



mobium
MORTGAGE GROUP INC.

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Mobium Mortgage Group has a history of working with our referral partners to continually develop new methods and strategies to identify, nurture and assist homebuyers with the tools and help needed to complete their dream of homeownership. Given the current state of the housing industry and the damaged credit markets, FHA financing has once again become one of the few high loan-to-value solutions available to buyers today. As tightened credit guidelines have gotten even tougher for condominiums, and FHA loans cannot be used to purchase condominiums unless they are FHA approved, you hopefully will appreciate the FHA Project Approval information provided below.

FHA Condominium Project Approval

-General-

Section 234(c) of the National Housing Act provides authority to insure any mortgage covering a one-family unit in a project coupled with an undivided interest in the common areas and facilities which serve the project. The project may include dwelling units in detached, semi-detached, row, garden-type, low or high rise structures. A project is defined by HUD as a structure containing four or more units.

The process of approving a condominium project consists of:

1. The acceptability of the structure (four or more units);
2. The acceptability of the condominium organization and operations.

The documents required and the processing steps will vary depending upon the individual project and the state of construction. The categories are as follows:

- A. Proposed Construction. (Please call for instructions)
- B. Developments with buildings under construction or existing less than one year. (Please call for instructions)
- C. Existing construction (non-operating condominium association). Construction complete over one year but developer is still in control of the association.
- D. Existing Construction (established operating condominium association). All units have been completed over one year and the developer has relinquished control of the association to the homeowners.

FHA Helpline: 800-225-5342

Completed requests for approval should be sent to the following:

U.S. Department of Housing and Urban Development
Atlanta Homeownership Center
Five Point Plaza
40 Merietta Street
Atlanta, GA 30303-2806

Attn: Technical Support Branch II
James Gullatte



FHA Condominium Project Approval

Existing Construction (Non-Operating Condo Association)

Definition: Buildings were constructed as a condominium and construction has been completed over one year; however, original units remain unsold and the developer/sponsor may not have relinquished control of the condominium to the homeowners.

The project must not be subject to future expansion at the option of the developer. If the condominium documents or the development plan indicates that additional units may be added to the condominium, you must process the project approval as if it were a development under construction or existing less than one year.

A. Required documents for FHA Project Approval:

1. **Cover Letter** - Letter requesting approval and listing Name and Location of the Condominium (street address, city, county, state, and zip code); also provide a description of the project including type of structure(s), number of units and common facilities; and provide name, address and phone number of contact person.
 2. **Location map** – Identifies location of condominium.
 3. **Recorded project plat, map and/or air lot survey** which adequately identifies units.
 4. **Condominium legal documents** – including the following:
 - a. Declaration of Covenants, Conditions and Restrictions – **recorded**
 - b. Articles of Incorporation – **filed with the state**
 - c. By-Laws – **signed by Homeowners Association (HOA), if applicable.**
 5. **Attorney’s Opinion Letter** stating that all HOA legal documents have been properly filed or recorded and are consistent with legal policies set out in HUD Handbook 4265.1, Change 4, Appendix 24, and complies with all state and local laws. (see Addendum A);
 6. **Condominium association budget and financial statement** including adequate reserves for maintenance, repair and replacement of the common elements – current and previous year.
 7. **Management Agreement** – if applicable.
 8. **Minutes of the last two meetings** of homeowners association - (if applicable);
 9. **Evidence of the completion** of the project (including the common elements by final municipal approval and occupancy authorization), show month and year completed.
 10. **Certification** - (on appropriate company letterhead) from the HOA that the project meets the 51% owner occupancy requirement.
- B. When submitted, the Atlanta office will assign a control number and notify the sponsor (developer, lender or association) with the project number.
- C. The Chicago office (local field office) will review and make an on-site inspection to determine acceptability of the site and location of the project. If the documents and the location are acceptable, the sponsor will be notified that appraisals may be requested.



FHA Condominium Project Approval

Existing Construction (Non-Operating Condo Association)

-Continued-

- D. Appraisals are ordered for individual units only, and should include comparables from competing projects.
- E. The Loan-to-Value Ratio. Since the construction of the building(s) is over one year, the units are considered eligible for the maximum ratio loan of 97%. (100%LTV is achievable if coupled with a "Downpayment Assistance Plan").
- F. A pre-sale will be required and established by the local HUD field office. The presale is especially important in a completed project and will depend on whether the developer has been actively conducting a sales campaign, and whether a large percentage of units remain unsold. The marketability of the project should be carefully assessed especially in projects two or three years old.

See next page for...

Existing Construction (Operating Condo Association)



FHA Condominium Project Approval

Existing Construction (Operating Condo Association)

Definition: All units and all common elements and improvements have been completed and have been committed to a plan of condominium ownership for at least one year prior to application for approval. **The developer has relinquished control of the association to the homeowners.** The condominium association may request approval for the project.

