CHAPTER 10. ACQUISITION, MANAGEMENT AND DISPOSITION

10-1. INTRODUCTION. If the mortgagor defaults and the lender and the mortgagor cannot negotiate a reinstatement plan, the lender must initiate action to acquire the property. In addition, if the lender has not already done so, the lender must determine whether to seek mortgagee-in-possession status or the appointment of a receiver. The lender must seek one of these remedies if necessary to assure the proper use of project funds and the protection of project assets. The lender must manage the project in accordance with HUD's requirements from the date the lender assumes control of the project through the date the lender sells the project or the coinsurance contract is terminated pursuant to Paragraph 11-21 of this Handbook. The lender may hold the property or dispose of the property through either competitive bid or a negotiated sale. Under the coinsurance program, lenders may not assign defaulted mortgages to HUD or convey title to HUD in exchange for insurance benefits.

Section 1: Acquisition

10-2. AVAILABLE METHODS OF ACQUISITION. The lender may acquire title through foreclosure of the mortgage or by accepting the owner's voluntary conveyance - i.e., a deed-in-lieu of foreclosure. A voluntary conveyance can save a lender considerable work, legal expenses and receiver's fees as well as avoid long delays in acquiring title. Generally, the lender should accept a voluntary conveyance only if the owner has not diverted funds from the project and the lender can reasonably expect the mortgagor to cooperate and expedite the conveyance. The lender may accept a deed-in-lieu only if the following conditions are met:

a. The mortgage is in default at the time the deed is executed and delivered.

b. The credit instrument is cancelled and surrendered to the mortgagor.

c. The mortgage is satisfied of record as a part of the consideration for such conveyance.

d. The deed from the mortgagor conveys marketable title and contains a convenant which warrants against the acts of the grantor and all claiming by, through, or under the grantor.

10-3. NOTIFYING HUD. At specific points in the acquisition process, the lender must report to HUD. The timing and content of these reports is discussed below. The lender must submit two copies of each report to HUD Headquarters' Office of Multifamily Housing Management and one copy of each to the local Field Office's Deputy Director for Management. The lender should mail the Headquarters copies by Certified Mail - Return Receipt Requested.

a. Notice of Election to Acquire and Intent to File a Claim. Within 75 days after the date of default, the lender must notify HUD of its election to acquire the property and its intention to file a claim for insurance benefits. HUD will consider extending the 75-day deadline if HUD determines that the lender and the owner are diligently pursuing reinstatement of the mortgage and that resolution of the problems that led to the default is feasible. The lender must submit this notice on Form HUD-92426, Multifamily Default Status Report.

b. Notice of Delay in Starting or Completing Acquisition. The lender must start foreclosure proceedings or actions to obtain a deed-in-lieu within 30 days after submitting the notice required by Paragraph 10-3.a. If State laws do not permit institution of foreclosure within this 30 day period, the lender must start foreclosure proceedings no later than 30 days after State law would permit. If the lender cannot meet these deadlines, the lender must report this fact to HUD and explain the reason for the delay. The lender must also report and explain any delays in completing the acquisition.

c. Notice of Acquisition. Within 30 days after acquiring title, the lender must inform HUD of the acquisition. This report must include the following information:

(1) Project name, address and FHA number;

(2) Acquisition date and method (i.e., foreclosure, or deed-in-lieu);

(3) Fiscal data, including:

(a) unpaid principal balance of the mortgage as of the date of acquisition;

(b) balance in the reserve for replacements and other reserves and escrows;

(c) accrued interest at mortgage rate on the unpaid principal balance from the date of default to the acquisition date;

(d) appraised values determined in accordance with Paragraph 10-11 of this Handbook;

(4) General condition of project, including:

(a) date of last inspection;

(b) description of physical condition;

(c) number and percentage of units occupied, vacant and not in rentable condition;

(5) Description of how the project will be managed, including name and address of management agent and management information required by Paragraph 4-3 of this Handbook; and

(6) Description of plans for selling the project.

10-4. ACCOUNTING FOR ACQUISITION COSTS. If the lender submits a claim for insurance benefits, the lender will be required to submit copies of invoices and ledger records for all costs incurred in acquiring the property. Hence, the lender must:

(a) retain receipts or paid invoices, showing check number and date paid, as costs are incurred; and

(b) account for costs in such a way that the lender can easily produce the information required by Paragraph 11-11 of this Handbook. Acquisition costs include reasonable attorney's fees, foreclosure costs, title policy, surveys, taxes on deeds, and recording fees.

