

## CHAPTER 3. POLICY STATEMENTS CONCERNING COMMITMENTS

## 3-1. LEASEHOLDS - HOME MORTGAGES.

- a. Policy of the Administration. Leaseholds may be accepted as security for FHA insured mortgages when they contain the following conditions. (There is no longer a requirement that evidence be provided that leaseholds are marketable in the community.)

(1) Term. Not less than 99 years, and renewable, or a term extending at least ten years beyond the mortgage maturity.

(2) Rental. Ground rentals are established in the local market place, but in no case may the annual rental exceed the lesser of 12 percent of the site value, or the maximum allowable applicable HUD-FHA Single Family mortgage interest rate at the time of underwriting, less two percent.

## Example:

Value of leasehold	\$51,000
Value of comparable site	\$ 9,000
Ultimate maximum annual rental (yield rate 12 percent)	\$ 1,080
Maximum annual rental if mortgage interest rate is 12 percent (yield rate 10 percent)	\$ 900
Maximum annual rental if mortgage interest rate is 13 percent (yield rate 11 percent)	\$ 990

These provisions represent a clarification and limitation, and are not intended to be used as standards in the establishment of rentals.

- (3) Rental Increases. Ground rentals may increase periodically, subject to the following:
- Rental amounts may not be increased for the first three years of the lease term. Subsequent rental increases may occur no more frequently than once every 12 months.
  - Increases must be stated in the lease document in exact dollar amounts.

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- (3-1) (c) Establishment of future rentals by negotiation or by formula is not permitted.
- (d) Increases in any 12 month period may equal no more than 2 percent of HUD's original site valuation, but at no time may annual ground rental exceed 12 percent of HUD's original site valuation.

Example:

Value of leasehold	\$57,000
Value of comparable site	\$ 9,000
Annual rental (yield rate 6 percent)	\$ 540
Maximum permissible Rental resulting from first increase (yield rate 8 percent)	\$ 720

- (4) Assignability. Leases may not contain restrictions of assignability not acceptable to HUD so long as the leasehold is covered by a HUD/FHA insured mortgage or a mortgage held by the Secretary or so long as the Secretary owns the leasehold.
- (5) Option to Purchase, Subject to the exceptions listed in 3-1.b. below, the lease must permit lessee or his/her assigns to purchase fee simple title from lessor or assigns with 30 days written notice. The option price of the fee simple title is intended to reflect HUD's recognition of value ascribed to the stream of income produced by the lease. Thus the underwriting instructions are hereby clarified to require the lease to permit purchase at a price not to exceed HUD's original valuation of the leased fee, as opposed to the previously worded "market price of the site." Buyer and seller may agree that this right shall not be exercised during the first five years of the lease term.
- (6) Default. Mortgagee must have the right to correct lessee's defaults within 120 days from receipt of notice of intent to terminate lease because of such default, or such further time as may be necessary to complete foreclosure.

- (7) Merger. The lease must provide that ownership of both the fee simple title and the leasehold estate by the same owner will not effect a merger of such estates while either estate is encumbered by a mortgage, without the written consent of the mortgagee.

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- (3-1) (8) Conflict. The terms of the lease must not conflict with the terms of the mortgage.

b. Requirement of an Option to Purchase. The Requirement of an Option to Purchase may be waived in any transaction covering the leasehold interest of the mortgagor under a lease where:

- (1) A state, including any political subdivision thereof, of the United States, an Indian Tribe, or an Indian, or a charitable institution, a church, a University or similar public purpose institution, is the lessor and an option to purchase would not be permitted under existing laws or regulation;
- (2) Where the property is located in an area which the Assistant Secretary-Federal Housing Commissioner has determined that the option to purchase is not economically feasible or acceptable because of the custom and practices relating to land ownership and its use.

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3-3. APPROVED MORTGAGEES: ADMINISTRATIVE REQUIREMENTS FOR APPROVAL AND IMITATIONS UPON ACCEPTANCE OF APPLICATIONS FOR MORTGAGE INSURANCE.

- \* a. Field Office Director's Responsibility. The Field Office Director is responsible for reviewing and analyzing lenders' applications requesting approval as HUD mortgagees prior to submission to the

Mortgagee Approval Officer. All mortgagee application referrals together with the Field Office Directors' comments and recommendations, including any other information pertaining to the applicant institution, shall be forwarded by the Field Office Director directly to the Mortgagee Approval Officer in Headquarters.