A. Required documents for FHA Project Approval:

1. **Cover Letter** - Letter requesting approval and listing name and location of the Condominium (street address, city, county, state, and zip code); also provide a description of the project including type of structure(s), number of units and common facilities; and provide name, address and phone number of contact person.
2. **Location map** – Identifies location of condominium.
3. **Recorded project plat, map and/or air lot survey** which adequately identifies units.
4. **Condominium legal documents** – including the following:
 - a. Declaration of Covenants, Conditions and Restrictions – **recorded**
 - b. Articles of Incorporation – **filed with the state**
 - c. By-Laws – **signed by Homeowners Association (HOA), if applicable.**
5. **Attorney’s Opinion Letter** stating that all HOA legal documents have been properly filed or recorded and are consistent with legal policies set out in HUD Handbook 4265.1, Change 4, Appendix 24, and complies with all state and local laws. (see Addendum A);
6. **Condominium association budget and financial statement** including adequate reserves for maintenance, repair and replacement of the common elements – current and previous year.
7. **Minutes of the last two meetings** of homeowners association;
8. **Month and year completed.**
9. **Certification** - (on appropriate company letterhead) from the HOA that the project meets the 51% owner occupancy requirement.

B. When submitted, the Atlanta office will assign a control number and notify the sponsor (developer, lender or association) with the project number.

C. The project should not be approved if circumstances or conditions exist that have a substantial adverse effect upon the project or will be a contributing cause for a unit owner’s mortgage to become delinquent. These circumstances or conditions include:

- a. Defects in construction
- b. Substantial disputes or dissatisfaction among the unit owners concerning the operation, maintenance or management of the project or the association.
- c. Disputes over the unit owner’s respective rights, privileges, and obligations.
- d. Insufficient reserves and/or unrealistic operating budget.



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- D. The Loan-to-Value Ratio. Since the construction of the building(s) is over one year, the units are considered eligible for the maximum ratio loan of 97%. (100%LTV is achievable if coupled with a “Downpayment Assistance Plan”).
- E. The Chicago office (local field office) will review and make an on-site inspection to determine acceptability of the site and location of the project. If the documents and the location are acceptable, the sponsor will be notified that appraisals may be requested. Appraisals are ordered for individual units only.

See next page for...

Addendum A

HUD Legal Policies and Requirements for Condominium



Addendum A

Condominium Document Approval

An attorney must certify that all condominium legal documents meet HUD guidelines, (found in HUD Handbook 4265.1, Appendix 24) and state and local condominium laws. (Approval of documents as evidenced by VA letter FL 26-619, or FNMA form 1028 may be accepted in lieu of an attorney's certification).

To assist counsel in preparing that certification, we list below those policies that pertain to condominiums.

HUD LEGAL POLICIES

The attached policy statements will serve to assist attorneys certifying that legal documents meet HUD's objectives. Legal documents submitted to HUD for project approval must be accompanied by certification from the mortgagee's attorney or other attorney that the documents comply with State and local condominium laws, HUD regulations and with the HUM policy statements attached.

NOTE: HUD will accept legal documents that have been accepted by FNMA, FHLMC, and/or VA. Evidence shall be submitted that the documents have been approved.

1. TYPES OF CONDOMINIUMS

The following types of basic ownership arrangements are generally acceptable provided they are established in compliance with the applicable condominium law of the jurisdiction(s) in which the condominium is located:

- b) Ownership of units by individual owners coupled with an undivided interest in all common elements.
- c) Ownership of units by individual owners coupled with an undivided interest in general common elements and specified limited common elements.

The agencies and corporations will consider for approval, on an individual case basis, an arrangement involving ownership of units by individual owners coupled with an undivided interest in the general common elements and/or limited common elements, with title to additional property for common use vested in an association of unit owners, where such a configuration of ownership is not precluded by the applicable condominium law. As to this type of ownership arrangement, in addition to compliance with the requirements of the organizations' respective condominium programs, there must be compliance with the applicable requirements of the organizations, respective planned unit development

2. ESTATE OF UNIT OWNER

The legal estate of each unit owner must generally be held in fee simple or acceptable leasehold estate. The acceptability of leasehold estates varies among the agencies and corporations. The declaration or equivalent document shall allocate an undivided interest in the common elements to each unit. Such interest may be allocated equally to each unit, may be proportionate to that unit's relative size or value, or may be



allocated according to any other specified criteria provided that the method chosen is equitable and reasonable for that condominium.

3. CONDOMINIUM DOCUMENTATION

- a) **Compliance with applicable law.** The declaration, by-laws and other enabling documentation shall conform to the laws governing the establishment and maintenance of condominium regimes within the jurisdiction in which the condominium is located, and to all other laws which apply to the condominium.
- b) **Recordation.** The declaration and all amendments or modifications thereof shall be placed of record in the manner prescribed by the appropriate jurisdiction. If recording of plats, plans, or by-laws or equivalent documents and all amendments or modifications thereof is the prevailing practice or is required by law within the jurisdiction where the project is located, then such documents shall be placed of record. If the by-laws are not recorded, then covenants, restrictions and other matters requiring record notice should be contained in the declaration or equivalent document.
- c) **Availability.** The owners association shall be required to make available to unit owners, lenders and the holders and insurers of the first mortgage on any unit, current copies of the declaration, by-laws and other rules governing the condominium, and other books, records and financial statements of the owners association. The owners association also shall be required to make available to prospective purchasers current copies of the declaration, by-laws, other rules governing the condominium, and the most recent annual audited financial statement, if such is prepared.