Section 2: Interim Management

10-5. GENERAL. The Mortgagee's Certificate requires the lender to comply with HUD's requirements for project operation and management from the time the lender obtains control of the project as mortgagee-in-possession or owner until the earlier of the date the lender sells the project, files a claim, or the contract of insurance is terminated as provided in Paragraph 11-21 of this Handbook.

10-6. SECURING COMPETENT MANAGEMENT. The lender must assure that the project is managed by a competent management agent. The lender must require the agent to submit the information required in Paragraph 4-3 of this Handbook, and the lender must comply with the review and 2530 clearance procedures in Paragraph 4-4. Until the lender has obtained 2530 clearance for the proposed management agent, it may not execute a management contract of more than 60 days duration. To expedite the previous participation clearance process, the lender should submit the Form HUD-2530 before actually acquiring title or control of the project.

a. Agent Selection. If the lender wants to self-manage the project, the lender must obtain approval from the HUD Field Office, just as a new owner-manager would need to do. The lender may retain the existing management agent if the lender concludes that the agent did not cause the default and that the agent can effectively manage the project.

b. Management Fees. Fees paid for interim management services must meet the criteria for reasonableness established in Chapter 4. Fees paid to a management firm which has an identity-of-interest with the lender may not exceed fees paid for the management of comparable projects in the same market area.

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c. Management Agreements. Any management agreement executed by the lender and its management agent must bind the agent to comply with the requirements of this Section and HUD's administrative procedures.

10-7. ACCOUNTING AND RECORDKEEPING. The lender and its agent must comply with the accounting and recordkeeping requirements of Paragraphs 3-2 and 3-3 of this Handbook.

a. Project Funds. The lender must deposit in the name of the project all rents and other income collected from the operation of the project. Project funds may not be commingled with those of other projects or with other funds of the lender.

b. Lender Advances. If the lender advances funds for escrow items, repairs or other expenses, the lender must not pass these funds through the project account. The lender must disburse such advances directly to the payee and must maintain a separate ledger for these expenses. This separation of accounts will facilitate the preparation of the claims forms required by Chapter 11.

c. Documentation. To claim insurance benefits, a lender will need to submit evidence of payment for all costs incurred in operating or repairing the project. Hence, the lender must: (1) retain receipts or paid invoices, showing check number and date paid as costs are incurred; and (2) account for all costs in such a way that the lender can easily produce the information required by Paragraph 11-10 of this Handbook.

10-8. USE OF FUNDS. The lender must comply with Chapter 3, Section 3's requirements on use of project funds. Since the project is in default, distributions are not permitted.

10-9. REPORTING ON PROJECT OPERATIONS. The lender must require the management agent or the project manager, if the lender's staff is managing the project, to submit monthly accounting reports on the project's operations. The management agent should prepare these reports according to the instructions in Paragraph 3-6.b. of this Handbook. However, to avoid un-necessary transcribing of information when preparing a claim, the management agent may use Form HUD-2744C, Mortgagee's Report of Project Disbursements, (shown in Appendix 31c) as a substitute for the Schedule of Disbursements, (Form HUD-93480), that is discussed in

Chapter 3. The lender must review these reports and use them to monitor the management agent's compliance with Paragraph 10-7's and 10-8's requirements. HUD reserves the right to audit the lender's and project's records or to require the lender to submit copies of these monthly reports.

10-10. DEVELOPING A MANAGEMENT STRATEGY. The lender must develop a marketing and repair strategy that is consistent with its disposition plans and the limitations noted below. To maximize income and minimize any claim, the lender must aggressively collect rents on all occupied units; assure

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that operating expenses are reasonable; market units that are in rentable condition; and, as cost effective, repair or improve vacant units to make them marketable.

a. Repairs and Maintenance. The lender may make repairs up to a cumulative average of $500 per unit and complete routine maintenance without prior HUD approval. The lender must obtain the HUD Field Office's written approval before making any repairs or replacements that will exceed a cumulative average of $500 per unit. The lender's request for HUD approval must include:

(1) An explanation of why the repair is needed (e.g., to meet local codes or HUD Minimum Property Standards; tenant safety; routine replacement; to improve occupancy or increase potential sales price); and

(2) A description of the proposed repairs, including a work write-up, cost estimates and a schedule for completion.

b. Rents. If the project has a subsidy contract, the lender must contact the HUD Field Office to determine what rents can be charged. For unsubsidized units the lender must charge market rent unless the HUD Field Office authorizes the lender to collect a lower amount. HUD will approve the lender's request to charge less than market rents if the lender demonstrates to HUD's satisfaction that such lower rents will increase occupancy and total rent collections.

c. Special Note on Subsidized Projects. If the project has a subsidy contract, the lender must check with the HUD Field Office to determine if there are any other special requirements relating to project operations, management and repairs.