(1) Usually, it is in the best interests of all parties for the Director to hold preapplication conferences with the applicant. Preapplication conferences will give the Director the opportunity to advise the applicant as to HUD Regulations, the responsibilities of an approved mortgagee and the manner in which the application should be executed, exhibits, etc., as well as acquainting himself/herself with the individuals involved, their backgrounds, etc.

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(2) Applications from supervised lenders usually will require less attention by the Director than will applications submitted by non-supervised lenders. The Director, prior to the submission of the application for a non-supervised mortgagee to the Mortgagee Approval Officer, shall have reviewed the applicant's financial statement to determine the acceptability of assets and otherwise screen the application. Credit reports or factual reports on the principals involved and commercial credit reports on the institutions shall be ordered when it is determined such reports will be helpful in reaching a conclusion regarding recommendation for approval.

(3) If the Director finds the application to be deficient, he/she shall return it with a letter advising the reasons for its return and a

statement that a new application may be submitted with supporting data, properly documented, evidencing the fact that the items having been noted as deficient have been corrected. When

these corrected applications have been resubmitted and the Director has not been able to obtain correction of all deficiencies, he/she shall forward the applications, with the recommendations, to the Mortgagee Approval Officer for final determination.

- \* (4) If the Director finds the application in order, complete with supporting documents, the application shall be forwarded to the Mortgagee Approval Officer with the Director's recommendation which shall contain a statement that the file has been reviewed and found to be in order, that the lender and its principals are responsible, reputable and knowledgeable in mortgage lending and that he/she recommends approval.
- (5) The Director has the responsibility of maintaining a continuing review of all approved mortgagees and their practices, and of referring information to the Mortgagee Approval Officer that may affect their participation in HUD programs.
- b. Types of Institutions Which May be Approved. The following institutions may submit applications for mortgagee approval:
- (1) Federal, State, or Municipal Agencies;
  - (2) Non-profit or Charitable Organizations;
  - (3) Supervised Institutions;
  - (4) Non-supervised Institutions;
  - (5) Loan Correspondent Institutions.
- c. Lender Application Requirements. Sections 203.1 to 203.6 of the Regulations deal with the approval of mortgagees, giving the type of institutions eligible and the qualifications for such approval. The approval under the above Sections gives the applicant the right to make application for mortgage insurance under all Sections of the National Housing Act except Title I.

(3-3) All lenders desiring mortgagee approval must file a formal application. (See FHA Form 2001, 2001c, and 2001e.) Requirements for mortgagee approval differ as to type of institution. The requirements for each of the various institutions are described as follows:

(1) Federal, State, or Municipal Agencies. Any federal, state, or municipal government agency that is or may hereafter be empowered to hold mortgages insured under Title I is approved as a mortgagee by virtue of the wording of FHA Regulations. Each agency is requested to file a formal application (See FHA Form 2001), so that HUD-FHA records may be complete. Normally, such institutions are not engaged in the origination of mortgages, but function as purchasers in the secondary market on a nation-wide scale. The mortgagees shall have the necessary facilities for servicing insured loans in the locality of the mortgaged property.

(2) Non-profit or Charitable Organizations. Any such organization which presents evidence (1) that it is responsible, (2) has experience in the field of

investment,

may be approved as an HUD-FHA approved mortgagee upon application. Although these institutions are primarily active in the secondary market, they must have the necessary facilities for servicing insured loans in the locality of the mortgaged property. A Director receiving an inquiry from a non-profit or charitable organization concerning approval will supply the

applicant

with HUD-FHA's application (FHA Form 2001e) for making application as an approved mortgagee.

(3) Supervised Institutions. Any lending institution under the supervision of a governmental agency which is required by law to make periodic examinations of the books and accounts of the institution may be approved as a mortgagee. The lending institution shall submit satisfactory evidence of net worth in an amount not less than \$100,000.

(a) These institutions are extensively engaged in the origination of mortgages for their own portfolios and are also active traders in the secondary

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- (b) The areas in which these institutions may operate through home offices or branch offices are restricted by charters and state laws and usually permission is obtained from the supervisory agencies prior to the opening of branch offices.
- (c) Institutions of this kind may submit applications for mortgage insurance to any Field Office. However, applications for home mortgage insurance submitted to Directors of Field Offices outside the state in which the main office or branch office of the mortgagee is located, must be accompanied by written evidence that the originating mortgagee has existing facilities for servicing loans for the state in which the mortgage security is located.
- (d) The above requirement respecting home mortgage loan servicing would not apply where the main office or a branch office of the mortgagee is so located that a portion of a state adjoining the state in which the home office or branch office is domiciled is of such proximity that home mortgages can be satisfactorily serviced in the opinion of the Field Office Director of the adjoining state.

(4) Non-Supervised Mortgagee.

