## CHAPTER 1. INTRODUCTION

1-1. CONDOMINIUM CHARACTERISTICS. Condominium ownership is created by a special real estate law that permits individual dwelling unit estates to be established within a total and larger property estate. The individual estates are technically established by use of vertical and horizontal planes (surfaces) which are usually identified; vertically, as the walls (not room partitions) of the unit and, horizontally, as the floors and ceilings of the unit. The exact location of the building structure on the property and the exact location of the unit within the structure are described in the plat (location map) and in the architectural plans. Each is also described in legal language in an Enabling Declaration (sometimes called a Master Deed or Plan of Apartment ownership). After all of the individual unit estates have been described within the total property estate, all of what remains, such as the land and structural parts of the buildings, becomes a common estate to be owned jointly by the owners of the individual estates.

a. The Master Deed. When the Enabling Declaration is recorded it extends the condominium laws of the State in which the condominium is located to the property. It also establishes an association which provides for the use and the maintenance of the common estate to be governed by a Board of Directors or "Board of Managers" elected from among the owners of the individual estates. The internal government is controlled by the By-Laws which are recorded with the Enabling Declaration. The By-Laws can usually be changed by a vote of the majority of individual owners but changes in the Enabling Declaration normally require consent of 100% of the owners. A Board governs the common estate.

b. The Individual. In a condominium, an individual has real estate title to his own unit; and, with the owners of other units, he has an undivided interest in the common areas and facilities that serve the development.

c. The Common Estate. The common estate includes such elements as land, roofs, floors, main walls, stairways, lobbies, halls, streets (that are not otherwise dedicated), parking space and community and commercial facilities. Each unit owner makes a monthly contribution to the Association covering his share of the cost of maintaining and operating the common properties.

1-2. PROGRAM CHARACTERISTICS (SUMMARY).

a. The Two Phases of a Condominium (Project/Individual Unit). Unlike the single family (single deed) estate which is eligible for insurance under Section 203(b), a condominium estate is not complete without its undivided interest in a larger common estate. Therefore, regardless of whether or not a condominium is, or has been, encumbered by a multifamily project mortgage its characteristics are those of a project. A condominium must be developed under a master development plan which reflects the total number of units comprising the condominium and on which the ratios of undivided interests are based.

Under the National Housing Act, as amended, the mortgages on individual unit estates are not eligible for insurance under Section 234(c) unless they were conceived out of a project the mortgage of which was previously insured by HUD-FHA (except where the condominium contains no more than 11 units).

The Individual Unit Phase, Section 2.34(c) is covered in Reference (1) of the Foreword.

(1) The project phase makes it possible to develop the land (streets, utilities, recreational areas and residential areas) with insurance of advances. FNMA will participate up to 95%. If 80% of the value of the units are sold the individual units may be financed in the following ways:

(a) Cash Sale.

(b) Conventional mortgage.

(c) HUD-FHA Section 234(c).

(d) VA Guaranteed Loan (there must be at least one HUD-FHA-insured mortgage).

(e) HUD-FHA Section 235(i) (Section 235 unit limitations and eligibility requirements apply).

(2) All of the above can coexist in the same development.

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(3) The Builder can buy units in the condominium for occupancy or rental but it must be on the same basis as any other owner.

(4) Condominiums are acceptable in suburban areas where rentals frequently are not.

(5) Higher densities and better land use can be achieved because of the undivided interest in the common property. Sewer and water lines can serve a cluster of units rather than individual lots.

(6) It is basically an unsubsidized program but assistance can be given to individual buyers and knowledge of the fact need be only between the individual, his mortgagee and HUD-FHA.

(7) Procedures provide minimal cost certification requirements for insurance upon completion cases using the simplified processing.

(8) Interim rental is permitted while the 80% presale requirement is being pursued.

(9) The builder needs only to own the land, have a knowledgeable Attorney with a set of FHA model forms of condominium documents and a sales staff to put him in the business of developing condominiums.

(10) In the absence of a sponsor, who may or may not be properly motivated to protect the interest of consumers (as required by Section 234), HUD personnel must assure themselves that the conditions, covenants and restrictions in the Declaration, Regulatory Agreement and other documents are in the model formats and appropriately implement the intent of the Act. The By-Laws must provide for equitable government by the owners and the Information Bulletin must adequately inform the buyers before they are committed to purchase.

b. Insurance Approaches:

(1) Insurance of Advances is a dual commitment (condominium or rental).