"Available" shall at least mean available for inspection upon request, during normal business hours or under other reasonable circumstances. The declaration, or its equivalent, shall provide that upon written request from any of the agencies or corporations which has an interest or prospective interest in the condominium, the owners association shall be required to prepare and furnish within a reasonable time an audited financial statement of the owners association for the immediately preceding fiscal year.

4. REAL PROPERTY DESCRIPTION

- a) **Property Description.** The description of the units, common elements, any recreational facilities and other related amenities, and any limited common elements shall be clear and in conformity with the law of the jurisdiction where the project is located. Responsibility for maintenance and repair of all portions of the condominium shall be clearly set forth
- b) **Developmental Plan.** The description or other legally enforceable and binding document must state in a reasonable manner the overall development plan of the condominium, including building types, architectural style and the size of the units. Under the applicable provisions of the declaration or such other legally enforceable and binding document, the development of the condominium must be consistent with the overall plan, except that the declarant may reserve



the right to change the overall plan or decide not to construct planned units or improvements to the common elements if the declaration sets forth the conditions required to be satisfied prior to the exercise of that right, the time within which the right may be exercised, and any other limitations and criteria that would be necessary or appropriate under the particular circumstances. Such conditions, time restraints and other limitations must be reasonable in light of the overall plan for the condominium.

5. DECLARANT'S RIGHTS AND RESTRICTIONS

- a) **Disclosure and Reasonableness of Reserved Rights.** Any right reserved by the declarant must be reasonable and set forth in the declaration.
- b) **Examples of Acts and Reserved Rights Which are Usually Unacceptable.** The following action on the part of the declarant, the developer, an affiliate of the declarant, the sponsor of a project, or any other party, (collectively referred to as "declarant") usually would be unacceptable. Binding the owners association either directly or indirectly to any of the following agreements unless the owners association shall have a right of termination thereof which is exercisable without penalty at any time after transfer of control, upon not more than 90 days' notice to the other party thereto:
- i. Any management contract, employment contract or lease of recreational or parking areas or facilities;
 - ii. Any contract or lease, including franchises and licenses, to which a declarant is a party.

The requirements of (i) and (ii) of this subparagraph do not apply to acceptable ground leases. As used in this section, "affiliate of a declarant" shall mean any person or entity which controls, is controlled by, or is under common control with, a declarant. A person or entity shall be deemed to control a declarant if that person or entity

- i. is a general partner, officer, director, or employee of the declarant;
- ii. directly or indirectly or acting in concert with one or more persons, or through one or more subsidiaries, owns, controls, or holds with power to vote, or holds proxies representing, more than 20 percent of the voting shares of the declarant;
- iii. controls in any manner the election of a majority of the directors of the declarant; or
- iv. has contributed more than 20 percent of the capital of the declarant. A person or entity shall be deemed to be controlled by a declarant if
 - 1. is a general partner, officer, director, or employee of that person or entity;



2. directly or indirectly or acting in concert with one or more persons or through one or more subsidiaries, owns, controls, or holds with power to vote, or holds proxies representing, more than 20 percent of the voting share of that person or entity;
3. controls in any manner the election of a majority of the directors of that person or entity; or
4. has contributed more than 20 percent of the capital of that person or entity.

c) Examples of Reserved Rights Which are usually Acceptable. The following rights in the common elements may usually be reserved by the declarant for a reasonable period of time, subject to a concomitant obligation to restore:

- i. Easement over and upon the common elements and upon lands appurtenant to the condominium for the purpose of completing improvements for which provision is made in the declaration, but only if access thereto is otherwise not reasonably available.
- ii. Easement over and upon the common elements for the purpose of making repairs required pursuant to the declaration or contracts of sale made with unit purchasers.
- iii. Right to maintain facilities in the common areas which are identified in the declaration and which are reasonably necessary to market the units. These may include sales and management offices, model units, parking areas, and advertising signs.

6. TRANSFER OF CONTROL

- a) The declarant shall relinquish all special rights expressed or implied, through which the declarant may directly or indirectly control, direct, modify, or veto any action of the owners association, its executive board, or a majority of unit owners, and control of the owners association shall pass to the owners of units within the project, not later than the earlier of the following:
 - (1) 120 days after the date by which 75 percent of the units have been conveyed to unit purchasers, or
 - (2) The last date of a specified period of time following the first conveyance to a unit purchaser, such period of time to be reasonable for the particular project and to be subject to approval in each instance by the agency or corporation concerned. The maximum acceptable period usually will be from three to five years for single phased condominium regimes and five to seven years for expandable condominiums.
- b) The foregoing requirements shall not affect the declarant's rights, as a unit owner, to exercise the votes allocated to units which it owns.



- c) Declarants should provide for and foster early participation of unit owners in the management of the project.
- d) FNMA and FHLMC will consider on a case basis possible modifications or variations of the requirements in subparagraph (a) above particularly in circumstances involving very large condominium developments.

