsement:

- 25% Allowance for legal fee.
- 25% Allowance for organization fee.
- 40% Allowance for Development Service fee.

(3) Disbursement at 100% Sales:

Balance of amount escrowed for marketing.

(4) Disbursement After Election of Permanent Board:

Balance of 10% Development Service allowance.

- c. Disbursement Schedule for Approved Sponsorship Organizations Using Single Cooperative Agency Agreement (see Sponsorship Criteria in Reference (1) of the Foreword. In cases where one approved cooperative sponsorship organization provides for all services under a single cooperative agency agreement the HUD-FHA Director may, at his discretion, change from individual holdback percentages, as set forth above, to an amount equal to 10% of all service fees. There must, however, be an additional holdback for unsold units as also set forth above.
- d. Management Pre-Sale Cooperatives Involving Insurance Upon Completion. All of the legal, organization and marketing and development service fees shall be disbursed at the initial/final closing of such cases, since all conditions of the commitment must necessarily have been met before such closing.

4-20. ARCHITECTS CONTRACTS.

- a. There are Three FHA Forms Covering Architect's Services, as follows:
 - (1) FHA Form 2719-A. This form is used when the Architect is to perform complete services, including supervision, and is an independent architect having no identity of interest with the mortgagor or builder.
 - (2) FHA Form 2719-B. This form is used by an architect whose services do not include supervision.
 - (3) FHA Form 2719-C. This form is used by an independent architect having no identity of interest with the mortgagor or builder covering supervisory services only.

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- (4-20) b. In All Management Type Cases, the services of an independent supervising architect will be required, covered by FHA Form 2719-C. The contracting parties will be the cooperative corporation and the architect.
 - c. If the Director is Satisfied that no Identity of Interest Exists between the builder and the architect who prepared the

drawings and specifications, under contract FHA Form 2719-B the cooperative corporation may, if it so desires, retain under FHA Form 2719-C the services of the same architect for construction supervision purposes. It is recognized that the architect who prepared the plans, assuming he is independent, is often in a position to perform more effective supervising services than an architect who has not had such familiarity with the plans.

- d. Investor Sponsor Projects, the Field Office will determine whether a supervising architect will be required, taking into consideration the factors discussed in Reference (6) of the Foreword. In Investor Sponsor cases, the contracting parties are the Investor Sponsor and the architect. It is not required that the cooperative retain an architect in such projects.
- e. Payment of Architectural Fees. If there is an identity of interest between the mortgagor and the architect, the architect's fee may not, for cost certification purposes, exceed the amount shown on FHA Form 2264.
 - (1) Where an architect other than the supervising architect has prepared the plans and specifications, a receipt from such other architect stating that he has been paid in full will be required unless contract FHA Form 2719-B is furnished.
 - (2) The amount to be paid the supervising architect will not be included in the first advance made by the mortgagee. The balance of funds available for architectural services may, however, be drawn down at such time so that all architectural services rendered up to such point will be paid in full. The supervising architect is paid as the work progresses in the manner provided for in the contracts.
- f. Relationship to HUD-FHA Inspections. Regardless of the type of architectural services to be rendered, HUD-FHA construction inspection will be required in the usual manner.

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- (4-20) g. In Management Type Cases where the contractor or seller of land has arranged for the preparation of the drawings and specifications (Contract Documents) the cooperative may purchase the right to use the Contract Documents directly from the contractor or land seller under the following conditions:
 - (1) The design architect is satisfactory to the HUD-FHA office having jurisdiction;

