

Security Instrument

1. **Format** – more detailed, topical organization, easier to locate applicable provisions
 - a. Index
 - b. Headings
 - c. New Terms - Use of Security Instrument, Lender and Borrower rather than Mortgage, Mortgagee and Mortgagor
 - d. Although greater specificity built into the document, Program Obligations will fill in the detail. [Examples: §3 – assignment of rents; § 4 – assignment of Leases; § 19 – property and liability insurance; § 20 – condemnation]
 - e. Definition section cross referenced, where needed, with specific sections of the Security Instrument
 - i. Applies uniformly to all closing documents unless specifically referenced in the other documents
 1. More consistent interpretation and enforcement across all documents
 2. More defined terms and more details with respect to definitions to improve clarity, understanding of expectations and uniformity across the Department and program participants
 3. Always capitalized in text
2. **Major Provisions that Have Not Substantually Changed**
 - a. Modernized current language, added more detail
 - b. Non-recourse loan (§ 6)
 - c. Exculpation (§ 6)
 - i. Insert names included in Section 50 of the Regulatory Agreement
 - d. Single Asset Borrower (§ 33)
 - i. Regulatory change to eliminate natural person and tenants-in-common ownership
 - e. Regulatory Agreement incorporated into Security Instrument (§ 9)
 - i. HUD may request of Lender to declare Indebtedness due and payable
 - ii. Discretion left to Lender
 - f. Borrower required to comply with all terms of the Security Instrument and the Note (§ 5)
 - g. Use of Property (§ 12)
 - i. Prohibits changes of use, unit configurations or number and parcel in most circumstances
 - ii. Implements Section 513 of the Act (no use as hotel or transient housing)
 - h. Borrower must pay taxes and all expenses of operating, managing and repairing the Mortgaged Property in a timely manner, including various forms of insurance (§§ 16, 19)

- i. No Liens unless approved by HUD and explicit language on repayment of inferior liens (§ 17)
 - i. includes regulatory language requiring inferior liens to be paid only from surplus cash or residual receipts in most instance
- j. Borrower must preserve the Mortgaged Property (§ 18) (very explicit language on obligations in this provision)
 - i. Explicit affirmative statements on Borrower obligations
 - ii. Requires compliance regardless of whether insurance proceeds of condemnation awards are available as a funding source
 - iii. References management agent obligations, use of project funds, Surplus Cash and Reasonable Operating Expenses and related matters
 - iv. Allows some limited exceptions

3. Significant New Provisions

- a. More clearly enunciated role for Lender (e.g., §§ 3 and 4, assignment of rents and leaves; §§ 7 and 8, imposition deposits, order of payments; § 13 protection of Lender's Security; § 14 inspection; § 15 books and records)
- b. Lender's Certificate drafted to complement Lender's role as articulated in the Security Instrument and the Note
- c. Program Obligations (impacts all documents) (§ 1(dd))
- d. Two-tiered Default Provisions and Remedies for Default (§§ 22, 43)
 - i. Monetary Event of Default (§22(a)) failure to pay amounts due under the Note or §7(a) or (b) of the Security Instrument
 - ii. Covenant Event of Default (§ 22(b))
 - 1. Certain acts of fraud, material representations or material omissions by Borrower and related parties relating to loan application, information to Lender during term of the Indebtedness or requests for Lender's consent under the Security Instrument or Note
 - 2. Commencement to forfeiture actions, which in Lender's reasonable judgment, could result in forfeiture of the Mortgaged Property and materially impair lien
 - 3. Material failure to comply with the Security Instrument continuing after 30 days notice by Lender (notice not required in all instances)
 - 4. Uncured violations of the Regulatory Agreement, if so requested by HUD
- e. Waste definition (§ 1(jj)) and Remedies for Waste (§ 45)
 - i. Created a contractual definition to avoid reliance on multiple definitions based in common law of all states, the District of Columbia and Puerto Rico

- ii. Five elements relying on physical condition and certain financial commitments of the Borrower
 - iii. Specific Remedies, including an injunction requiring repairs if Waste has impaired or threatens to impair Lender's security and payment of damages (limited by the amount of Waste) and the payment must be applied, at HUD's discretion, to remedy the Waste, payment of the Indebtedness, certain costs of the Lender or for other purposes designated by HUD
- f. Mortgaged Property Definition (§ 1(w))
 - i. Ensures clarity with what is or is not covered by the Security Instrument and subject to regulatory control (e.g., what assets may be owned by the Borrower and not be subject to the Security Instrument or the Regulatory Agreement)
 - ii. Brings into the specific language of the Security Instrument items that were never fully articulated in the contract documents previously
 - iii. Several Components with subdefinitions including Land, Fixtures, Personalty, Rents, Leases, Imposition Deposits, Improvements
 - iv. Project and Project Assets are defined to mean Mortgaged Property to fully capture everything subject to the Security instrument and the Regulatory Agreement
- g. Environmental Hazards (§ 48)
 - i. Limitations on source of funds for damages and indemnification to Surplus Cash and insurance proceeds
 - ii. Borrower obligation to not cause or permit any occurrence on the Mortgaged Property or Borrower property adjacent to the Mortgaged Property that violates Hazardous Materials Law or violates an Environmental Permit
- h. Security Agreement (§ 2)
- i. Compliance with Laws (§ 11)
- j. Protection of Lender's Security (§ 13)
- k. More details on Impositions and Imposition Deposits with details on depositories set forth in Program Obligations and Borrower payment of Lender's fees and Lender payment of interest on deposits (specifics in Lender's Certificate) (§§ 7,8)
- l. Transfers of Mortgaged Property (TPA) (§ 21)
 - i. Lender can explicitly charge fees for its review
- m. Recognition of Federal Remedies (§ 44) and Termination of HUD's Rights (§ 46)
- n. Third Party Beneficiary (§ 36)
- o. Borrower Certifications (e.g., §41)
- p. Loan Servicing (§ 39)

- q. Basic Contract Provisions (e.g., § 27, waiver of marshalling; § 29 estoppel certificate; § 30, governing law and consent to jurisdiction and venue; § 31, notice; §35, successors and assigns; § 26, estoppel; § 38 rules of construction)