- (a) Any corporation or trust not under supervision and meeting with the following requirements and conditions may be approved upon application:
  - 1 It must be a chartered institution or other permanent organization having succession, or a trust;
  - 2 Its principal activity must be the lending or investment of funds under its own control in real estate mortgages;
  - 3 It must have a net worth of not less than \$100,000. Its assets must be adequate for and invested properly in relation to the character and extent of its operations and must be proportioned to liabilities. (In order to retain approval, the mortgagee must at all times maintain a net worth of not less than \$100,000.)

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- 4 Experience in the mortgage origination and servicing fields and the general reputation of the principals must be acceptable to the  
of the Field Office having jurisdiction.
- 5 It must present evidence showing credit lines to be available either through banks or other sources to finance properly its proposed mortgage originations;
- 6 It must agree to submit an annual certified detailed audit of its books made by a CPA or other accountant satisfactory to HUD-FHA;
- 7 It must agree, except with the prior approval of the Assistant Secretary-FHA Commissioner, to segregate and deposit in a special account with a bank or banks whose deposits are insured by the FDIC that portion of the monthly payments received by it on insured loans on account of ground rents, taxes, MIP, hazard insurance, etc., and to use those funds for no other purpose than that for which they were received.

(b) A mortgagee of this type is permitted to originate and service loans throughout the state in which its office is located; however, in these states having two or more Field Offices, consent of the other Directors to have the applicant operate in their areas must be secured prior to such operations. If the office of the mortgagee is so located that a portion of a state adjoining the state in which its office is domiciled is of such proximity that home mortgages can be satisfactorily serviced and the mortgagee desires to operate in that territory the Director in whose area the mortgagee desires to operate shall review the request and submit the request with his recommendation to the Mortgage Approval Officer.

(c) An institution of this type may conduct operations through branch offices in its home state. It may also establish branch offices in contiguous states to originate and service HUD-FHA loans. Should it desire to establish a branch office or offices in a non-contiguous state, it must have a net worth of \$150,000.

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- 1 For each additional non-contiguous state in which it establishes a branch office or offices it must have an additional \$50,000 in net worth until net worth reaches \$250,000, at which time no further increase in net worth will be
- if branches are opened in additional non-contiguous states.
- 2 Every branch office must be maintained as a separate entity from any other local business, staffed with experienced personnel to handle
- its
- business adequately, be under the management of an officer of the company experienced in the mortgage business, have the recommendation of the Field Office having jurisdiction and the approval of the Central Office.
- (d) Institutions of this kind may submit applications for mortgage insurance under all Sections of the National Housing Act to any HUD-FHA Field Office,
- 1 Applications for home mortgage insurance submitted to Field Offices outside the state in which the main office or a branch office of the mortgagee is located, must be accompanied by written evidence satisfactory to the
- Director
- handled
- that the servicing of such loans will be
- by a local approved mortgagee unless the purchasing mortgagee has existing facilities for servicing loans for the state in which the mortgage security is located.
- 2 The above requirement respecting the servicing of home mortgage loans would not apply where the main office or a branch office of the mortgagee is so located that a portion of a
- state
- adjoining the state in which the home office or a branch is domiciled is of such proximity that home mortgages can be satisfactorily serviced.

3 The mortgagee shall by letter to the Director request permission to originate and service HUD-FHA-insured loans in those counties of the state which are listed in the letter. The Director, prior to giving his approval, shall inform the Mortgagee Approval Officer of the lender's request and ask to be advised as to whether there are any objections to his

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such request.

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(e) An institution of this type may originate or insured loans for its portfolio or for sale to any other approved mortgagees and service the same.

(5) Loan Correspondent. Any corporation having a net worth in excess of \$5,000 in acceptable assets may be approved as a loan correspondent mortgagee. Qualifications for approval are identical to those of a non-supervised mortgagee, except as to net worth. Its approval must be requested by a supervised institution doing business in five or more states and investing in insured

mortgages

for its own permanent portfolio, or a supervised institution doing business in less than five states but able to present satisfactory evidence that it is

investing

in insured mortgages for permanent investment in a volume that will enable its correspondent to maintain its servicing accounts satisfactorily.

comments

(a) The Director of the area in which the office of the applicant is located will be requested to make an investigation of the applicant and give his

as to approval or disapproval.

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1 Although a mortgagee of this type is permitted originate mortgages for sale to its sponsor and to service insured loans throughout the state in which its office is located, in those states

having

two or more Field Offices, consent of the other Directors to have the applicant operate in their

areas must be secured prior to such operations.