(1-2) (2) Insurance Upon Completion (standard form) is a dual commitment providing for condominium or rental. The builder must have his own source of financing construction of the project.

(3) Insurance Upon Completion (modified form) is used in simplified procedures using home mortgage processing. This is not a dual commitment. The development will not be insured by HUD as a rental if it fails to market as a condominium. Even though home mortgage processing is used, units can not be insured under Section 203(c) if a condominium regime is recorded on the property. Section 203(b) does not provide for an undivided interest in the land underlying the unit.

c. Important points to Consider:

(1) The National Housing Act makes it possible for any project previously insured by HUD-FHA (except a Section 213 Management Type cooperative) to be converted to a condominium. Conventionally financed developments of 11 or less units can be insured as a condominium if the documents conform to the HUD-FHA model forms. Conventionally Financed developments that have 12 or more units and are old enough to require substantial rehabilitation can be insured if the project is rehabilitated under the provisions of Section 234(d).

(2) Applications for new construction should be made under Section 234(d) because of the dual processing features of the program. It is, however, permissible to use Section 236 as a vehicle to create a condominium for low income people where the period required to sell 80% of the value of the units would require interim occupancy on a rental basis, and the prospective buyers could not pay market interest rate. This, however, would require an allocation of Section 236 funds as well as Section 235. If a strong market of low income people exist and the project is of a size that can be rapidly constructed and sold without the need for interim occupancy, it would be best to use the simplified insurance upon completion approach.





(1-2) (3) Legal review differs from administrative review. It is the Area Counsel's responsibility to review for conformance to model forms but he should advise the Field Office

Director of the legal or administrative impact of additional or changed provisions. Architects and Appraisers must check the Enabling Declaration to determine how the unit and its undivided interest is described. Management personnel must be cognizant of the provisions in both the Master Deed and the By-Laws.

(4) In the Simplified Insurance Upon Completion cases, HUD-PHA is not committed to insure the development as a project rental if 80% of the value of units has not been sold (the simplified home mortgage processing does not contemplate a rental project). The construction of the project must also be completed. (With 80% sales the indebtedness can normally be paid off prior to, or simultaneously with, spin off to individual ownership.) The construction must be completed primarily because by recording the Enabling Declaration (FHA 3276-A) an undivided interest would be created between the early buyers and the builder (this creates joint liability problems and problems of mechanic's liens attaching to the undivided interest). If the construction is completed and the indebtedness can be removed, the presale requirement could be lowered 80% (but not below 51% of the value of the units) if there is still evidence of a strong market (care should be taken to determine that the selling price is not substantially in excess of the HUD-FHA valuation). Before lowering a presale requirement a visual inspection should be made to determine that the property is attractive and the units are conducive to long term occupancy (i.e., a garden type without community facilities, may not be). See Reference (1) of the Foreword for Presale Requirements prior to insurance of individual unit mortgages.

(5) While any developments insured under any Section of the National Housing Act may be converted to condominium (except Section 213 Management and Sales Type), in accordance with the Section 234(c) Handbook, (Reference (1) of the Foreword) conversion should not be permitted by release of units from a project mortgage one by one unless it is clearly to the benefit of the Secretary to do so.





(1-2) (6) HUD-FHA financed condominium regimes may, under certain conditions, share use of off-site community facilities where the facilities are owned by a nonprofit recreational corporation which is approved by HUD-FHA.

(7) There are two different Regulatory Agreements applicable to the condominium program. FHA Form 3278 is recorded with the Master Deed and must be used in all Instances where an individual mortgage is insured. FHA Form 3254-B is only used to control the builder sponsor organization.

(8) As in the ownership of a single family dwelling, title (owners title policy) and liability insurance are the individual responsibility of the condominium owners. In some situations a comprehensive general liability policy with each owner co-insured has been used. If such is the desire of the owners, the premium should appear in the Budget of the Association of Co-owners (Form HUD 93240).

(9) There is always a presale requirement after construction is completed and prior to recording the Master Deed. This serves the purpose of proving the market and establishing a viable condominium. When the 80% presale requirement is required before construction in Insurance of Advances cases, it is only for the purpose of proving the market. It does not automatically mean that the Enabling Declaration can be recorded and title to the individual units can be conveyed as they are constructed. Recording the Enabling Declarations changes the law covering the land within the boundary lines of the condominium property from traditional real estate law to condominium law. This should not be done until a viable condominium is assured. Title must not be conveyed until construction is completed.

