
CHAPTER 6
PERFORMANCE REVIEW ACTIONS

- 6-1. GENERAL. There may be occasions when poor performance by individuals having an interest in the project or associated with the project may adversely affect the successful completion of a project or contribute substantially to the overall cost of the project. The following addresses those instances where HUD monitoring requires action when performance is deemed inadequate.
- 6-2. TERMINATION OF SUPERVISORY ARCHITECT'S SERVICES. Paragraph 10 of the Amendment To AIA Document B181, Standard Form of Agreement Between Owner and Architect For Housing Services, states, "The Owner and the Architect shall recognize as a valid reason for termination, any request by HUD/FHA for termination because of inadequate performance, undue delay or misrepresentation which may make the further services of the Architect unacceptable to HUD/FHA."
- A. General. The insured programs rely heavily upon a supervisory architect with no project interest except the pay for services to:
1. Administer the construction contract in an even-handed professional manner,
 2. Render necessary clarifications, recommendations, approvals and decisions in a timely fashion,
 3. Seek compliance of the work with the construction documents, and advise the contractor, owner, mortgagee and HUD by recording noncompliances in the job log and issuing Supplemental Architectural Instructions to the contractor to bring construction into compliance with the contract documents,
 4. Promptly and factually report all situations and conditions that may adversely impact successful completion and occupancy of the project in the job log, and as may otherwise be required for timely action,
 5. Meet with, provide appropriate data to, and where necessary mediate issues with municipal or governmental representatives, owner's or contractor's professional consultants, and/or the contractor to resolve matters or disputes within the scope of the architect's services that relate
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- (6-2) to performance of the contract, project completion and project occupancy, and
6. Discharge the applicable services and meet the applicable terms of the Owner-Architect Agreement, including provisions of the HUD Addendum to the Agreement, Construction Contract and the General Conditions, AIA Doc A201, in a responsible, timely and professional manner.
- B. Monitoring The Architect's Performance. See Handbook 4460.1 REV-1 for detailed information.
1. The HUD representative must on each site visit, monitor and report on the architect's performance on Form HUD-5379, HUD Representative's Trip Report. Where applicable, the HUD representative must also prepare a memorandum to the Chief Architect describing deficiencies, proposed actions and recommended disallowance of the supervisory architect's fees as appropriate.
 2. Require that the HUD representative report specific deficiencies, where applicable, instead of making generalized, subjective or qualitative statements.
 3. Critical deficiencies in the architect's performance include:
 - a. Misrepresentations.
 - b. Egregious or chronic misuse of the Architect's Supplemental Instructions, AIA Doc G710, e.g. using G710 where Form HUD-2437, Request for Construction Changes on Project Mortgages, should have been used to reflect a change in the scope of work, contract price or contract time.
 - c. Egregious or chronic failure to report patent defects, deficiencies and other noncompliances with the contract drawings, specifications and approved change orders.
 - d. Egregious or chronic failure to make timely clarifications, recommendations, and/or approvals.
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- e. Refusal to perform any services required of the architect by the Owner-Architect Agreement (for the construction phase, including the HUD Addendum), the Construction Contract and/or the General Conditions.
 - f. Any action(s) or lack of action(s) that cause unacceptable mortgage risks.
 - g. Failure to satisfactorily improve performance after being cautioned under paragraph C. below.

C. Letter of Caution For Unacceptable Services.

- 1. Make every reasonable effort to secure acceptable performance by the supervisory architect before sending a letter to the mortgagor. Where the nature of the deficient performance permits, use the following procedure:
 - a. Require the HUD representative to meet with the supervisory architect, discuss the areas of concern, reiterate appropriate HUD requirements, instructions or applicable contractual obligation, and provide other appropriate guidance. Require the HUD representative to document the events in a memorandum to the Chief Architect.
 - b. Require the Chief Architect to meet with the supervisory architect and HUD representative to define a schedule for achieving fully acceptable performance, where compliance has not been attained by the HUD representative's first visit following the meeting in paragraph a. above.
- 2. Send a letter to the mortgagor with a copy to the supervisory architect expressing your concern about any significant act or continuing unacceptable performance, where satisfactory improvement in the architect's performance is not achieved after following the procedures in paragraph 1 above.
 - a. Where the problem is of a continuing nature, provide 30 days for its correction. Advise the mortgagor that replacement of the supervisory architect will be required, if performance is not satisfactory by the date set, and of any intended or continued disallowance of the architect's fee.

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- (6-2) b. Disallow any part or all of the architect's fee from the approved advance, Form HUD-92403, as the situation dictates.
- D. Letter For Termination of Services. Where the architect's performance is critically deficient, whether by a single unacceptable act or uncorrected chronic condition after sending a letter of caution as provided in paragraph C.2. above, require the mortgagor to immediately implement provisions under the Owner-Architect Agreement and HUD Addenda to terminate the architect's services.
1. Modify Appendix 4 (Specimen Letter - Request Termination of the Owner-Architect Agreement) to address the particular conditions of the case, and secure the Area Counsel's concurrence.
 2. The letter must:
 - a. Require the mortgagor to employ a different supervisory architect acceptable to HUD.
 - b. State that HUD will not assume the role of supervisory architect.
 - c. Clarify that HUD will not approve any additional insured advances for the architect's fees until action is taken acceptable to HUD and the mortgagee.
- E. Limited Denial of Participation must be considered for deficiencies listed in paragraphs 1 and 2 below, and suspension or debarment should also be pursued for deficiencies in paragraph 2 below.
1. Where there's a grossly negligent act or the pattern of performance on one or more projects indicates an unwillingness or inability to successfully perform in accordance with the provisions of the Owner-Architect Agreement, HUD Addenda, Construction Contract and/or the General Conditions.
 2. Where misrepresentation, undisclosed identity of interest, kickbacks, or other fraudulent acts are known to have occurred. Also furnish the information to the Regional Inspector General.

- (6-2) 3. Consult with Field Counsel on any proposed adverse actions and whether suspension or debarment should also be pursued. Procedural questions may be directed to the Director, Participation and Compliance Division, HSLP.
- F. Restrictions on Advances For Unacceptable Performance.
1. Do not approve insured advances for supervisory architect's fees where: a review of the facts supports the inspector's recommendation to disallow the fees (see paragraph B.1. above), or under the conditions of paragraphs C. or D. above.
 2. Article 7 of the Owner-Architect Agreement provides for termination of the Agreement upon 7 days written notice. The architect shall only be entitled to the prescribed portion of the fee determined by the percentage to which construction is completed on the date that the architect is removed from the project.
- 6-3. RESERVED. CONTRACTOR, HOUSING CONSULTANT, MORTGAGOR.