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- 2 If the office of the mortgagee is so located a portion of a state adjoining the state in which it is domiciled is of such proximity that home mortgages can be satisfactorily serviced and the mortgagee desires to operate in that territory, consent from the Director in whose area the mortgagee will operate will be required.

- (b) Sponsorship of a loan correspondent mortgagee is limited to two sponsors, except where definite evidence can be submitted to show that this number cannot absorb the output of the correspondent, in which case a third sponsor may be permitted. Further, should a situation arise where one or more of the sponsors are temporarily out of the market, additional sponsors up to the number out of the market will be permitted for a limited period of time, not to exceed one year.

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- (3-3) (c) The loan correspondent mortgagee is restricted in that he may originate or purchase insured loans for

sale to his sponsor or sponsors only. The only exception to this rule is where the sponsor will not purchase a particular loan originated in its behalf. Such loan may be sold to an approved mortgagee other than the sponsor upon the permission of the HUD Field Office having jurisdiction.

- d. Servicing Agents. HUD-FHA does not approve servicing agents' contracts. Servicing agents are employed by the principal to perform certain services. These services may vary in accordance with the agreement between the parties.

- (1) Servicing agents are not permitted to file or process any papers to HUD-FHA Field Offices. If an application for a commitment is received from a servicing agent, it is to be promptly returned by letter.

for (2) HUD-FHA imprint stamps are issued to servicing agents  
use in processing transfer notices, prepayment reports,  
that etc. For this reason, the Director must make certain  
an application for a commitment is from an institution  
not approved to submit applications for mortgage insurance.  
Possession of an imprint stamp by an institution does  
necessarily mean that it is an approved mortgagee.

e. Authorized Agents. An authorized agent may be a corporate entity, partnership, firm, or individual authorized by a principal to act in its name and behalf in the origination or servicing of mortgages. There are no requirements as to financial worth or succession.

\* (1) Only a supervised institution approved by HUD-FHA as a mortgagee is permitted to originate insured loans  
through authorized agents.

(2) HUD-FHA must receive two copies of the resolution by which the principal grants authority to the agent.  
This resolution must clearly and completely set forth the authority granted to the agent, as well as specify the geographical area in which the agent will operate and whether the agent will service self-originated mortgages.  
copies (Give agent's name and address.) In forwarding the to the Mortgagee Approval Officer, the Director may include appropriate comments in the transmittal memorandum.

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\* f. Mortgage Servicing. HUD-FHA regulations for mortgagee approval require lenders to service insured loans in accordance with acceptable mortgage practices of prudent lending institutions. The holder of the mortgage is responsible to the Assistant Secretary-FHA Commissioner for proper servicing,

even though the actual servicing may be performed by a servicer for such holder. Proper servicing includes convenient facilities for mortgagors to obtain information and advice regarding the terms of their mortgage obligations, the status of mortgage payments, related mortgage requirements and the application made of funds remitted.

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3-4. FEES AND CHARGES COLLECTED FROM MORTGAGORS. Section 203.27(a) of the HUD-FHA Regulations specifically permits the lender to collect certain fees from the borrower. Section 203.27(a)(3)(v) further provides for the collection of such other fees and

charges

as may be authorized by the Assistant Secretary-FHA Commissioner. While the specific fees and charges listed in this Section are generally associated with the origination and closing of the mortgage loan, the Assistant Secretary-FHA Commissioner's authority

to regulate fees and charges collected by the mortgagee at other times is in no way limited by this Section of the Regulation, and a mortgagee which collects any charge which has not been authorized in advance as being reasonable and customary, regardless of when the charge is collected, may be in violation of the Regulations. The authority to determine whether any charge is reasonable and customary has been delegated to the Field Office Directors by Section 200.84(b) of the Regulations.

a. Assumption of Insured Mortgages. The fee which the mortgagee is permitted to collect for processing an assumption of an insured mortgage should be directly related to the work which the mortgagee performs. There are three degrees of difficulty

in processing assumptions, and the fees permitted should reflect these differences.

(1) Simple Assumption. In this case, the mortgagee need only change its records to reflect the identification of the new borrower and occasionally, inform the investor and HUD-FHA of the change. The FHA Form 2210 procedure is not followed, and there is no intention that the original borrower be released from liability. The fee for this service should be minimal.

(a) It shall remain HUD-FHA's policy that reasonable and customary fees and charges for certain

services,

as determined by the local Director, shall be acceptable. However, no Director shall permit a charge for simple assumption to be made in excess of \$35. Offices now permitting a charge less than

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(3-4) this maximum shall not use this paragraph as a basis for permitting an increase in the charge. Offices now permitting a charge in excess of the above maximum shall immediately notify all their mortgagees that the permissible fee is reduced to \$35.