7. OWNERS ASSOCIATION'S RIGHTS AND RESTRICTIONS

- a) **Right of Entry Upon Units and Limited Common Elements.** The owners association shall be granted a right of entry upon unit premises and any limited common elements to effect emergency repairs, and a reasonable right of entry thereupon to effect other repairs, improvements, replacement or maintenance deemed necessary
- b) **Power to Grant Rights and Restrictions in Common Elements.** The owners association should be granted other rights, such as the right to grant utility easements under, through or over the common elements, which are reasonably necessary to the ongoing development and operation of the project.
- c) **Responsibility for Damage to Common Elements and Units.** A provision may be made in the declaration or by-laws for allocation of responsibility for damages resulting from the exercise of any of the above rights.
- d) **Assessments.**
 - i. **Levy and collection.** The declaration or its equivalent shall describe the authority of the owners association to levy and enforce the collection of general and special assessments for common expenses and shall describe adequate remedies for failure to pay such common expenses. The common expenses assessed against any unit, with interest, costs and reasonable attorney's fees shall be a lien upon such unit in accordance with applicable law. Each such assessment, together with interest, costs, and attorney's fees shall also be the personal obligation of the person who was the owner of such unit at the time the assessment fell due. The personal obligation for delinquent assessments shall not pass to successors in title or interest unless assumed by them, or required by applicable law. Common expenses as used in this Statement of Policies shall mean expenditures made or liabilities incurred by or on behalf of the owners association, together with any assessments for the creation and maintenance of reserves.
 - ii. **Reserves and Working Capital.** There shall be established an adequate reserve fund for the periodic maintenance, repair and replacement of the common elements, which fund shall be maintained out of regular assessments for common expenses. Additionally, a working capital fund must be established for the initial months of the project operations equal to at least a two months' estimated common area charge for each unit.



iii. Priority of Lien. To the extent permitted by applicable law, HUD, VA, FNMA and FHLMC require that the declaration shall provide any lien of the owners association for common expense charges and assessments becoming payable on or after the date of recordation of the first mortgage, shall be subordinate to the first mortgage on the unit. Such a lien for common expense charges and assessments shall not be affected by any sale or transfer of a unit, except that a sale or transfer of a unit pursuant to a foreclosure of a first mortgage shall extinguish a subordinate lien for common expense charges and assessments which became payable prior to such sale or transfer. Any such sale or transfer pursuant to a foreclosure shall not relieve the purchaser or transferee of a unit from liability for, nor the unit so sold or transferred from the lien of, any common expense charges thereafter becoming due.

8. UNIT OWNERS' RIGHTS AND RESTRICTIONS

- a) **Obligation to pay expenses.** The declaration or equivalent document shall establish a duty on each unit owner, including the declarant, to pay a proportionate share of common expenses upon being assessed therefore by the owners association. Such share may be allocated equally to each unit, may be proportionate to that unit's common element interest, relative size or value, or may be allocated according to any other specified criteria provided that the method chosen is equitable and reasonable for that condominium.
- b) **Voting Rights.** The declaration or equivalent document shall allocate a portion of the votes in the association to each unit. Such portion may be allocated equally to each unit, may be proportionate to that unit's common expense liability, common element interest, relative size or value, or may be allocated according to any other specified criteria provided that the method is equitable and reasonable for that condominium. The declaration may provide different criteria for allocations of votes to the units on particular specified matters and may also provide different percentages of required unit owner approvals for such particular specified matters.
- c) **Ingress and Egress of Unit owners.** There may not be any restriction upon any unit owner's right of ingress and egress to his or her unit. It is recommended that the declaration affirmatively provide for the right of ingress to and egress from such unit, with such right being perpetual and appurtenant to the unit ownership.
- d) **Easements for Encroachments - Units and Common Elements.** In the event any portion of the common elements encroaches upon any unit or any unit encroaches upon the common elements or another unit as a result of the construction, reconstruction, repair, shifting, settlements, or movement of any portion of the improvements, a valid easement for the encroachment and for the maintenance of the same shall exist so long as the encroachment exists. The declaration may provide, however, reasonable limits on the extent of any easement created by the overlap of units, common elements, and limited common elements resulting from such encroachments.



e) **Right of First Refusal.** The right of a unit owner to sell, transfer, or otherwise convey his or her unit in a condominium shall not be subject to any right of first refusal or similar restriction. It is recommended that the declaration affirmatively provide that a unit owner may transfer his or her unit free of any such restriction.

f) **Leasing Restrictions.**

- i. All leases should be in writing and be subject to the declaration and by-laws.
- ii. FNMA, HUD and VA agree that unit owners should be prohibited from leasing their units for an initial term of less than 30 days. The three organizations would not object to a requirement that leases have a minimum initial term of up to six months; however, they agree that no prohibition related to the term of a lease shall apply to a lease having an initial term exceeding six months. While FHLMC does not have any requirements regarding minimum lease terms, it would not object to documents meeting the requirements of the other organizations.

