

## **CHAPTER 6 RELEASE OF PORTION OF SECURITY**

### **6-1 VOLUNTARY OR INVOLUNTARY RELEASE**

When FHA approves the release of a portion of the property securing an insured mortgage, the lender's rights under the original contract for insurance are not affected.

#### **A. FHA Approval Not Required**

FHA approval is not required (24 CFR § 203.389[n]) for the voluntary or involuntary release of a portion of the security if *all* of the following conditions are met:

- The portion of the property being conveyed does not exceed 10 percent of the area of the mortgaged property;
- There has been no damage to existing structures or other improvements, and there is no unrepaired damage to sewer, water, or paving;
- All of the payment received as compensation for the taking is applied to reduce the unpaid principal balance of the mortgage; and
- The conveyance occurred after insurance of the mortgage.

If the lender files a claim for mortgage insurance benefits, the claim must be accompanied by the lender's certification that the requirements of this paragraph have been met.

#### **FHA Approval Not Required—Governmental Release**

FHA approval is not required when there is a release of a portion of security as a result of governmental action.

When the lender receives a request to join with the borrower in conveying a portion of the security for an insured mortgage to a governmental agency for use in connection with a road, highway or park project, or for other public purposes, the lender may consent to the release without the prior approval of FHA provided that:

1. The consideration is \$300 or less, all of which will be applied to reduce the outstanding balance of the insured mortgage; and
2. The lender notifies the appropriate HOC of the release by letter within 30 days of the lender's signing of the release.

#### **FHA Approval Required**

When FHA approval is required (24 CFR § 203.343[a]), the lender must send in writing the request for approval of release to the appropriate HOC having jurisdiction over the property. The written request must contain:

1. Whether or not the mortgage is in good standing;
2. The amount of the outstanding principal balance;
3. The due date of the last unpaid installment, and if the mortgage is delinquent, the number of delinquent payments;

4. A list of unpaid special assessments, if any, and the total amount payable;
5. A complete legal description of the property to be released;
6. The borrower's reasons for requesting the lender to make the release, including information about the contemplated use of the land to be released;
7. The monetary consideration, if any, to be received by the borrower;
8. The amount of a prepayment, if any, to the mortgage principal;
9. Any restrictions to be imposed on the land to be released;
10. A survey or sketch of the property showing dimensions of the portion to be released, the location of existing and proposed improvements, and the relation of the property to surrounding properties;
11. Plans and specifications, including cost estimates, of any alterations proposed for the remaining property after the release; and
12. The case number of the mortgaged property.

**6-2 PROCESSING – FHA APPROVAL OF RELEASE OF PORTION OF SECURITY**

B. For cases requiring FHA approval, all requests from a lender for partial release are forwarded to the appropriate HOC. The lender will submit appraisals reflecting the value before the release of partial security and the value of the remaining property after the release of partial security. The HOC determines the effect on the value of the remaining part of the security. Releases will be approved only when the remaining property is an acceptable risk in all respects. The HOC should use the following processing procedures to reach this determination.

13. Initial Review. The HOC determines if the request contains the required information described in Paragraph 6-1C.

14. Analysis. The HOC will determine if any architectural processing is necessary, and/or whether a site inspection is necessary. The HOC staff will develop the following information upon which to base its decision:

- a. Estimate of Value before release.
- b. Estimate of Value of the area to be released must be taken into account:
  1. Area to be released is not capable of separate utilization. (Indicate its value as a fragmental portion of the entire property.)
  2. Area to be released is capable of separate utilization. (Indicate its value as a building site for highest and best use to typical purchasers for long term use.)
  3. The release involves a property right (no area involved). (Indicate its value.)

96 Indicate loss in value attributed to severance, if any. (This is in addition to the value of the part to be released.)

97 Indicate total loss in value. (Refer to 6-2A.1.a(2) and 6-2A.1.a(3) above.)

- 98 Estimated cost of proposed improvements to the remaining property.
- 99 Estimate of Value of the property remaining after release and after any proposed improvements are completed.
- 100 Indicate the amount of special assessments for off-site improvements, including accrued interest as of this date, which will remain unpaid.
- 101 State whether the remaining mortgage security is less marketable as a result of the severance at the Estimate of Value shown above.
- 102 The disposition of the lender's request should:
4. Recommend acceptance or rejection of request;
  5. State whether any existing restrictions will be violated;
  6. Indicate restrictions required;
  7. Indicate prepayment amount to mortgage principal, and manner of applying prepayment; and
  8. Indicate conditions required.

#### Reduction of Mortgage Amount

A reduction to the principal mortgage amount is not necessary if the loan-to-value ratio is 75 percent or less. The loan-to-value percentage is applied to the maximum mortgage amount available after the release and after any proposed improvements are completed.

#### Notification

After review of the request, a letter signed by the appropriate HOC is sent to the lender indicating the disposition of the request.

15. If the request is rejected, the lender is notified in writing and the papers are placed in the HOC's general correspondence file.
16. If the request is approved, the lender is notified in writing that the FHA approves of the release, and the lender is advised that they have the continued responsibility for maintaining a valid first lien on the mortgaged property, less the portion of property conveyed under the FHA agreement.

#### Lender Alternative Method

If it is determined that the partial release cannot be approved (even though the whole amount received as a result of the involuntary conveyance, by condemnation or otherwise, is applied to the mortgage debt) the HOC sends a letter to the lender setting forth the following alternatives.

17. The loan amount can be reduced to bring the loan-to-value (LTV) ratio within the maximum legal limitation effective at the time of severance.
18. In the event the property is offered in exchange for insurance benefits, the lender agrees to accept an amount in insurance benefits which is calculated by subtracting the amount necessary to bring the loan within the LTV ratio limitation, effective at the time of severance, from the amount it would be entitled to were there no release.

**6-3 INSURANCE COMPANY CHECK IN SETTLEMENT OF LOSSES**

When a check is presented which requires the endorsement of FHA as one of the payees, the check is not deposited, but must be endorsed as follows by the appropriate HOC:

Pay to the Order of the Named Borrower, Without Recourse

Assistant Secretary-FHA Commissioner

By \_\_\_\_\_

Home Ownership Center Director

HISTORICAL REFERENCE ONLY