Section 3. Disposition

10-11. REQUIRED APPRAISALS. Within 30 days after acquiring marketable title to the property, the lender must obtain two appraisals of the property. The appraisals must be performed by independent appraisers selected from a panel of fee appraisers approved by HUD. The appraisals must reflect the market value of the property as of the date of acquisition, for its highest and best use. The appraisals must also reflect whatever financing the lender intends to make available in conjunction with the sale of the property. The appraisers may use Form HUD-92264, Property Income Analysis and Appraisal, or their own form or format for preparing the required appraisals. Appraisal fees may not exceed those customarily paid for appraisals of projects of similar type and size in the market area where the project is located. If the lender subsequently files a claim for insurance benefits, the lender must include complete copies of both appraisals.

10-12. METHODS OF DISPOSITION. The lender may dispose of the property through either a competitive bid procedure or a negotiated sale. The lender should use the disposition method it believes will minimize its coinsurance loss and claim for insurance benefits.

a. HUD will consider a sale to be by competitive bid if the lender complies with all the requirements listed in Paragraph 10-15 and the lender executes the Certification for Sale by Competitive Bid shown in Appendix 32. If the lender does not comply with the prescribed competitive bid procedures or does not execute this Certification, HUD will consider the disposition to be a negotiated sale in computing insurance benefits.

b. If the lender disposes of the project through a negotiated sale, HUD will use the higher of the two appraised values determined in accordance with Paragraph 10-11 when computing net sales proceeds in the calculation of insurance benefits. If the lender disposes of the project through a competitive bid procedure, HUD will use the sales price, even though it may be lower than the higher of the two appraised values.

10-13. SPECIAL REQUIREMENTS FOR PROJECTS SOLD WITH COINSURED FINANCING OR WITH A SUBSIDY CONTRACT. If the lender offers coinsured financing, or if the project has a subsidy contract with HUD and that contract will continue after the sale, the sales contract must require the prospective buyer to comply with the applicable HUD coinsurance and/or subsidy program requirements. All principals of the purchaser entity must receive Previous Participation Clearance before the lender consummates the sale. Such transactions are subject to the following additional requirements.

a. Restricted Purchasers. The following persons and entities may not bid on, purchase, or participate in the purchase of the project:

(1) Temporarily suspended or debarred individuals or firms;

(2) HUD employees; and

(3) Members of Congress.

b. Coinsured Projects. The prospective purchaser must satisfactorily complete all of the coinsurance loan application requirements set forth in HUD Handbook 4566.1. The lender must process and underwrite the loan according to the requirements of that Handbook. Prior to issuing a firm commitment, the lender must submit the loan application to HUD's Office of Insured Multifamily Housing Development for review and approval as required by that Handbook.

c. Subsidized Projects. The lender must consult with HUD Headquarters' Office of Multifamily Housing Management to determine if HUD statutes, regulations or administrative procedures impose any special requirements on the disposition or operation of the project.

10-14. SPECIAL REQUIREMENTS IF THE BUYER HAS AN IDENTITY-OF-INTEREST WITH THE LENDER. If the prospective buyer has an indentity-of-interest with the lender, as defined in Paragraph 10-14.a., and the lender intends to file a claim, the lender must follow the requirements in Paragraph 10-14.b. These requirements apply to both negotiated and competitive bid sales.

a. Definition of Identity-of-Interest. HUD construes an identity-of-interest to exist between the purchaser and the lender/seller when (1) the proposed purchaser; or (2) any officer or director of the proposed purchaser; or (3) any person who directly or indirectly controls 10 percent or more of the purchaser's voting rights or or directly or indirectly owns 10 percent or more of the purchaser; is also (1) an officer or director of the lender/seller; or (2) a person who directly or indirectly controls 10 percent or more of the lender/seller's voting rights or directly or indirectly owns 10 percent or more of the lender/seller. For purposes of this definition, the term "person" includes any individual, partnership, corporation, or other business entity. Any ownership, control or interest held or possessed by a person's spouse, parent, child, grandchild, brother or sister is attributed to that person.

b. Requirements for HUD Approval of Identity-of-Interest Sales. The lender must include in any bid acceptance notice or sales contract a clause making the sale contingent upon HUD's approval, unless the lender has notified HUD that it will not file a claim for insurance benefits. Before consummating an identity-of-interest sale, the lender must obtain the approval of the Office of Multifamily Housing Management in HUD Headquarters. The lender's request must include the information listed in Paragraph 10-14.b.(1) or 1014.b.(2) below. Paragraph b. (1) relates to negotiated sales; paragraph b.(2) relates to sales by competitive bid.