9. FIRST LIEN HOLDERS' RIGHTS

a) **Notices of Action.** A holder, insurer or guarantor of a first mortgage, upon written request to the owners association, (such request to state the name and address of such holder, insurer or guarantor and the unit number), will be entitled to timely written notice of:

- i. Any proposed amendment of the condominium instruments effecting a change in:
 - (a) the boundaries of any unit or the exclusive easement rights appertaining thereto,
 - (b) the interests in the general or limited common elements appertaining to any unit or the liability for common expenses appertaining thereto,
 - (c) the number of votes in the owners association appertaining to any unit or,
 - (d) the purposes to which any unit or the common elements are restricted;
- ii. Any proposed termination of the condominium regime;
- iii. Any condemnation loss or any casualty loss which affects a material portion of the condominium or which affects any unit on which there is a first mortgage held, insured or guaranteed by such eligible holder;
- iv. Any delinquency in the payment of assessments or charges owed by an owner of a unit subject to the mortgage of such eligible



holder, insurer or guarantor, where such delinquency has continued for a period of 60 days;

- v. Any lapse, cancellation or material modification of any insurance policy maintained by the owners association pursuant to paragraph 14(a)(i) and (ii).

b) **Other Provisions for First Lien Holders.** To the extent possible under applicable law, the following protections for the benefit of first mortgage holders must be legally binding with respect to the condominium by virtue of the constituent documents, applicable law or otherwise:

- i. Any restoration or repair of the condominium after a partial condemnation or damage due to an insurable hazard shall be substantially in accordance with the declaration and the original plans and specifications unless the approval of the eligible holders of first mortgages on units to which at least 51% of the votes of units subject to mortgages held by such eligible holders are allocated, is obtained.
- ii. Any election to terminate the condominium regime after substantial destruction or a substantial taking in condemnation of the condominium property must require the approval of the eligible holders of first mortgages on units to which at least 51% of the votes of units subject to mortgages held by such eligible holders are allocated.
- iii. Unless the formula for reallocation of interests in the common elements after a partial condemnation or partial destruction of the condominium project is fixed in advance by the declaration or by applicable law, no reallocation of interests in the common elements resulting from a partial condemnation or partial destruction of the condominium project may be effected without the approval of the eligible holders of first mortgages on units to which at least 51% of the votes of units subject to mortgages held by such eligible holders are allocated.

NOTE: As used in this section, the term "eligible holder, insurer or guarantor" shall mean a holder, insurer or guarantor of a first mortgage on a unit in a condominium which has requested notice in accordance with the provisions of Section 9(a) above.

10. AMENDMENT TO DOCUMENTS

The following provisions do not apply to amendments to the constituent documents or termination of the condominium regime made as a result of destruction, damage or condemnation pursuant to Section 9 above, or to a reallocation of interests in the common elements which might occur pursuant to any plan of expansion or phased development previously approved by the agencies and corporations, to the extent such approval was required under the applicable condominium programs of



the agencies and corporations. VA will accept, but does not require, the provisions of this Section 10.

- a) The consent of owners of units to which at least 67 percent of the votes in the owners association are allocated and the approval of the eligible holders of first mortgages on units to which at least 67 percent of the votes of units subject to a mortgage appertain, shall be required to terminate the condominium regime.
- b) The consent of owners of units to which at least 67 percent of the votes in the owners association are allocated and the approval of eligible holders of first mortgages on units to which at least 51 percent of the votes of units subject to a mortgage appertain, shall be required to materially amend any provisions of the declaration, by-laws or equivalent documents of the condominium, or to add any material provisions thereto, which establish, provide for, govern or regulate any of the following:
 - (1) Voting;
 - (2) Assessments, assessment liens or subordination of such liens;
 - (3) Reserves for maintenance, repair and replacement of the common elements;
 - (4) Insurance or Fidelity Bonds;
 - (5) Rights to use of the common elements;
 - (6) Responsibility for maintenance and repair of the several portions of the condominium;
 - (7) Expansion or contraction of the condominium regime or the addition, annexation or withdrawal of property to or from the regime;
 - (8) Boundaries of any unit;
 - (9) The interests in the general or limited common elements;
 - (10) Convertibility of units into common elements or of common elements into units;
 - (11) Leasing of units;
 - (12) Imposition of any right of first refusal or similar restriction on the right of a unit owner to sell, transfer, or otherwise convey his or her unit in the condominium;
 - (13) Establishment of self-management by the condominium association where professional management has been required by any of the agencies or corporations.
- c) The consent of owners of units to which at least 67 percent of the votes in the owners association are allocated and the approval of eligible holders of first mortgages on units to which at least 51 percent of the votes of units subject to a mortgage appertain, shall be required to amend any provisions included in the declaration, by-laws or equivalent documents of the condominium which are for the express benefit of holders or insurers of first mortgages on units in the condominium.
- d) For first mortgagees to be eligible holders under Section 10, they must request notice in accordance with the provisions of Section 9(a).



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11. RIGHTS OF ACTION

The owners association and any aggrieved unit owner shall be granted a right of action against unit owners for failure to comply with the provisions of the declaration, by-laws, or equivalent documents, or with decisions of the owners association which are made pursuant to authority granted the owners association in such documents. Unit owners shall have similar rights of action against the owners association.