- (2) At the time of initial endorsement, the contractor and the design architect accept responsibility for the adequacy of the Contract Documents and for any additional design work or changes to the Contract Documents that may be required to meet construction needs;
- (3) At the time of initial endorsement (or at commencement of construction in advance of initial endorsement), the design architect shall furnish evidence that he maintains professional liability insurance;
- (4) The design architect acknowledges that the contractor or land seller has the right to sell to the cooperative the right to use the Contract Documents;
- (5) The contractor or land seller executes an agreement acceptable to HUD conveying the Contract Documents to the cooperative and certifying that the Contract Documents are fully completed and acceptable to the HUD office having jurisdiction;
- (6) The contractor and the cooperative have executed an agreement that the construction will conform to the approved Contract Documents without additional cost to the cooperative (including any changes made necessary to meet unforeseen conditions);
- (7) An architect who maintains professional liability insurance and has no identity of interest with the contractor (although he may have been the design architect who prepared the Contract Documents for the contractor) administers the construction contract under an Architect's Agreement entered into between him and the cooperative on FHA Form 2719-C.

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4-21. MORTGAGOR'S ATTORNEY'S OPINION. This opinion is addressed to HUD-FHA and the mortgagee. There is no prescribed form, but same should indicate that the mortgagor corporation has been properly organized; that all incorporation fees and taxes have been paid; that the corporation has authority to enter into the mortgage transaction and that the execution of all documents by the mortgagor have been duly authorized; that the note and mortgage are valid and binding and constitute a first mortgage; that all pertinent Blue Sky Laws and SEC requirements have been complied with, etc.

a. In management type cases, the mortgagor corporation will

retain the services of an attorney, independent of the builder, who will represent the mortgagor corporation at both initial closing and final closing. It is required that such agreement provide that twenty-five percent of the attorney's fee be withheld until final endorsement of the note unless other arrangements, which will assure the cooperative of attorney's service's through final closing, have been approved by HUD-FHA. An acceptable exception to this rule is where a Cooperative Agency Agreement provides for the establishment of an escrow of ten percent of the total advance for legal, organization and marketing and development services fees at the time of the initial closing. This "holdback," which is more than twenty-five percent of the allowance for legal fees, assures the services of both the cooperative servicing agent and associated counsel through final closing and for a specified period thereafter. The mortgagor's attorney's opinion in such a case should read as follows:

"The undersigned hereby certify that they were retained by the Corporation on or prior to its execution of contracts for the purchase of land for the project and for the construction thereof, and that the payment of their fee (including the fee of the aforesaid local counsel) is fully covered by the terms of the Cooperative Agency Agreement. The undersigned further state that to the best of their knowledge, information and belief, the Corporation is indebted to no other attorneys for legal services."

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- b. In the absence of such other acceptable arrangement, the following certification is required as part of the attorney's opinion:
- (1) "The undersigned hereby certifies that he does not represent and has not represented any party or interest in connection with the above-referred-to housing project other than the mortgagor corporation and further certifies that he does not have any financial interest in the project or the real estate upon which it is to be constructed other than the legal fee he has received or is to receive from the mortgagor corporation.
 - (2) The undersigned hereby agrees that he will represent the mortgagor corporation, if it so desires, in connection with the final endorsement for mortgage insurance by HUD-FHA, in which event he will be entitled to the 25% payment now being withheld.

(3) Except for the 25% being withheld (amounting to \$_____) the undersigned has been paid in full for his services and to the best of his knowledge, information and belief the mortgagor corporation is obligated to no other party on account of legal services."

c. It is not intended to preclude an attorney who is part of a consumer group (as discussed in Reference (1) of the Foreword) from representing the mortgagor corporation as its attorney, and if such instances arise an appropriate modification of the above-quoted paragraph will be made.

4-22. MORTGAGEE'S CERTIFICATE, FHA FORM 3220. This form is used in all projects except in existing construction cases under Section 213(i), in which case FHA Form 3220 A is applicable.

a. The Amounts to be Inserted for HUD application and commitment fees; initial service charge; title and recording expense; inspection fee and mortgage insurance premium should not exceed those set forth in the Financial Requirements for Closing.

b. The Amount Required for Working Capital is specified in the applicable commitment for insurance.

c. The Cash to be Deposited in the various escrows must coincide with the Financial Requirements for Closing.

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d. If the Cooperative Agency Agreement provides for the Establishment of a "Holdback" Escrow equal to ten percent of the total advance for legal, organization and marketing and development services fees to assure the services contemplated by that agreement, the Mortgagee's Certificate should include a statement that the escrow has been established.

