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CHAPTER 2. BASIC DOCUMENTS

- 2-1. Controlling Documents. The following entries are presented in glossary form and should be useful as instructional material for newly trained Housing Management staff or as a quick reference guide for seasoned Loan Servicers/Asset Managers. Controlling documents are comprised of contracts, certifications, forms and regulations which set out specific program requirements and obligations. As an exercise it might be useful to pull some of the documents from various dockets and files in order to understand their significance and to become familiar with their contents. This glossary is provided for background information only and is NOT a running list of forms to be duplicated and placed in the General Mortgage Servicing File after final endorsement. For guidance in this area, refer to paragraph 3-2(B)(3)(a) of this handbook.
- A. Amortization Schedule for Section 202 Direct Loan projects. A table that shows the monthly payment requirements, interest and principal, and the unpaid loan balance during the life of the loan. The Amortization Schedule is a required inclusion for the files of Section 202 Direct Loan projects.
  - B. Building Loan Agreement or Loan Agreement. Used for both Insured Loan and Section 202 Direct Loan projects, these are agreements between the construction lender (HUD in the case of 202 projects) and the borrower that delineate the rights and responsibilities of both entities during a project's development and construction (i.e., loan amounts, construction distributions, adherence to specifications, financing terms, financial requirements for project accounts, etc). For further discussion of Loan Agreements see the HUD-Held Project Servicing Handbook 4360.1, Chapter 7, Section 2 and the Section 202 Direct Loan for Housing for the Elderly or Handicapped Processing Handbook, 4571.1 REV 2, Appendix 30.

- C. Charters and Trust Agreements. At one time such documents and agreements were used to establish HUD control of a project through the purchase of preferred stock or through the purchase of preferred certificates of beneficial interest in a trust. HUD also controlled the process of amending these documents (e.g. legal review of proposed changes, and establishing procedures to provide for control by Regulatory Agreements). HUD has not used Charters or Trust Agreements to control projects since March, 1961. (See HUD-Held Project Servicing Handbook 4360.1, Chapter 7, Section 2 for further discussion of Trust Agreements).
- D. Chattel Mortgage or Security Agreement and Financing Statement. Required for both Insured Loan and Section 202 Direct Loan projects, these are instruments by which personal property (such as office furnishing, furniture for furnished units, capital equipment, etc.), which has been purchased with mortgage proceeds, is pledged as security for a debt. They are used to create a valid first lien on such non-reality items that have been purchased by the project but that are not clearly subject to the mortgage lien. These mortgages or agreements are required supplements to the personal property clause of the mortgage unless the laws of the State in which the property is located clearly make personal property subject to a mortgage lien or Deed of Trust. These instruments may not be required if the mortgagor acquired the personal property with funds other than mortgage proceeds.
1. Attorney's Opinion of Coverage. For Section 202 projects, an attorney's opinion stating that the non-realty items are covered by the lien of the real estate mortgage may be used instead of the Chattel Mortgage or other security agreements. The opinion must be submitted at the time of final closing of the loan.
  2. Financing Statements and Continuation Statements. Under the Uniform Commercial Code, (UCC), Chattel Mortgages, security instruments or agreements must be accompanied by a Financing Statement. These

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Statements must be renewed periodically by the filing of a Continuation Statement under the Uniform Commercial Code and the enacting State laws. Procedures relating to Continuation Statements are found in the HUD-Held Project Servicing Handbook 4360.1, Chapter 7, Section 2.

- E. Deed of Trust. An instrument used in some States instead of a mortgage. The buyer of the property gives a deed of trust (instead of a mortgage) which is then held in the name of a trustee. Legal title to the property is then vested in the trustee to secure repayment of the debt. If the buyer defaults on the loan, the lender has reasonably easy access to the property through the trustee.
- F. Grant Agreement. The Grant Agreement is used for projects approved for funding under HOPE 2 (resident homeownership program in multifamily properties insured by HUD or properties financed under Section 202) or under the Housing Development Grant Program. This is an agreement between HUD and the grant recipient that sets forth the amount of the grant and applicable terms and conditions, including sanctions for violation of the Agreement.
- G. Ground Lease (i.e., Leaseholds). From the inception of HUD project mortgage insurance programs, HUD has permitted these leases, by which the mortgagor rents instead of purchases land. Under a Ground Lease, the land may then be used for any purpose allowed under the lease for a specified lease term, including the addition of improvements. A ground lease may be renewable, and renewal provisions may be required by HUD. At the end of the lease term, the land, as well as any added improvements, reverts to the landowner. Initially, ground leases were allowed only under the Section 207 program and in localities where the use of leaseholds was commonplace. This was changed years ago, and leaseholds are generally allowed as long as they are freely marketable and meet all other eligibility requirements.

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HUD Option Right. Unless HUD waives the option right requirement, ground leases must contain a provision giving HUD the option to purchase the fee simple title to the land at the market price established for it by HUD at the time the mortgage was insured. In the event HUD elects to acquire title to the leasehold estate, it must give the lessor 60 days written notice of the Department's intent to exercise this option.

- H. Housing Assistance Payments (HAP) Contract. HUD and the owner enter into these contracts for all projects that receive Section 8 housing assistance payments from HUD. The HAP Contracts specify the terms and conditions for provision of this assistance.

In the Section 202 Housing for Handicapped People program, the subsidy takes the form of a Project Assistance Contract (PAC), and in the Section 202 and Section 811 Capital Advance programs, subsidy is termed Project Rental Assistance Contract (PRAC).