12. FLEXIBLE CONDOMINIUMS

- a) **Expandable Condominiums.** The following policies apply to condominium regimes which may be increased in size by the declarant.
1. The declarant's right to expand the regime must be fully described in the declaration. The declaration must contain provisions adequate to ensure that future improvements to the condominium will be consistent with initial improvements in terms of quality of construction.
 2. The reservation of a right to expand the condominium regime, the method of expansion and the result of an expansion must not affect the statutory validity of the condominium regime or the validity of title to the units.
 3. The declaration or equivalent document must contain provisions satisfactory to HUD, VA and FNMA, requiring that no additional property may be added to the existing condominium without the prior written consent of each of them that holds, insures or guarantees any mortgage in such existing condominium at the time such property is to be added. Such consent will not be withheld if the property to be added substantially conforms to a plan of expansion which has been fully described in the declaration or equivalent document and the other requirements of these policies have been met.
 4. The declaration must provide that all improvements on the property to be added shall be substantially completed before such property is added to the existing condominium.
 5. Liens arising in connection with the declarant's ownership of, and construction of improvements upon, the property to be added must not adversely affect the rights of existing unit owners, or the priority of first mortgages on units in the existing condominium property. All taxes and other assessments relating to such property, covering any period prior to the addition of the property, must be paid or otherwise satisfactorily provided for by the declarant. If FNMA holds any mortgage in the existing condominium at the time additional property is to be added, FNMA must be furnished with title evidence, in a form satisfactory to it, which discloses any lien, easement or other encumbrance affecting the property to be added or which will affect the existing condominium property after such addition.



6. The declarant's right to expand the condominium must be for a reasonable period of time with a specific ending date. The maximum acceptable period usually will be from five to seven years after the date of recording the declaration.

7. The declaration or equivalent document shall clearly set forth the basis for reallocation of unit owners' ownership interests, common expense liabilities and voting rights in the event the number of units in the condominium is increased. Such reallocation shall be according to the applicable criteria set forth in Sections 2, 8(a) and 8(b) of these policies.

b) **Other Flexible Condominiums.** Condominiums containing withdrawable real estate (contractable condominiums) and condominiums containing convertible real estate (portions of the condominium within which additional units or limited common elements, or both, may be created) will be considered by the agencies and corporations on an individual case basis.

13. POLICIES FOR BY-LAWS

The by-laws of the condominium should be sufficiently detailed for the successful governance of the condominium by unit owners. Among other things, such documents should contain adequate provisions for the election and removal of directors and officers.

14. INSURANCE AND RELATED REQUIREMENTS

The following provisions of (a) and (b) contain the requirements of HUD, FNMA and FHLMC regarding insurance of condominiums. VA suggests that the insurance requirements of HUD, FNMA and FHLMC in (a) and (b) be followed. VA insurance requirements are governed by Sections 36.4326 and 36.4359(e) of Title 38 of the Code of Federal Regulations. The provisions in (c) relating to "Qualifications of Insurance Carriers" are applicable only to FNMA and FHLMC; HUD and VA take no position with respect to these provisions. Paragraph (d) of this section contains requirements regarding condemnation and total or partial loss or destruction of the condominium property, which requirements are applicable only to FNMA. FHLMC, HUD and VA have no specific requirements related to condemnation and loss or destruction to the condominium property, but would accept a project which is in conformity therewith. In addition to the following provisions the owners association must maintain any insurance coverage required by law, such as workmen's compensation insurance. Without limiting or diminishing the responsibilities of the mortgagee under the HUD mortgage insurance contract to obtain and maintain insurance in an amount sufficient to protect the security against the risks or hazards to which the property may be subjected, HUD agrees that the owners association must be required to maintain adequate blanket property insurance, liability insurance, flood insurance, fidelity bond coverage and workmen's compensation insurance by virtue of provisions in the declaration or equivalent document or by applicable law in accordance with the requirements in (a) and (b) of Section 14 hereof.



a) Type and Scope of Insurance Coverage Required

i. Insurance for Fire and Other Perils.

The owners association must be required either by the terms of the declaration (or other appropriate constituent document of the condominium) or by applicable law, to obtain, maintain, and pay the premiums upon, as a common expense, a "master" or "blanket" type policy of property insurance covering all of the common elements and limited common elements, (except land, foundation, excavation and other items normally excluded from coverage) including fixtures, to the extent they are part of the common elements of the condominium, building service equipment and supplies, and other common personal property belonging to the owners association. All references herein to a "master" or "blanket" type policy of property insurance, are intended to denote single entity condominium insurance coverage.

In addition, any fixtures, equipment or other property within the units which are to be financed by a mortgage to be purchased by FNMA or FHLMC (regardless of whether or not such property is a part of the common elements) must, by the terms of the declaration or equivalent document, be required to be covered in such "blanket" or "master" policy. The declaration or other appropriate constituent document of the condominium must contain a clear delineation of all property which is to be covered by such policy. For the purposes hereof, the term "limited common elements" shall have the meaning described by any applicable law of the jurisdiction or as defined in the declaration or other constituent document of the condominium.