4-23. MORTGAGOR'S CERTIFICATE, FHA FORM 3212. Care should be taken to ascertain that all exhibits referred to in this certificate have been appended. At the time of initial closing, the number of cooperators approved by the cooperative and HUD must be equal to the number specified in the commitment for insurance. See Presale of Units for additional instructions on this subject. The schedule of subscribers which is attached to the certificate should be checked by the HUD-FHA office to determine that the requisite number of subscribers have been obtained and have been cleared as to credit by HUD-FHA.

NOTE: In management and sales type cases under Section 213 and management type cases under Section 221(d)(3), the

correct form is Mortgagor's Certificate, FHA Form 3212.

- 4-24. SPONSOR'S CERTIFICATE, FHA FORM 3227. The purpose of this form is to give assurance that all of the cooperative members listed have a bona fide intention to reside in the project. The Director is responsible for informing the HUD Area Counsel as to the individual or individuals who will execute this document.
- 4-25. MORTGAGOR'S STATEMENT COVERING LEGAL AND ORGANIZATIONAL EXPENSES.
- a. In Management Type Cases, this consists of a statement signed by the mortgagor showing the total obligations incurred in connection with legal and organizational and development services matters. Language must be included indicating that such obligations have been paid in full (except for the holdbacks applicable) or will be paid out of funds allocated for same in the building loan agreement. It is important that the Director carefully examine the arrangements covering the organization of the cooperative. This is necessary to determine that the services performed in this category, and paid for, are such as will result in complete organization of the cooperative including obtaining members acceptable to it and to HUD-FHA for all of the units in the project without additional expense to the cooperative, or subject to such additional expense as is not in excess of the unexpended portion of legal and organization expenses provided for in the Building Loan Agreement.

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- b. The Statement Required by the Above Sub-Paragraph Will Not Be Required in any case involving the use of a Cooperative Agency Agreement providing for the services of a cooperative servicing agent and associated counsel, provided that the total amount of the fees to be paid for such services are specified in the agreement.
- 4-26. SURVEY INSTRUCTIONS AND CERTIFICATE, FHA FORM 2457. This form is required and should show that the surveyor's final inspection of the premises was made on a comparatively recent date. Acceptability of the survey and certificate is the responsibility of the Area Counsel.
- 4-27. CORPORATE DOCUMENTS OF MORTGAGOR, MANAGEMENT AND SALES TYPE CASES.
- a. Certificate of Incorporation. The Area Counsel will require a certification from the appropriate state incorporation official evidencing the filing of the Certificate of Incorporation in the form previously approved by HUD. In situations where the mortgagor has been incorporated in a "foreign" state, HUD should also be furnished with a certificate

of domestication (sometimes known as a certificate of authority) by the appropriate official of the state in which the project is located.

- b. By-Laws. These must be duly certified and be in the form previously approved by HUD-FHA.
 - c. Minutes of Meetings - Organizational, Directors and Stockholders. These will be examined by the HUD Area Counsel for adequacy.
 - d. Stockholders' and Directors' Resolution to Execute Mortgage. These should, of course, meet the requirements of State law. Generally, state laws specify the percentage of stockholders or members who must approve such an action and care should be exercised in determining that this requirement has been met.
- 4-28. COMMITMENT FEE. The HUD-FHA office should recheck to ascertain that the commitment fee has been paid in the requisite amount. For more detailed information as to the manner in which this fee is computed, reference should be made to the Project Fiscal Procedures.

