

CHAPTER 9: SPECIAL SITUATIONS

9.1 INTRODUCTION

This chapter describes the requirements for processing loans in several special situations. Section 1 discusses conditional commitments. Section 2 deals with processing requirements surrounding condominium ownership, community land trusts, and planned unit developments. The chapter concludes with Section 3, which describes the specific processing differences for manufactured homes.

SECTION 1: CONDITIONAL COMMITMENTS [7 CFR 3550.70]

9.2 OVERVIEW OF CONDITIONAL COMMITMENTS

A conditional commitment is a written assurance from the Agency to a qualified builder, dealer-contractor, or seller that a dwelling to be constructed or rehabilitated will be certified as acceptable for purchase by qualified loan applicants, as long as the construction and sales price meet certain conditions. The conditional commitment does not reserve loan funds, nor does it guarantee that an eligible loan applicant will be available to purchase the property. It does, however, provide a reasonable assurance to the builder that the home will be eligible for financing once it is completed.

If the area does not remain rural, the conditional commitment will not be honored unless a purchaser is found who applied for a loan before the rural area designation changed.

9.3 APPLICATION AND FEE

Builders, dealer-contractors, or sellers interested in becoming conditional commitment contractors must apply using Form RD 1944-36, Application for Conditional Commitment. A single application form may be used to request conditional commitments for multiple dwellings. All required attachments must be included for each dwelling for which a conditional commitment is requested, including the proposed selling price, address, evidence of building site ownership, and detailed descriptions of all proposed construction.

Applicants must include a standard application fee for each dwelling for which a conditional commitment is requested. This fee is updated periodically through an Unnumbered Letter (UL) posted to the Agency's [Directives](#) website. The UL will generally be posted 30 days prior to the effective date of the fee change. If a preliminary inspection of the property or investigation of the conditional commitment applicant indicates that a conditional commitment will not be issued, the application fee should be refunded. Once the appraisal is conducted, the application fee cannot be refunded. When a loan on a property with a conditional commitment is closed, the appraisal fee collected from the purchaser is disbursed to the conditional commitment contractor.

9.4 EVALUATING THE CONDITIONAL COMMITMENT APPLICATION

An application for a conditional commitment is evaluated based on the criteria discussed below.

- **Ownership.** The applicant must have an adequate ownership interest in the property, as described in Paragraph 5.11 of this Handbook, before beginning construction.
- **Capacity.** The applicant must have the experience and ability to complete any proposed work competently and must be financially responsible and able to finance or obtain financing for any proposed work. The capacity of applicants for conditional commitments should be evaluated in the same manner as for any construction contractor, as discussed in Paragraph 5.25 A of this Handbook.
- **Legal capacity.** The applicant must have the legal capacity to enter into the required agreements. Legal capacity can be verified by checking the applicant's business license and registration.
- **Civil rights.** The applicant must agree to comply with all applicable laws, regulations, and Executive Orders relating to civil rights, as described in Paragraph 1.9 of this Handbook.
- **Affirmative marketing.** Any company that receives 5 or more conditional commitments during a 12-month period must develop an acceptable Affirmative Fair Housing Marketing Plan, as described in RD Instruction 1901-E.
- **Site requirements.** The proposed site must meet the requirements listed in Section 1 of Chapter 5 of this Handbook.
- **Dwelling requirements.** If the dwelling is to be constructed or substantially rehabilitated, it must meet the requirements listed in Section 2 of Chapter 5 of this Chapter. If it is a new manufactured home, it must meet the requirements of Paragraph 9.19 of this Chapter.

Paragraph 9.4 Evaluating the Conditional Commitment Application

- **Environmental Requirements.** An environmental review must be completed as described in Section 3 of Chapter 5.
- **Start of construction.** Conditional commitments for new or substantially rehabilitated dwellings will not be issued after construction has started.
- **Local market demand.** The number of conditional commitments issued in any locality should not exceed existing market demand. In particular, the number of outstanding commitments in the area must not exceed the number of loans that can reasonably be expected to be made within 3 months of dwelling completion. To determine this, the Loan Originator should consider the availability of loan funds and the number of loan applications typically received in the office.
- **Proposed price.** The proposed price must not exceed the applicable area loan limit, as described in Paragraph 6.6 of this Handbook.

9.5 PRELIMINARY APPROVAL

In general, the Loan Originator must review the application materials within 7 days of receiving a completed application. Staff is encouraged to use online resources, such as the county assessor or taxing authority, to verify property details provided in the conditional commitment application package.