- I. Mortgage. A written instrument which creates a lien on the property used as security to ensure repayment of the debt owed on that property. It is the key document of a mortgage insurance or loan transaction. For Insured Loan projects, it is the instrument that the mortgagor gives to the mortgagee for the loan covered by the note or bond endorsed by HUD for insurance; or, in the case of Section 202 Direct Loan projects, for repayment of the loan the Federal Government makes to the borrower.
- J. Mortgage Note. A Mortgage Note is executed for all mortgages. It is the written promise by the borrower to repay the loan. It sets forth the amount of indebtedness to the mortgagee (or to HUD in the case of a Direct Loan), the interest rate, and the manner in which the debt will be repaid.
- K. Mortgagee's Certificate. Used in conjunction with Insured Loan projects, the Mortgagee's Certificate contains provisions about the

mortgage insurance. It also sets forth agreements and certifications by the mortgagee concerning certain HUD requirements after insurance. It confirms certain fees have been paid and reiterates that the mortgagee is in compliance with applicable Regulations. It also outlines some of the mortgage financing terms and prohibitions. The Certificate is executed and submitted to HUD either at the time of initial closing (in the case of insurance of advances), or at the time of closing (in the case of insurance upon completion).

Mortgagor's Certificate. Also used in conjunction with Insured Loan projects, the Mortgagor's Certificate is executed and submitted to HUD with the Mortgagee's Certificate. Its purpose and content are similar to those in the Mortgagee's Certificate (i.e., mortgagor certification of certain terms, financing arrangements, conditions of the mortgage and compliance with applicable Regulations). It also contains agreements and certifications by the mortgagor concerning HUD requirements that affect mortgage servicing.

- M. Regulations. Regulations describe the rights, duties and obligations of both HUD and participating lenders and borrowers in Insured Loan and Section 202 projects after the insurance of the mortgage or final closing. The applicable regulations are identified in the endorsement panel of the mortgage note. Together with the other documents accepted by HUD at the closing of the loan (or at initial closing for insurance of advances), the identified applicable Regulations constitute the mortgage insurance contract between HUD and the mortgagor.
- N. Regulatory Agreement. Regulatory Agreements establish the relationship between HUD and the mortgagor. The Form delineates the mortgagor's responsibilities and provides for HUD control of the mortgagor entity, be it an individual, partnership, trust or corporation (either nonprofit or profit motivated). In the Agreement, the mortgagor consents to abide by HUD control of rents (or in some cases decontrol

of rents), other tenant charges, rate of return and methods of operation in return for mortgage insurance or issuing a loan. HUD utilizes Regulatory Agreements to control both Insured Loan and Section 202 Direct Loan projects.

- O. Title Policy. A Title Policy is insurance coverage that protects the holder from loss sustained from defects in title (i.e., unresolved claims against the ownership of property). If, sometime after closing, a claim against the owner's right to title to the property was upheld, the title insurance company would pay for the owner's loss. Title Policies are required for both Insured Loan and Section 202 Direct Loan projects.

2-2. Dockets

- A. Introduction. Dockets are files of important documents pertaining to the loan being serviced. HUD establishes these files at the initiation of the project. Additional documents are added to the dockets as the project moves through its operational life. Two dockets are made, the Washington Docket and the Field Office Docket.
  1. The Washington Docket (actually HUD's permanent legal file) is assembled by the Field Office Manager's Designee and mailed to Headquarters' Chief, Records Management, HOAMP, within 10 working days of final endorsement. See Handbook 4440.1 (issued by the Office of Insured Multifamily Housing Development) for a listing of the contents of the Washington Docket.

Section 202 and Section 811 (FY 1991 and later). After final closing, the Field Office Housing Development Division or Loan Management Branch staff prepares the original (legal) loan docket and then forwards the package to the appropriate Regional Accounting Division (RAD). Each RAD has responsibility for safekeeping and maintaining all original permanent documents under the Section 811 and Section 202 Capital Advance programs. See Handbooks 4571.4 and

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4571.5 for instructions regarding the Capital Advance programs, and Handbook 4571.1 REV 2, paragraph 9-35, for further information regarding preparation, retention and disposition of Section 202 Direct Loan program files. Lastly, it should be noted that the Philadelphia RAD retains all legal dockets for projects with loans under the original Section 202 program, i.e., projects with "SH" identification numbers (for Senior Citizen Housing).

2. The Field Office Docket is assembled by the Field Office Manager's Designee and forwarded to the Director, Housing management Division within 10 working days of final endorsement. The Field Office Docket contains a duplicate of all documents included in the Washington Docket, plus any residual documents accrued during Development processing.
    - a. The Director, Housing Management Division, is responsible for maintaining the Field Office Docket for both Housing Management and any Housing Development post-final endorsement use.
    - b. General Mortgage Servicing File. Loan Management Branch staff copy certain key documents from the Field Office Docket to form the basic documents of the General Mortgage Servicing File. This file grows as servicing of the loan proceeds. (For a description of the documents included in the General Mortgage Servicing File - including those from the Field Office Docket - see Chapter 3 of this Handbook.) After copying needed documents to the General Mortgage Servicing File, Loan Management staff shall file the Field Office Docket and follow retention and disposition schedules as set forth in HUD Handbook 2225.6 REV-1, Appendix 1.
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- C. Section 202 and Section 811 (FY 1991 and later. After final closing, Field Office Housing Development Division or Loan Management Branch staff should make copies of various documents and send them to Headquarters, Assisted Elderly and Handicapped Housing Division, HMEE. These documents become the nucleus of Headquarters' reference-correspondence file. Handbooks 4571.4 and 4571.5 contain a list of what documents are to be included and further guidance.