(b) HUD-FHA calls to the attention of mortgagees the right of a mortgagor to transfer his property to a new owner without the prior approval of the mortgagee.

While HUD-FHA encourages obtaining approval of a new owner's credit, we will not condone the practice of some mortgagees who refuse to

recognize a new owner, accept payments and otherwise properly service an insured loan where prior approval of the transfer is not obtained.

(2) FHA Form 2210 Procedure. In these cases, the mortgagee prepares and submits FHA Form 2210, with its supporting documents, and receives HUD-FHA consent to release of the original mortgagor from liability. Its actions are limited to preparation of FHA Forms 2210 and 2900 and securing a credit report and verifications of deposit and employment. Then, after HUD-FHA processing, the action is the same as in the first example. The identification of the mortgagor is changed in the mortgagee's records, and the investor and HUD-FHA are notified of the change. These cases are more

complicated than a simple record change, and higher fees should be permitted.

(3) Formal Release From Liability. In these cases, the FHA Form 2210 procedure is followed, and the original mortgagor is formally released from his liability under the mortgage, with the assumptor being substituted as the mortgagor. The lender is obviously required to do much more than in either of the preceding examples, and the fee permitted should reflect this fact.

(4) Fees as a Percentage of the Outstanding Balance. The fee permitted for processing assumption actions should be based on the actual cost to the mortgagee of

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the service. There is no way in which this cost can reasonably be related to the outstanding balance of the loan, and charges stated as a percentage of the outstanding balance should not be permitted. In

to a set fee designed to compensate the mortgagee for

work of its own staff in processing the assumption, the mortgagor may, of course, also be required to reimburse the mortgagee for actual out-of-pocket expenses if, for example, a credit report is ordered.

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- b. Statements to Comply with the Truth in Lending Act. One of the fees permitted to the mortgagee is 1% or 2 1/2% of the original mortgage amount which, in the words of Section 203.27(a)(2) of the Regulations, is "A charge to compensate the mortgagee for expenses incurred in originating and the loan." The other charges specifically authorized by this Section of the Regulations are for services normally performed by other than the mortgagee's own staff, and which normally represent expenditures that the mortgagor could conceivably be required to make directly, but which, for convenience and accuracy, the mortgagee normally makes. The statement required by the Truth in Lending Act, however, is not something which the mortgagor can be required to purchase other than the mortgagee. It is an obvious part of the mortgagee's work in originating and closing the loan. As such, the mortgagee's compensation for preparing the statement is included in the basic 1% or 2 1/2% origination fee. No other charge to the mortgagor can be justified.
- c. Mortgagee and Legal Requirements. The HUD-FHA's policy of accepting certain reasonable charges for post endorsement services shall in no way be construed as being indicative of whether or not such charges are permissible under applicable law and court decisions.
- d. Publication. Directors should issue an office circular letter clarifying these matters with all mortgagees if there is any misunderstanding in the office jurisdiction.

3-5. ELIGIBILITY REQUIREMENTS.

- a. Expired Commitment for Proposed Construction. Where a commitment for proposed construction has expired and a new application is received the following criteria apply when determining eligibility for a high ratio mortgage when the property has not been completed for one year.

(1) Construction Not Completed.

- (a) If the original commitment on the subject property involving new construction expired after the issuance of a Compliance Inspection Report, which report indicates Compliance, the contents of the case binder may be construed as establishing the eligibility of a new application for mortgage

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- (3-5) insurance covering the same exhibits with respect to the maximum amount and the maximum term in the new case even though construction has progressed in the meantime. The status of construction must be such that all necessary inspections can be made.
- (b) If the original commitment on the subject property involving new construction expired after the issuance of a Compliance Inspection Report, which report indicates EXCEPTIONS, and if construction is in such condition that it can be established that required corrections have been or can be made, the contents of the binder of the expired case may be construed as establishing the eligibility of a new application for mortgage insurance covering the Same property and based upon the same exhibits with respect to the maximum amount and maximum term in the new case. The status of construction must be such that all necessary inspections can be made.
- (c) The determining factor for establishing eligibility is that a sufficient number of Compliance Inspections have been or will be made to assure that the property is in substantial conformity with the approved drawings and Description of Materials.
- (2) Construction Completed. A property approved for mortgage insurance prior to the beginning of construction

when resubmitted as a new case is eligible for the maximum ratio of loan to value even though the construction has been completed less than one year, provided it had at least two compliance inspections at different stages of construction with no reported non-compliance on the second report, has been completed, meets the objectives of the MPS's and is otherwise eligible for mortgage insurance. Conformity with the original drawings and Description of Materials is not required as the eligibility of the property for mortgage insurance is determined on the same basis as any other existing property.