A. Ordering an Appraisal

If the document review indicates that all of the requirements outlined in Paragraph 9.4 of this Chapter can reasonably be met (except for the site requirements which will be reviewed upon receipt of an appraisal), an appraisal should be ordered in accordance with the guidelines set forth in Paragraph 5.17 of this Handbook. Because the application fee cannot be refunded after the appraisal is conducted, the appraisal should never be ordered until the document review is complete.

B. Site Approval and Responsibility for Environmental Reviews

Upon receipt of the appraisal, the Loan Originator should ensure that construction has not begun and that the site meets the requirements of Section 1 of Chapter 5. In addition, the Loan Originator will initiate an environmental review as discussed in Section 3 of Chapter 5. Unless there are unresolved environmental issues, the Loan Originator must determine within 7 days of receipt of the appraisal, whether the application for a conditional commitment should be accepted or rejected.

If there are environmental issues that will take additional time to resolve, the Loan Originator must inform the conditional commitment applicant about the outstanding issues.

C. Rejecting the Application for Conditional Commitment

If any of the requirements outlined in Paragraph 9.4 of this Chapter are not met, the Loan Originator must deny the application for a conditional commitment. The documents attached to the application must be returned to the applicant, along with a letter explaining why the application was not approved. The application, a copy of the supporting documents, and a copy of the rejection letter should be retained in the conditional commitment applicant's file.

If no appraisal has been conducted, the letter should indicate that the application fee will be refunded separately. In this case, the Loan Originator should provide the Servicing and Asset Management Office (Servicing Office) with the information needed to send the refund check. If the application was not approved because of the Loan Originator's assessment of the applicant's experience or financial capacity, the letter should specify that the applicant has the right to appeal the decision to the National Appeals Division (NAD).

9.6 FINAL APPROVAL

The final decision about approving an application for a conditional commitment depends on the results of the appraisal. The proposed selling price listed on the conditional commitment application must not exceed the property's appraised value or the area loan limit, whichever is lower.

A. Proposed Price Too High

If the proposed selling price exceeds the property's appraised value, the Loan Originator must notify the conditional commitment applicant that the application cannot be approved unless the selling price is reduced. If the conditional commitment applicant decides to reduce the proposed price, this decision must be provided to the Loan Originator in writing; the Loan Originator cannot make changes based on verbal instructions. If the conditional commitment applicant elects not to reduce the proposed price, the documents attached to the application should be returned along with a letter explaining why the application was not approved.

B. Proposed Price Acceptable

If all of the eligibility requirements are met and the proposed price is acceptable, a conditional commitment can be issued. The Loan Approval Official should complete and sign Form RD 1944-11, Conditional Commitment, and forward a copy to the conditional commitment applicant.

9.7 DURATION OF COMMITMENT

Conditional commitments are valid for 12 months from the date of issuance. At the conditional commitment contractor's request, the Loan Approval Official may extend the commitment period for up to an additional 6 months if there have been unexpected delays in construction caused by such factors as bad weather, materials shortages, or marketing difficulties. In order to document the extension, the Loan Originator should modify Form RD 1944-11, Conditional Commitment.

A conditional commitment will be canceled if construction does not begin within 60 days after the commitment is issued, unless the Loan Approval Official determines that there were unavoidable circumstances that justified the delay. The Agency's construction inspector, or other qualified inspector as set forth in Section 6 of Chapter 5, should visit the site to verify that construction has begun. If the inspector finds that construction has not begun, the Loan Originator should send a letter to the contractor indicating that the conditional commitment has been canceled and specifying the reasons.

9.8 CHANGES IN PLANS, SPECIFICATIONS, OR COMMITMENT PRICE

The Loan Approval Official may approve changes in project plans, specifications, or commitment price if the conditional commitment contractor requests the changes in writing, and the conditions discussed below have been met.

- The property must continue to meet applicable development standards after any changes;
- If a change is requested after a loan applicant has exercised an option on the property, the change may be approved only if the loan applicant and the contractor both agree to the changes in writing;
- Any increase in costs must have been caused by factors beyond the control of the commitment holder, such as an unforeseeable materials shortage;

- The increased commitment price must remain at or below the lesser of the property's appraised value or the applicable area loan limit; and
- If the proposed change will alter the purpose, operation, location, or design of the project as originally approved, the environmental review for the project must be amended (or a new environmental review completed) prior to approval of the change.

Changes to plans and specifications must be noted on Form RD 1924-25, Plan Certification.