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- 4-29. CASH REQUIRED FOR COMPLETION OF PROJECT. A deposit must be made with the mortgagee (to be reflected in paragraph (5) of the Mortgagee's Certificate, FHA Form 3220) of the amount required to complete the project over and above the sums to be disbursed from the mortgage. These funds will be advanced by the mortgagee prior to disbursement and insurance of any of the mortgage proceeds. The amount of the deposit is obtained from the Financial Requirements for Closing.
- 4-30. ASSURANCE OF COMPLETION OF ON-SITE FACILITIES. Assurance of completion is by bond or escrow deposit. Acceptable bonds are (a) Standard American Institute of Architects form of construction bond; or (b) "Contract Bond-Dual Obligee," FHA Form 2452. Copies of the American Institute of Architects bond may be obtained at stationery stores or directly from the American Institute of Architects, 1741 New York Avenue, N.W., Washington, D. C. Any surety on the accredited list of the U. S. Treasury is acceptable. The acceptability of the surety and the amount of the bond are responsibilities of the Director. The legal sufficiency and form of the bond are the responsibilities of the HUD Area Counsel. The following are the types of assurances and requirements for each:
- a. American Institute of Architects Bond. The bond must be in a penal sum of not less than 10% of the HUD-FHA estimate of the

cost of the construction of the on-site physical improvements or 10% of the amount of the construction contract, whichever is higher, and must include the mortgagee as a co-obligee. The amount of the HUD-FHA estimate is determined by deducting from the "total for all improvements" shown on FHA Form 2264, the amount of the estimated architect's fees.

- b. Contract Bond-Dual Obligee, FHA Form 2452. The amount of the bond is determined as set forth in paragraph 4-30.a. above. The mortgagee must be included as a co-obligee in the first paragraph of the form. In Management Type closings, the word "Rental" in the first "Whereas" clause should be changed to "Cooperative." Needless to say, this as well as all other bonds should have a current power of attorney annexed thereto evidencing the authority of the signer to execute the bond on behalf of the surety company.

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- c. Completion Assurance Agreement, FHA Form 2450. The amount is determined as set forth in paragraph 4-30.a. above. The escrow established under the provisions of FHA Form 2450, must consist of cash, or securities of, or fully guaranteed as to principal and interest by the United States of America. This agreement must be executed by the mortgagor, the mortgagee and the contractor.
- d. Letter of Credit. Under the regulations, the mortgagee is charged with the full responsibility for approving a letter of credit in any case where it is used in lieu of a required cash deposit. The regulations require that the letter of credit be issued by a banking institution and that such letter be unconditional and irrevocable. In the event a demand for the payment of cash under the letter of credit is not immediately met by the issuing bank, the mortgagee is required to substitute cash equivalent to the full amount of the undrawn balance under the letter of credit. Provisions are also included which require the mortgagee to remit to the Assistant Secretary-FHA Commissioner, along with its application for debentures, cash in an amount equivalent to any undrawn balance under a letter of credit. This places the full responsibility upon the mortgagee for collecting from the issuer of the letter of credit any undrawn balance existing at the time the application for debentures is filed.

4-31. ASSURANCE OF COMPLETION OF OFF-SITE FACILITIES.

- a. The Required Assurance may, as determined by the Director, take the form of either:
 - (1) Off-Site Bond, FHA Form 3213, (or 2479 in Investor-Sponsor

cases); or

(2) Escrow Agreement for Off-Site Facilities, FHA Form 2446.

- b. Regardless of the Form of Assurance Accepted, the Director will determine that the assurance requires installation and completion of off-site facilities in accordance with satisfactory drawings and specifications, and without cost to, or assessment against, the mortgagor other than as provided for in the contract documents. The Director will also determine that the assurance provides for completion and installation

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of off-site facilities simultaneously with completion of improvements on the project site, or within a reasonable time thereafter, as determined by him. The construction contract and building loan agreement provide that the 10% on-site-facilities holdback will not be advanced until satisfactory completion of off-site facilities.