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b. Eligibility for Maximum Term. HUD-FHA Regulations permit a mortgage term up to 35 years for properties approved for HUD-FHA mortgage insurance or VA loan guarantee prior to the start of construction and completed satisfactorily under HUD-FHA or VA compliance inspections. Under this policy, a property eligible initially for maximum mortgage insurance benefits will remain eligible for maximum benefits in the future. The number of sales of a property will not affect its eligibility for a maximum term and a mortgage could be eligible for a maximum term after numerous sales provided the mortgagee can furnish proof of eligibility.

(1) The responsibility for establishing and furnishing proof of eligibility is with the mortgagee. Mortgagees desiring a 35-year term in connection with existing construction applications shall furnish:

(a) A copy of the original HUD-FHA Commitment for Insurance or VA Certificate of Reasonable Value indicating prior approval and a copy of the final compliance inspection report showing satisfactory completion; or

(b) A certification by the VA Loan Guaranty Officer that the property had prior approval and was completed in a satisfactory manner under VA inspection.

- (2) It is not necessary for HUD-FHA employees to search files or records to determine eligibility or to verify the mortgagee's submission. However, this submission must be a positive proof of eligibility. If there is any uncertainty, the maximum mortgage term cannot exceed 30 years.
- (3) Under Section 221(d)(2) of the National Housing Act, a mortgage term up to 40 years is available for displaced families and certain other low income mortgagors qualifying under Section 221.30 of the FHA Regulations.

3-6. OWNER-OCCUPANT OF MORE THAN ONE PROPERTY. A mortgagor may be the "owner-occupant" of more than one property at the same time. The fact that a mortgagor occupies a city dwelling for nine months in each year would not prevent him from qualifying as the owner and occupant of a cottage at the beach built exclusively

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for himself and family during the summer months. It is, of course, understood that at the time the mortgage is insured, the mortgagor will either have moved into the beach cottage or will have evidenced his intention to occupy it by equipping it with appropriate furniture or some other appropriate physical acts of possession.

3-7. OWNER-OCCUPANT REQUIREMENT FOR JOINT MORTGAGORS. Occupancy by any one of several joint mortgagors will comply with the requirements as to owner-occupancy provided the occupant is a bona fide owner of at least an equal undivided interest therein.

3-8. DEFINITION OF BEGINNING OF CONSTRUCTION FOR SHOP FABRICATED HOUSING OR MANUFACTURED HOMES. In the case of a house pre-fabricated in two or more parts and assembled at the permanent location, the pouring of footings or the date of such assembling whichever was prior, would be the beginning of construction.

3-9. APPROVED AND/OR ACCEPTED FOR INSURANCE. When several conditional and firm commitments have been issued, the following shall apply:

a. Issuance of Commitment. If a commitment, whether conditional or firm, has been issued covering the subject property, the date of the first such commitment shall be the date the property is "approved for insurance" even though such commitment may have been issued in connection with a prior insured mortgage.

b. Date the Mortgage is Accepted for Insurance. The date the mortgage is "accepted for insurance," however, is the date of the final firm commitment pursuant to which the particular mortgage is insured. Thus, if a firm commitment was issued subsequent to the operative builder which was superseded by a firm commitment to a purchaser, the date of the latter commitment will be the date the mortgage was "accepted for insurance."

3-10. PERMISSABLE AMENDMENT TO HUD-FHA MORTGAGE FORM. When it is customary in an area to add covenant by the mortgagor to pay any taxes which may be levied against the mortgagee's interest in the real estate or against the mortgage obligation, the following clause may be added to the HUD-FHA mortgage form:

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That the mortgagor will pay all taxes, which may be levied upon the mortgagee's interest in said real estate and improvements, and which may be levied upon this mortgage or the debt secured hereby (but only to the extent that such

is

not prohibited by law and only to the extent that such will not make this loan usurious), but excluding any income tax, State or Federal, imposed on mortgagee, and will file the official receipt showing such payment with the mortgagee. If, at any time, any law or court decree prohibits the payment by the mortgagor of any tax, other than income tax, levied upon the mortgagee's interest in the mortgaged real estate and improvements, or levied upon the mortgage or the debt secured hereby, or provides that any amount so paid by the mortgagor must be credited on the mortgaged debt, the mortgagee shall have the right to give thirty days' written notice to the owner of the mortgage debt. If such notice

be

given, the said debt shall become due, payable and collectable at the expiration of said thirty days.