If an approved change will result in an increase in the conditional commitment price that exceeds the original appraised value, a revised appraisal report (to be paid for by the conditional commitment contractor) should be ordered by the Agency, and Form RD 1944-11, Conditional Commitment, should be revised based upon the latest appraisal. The revised commitment should be initialed and dated by the Loan Approval Official, and initialed by the commitment holder. A new appraisal is not required if the new price does not exceed the original appraised value.

9.9 PROPERTY INSPECTIONS

Property inspections will be performed according to the procedures for new construction and major rehabilitation set forth in Section 6 of Chapter 5. If the contractor fails to correct any deficiencies detected during an inspection or to complete the work according to previously approved plans and specifications, the Loan Approval Official may cancel the conditional commitment.

9.10 BUILDER'S WARRANTY

The builder or seller, as appropriate, must execute either Form RD 1924-19, Builder's Warranty, or provide a 10-year insured warranty when construction is completed. Builder's warranties are discussed in Paragraph 5.24.

9.11 CONDITIONAL COMMITMENTS INVOLVING PACKAGING OF APPLICATIONS

A conditional commitment may be made to a seller, builder, or dealer-contractor who packages a loan application for a prospective purchaser. In cases where the dwelling is to be constructed for sale to a specific eligible applicant, all of the following conditions listed below must be met.

- The conditional commitment will not be approved until the applicant's loan has been approved.
- Construction will not begin until funds are obligated for the loan. Exceptions may be made when it appears likely that funding will be forthcoming and as long as the Agency's lien priority is not jeopardized. The sales agreement must indicate that the loan has been approved, but not funded and must provide that if the loan is not closed within 90 days of the date of approval, the contractor may terminate the sales agreement and sell the property to another party. If the sales agreement is terminated, the conditional commitment will be honored for another eligible loan applicant for the remaining period of the commitment.
- The Agency loan will be closed only after the dwelling is constructed or the required rehabilitation is completed, and final inspection has been made.

SECTION 2: SPECIAL FORMS OF OWNERSHIP

9.12 OVERVIEW

This section discusses processing requirements for loans for dwellings with three types of special ownership: condominiums, community land trusts, and planned unit developments. Unless otherwise indicated in this section, the same basic requirements for loan approval discussed elsewhere in this handbook apply to these loans, along with the additional requirements specified here. Documents related to the establishment and operation of community land trusts must be reviewed by the Office of the General Counsel (OGC) to determine whether the Agency's rights are sufficiently protected. Other forms of ownership will be referred to OGC when the Loan Approval Official determines it necessary to ensure the Agency's rights are protected.

When a duplex, townhome, condex (or other similar descriptive type of property) has shared property or zero lot line beyond the dwelling's footprint and where the borrower owns, typically one-half of a 2-dwelling unit, the Loan Approval Official must review and approve the "association's" recorded agreements. The document must indicate the maintenance responsibilities for the structure and any shared walls, roofs, driveways, amenities, utilities, and easements to ensure they are enforceable (as needed) and compel payments from each owner sufficient to ensure that the structure remains in good condition. The document should clearly inform each owner of a unit of their rights, responsibilities, their share of costs, and be legally binding. A master insurance policy for the building shell is required. If the master policy includes interior property damage coverage (e.g., flooring, cabinets, fixtures) a separate property insurance policy (HO-6 or HO-3) purchased by the borrower is not required but is highly recommended for protection of their personal possessions and furnishings.

9.13 LOANS FOR CONDOMINIUM UNITS [7 CFR 3550.71]

Loans may be made to finance the purchase of dwellings in condominium developments if the conditions described in this paragraph are met, and the applicant and the property otherwise meet the requirements outlined in this handbook.

A. Definition

A condominium is defined as a real estate project in which each unit owner has title to a unit, an undivided interest in the common areas of the project, and sometimes the exclusive use of certain limited common areas. The project may include dwelling units in detached, semi-detached, row, garden-type, low- or high-rise structures.

B. Financing Approval

Loans cannot be approved for condominium units unless the project has been approved for financing by:

- Department of Housing and Urban Development (HUD),
- Federal National Mortgage Association (Fannie Mae),
- Federal Home Loan Mortgage Corporation (Freddie Mac),
- Department of Veterans Affairs (VA),
- State Housing Finance Agency (SHFA),

The applicant must submit documentation from the appropriate agency showing that the project is acceptable for financing. HUD approved projects can be found by conducting a search for condominium on their website at <https://entp.hud.gov/idapp/html/condlook.cfm>. The Fannie Mae Project Eligibility Review Service (PERS) website can be found at: <https://singlefamily.fanniemae.com>. Freddie Mac does not currently publish a list of approved projects on their website. VA approved projects can be found by conducting a search through the Veterans Information Portal at <https://vip.vba.va.gov/portal/VBAH/Home>.