Such policy must be consistent with state and local insurance laws and at least equal to such coverage as is commonly required by prudent institutional mortgage investors in the area in which the condominium is located. The policy shall be in an amount equal to 100% of current replacement cost of the condominium exclusive of land, foundation, excavation and other items normally excluded from coverage.

The name of the insured under such solicits must be set forth therein substantially as follows:

"Association of Owners of the _____ Condominium for use and benefit of the individual owners (designated by name if required by law)."

The policies may also be issued in the name of an authorized representative of the owners association, including any insurance trustee with whom the association has entered into an Insurance Trust Agreement, or any successor trustee, as insured, for the use and benefit of the individual owners. Loss payable shall be in favor of the owners association (or Insurance Trustee), as a trustee, for each unit owner and each such owner's mortgagee.



The owners association or insurance trustee, if any, must be required to hold any proceeds of insurance in trust for unit owners and their first mortgage holders, as their interests may appear. Each unit owner and each unit owner's mortgagee, if any, shall be beneficiaries of the policy in the percentage of common ownership or in an amount determined pursuant to a reasonable formula prescribed in the declaration or appropriate exhibit thereto. Certificates of insurance shall be issued to each unit owner and mortgagee upon request.

Such policies shall contain the standard mortgage clause, or equivalent endorsement (without contribution), which is commonly accepted by private institutional mortgage investors in the area in which the property is located and which appropriately names FNMA and FHLMC if such corporations are holders of first mortgages on units within the condominium. Such policies must also provide that they may not be cancelled or substantially modified, without at least 10 days' prior written notice to the owners association and to each holder of a first mortgage listed as a scheduled holder of a first mortgage in the policies.

Policies are unacceptable where:

1. under the terms of the insurance carrier's charter, by-laws, or policy, contributions or assessments may be made against borrowers, FNMA, FHLMC, or the designee of FNMA or FHLMC; or
2. by the terms of the carrier's charter, by-laws or policy, loss payments are contingent upon action by the carrier's board of directors, policyholders, or members, or
3. the policy includes any limiting clauses (other than insurance conditions) which could prevent FNMA, FHLMC, or the borrowers from collecting insurance proceeds.

The policies must also provide for the following:

1. recognition of any, Insurance Trust Agreement; a waiver of the right of subrogation against unit owners individually;
2. that the insurance is not prejudiced by any act or neglect of individual unit owners which is not in the control of such owners collectively; and
3. that the policy is primary in the event the unit owner has other insurance covering the same loss.

The requirements stated in this paragraph are generally provided by the insurer in the form of a "Special Condominium Endorsement" or its equivalent.



The insurance policy shall afford, as a minimum, protection against the following:

1. loss or damage by fire and other perils normally covered by the standard extended coverage endorsement;
2. in the event the condominium contains a steam boiler, loss or damage resulting from steam boiler equipment accidents in an amount not less than \$50,000 per accident per location (or such greater amount as deemed prudent based on the nature of the property);
3. all other perils which are customarily covered with respect to condominiums similar in construction, location and use, including all perils normally covered by the standard "all-risk" endorsement, where such is available.

In addition, FNMA requires that such policies include an "Agreed Amount Endorsement" and, if available, an "Inflation Guard Endorsement". FHLMC requires the foregoing endorsements only if they are available and are commonly required by prudent institutional mortgage investors in the area in which the condominium is located. FNMA and FHLMC may also require, on an individual case basis, construction code endorsements (such as a Demolition Cost Endorsement, a Contingent Liability from Operation of Building Laws Endorsement and an Increased Cost of Construction Endorsement) if the condominium is subject to a construction code provision which would become operative and require changes to undamaged portions of the building(s), thereby imposing significant costs in the event of partial destruction of the condominium by an insured hazard.

ii. Liability Insurance

The owners association must be required either by the terms of the declaration (or other appropriate constituent document of the condominium) or by applicable law, to maintain comprehensive general liability insurance coverage covering all of the common elements, commercial space owned and leased by the owners association, and public ways of the condominium project. Coverage limits shall be in amounts generally required by private institutional mortgage investors for projects similar in construction, location, and use. However, such coverage shall be for at least \$1,000,000 for bodily injury, including deaths of persons and property damage arising out of a single occurrence, with the exception that FHLMC does not require coverage in such amount if the condominium consists of 30 or fewer units. Coverage under this policy shall include, without limitation, legal liability of the insureds for property damage, bodily injuries and deaths of persons in connection with the operation, maintenance or use of the common elements, and legal liability arising out of lawsuits related to employment contracts of the owners association.



Such policies must provide that they may not be cancelled or substantially modified, by any party, without at least 10 days' prior written notice to the owner's association and to each holder of a first mortgage on any unit in the condominium which is listed as a scheduled holder of a first mortgage in the insurance policy. FNMA and FHLMC may also require such coverage to include protection against such other risks as are customarily covered with respect to condominiums similar in construction, location and use, including, but not limited to, host liquor liability, employers liability insurance, contractual and all-written contract insurance, and comprehensive automobile liability insurance.

iii. Flood Insurance

FNMA and FHLMC will not purchase any mortgage secured by a condominium property located in an area which has been identified by the Secretary of Housing and Urban Development as having special flood hazards (by publication in the Federal Register of a Flood Insurance Boundary Map or Insurance Rate Map) for which flood insurance is not available because the community in which the condominium is located is ineligible for participation in the National Flood Insurance Program, except for any mortgage which was closed prior to July 1, 1975 or is closed within one year following the publication of the Flood Hazard boundary Map, whichever is later.