(10) Mortgage Application for Blanket Commitment (Form FHA 3280) and Blanket Commitment for Insurance of Individual Condominium Mortgages Form FHA 3275-A are used in conversion cases to close the gap between a project that has already been insured under some Section of the Act other than Section 234(d) and the individual mortgages under Section 234(c).





d. Taxes. In a condominium, it is essential that all taxes and special assessments be levied against the individual unit owners, separately, and not against the condominium association. Also, each unit must be capable of bearing its own mortgage. Thus, an owner's title is not endangered by default on the part of owners of other units in meeting mortgage and real estate tax payments, nor is the owner subject to call to meet deficiencies in such payments. All States, as well as the District of Columbia, Puerto Rico and the Virgin Islands, have enacted legislation recognizing this division of ownership.

e. Contract of Sale. A Subscription and Purchase Agreement (Form FHA 3279) sets forth the terms under which the prospective buyer will acquire title to a unit, together with an undivided interest in the common areas. It also functions as an Information Bulletin and must contain, among other things, a full disclosure of any unusual characteristics of the condominium.

1-3. ESTABLISHMENT OF A CONDOMINIUM REGIME. A condominium regime is established by the recording of an Enabling Declaration (Form FHA 3276-A) dedicating the property to a condominium plan of ownership. Exhibits attached to and recorded with the Enabling Declaration include plat and plans of the project, the By-Laws of the Association of Owners (Form FHA 3277) and the FHA Regulatory Agreement, Form FHA 3278.

a. The Enabling Declaration must identify and describe accurately the individual units and the common areas.

b. Valuations and Proportioned Interests must be correctly stated, because the extent of interest that the owner of a living unit has in the common areas and facilities as governed by the ratio also represents the owner's voting interest in the condominium owner association and it determines the owner's proportionate share of the expenses of the association.

1-4. OFF-SITE RECREATION OR SERVICE CORPORATIONS. Condominium owners may own a membership certificate in a "Nonprofit/Non-equity" corporation that holds title to recreation areas, streets, water and sewer facilities, etc., that are shared by a number of separate condominium developments. The equity under such circumstances is built up in the individual condominium unit and not in the recreation property.





a. Condominium Owners may also own an undivided interest in a freehold estate (fee) that is governed by a corporation or association under their absolute control.

b. Condominiums and Rental Operations must not be commingled by use of off-site corporations without a field office review of the circumstances and documents that govern such a relationship and the written approval of the Office of Multifamily Housing Development.

1-5. HUD INSURANCE PROGRAMS FOR CONDOMINIUMS. HUD insures project mortgages to finance construction or rehabilitation of condominium housing developments. Later, when the units in such projects are sold to individual owners, the project mortgage is either terminated or the units are released from the project mortgage and financed separately. Initial sales and resales of the dwelling units in a condominium that was approved as a project by HUD prior to construction or rehabilitation may be sold for cash or financed under unsubsidized Section 234(c) or subsidized Section 235(i) of the National Housing Act, with a VA Guaranteed Loan or with a Federal National Mortgage Association (FNMA) conventional loan, Standard conventional loans are also permitted.

a. Mortgage Limits for Projects Under Section 234(d). An amount attributable to dwelling use excluding exterior land improvements as defined by the Assistant Secretary for Housing - Federal Housing Commissioner not to exceed: (The mortgage amount may exceed these limits by not more than 90% of the cost not attributable to dwelling use, including exterior land improvements.)

(1) Walk-up Structures:

$19,500 per family unit without a bedroom
$21,600 per family unit with one bedroom
$25,800 per family unit with two bedrooms
$31,800 per family unit with three bedrooms
$36,000 per family unit with four or more bedrooms

(2) Elevator Structures:

$22,500 per family unit without a bedroom
$25,200 per family unit with one bedroom
$30,900 per family unit with two bedrooms
$38,700 per family unit with three bedrooms
$43,758 per family unit with four or more bedrooms





(1-5) NOTE: The Assistant Secretary for Housing-Federal Housing Commissioner may increase the foregoing dollar amount limitations by an amount not to exceed 50% in any geographical area where he finds cost levels so require. Instructions for calculating high cost percentages are contained in Reference (2) of the Foreword.

b. Eligible Type of Housing. The housing may consist of high rise, garden type, row, semi-detached or detached structures. While the project must be designed principally for residential use, commercial facilities adequate to serve the needs of the occupants may be included. Such facilities may be included in the common elements or may be treated as individual condominium units with conventional financing, except that where the net rentable commercial area exceeds 10% of all net rentable area, both commercial and residential, then all commercial areas must be separate condominium units. Commercial condominium units must be conventionally financed as they are not eligible for HUD mortgage insurance.