If the project has not been approved by one of the sources listed above, the State Director may approve the specific condominium unit in accordance with Attachment 9-C of this Chapter, Condominium Questionnaire. This type of approval represents a greater risk to the Agency and should be used with caution.

C. Condominium Status

Agency financing will not be considered for any condominium regardless of how the project was approved unless, at the time of loan approval, the status of the condominium projects meets the conditions listed below.

- At least 70 percent of the units must have been sold. (Multiple purchases of condominium units by one owner are counted as one sale when determining if the sales requirements have been met.)
- No more than 15 percent of the unit owners can be more than 1 month delinquent in payment of homeowners' association dues or assessments at the time the Agency loan is approved.
- The condominium project must consist of a structure or structures containing four or more units and must not contain any commercial space. Units in a rental project which was converted to condominium ownership are not eligible.
- In addition, condominium projects that are considered ineligible by HUD, Fannie Mae, Freddie Mac, or VA, such as condominium hotels, timeshares or houseboats, etc., are not eligible for Agency financing.

D. Protection of Agency Rights and Lien Position

A loan may not be approved unless condominium documents preserve the rights and lien position of the Agency described below.

1. Right of First Refusal

Any right of first refusal in the condominium documents must not impair the rights of the Agency to: (1) foreclose or take title to a condominium unit under the remedies in the mortgage; (2) accept a deed in lieu of foreclosure if a mortgagor defaults; and (3) sell or lease a unit it acquires.

2. Agency Obligation for Charges

If the Agency obtains title to a condominium unit under the remedies in its mortgage or through foreclosure, it will not be liable for more than 6 months of the unit's unpaid regularly budgeted dues or charges accrued before it acquired title to the unit. The homeowners' association's lien may include the cost of collecting unpaid dues.

All taxes, assessments, and charges that may become liens prior to the first mortgage under local law must relate only to the individual condominium units and not to the condominium project as a whole.

3. Provisions in the Case of Condemnation or Substantial Loss

In the case of condemnation or substantial loss to the units or common elements of the condominium project, unless at least 51 percent of the first mortgagees of the individual condominium units have given their consent, the homeowners' association may not:

- By act or omission seek to abandon or terminate the condominium project;
 - Change the pro rata interest or obligations of any condominium unit in order to levy assessments or charges, allocate hazard insurance proceeds or condemnation awards, or determine the share of ownership in the common elements;
 - Partition or subdivide any condominium unit;
 - Seek to abandon, partition, subdivide, encumber, sell, or transfer the common elements by act or omission (the granting of easements for public utilities or other public purposes consistent with the intended use of the common elements by the condominium project is not a transfer within the meaning of this clause); or
 - Use hazard insurance proceeds for losses to any condominium property (whether units or common elements) for purposes other than the repair, replacement, or reconstruction of the condominium property
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- The condominium documents must not give the condominium unit owner (or any other party) priority over the Agency's right to insurance proceeds or condemnation awards for losses to, or taking of, condominium units or common elements.

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E. Closing Documents

Form RD 3550-10, Condominium Rider, must be used to amend and supplement the security instruments to accommodate special requirements that apply because the owners' association may hold title to the property. For example, hazard insurance may be paid by the owners' association, rather than by the borrower.

Condominiums are a private residence owned by an individual homeowner/family in a building with multiple units. Because there are multiple units located within one structure, the condominium association purchases a Master Policy, which insures the structure against loss. A copy of this policy must be provided at closing, and annually thereafter. This policy, however, does not provide "studs-in" or contents coverage. If the unit owner opts to purchase this coverage under a HO-6 policy, they are responsible for payment of the premium, as the Agency does not include this premium in escrow. Condos are escrowed for taxes only.

F. Association Dues

The Agency also does not include the monthly fees or dues for the condo association in escrow. The unit owner is responsible for that payment. In the event the unit owner becomes delinquent on their dues and the association places a lien on the property, the Servicing Office's Escrow Department may pay delinquent dues and a fee will be amortized on the account.

9.14 LOANS FOR UNITS IN A COMMUNITY LAND TRUST

Loans may be made to finance the purchase of dwellings located on land owned by community land trusts if the conditions described in this paragraph are met, and the applicant and the property otherwise meet the requirements outlined in this handbook. Documents related to the establishment and operation of community land trusts must be reviewed by the Office of the General Counsel (OGC) to determine whether the Agency's rights are sufficiently protected. These documents should include, but are not limited to: articles of incorporation and bylaws; organizational resume or history summarizing the organizations experience in affordable housing; list of staff responsible for the community land trust's homeownership program; current annual report; and ground lease.