- (1) If an escrow is required, it will be in an amount equal to the HUD-FHA estimate of cost of the off-site facilities. The funds will be placed in escrow with the mortgagee, or under the control of the mortgagee in a depository satisfactory to the Director and mortgagee.
- (2) In Management Type cases, the name of the general contractor should be inserted in the first sentence of FHA Form 2446 as the "Depositor." The reason for this is that under this form, it is the depositor who makes the guarantee against faulty materials and/or workmanship. Such a guarantee made by the mortgagor in a Management Type project would, of course, be pointless. In most instances (except leasehold projects) it is the mortgagor corporation who actually pays for the off-site improvements and therefore the insertion of an additional "whereas" clause to indicate that the funds placed in escrow by the depositor were paid to the depositor by the mortgagor is desirable.
- (3) If assurance is given in the form of an Off-Site Bond, FHA Form 3213, furnished by a surety on the accredited list of the U.S. Treasury, the bond must be in a sum equal to 100% of the HUD-FHA estimated cost of installation of off-site facilities.
- (4) In case of assurance from a public authority or public utility company, the assurance must be satisfactory in form and substance to the Field Office and the Regional

Attorney.

4-32. MORTGAGE TRANSFERS, PLEDGES AND PARTICIPATIONS. An insured mortgage may not be transferred or pledged prior to full disbursement of the mortgage loan, except with the prior written approval of HUD-FHA. The Field Office Director, before initial endorsement, will determine that the mortgagee of record is in a position to disburse the mortgage proceeds.

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(4-32) a. Transfer of Mortgage - Prior to Full Disbursement. Whenever circumstances warrant, the Director may approve such assignments subject to the following:

- (1) The assignee must be a HUD-FHA approved mortgagee.
- (2) The assignment of the mortgage and endorsement of the note to the transferee.
- (3) The assignment of the Building Loan Agreement with written consent thereto of mortgagor.
- (4) The assignment of the assurance of completion, with written consent thereto of mortgagor, contractor, indemnitors or surety, as the case may be.
- (5) The assignment of assurance(s) of installation of off-site facilities together with any deposits there under.
- (6) The transfer to the transferee for deposit with it or under its control of the working capital, funds required for the completion of the project and all other escrow funds, if any, deposited in connection with the project.
- (7) The written assumption by the transferee of all obligations under the Contract of Mortgage Insurance and of all documents, funds and escrow deposits in connection therewith together with written opinion of the transferee's attorney as to the validity of the entire transaction and of all documents executed in connection therewith.
- (8) Executed Notice of Transfer by Transferor and transferee (in triplicate) on FHA Form 2080.
- (9) With respect to the transfer of title evidence accepted at closing, the matter should be handled in a manner acceptable to the insurer with its written consent.

b. Two Conformed Copies of the above items numbered 1 through 7 should be obtained, one set for the Field Office Docket and

one for the Washington Docket.

- (1) The Field Office Director should submit all documents to the HUD Area Counsel for review as to legal sufficiency thereof.

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 - (2) The HUD Area Counsel will return the documents with a memorandum and such comments and recommendations as the circumstances require.
 - (3) The Director will then notify the parties at interest of his approval or disapproval, with a copy to the Office of Underwriting Standards and will forward the Notice of Transfer by Transferor and Transferee, FHA Form 2080, together with the pertinent documents called for by the FHA Form 2080, to the Office of the Comptroller.

c. Pledge of Mortgage - Prior to Full Disbursement.

- (1) There is no administrative objection to the pledging of an insured mortgage prior to full disbursement and final endorsement in a situation where:
 - (a) The Field Office Director has satisfied himself that such arrangement is practicable; and
 - (b) The mortgagee of record has, expressly stated, in writing, that it will remove the loan from the warehousing bank within 30 days after final endorsement of the mortgage for insurance.
- (2) Whenever a Director determines that the pledging of the loan is a practicable transaction, he will advise the mortgagee that the pledging is approved, at the same time calling the mortgagee's attention to the Regulations governing the pledging of an insured mortgage. Copies of the documents supporting the Director's decision will be included in the Washington Docket.