(1) Negotiated Sale:

(a) copies of the two required appraisals;

(b) name of the prospective buyer and description of the identity-of-interest relationship;

(c) proposed or contract sales price;

(d) lender's estimate of public interest in the project;

(e) explanation of why the lender chose not to sell by competitive bid; and

(f) explanation of how use of a negotiated sale would benefit HUD and the lender.

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(2) Competitive Bid Sale:

(a) items (a) and (b) above;

(b) certified copies of advertising;

(c) complete Prospectus and Bid Kit;

(d) the control log required by Paragraph 10-15.e.(9); and

(e) explanation of why any higher bids were rejected.

10-15. SALE BY COMPETITIVE BID. If the lender chooses this disposition method, the lender must comply with each of the requirements in this Paragraph. If the lender fails to meet any of these requirements, HUD will consider the disposition to be a negotiated sale.

a. Prepare a Prospectus. The lender must prepare a Prospectus which describes the property and summarizes the terms and conditions of the sale. The Prospectus must include, at a minimum, the information listed in Exhibit 10-1.

b. Prepare a Bid Kit. The lender must also prepare a Bid Kit which contains, at a minimum, the items listed in Exhibit 10-2. The Bid Kit's instructions for submitting bids must:

(1) explain the lender's earnest money deposit requirements.

(2) specify the date and time by which the lender must receive the bids;

(3) state the number of days for which bids must be continuing offers; and

(4) state that bidders may not withdraw or modify their bids after the submission deadline.

c. Publicize the Sale. The lender/seller must take the following steps to make potential bidders aware of the availability of the property and to announce the sale:

(1) Newspaper Advertising. The lender must advertise the sale in the city or town where the project is located, even though this may require using a weekly publication of limited circulation. The lender must also advertise in the major metropolitan newspapers in the region in which the property is located. If the appraised value of the property is $1,000,000 or more, the lender must also advertise the sale in at least one newspaper of national circulation. (HUD advertises such sales in the Financial Section of the Sunday New York Times and in the Friday edition of Wall Street Journal.) The lender must obtain and retain copies of each published advertisement. The lender

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must also keep copies of all invoices for advertising. The lender must submit such invoices with any claim for insurance benefits.

(2) Solicitation/Outreach. The lender must obtain from HUD's Office of Multifamily Housing Management a copy of HUD's national list of potential bidders. After publicly advertising the property, the lender must send the Prospectus to at least 20 firms likely to be interested in this type of property.

d. Respond to all Inquiries. The lender must promptly respond to all requests for information on the sale of the property and must give copies of the Prospectus and Bid Kit to anyone who requests them.

e. Comply with the Following Bid Processing Procedures.

(1) Keep all bids sealed and secured until the date and time for bid opening specified in the Prospectus and Bid Kit.

(2) Not disclose, prior to bid opening, any information on the number, amount, or source of bids received.

(3) Not accept any telegraphic or telephone bids.

(4) Conduct a bid opening which is open to the public.

(5) Consider only bids that meet the requirements of paragraph 10-15.f. and any other requirements the lender included in the Prospectus and Bid Kit.

(6) Document the reasons for rejecting any bids.

(7) Hold all earnest money deposits until issuing a notice of acceptance to the highest acceptable bidder. After executing this notice, return all earnest money deposits except the deposit for the highest acceptable bid.

(8) Execute a contract of sale and purchase with the highest acceptable bidder within 60 days after bid opening.

(9) Maintain a bid processing control log. Show the following information for each inquiry: person's or organization's name and address and date of inquiry; date bid kit sent; date bid received.

(10) Prepare a tabulation of bids. For each bid received, show the bidder's name; the amount of the bid; whether the bid was accepted, returned because it was submitted after the deadline, or rejected; and the reasons why any bids were rejected.

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f. Accept only Bids which Meet the Following Requirements. Bids must meet all of the requirements listed below. Bids must:

(1) Be fixed in one amount (i.e., not include alternative amounts).

(2) Be unconditional (i.e., not modify the terms of sale set forth in the Prospectus and Bid Kit).

(3) Be responsive to the offering.

(4) Be submitted by the deadline specified in the Prospectus and Bid Kit.