3-11. LEGAL EFFECT OF REQUEST FOR CREDIT APPROVAL OF SUBSTITUTE MORTGAGOR (FHA FORM 2210) AND APPROVAL OF PURCHASER AND RELEASE OF SELLER (FHA FORM 2210-1). The execution of FHA Form 2210 by the mortgagee and by the HUD-FHA is assurance to the mortgagee that if it releases the original mortgagor upon conditions noted therein, such release will not affect its rights under the Contract of Insurance. The form is divided into two parts. One is a request addressed to the Assistant Secretary-FHA

Commissioner

by the mortgagee requesting his consent to the release of the original mortgagor from financial responsibility for a deficiency

occurring as a result of foreclosure and to the acceptance of a named purchaser as substitute mortgagor. The other part is the consent by the Assistant Secretary-FHA Commissioner to such request subject to conditions imposed. The consent to release by the Assistant Secretary-FHA Commissioner to such request subject to conditions imposed. The consent to release by the Assistant Secretary-FHA Commissioner does not in itself constitute

a release and must not be so regarded.

a. The Execution of FHA Form 2210-1. The Execution of FHA Form 2210-1, Approval of Purchaser and Release of Seller, by the mortgagee is assurance to the mortgagor that the executing mortgagee releases and frees such mortgagor from any

financial

obligation arising in connection with the security instruments

covering the subject property, and that the executing mortgagee will not hold the seller liable for any deficiency arising from a foreclosure of the HUD-FHA-insured mortgage covering the subject property.

b. Absence of a Recorded Release Agreement. In the absence of a Recorded Release Agreement, the executed FHA Form 2210-1 may not constitute notice of the release to a subsequent holder of the mortgage and, therefore, may not bar a claim under a deficiency judgment against the original mortgagor

holding by such holder. Because of the protection afforded a mortgagee under the Contract of Insurance, there should be little question that the subsequent holder of the mortgage will honor the release notwithstanding any lack of notice.

c. Formal Release Agreement. Whether a Formal Release Agreement is to be executed and recorded is a decision to be made by the mortgagee. The Assistant Secretary-FHA Commissioner does not prescribe nor pass upon the form or method by which the original mortgagor is formally released and the liability of the new mortgagor is substituted. This is a responsibility of the mortgagee, who will be guided by the advice of its attorney.

3-12. LEASEHOLDS - HOME MORTGAGES.

a. Policy of the Administration. It is the Policy of the Administration with respect to home mortgage leaseholds that:

- (1) There shall be satisfactory evidence that such leaseholds are freely marketable in the community in which the property is located;
- (2) The lease shall contain a provision permitting the lessee and his assigns the option to purchase the fee simple title upon 30-day written notice to the lessor at a price no higher than the HUD-FHA estimate of available market price of site made at the time of the processing of the case;
- (3) The right to exercise such option may be deferred if desired by the parties for a period not exceeding five years from the date of the lease; and
- (4) The annual rental reserved in the lease shall not exceed 6% of the HUD-FHA estimate of the available market price of the land as of the date of the lease, and the lease shall provide that the purchase price to be payable upon exercise of the option shall not exceed such estimate of available market price.

b. Requirement of an Option to Purchase. The Requirement of an Option to Purchase may be waived in any transaction covering the leasehold interest of the mortgagor under a lease where:

- insured;
- (1) An insured loan is to be refinanced and the lease did not contain such option at the time the loan was insured;
- (2) A State, including any political subdivision thereof, of the United States, an Indian Tribe, or an Indian, or an eleemosynary institution, a church, a University or similar public purpose institution, is the lessor and an option to purchase would not be permitted under existing laws or regulation;
- (3) A loan is to be insured and the interest of the mortgagor is under a lease in existence at the time the application is filed, provided the lease was made prior to September 1, 1961 and evidence is submitted establishing to the satisfaction of the Assistant Secretary-FM Commissioner that diligent efforts have been made to purchase the fee but without success and that the lease cannot be rewritten or amended to include the option to purchase;
- (4) Where the property is located in an area which the Assistant Secretary-FHA Commissioner has determined that the option to purchase is not economically feasible or acceptable because of the custom and practices relating to land ownership and its Use.

3-13. DEFINITION OF OCCUPANT. An occupant is one who has acquired the property primarily for use as his home and not primarily for sale or rent and who has evidenced carrying out of such purpose by appropriate physical acts of possession.

a. Occupant. In its most simple sense, the earliest physical act of possession may reasonably be considered to have occurred at the closing of the sale to the purchaser when title has been placed in his name and he has been delivered possession of the property as evidenced both symbolically and practically by delivery of the keys to the property.