- d. Participations. When the mortgagee desires to maintain only a partial interest in the mortgage, participation by others to the limit of 90% of the loan up to the date of final endorsement, and to the limit of 95% of such loan thereafter, is permissible under a participation agreement or arrangement without obtaining the Secretary's approval, provided the applicable regulations are satisfied.
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- (1) The "principal" mortgagee, as defined in the regulations, must remain the mortgagee of record and its agreement or arrangement with other participants must provide that HUD-FHA, is under no obligation to recognize any other party than the mortgagee of record under the contract of mortgage insurance.
- (2) Participants may only be:
 - (a) An approved mortgagee,
 - (b) A pension or retirement fund or a profit-sharing plan, as defined in FHA regulations, or
 - (c) A charitable or non-profit organization.
- (3) No notice of any sale or transfer of a participating or partial interest will be required unless the insured mortgage is transferred in its entirety to a new "principal" mortgagee on the public records.

4-33. PROPERTY INSURANCE REQUIREMENTS. The regulations require that the mortgagee be advised, at the time of endorsement for insurance, of HUD-FHA's requirements for the types and amounts of insurance to be maintained on the project, and also require the mortgagee to maintain such insurance in the event of failure of the mortgagor to do so. At initial endorsement, the Director will notify the mortgagee of the insurance requirements by completing FHA Form 2447, being guided by the following:

- a. The Director will first ascertain from the Assistant Director for Technical Services or the Chief Underwriter (ADTS/CU) whether any change in drawings and specifications or in the cost estimate has occurred subsequent to preparation of Hazard Insurance Schedule, FHA Form 2329, which will require revision in the form. If such change has occurred, the Director will obtain a revised FHA Form 2329 from the Chief Underwriter.
- b. The Director will prepare FHA Form 2447 in the following manner:
 - (1) The form will be prepared in quadruplicate. The date of the form must coincide with the date of initial endorsement of the credit instrument. In paragraph 3 of the form, insert the date of the applicable FHA Form 2329.

- (2) Following preparation of FHA Form 2447, the Director will staple to each copy of the form a copy of the applicable FHA Form 2329. The Director will then execute all copies of FHA Form 2447.
 - (3) Immediately upon initial endorsement, the Director will deliver or forward to the mortgagee the original and one duplicate copy, making certain that both copies of FHA Form 2447 have attached thereto, copies of the applicable FHA Form 2329.
 - (4) Executed copies of FHA Form 2447 with applicable FHA Form 2329 attached will be filed in the Washington and duplicate dockets.
- c. Directors are cautioned that FHA Form 2447 and its attachment bear directly on the contractual relationship between HUD and the mortgagee, and that accuracy and promptness in the execution of the procedure herein provided is of primary importance. In all cases in which there is any revision of FHA Form 2329 or any correspondence in connection with either FHA Form 2329 or FHA Form 2447, a copy of such revision or correspondence will be filed in both the Washington and duplicate dockets.
- d. While public liability insurance coverage is not a requirement insofar as mortgage insurance is concerned, representatives of the cooperative are reminded that it would be most unwise for the cooperative not to be protected in this regard. It is therefore expected that adequate comprehensive general public liability insurance coverage will be obtained on behalf of the cooperative. The management agent should see that this is accomplished.
- 4-34. FINANCIAL REQUIREMENTS FOR CLOSING. FHA Form 2283c (2283 in case of Investor Sponsor projects) is completed in accordance with underwriting instructions and sets forth the up-to-date statement of fiscal and escrow requirements.
- 4-35. MANAGEMENT AGREEMENT. Before occupancy of the project commences (and in any event prior to final endorsement), a management agent must be retained to manage the project.
- a. The Field Office Director must assure himself that the management agent selected is competent to provide skilled, effective sound management.