Where the condominium is located within an area which has been officially identified by the Secretary of Housing and Urban Development as having special flood hazards and for which flood insurance has been made available under the National Flood Insurance Program (NFIP), the owners association must be required by the terms of the declaration or other appropriate constituent document of the condominium to obtain and pay the premiums upon, as a common expense, a "master" or "blanket" policy of flood insurance on the buildings and any other property covered by the required form of policy (herein insurable property), in an amount deemed appropriate by the owners association, but not less than the following:

The lesser of:

1. the maximum coverage available under the NFIP for all buildings and other insurable property within the condominium to the extent that such buildings and other insurable property are within an area having special flood hazards; or
2. 100% of current replacement cost" of all such buildings and other insurable property within such area.

Such policy shall be in a form which meets the criteria set forth in the most current Guidelines on the subject issued by the Federal Insurance Administrator.



iv. Fidelity Bonds

By the terms of the declaration or other appropriate constituent document of the condominium, blanket fidelity bonds shall be required to be maintained by the owners association for all officers, directors, and employees of the owners association and all other persons handling, or responsible for, funds of or administered by the owners association. Where the management agent has the responsibility for handling or administering funds of the owners association, the management agent shall be required to maintain fidelity bond coverage for its officers, employees and agents handling or responsible for funds of, or administered on behalf of, the owners association. Such fidelity bonds shall name the owners association as an obligee and shall not be less than the estimated maximum of funds, including reserve funds, in the custody of the owners association or the management agent, as the case may be, at any given time during the term of each bond. However, in no event may the aggregate amount of such bonds be less than a sum equal to 3 months aggregate assessments on all units plus reserve funds.

The bonds shall contain waivers by the issuers of the bonds of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees", or similar terms or expressions. The premiums on all bonds required herein, except those maintained by the management agent, shall be paid by the owners association as a common expense. The bonds shall provide that they may not be cancelled or substantially modified (including cancellation for non-payment of premium) without at least 10 days' prior written notice to the owners association or Insurance Trustee. The Federal National Mortgage Association also requires, as a condition to approval of condominium projects, that such bonds provide that the FNMA Servicer, on behalf of FNMA, also, receive such notice of cancellation or modification.

Fidelity bond coverage is not required for condominiums consisting of 30 or fewer units.

b) Insurance Trustees; Power of Attorney

The declaration or other appropriate constituent document of the condominium shall provide that, notwithstanding any of the foregoing provisions and requirements relating to property or liability insurance, there may be named as an insured, on behalf of the owners association, the owners association's authorized representative, including any trustee with whom such owners association may enter into any Insurance Trust Agreement or any successor to such trustee (each of whom shall be referred to herein as the "Insurance Trustee"), who shall have exclusive authority to negotiate losses under any policy providing such property or liability insurance and to perform such other functions as are necessary to accomplish this purpose.



Where appropriate under applicable law, the declaration shall contain a provision whereby each unit owner appoints the owners association, or any Insurance Trustee or substitute Insurance Trustee designated by the owners association, as attorney-in-fact for the purpose of purchasing and maintaining such insurance, including: the collection and appropriate disposition of the proceeds thereof; the negotiation of losses and execution of releases of liability; the execution of all documents; and the performance of all other acts necessary to accomplish such purpose.

c) Qualifications of Insurance Carriers

FNMA and FHLMC reserve the right to set standards and qualifications for insurance carriers. The declaration shall require the owners association to use generally acceptable insurance carriers. Reference should be made to the FNMA Conventional Home Mortgage Selling Contract Supplement and the FHLMC Sellers Guide for specific requirements regarding the qualifications of insurance carriers.

d) Condemnation and Total or Partial Loss or Destruction

The following provisions contain the requirements of FNMA regarding condemnation and total or partial loss or destruction of the condominium property. The owners association shall represent the unit owners in the condemnation proceedings or in negotiations, settlements and agreements with the condemning authority for acquisition of the common elements, or part thereof, by the condemning authority. Where appropriate under applicable law, the declaration should contain a provision whereby each unit owner appoints the owners association as attorney-in-fact for such purpose. The declaration may provide for the appointment of a Trustee to act on behalf of the unit owners, in carrying out the above functions, in lieu of the owners association.

In the event of a taking or acquisition of part or all of the common elements by a condemning authority, the award or proceeds of settlement shall be payable to the owners association, or any Trustee, to be held in trust for unit owners and their first mortgage holders as their interests may appear.

A reasonable method for dealing with any total or partial loss or destruction of the condominium property, and with any total or partial condemnation of such property, must be provided in the declaration or other appropriate constituent document of the condominium or by applicable law.