- acts possession, the
- (1) Subsequent to this occurrence, there are many other acts which could be considered as physical acts of possession, such as placing personal belongings and furniture in the property, occupancy either by the owner, members of his family or the owner's servants, or work performed for maintenance and preservation of the property.

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(2) It must be realized that a single act of possession, such as custody of keys or Maintenance of the property, would not in itself establish an owner as an occupant if, for instance, the owner permits occupancy for other than temporary purposes thereby clearly negating the presumption of his intent to occupy the property primarily for use as his home.

b. Eligibility. In those cases when the mortgagee raises a question as to eligibility, the Director shall examine the specific facts in order to determine whether the occupancy requirements as defined herein are met, and if the question of eligibility cannot be resolved, the Director shall

forward

the facts in the case to the Regional Administrator for determination.

3-14. RENTAL OF 1-4 FAMILY DWELLINGS FOR SCHOOL PURPOSES. The Housing Act of 1954 amended Section 203(b)(2) to permit insurance of a mortgage or mortgages on 1-4 family dwellings held for temporary rental for school purposes as a means to provide temporary quarters for bringing elementary or secondary educational facilities into areas or subdivisions where such facilities are temporarily inadequate, and where the area to be served consists principally of sales housing under construction, or to be constructed, under Section 203.

a. Temporary Rental. Whenever the Field Office is requested to consider an application in which the mortgagor states that the structure is intended for temporary rental for school purposes, a report of the facts, together with the

Director's

recommendations shall be presented to the Regional Administrator for appropriate review and determination.

b. Elements Considered. While local needs and conditions in each instance will require special consideration, there are certain elements which should be given careful consideration in preparing the report for the Regional Administrator.

(1) It must be established that the need for temporary school quarters exists in the area and the Field Office should obtain from the mortgagor a statement shaving

jurisdiction, that he has negotiated, or that negotiations are under way, with the local school authorities with or established religious or educational organizations, to rent the subject property for school purposes.

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- property
- (2) The Act provides that rentals for school purposes shall be of a temporary nature, which implies that the
- subject when
- will be placed on the market for sale to private owners when its use for temporary school purposes no longer exists. The Field Office should obtain from the lessor a statement showing specifically what plans have been made, or what plans are under consideration to provide permanent school housing facilities to replace the accommodations to be provided temporarily by the property. A specific date should be obtained as to such permanent facilities will be available.
- the
- (3) Appraisals of such properties are to be based upon the property as built for residential purposes but consideration must be given to the cost of construction and equipment considered desirable to be omitted from the structure when used for school purposes and those items should be set up for deferred construction under an escrow agreement withholding sufficient mortgage funds to assure satisfactory change-over from temporary school use to residential use. Considerations should be given to include in the escrow sufficient funds for anticipated rehabilitation cost, including landscaping, which will be required to make the property acceptable for Sale after its use for school purposes.
- construction, the
- (4) The term "temporary rental" is to be construed as meaning only such time as would ordinarily be required for appropriate authorities to plan, start and complete school facilities temporarily served by residential structure.

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3-15. GNMA SPECIAL ASSISTANCE PROGRAMS FOR PURCHASE OF MULTIFAMILY MORTGAGES.

a. Purpose. The purpose of this paragraph is to establish a permanent procedure to inform the Government National Mortgage Association that multifamily mortgages have been endorsed for insurance.

b. Procedure. Under certain conditions the Government National Mortgage Association may ask the mortgagee for evidence that a specific multifamily mortgage offered to GNMA has been endorsed for insurance by HUD-FHA. The Federal National Mortgage Association, acting on behalf of GNMA, has requested the assistance of Field Offices to provide the required evidence.

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\* (3-15) (1) In order to properly document the consummation of the loan and avoid the possibility of misuse of program funds, FNMA, on behalf of GNMA, requires a copy of the original mortgage note showing thereon final

endorsement

for mortgage insurance by HUD-FHA. As evidence of authenticity, it is necessary that this copy be

certified

by the Field Office Director or his authorized representative before the GNMA funds are disbursed.

Also,

the copy should be marked "Copy of Original

Instrument."

(2) The Director or his authorized representative will promptly execute such a certification when requested to do so by Sellers needing same for presentation to FNMA regional offices.

c. Applicability. The above procedure applies to all multifamily mortgages when the approved mortgagee/seller submits a request for authentication of insurance endorsement. The

procedure is not applicable to the home mortgage programs  
using Mortgage Insurance Certificate, FHA Form 9100.

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