(5) Be accompanied by the earnest money deposit specified in the Prospectus and Bid Kit. Bidders must submit the deposit in the form of a money order, or certified, cashier's or other banker's check payable to the lender.

(6) Specify the amount and type of financing the purchaser will use to complete the sale.

(7) Include the bidder's statement as to whether or not there is an identity-of-interest relationship, as defined in Paragraph 10-14.a., between the bidder and the lender/seller and a description of the relationship, if any.

(8) Include the bidder's certification that the bidder:

(a) has the power to bind the buyer;

(b) agrees to all terms of the Prospectus and Bid Kit; and

(c) agrees to furnish and execute all documentation required to complete the sale.

10-16. RECORDS RETENTION REQUIREMENTS. The lender must maintain complete documentation on all sales for three years from the date of the sale. This documentation includes the following:

a. All Sales:

(1) Executed sales contracts

(2) Copy of deed conveying the property

(3) Settlement sheet

(4) Copies of all other documents required for settlement

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b. Additional Requirements for Competitive Bid Sales:

(1) Copies of all advertis1ng

(2) Bid Kit

(3) Bid processing control log required by Paragraph 10-15.e.(9)

(4) Tabulation of bids required by Paragraph 10-15.e.(10)

(5) Complete copy of highest acceptable bid

10-17. ACCOUNTING FOR DISPOSITION COSTS. To claim insurance benefits the lender must document all costs incurred in disposing of the project. Hence, the lender must: (a) retain receipts or paid invoices showing check number and date paid as costs are incurred; and (b) account for all costs in such a way that the lender can easily produce the information required by paragraph 11-11 of this Handbook. Disposition costs include:

a. The cost of the two appraisals required by Paragraph 10-11;

b. The cost of advertising the property and/or publicizing the sale (however, the lender may not include any costs it recovers by charging a fee for the Bid Kit);

c. Attorney's fees for contract preparation and closing;

d. Closing costs not paid by the purchaser; and

e. If the disposition is handled by a real estate broker, a sales commission not to exceed the percentage customarily paid in the market area for sales of similar projects.

EXHIBIT 10-1

INFORMATION THE LENDER MUST INCLUDE IN THE PROSPECTUS

1. Property Description

   a. Project name
   b. Project address
   c. Date constructed
   d. Type of project (i.e., walkup, highrise, garden apts, town houses)
   e. Number of buildings
   f. Number of stories
   g. Total units
      (1) Revenue units
      (2) Non-revenue units
   h. Land area
   i. building area
   j. Net rentable area
      (1) Residential

2. Inspection of Property and Project Records

   a. Dates and times property and records will be available for inspection
   b. Names, addresses and phone numbers of persons to contact to arrange for inspections

3. Information on Sale

   a. Date, time and location of public bid opening
   b. Minimum bid price (if any)
   c. Earnest money deposit required with bid

(2) Commercial
k. Brief description of construction(e.g., brick, etc.)
l. Parking facilities
m. Tenant services and equipment included in rent
n. Current rent schedule
o. Gross annual rent potential
p. Estimated annual expenses

2. Occupancy Information

a. Units currently occupied
b. Units not rentable
c. Average occupancy during past year

d. Description of available financing (if any)
e. Where to call or write to obtain Bid Kit
f. Cost (if any) of Bid Kit

4. Other Information

a. Zoning
b. Description of easements, covenants or other use restrictions
c. Type and duration of all leases that will extend beyond the expected sale date
(1) Residential
(2) Commercial
d. Type of subsidy and number of subsidized units (if any)

EXHIBIT 10-2

ITEMS THE LENDER MUST INCLUDE IN THE BID KIT

1. All public offerings

a. Prospectus
b. Instructions for submitting Bids
c. Contract of Sale and Purchase or other Bid Form
d. Bidder's certification required by Paragraph 10-15.f.(7)
e. Personal Financial and Credit Statement (Form FHA-2417) or similar form
f. Description of other items required by the lender to constitute a complete and responsive bid

2. Additional items for sales of projects offered with coinsured financing

a. Previous Participation Certification (Form HUD-2530)
b. List of applicable regulations and Handbook requirements
c. Regulatory agreement
d. Sample mortgage or deed of trust
e. Sample mortgage or deed of trust note
f. Conditional Commitment (in the form prescribed in HUD Handbook 4566.1)
g. List of all requirements for coinsured financing to be submitted prior to closing (See HUD Handbook 4566.1)

3. Additional items for sales of projects for which a subsidy contract is in force at the time of sale

a. Previous Participation Certification (Form HUD-2530)
b. Copy of current subsidy contract
c. List of applicable HUD regulations