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- b. The Field Office Director may approve initial management contracts for a period of up to three years, provided he is satisfied that this would be in the best interest of the project. During the period of the initial contract, the cooperative group, the mortgagee and HUD-FHA will have an opportunity to observe the management of the project and to formulate an opinion as to whether the contract should be continued or the management changed. While this decision is initially one for the board of directors of the cooperative, it must subsequently be approved by the mortgagee and by HUD-FHA.
 - c. After the initial term has expired and the cooperative is actively functioning, management agreements running for longer terms may be approved.
 - d. If a development is being constructed in a series of "sister" projects, it is usually advantageous to permit a longer initial period of management so as to have only one management agent during the period estimated by the HUD-FHA office for completion and occupancy of all of the units in the development.
- 4-36. CERTIFICATION BY CLOSING ATTORNEY. When all legal requirements have been met-to the Closing Attorney's satisfaction, the Director should be advised by memorandum that endorsement of the note is in order provided he is satisfied that all administrative and underwriting requirements have been satisfactorily complied with. The memorandum of the Closing Attorney should call the attention of the Director to any unusual features of the case which would appear to require his particular attention.
- 4-37. PREFERRED STOCK OR MEMBERSHIP. The preferred stock on membership is not applicable when a Regulatory Agreement is used.
- a. The Certificate should be issued to the Department of Housing and Urban Development and not to the Secretary. Note that when the corporation has been formed on a membership basis, five certificates of membership should be issued to the Department.
 - b. There is no Prescribed Form insofar as the Certificate of Preferred Stock or Membership is concerned. It should, of course, include any special provisions required by the law of the jurisdiction. A long and involved summary of stock preferences, etc., to be set forth on the certificate would

(4-37) also be time-consuming insofar as examination thereof is concerned. To avoid this (if in the Closing Attorney's opinion such an expedient is valid under state law), a copy of the Certificate of Incorporation should be physically attached to the Certificate of Preferred Stock and the Stock Certificate contain on its-face substantially the following language:

"This is to certify that the Department of Housing and Urban Development is (the owner of _____ shares of Preferred Stock of) (a Preferred Member of) _____ corporation and as such is entitled to all of the rights, privileges, prerogatives and restrictions of such (ownership) (membership) as set forth in the Certificate of Incorporation, a copy of which is attached hereto and made a part hereof as fully as though its provisions were imprinted in full on this Certificate."

- c. Current Procedure requires that the HUD-FHA Closing Attorney shall address a memorandum to the Director of the Field Office, substantially along the following lines:

"This is to certify that the enclosed Stock Certificate has been duly issued under the laws of the State of _____ and that the voucher executed in payment therefor is a proper expenditure on behalf of the Department of Housing and Urban Development. Enclosed herewith are the following:

- (a) Stock Certificate No. _____ representing _____ shares of preferred stock in the subject corporation.
- (b) Public Voucher in the amount of \$100.00 in payment for the above stock."

- d. Common Stock or Membership. HUD-FHA requires the mortgagor to certify that Stock Certificates covering all stock subscribed have, in fact, been issued to the subscriber without restriction or restraint on the exercise of their rights (see FHA Form 3212), but does not require that the closing documents include a copy of the actual certificate as issued. It is the responsibility of the mortgagor's attorney to see that such

certificates are prepared in appropriate form. If the suggestion set forth above with regard to the Preferred Stock is a good one it would also appear to be a convenient method

for the corporation to follow in its issuance of Common Stock Certificates. However, in view of the fact that the By-Laws set forth many provisions with regard to the rights and restrictions of common stock ownership, it is suggested that the By-Laws as well as the Certificate of Incorporation be attached to the Common Stock Certificate and the language on the Stock Certificate be adjusted accordingly.

- e. Voucher for \$100 (Standard Form 1034). This is to be signed by an officer of the mortgagor corporation in connection with the issuance of the preferred stock. It will be delivered to the Director along with the Certificate of Preferred Stock. The Field Office will forward the Certificate of Preferred Stock and the voucher (after it has been certified for payment) to the Office of Finance and Accounting in Washington.

4-38. MISCELLANEOUS CLOSING DOCUMENTS. In some cases, the facts will require some additional documents. Also, the peculiarities of the jurisdiction may require additional documents, as for example, in some states a mortgage warrant in addition to the mortgage note or bond. Also, the commitment itself may contain special typed-in conditions. The Closing Attorney should check to see that any necessary additional documentation is obtained.