(1) A project must contain no less than four units to be eligible for insurance under Section 234(d).

(2) One person may own as many as four units financed under Section 234(c) with HUD insured mortgages, but must live in one of them.

c. Conditions Precedent to Sale of Units. Whether the project is new or existing construction, sale to condominium buyers may be made only after HUD has processed the case and found the plan of condominium ownership acceptable. Prior to solicitation for membership, all condominium sponsors must obtain HUD approval of the organizational documents and the Subscription and Purchase Agreement, Form FHA 3279.

d. Projects Located in Resort Areas. Projects located in resort and recreational areas are eligible for mortgage insurance under Section 234 subject to the provisions outlined in Reference (3) of the Foreword. Use of the units as primary or secondary homes is permissible. The provisions of Section 513 of the National Housing Act concerning hotel and transient occupancy are applicable and are set forth in the Regulatory Agreement, Form FHA 3278 and the model Form of Enabling Declaration, Form FHA 3276-A.





1-6. UNSUBSIDIZED vs SUBSIDIZED UNIT MORTGAGES IN A CONDOMINIUM. The basic condominium documents set forth in this Handbook are not changed by the application of assistance payments under Section 235(i). A Section 234(c) commitment can be qualified so as to make it convertible to Section 235(i) if the unit and the family that is to own the unit are eligible for assistance payments. The basic documents are also applicable to condominiums. The project mortgages of condominiums are to be insured under Section 236, and all of the units are to be converted, at some later date, to

Section 235(i) individual condominium mortgages. Also the basic documents are applicable to rehabilitation project mortgages to be insured under Section 235(j)(1) for future conversion to Section 235(j)(4) individual condominium mortgages.

1-7. SECTION 221(i). This Section is no longer operational because the increased funds that would be necessary to support the establishment of a condominium regime and the marketing of the units are no longer available.

1-8. VA GUARANTEE OF LOANS ON HUD-FHA APPROVED CONDOMINIUMS.

a. General Information. The Veterans Housing Act of 1970 permits the VA to guarantee "a loan to an eligible veteran to purchase a one-family residential unit to be owned and occupied by him as a home in a condominium housing development or project as to which the Secretary of HUD has issued, under Section 234 of the National Housing Act, as amended, evidence of insurance on at least one loan for the purchase of a one-family unit." Under this limitation, the VA may guarantee a condominium loan only after the determination has been made that HUD-FHA has in fact insured a mortgage under Section 234 for the purchase of a condominium unit. The fact that HUD-FHA may have insured a mortgage on the project under Section 234 is not sufficient to qualify unit loans in a project for VA guarantee or insurance. Certificates of Reasonable Value in connection with the original sale of a condominium unit will be based on the HUD-FHA Value of Unit Excluding Closing Costs, Column 12 of Condominium Analysis and Appraisal, FHA Form 180.





(1-8) b. Documents for the Veterans Administration. When the firm commitment for project mortgage is issued, copies of the commitment forms FHA 3283, 3284 or 3275a, of the Schedule of units FHA Form (3280-A) and of Condominium Analysis and Appraisal FHA Form 180 will be sent to the Veterans Administration office which guarantees loans in that area. Copies from feasibility or conditional commitment stage processing should not be sent to VA as it is desired to send only valuations which are not likely to be changed. When the condominium unit sales program begins, VA purchasers may be issued CRVs based on HUD-FHA value, but each CRV will contain a requirement for evidence that at least one mortgage on a condominium unit has been insured by the Secretary for HUD.

c. Resale of Condominium Units. In projects where HUD-FHA has, in the past, insured a mortgage on at least one condominium unit, the VA will appraise for reasonable value and issue CRVs for resale purposes. The VA valuation procedures involve estimation of the current unit share of condominium unit replacement cost by multiplying the Unit Share of Condominium Replacement Cost for that unit in Column 8 (as shown in the original Condominium Analysis and Appraisal FHA Form 180) by the cost index factor necessary to adjust costs from that date to the present. For this reason, HUD Field offices will supply copies FHA Forms 180 concerning previously processed condominium projects whenever the VA office requests it in order to appraise condominium units for resale.

d. Notice of First Insurance. When the first condominium unit mortgage is insured by HUD-FHA in a project, the Chief Appraiser will prepare a memorandum to be signed by the Field Office Director, informing the VA that an identified unit mortgage in that project was endorsed for mortgage insurance on a particular date.

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