Ground Leases. Some common issues which should be addressed in a ground lease include, but are not limited to:

- Duration of lease (typically 99 years);
- Lease fee;

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- Use of the leased land (residential use only, maintenance of common areas, etc.);
- Taxes and assessments;
- Improvements to the home and/or land;
- Financing (permitted mortgages, excess sale proceeds);
- Liability, insurance, damage and destruction, eminent domain;
- Transfer/Sale of the home;
- Default (must contain language that ensures that all restrictions relating to community land trusts will automatically and permanently terminate upon foreclosure or Agency acceptance of a deed in lieu of foreclosure);
- Mediation / Arbitration; and
- Other General Provisions

When reviewing a ground lease, staff may also find it helpful to compare the submitted lease to other model leases available through National Community Land Trust Network; which can be searched at <http://cltnetwork.org>.

A. Definition

A community land trust is defined as a private nonprofit community housing development organization that owns and leases land under a long-term ground lease to low- and moderate-income households, at affordable prices. The organization must:

- Be organized under State or local laws;
- Have no part of its net earnings benefiting any member, founder, contributor, or individual;
- Comply with standards of financial accountability;
- Have among its purposes significant activities related to the provision of decent housing that is affordable to low- and moderate-income people;

- Maintain, through significant representation on the organization’s governing board and otherwise, accountability to low-income community residents with regard to decisions on the design, siting, development, and management of affordable housing;
- Have its corporate membership open to any adult resident of a particular geographic area specified by the by-laws of the organization; and
- Is established to carry out all of the following activities:
 - ◊ Acquire parcels of land, held in perpetuity, primarily for conveyance under long-term ground leases;
 - ◊ Transfer ownership of any structural improvements located on such leased parcels to the lessees; and
 - ◊ Retain a pre-emptive option to purchase any such structural improvements at a price determined by a formula that is designed to ensure that the improvement remains affordable to low- and moderate-income people in perpetuity.

B. Preservation of Agency Rights and Lien Position

The relevant legal documents must contain language that ensures that all restrictions relating to community land trusts will automatically and permanently terminate upon foreclosure or Agency acceptance of a deed in lieu of foreclosure. Language that merely subordinates the restrictions to the mortgage is not sufficient -- the restrictions also cannot be forced upon subsequent purchasers following resale by the Agency.

C. Restrictions on Resale Price

Restrictions on the limits to the resale price of the property or recapture of equity are permitted. A maximum sales price may be imposed or the sales proceeds due the borrower may be limited, with any excess payable to a governmental body or nonprofit organization for reuse in the community land trust. If resale restrictions include income limits for prospective buyers, the limits may be as restrictive as applicable Direct income limits in effect at the time of the purchase agreement, but must not be more restrictive. When such restrictions apply, the requirements listed below must be met.

- The borrower must be permitted to recover at least the original purchase price, sales commission and other typical selling expenses, and cost of capital improvements made by the borrower, when the borrower sells the property.
- If the property has depreciated such that the original purchase price was greater than the current market value, the borrower must be permitted to recover at least the current market value (less typical selling expenses) when the borrower sells the property.

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- The borrower must be permitted to recover a reasonable amount of appreciation as determined by the Agency below. Appreciation is measured by the difference between the original purchase price and the actual price at which the property is resold.
- If the program permits the borrower to sell the property at market value but recaptures part of the equity, the Agency considers a reasonable share of appreciation to be at least 50 percent. The Agency does not object to situations whereby the borrower's share of appreciation is on a sliding scale beginning at 0, provided that within 2 years the homeowner would be permitted to retain 50 percent of the appreciation.
- If the program sets a maximum sales price restriction, the borrower must be permitted to retain 100 percent of the appreciation.
- Other arrangements for sharing appreciation may be approved by the State Director.

D. Right of First Refusal

One method commonly used to ensure that housing remains part of an affordable housing program is for the community land trust to hold a right of first refusal or an option right that can be exercised when the borrower proposes to sell the home to a purchaser not eligible for the program benefits. Such a provision is permitted if all of the requirements listed below are met.

- The rights must be held only by a governmental body or eligible nonprofit organization and exercised by them or someone they have identified as an eligible purchaser.
- Any right must be exercised within 45 days after the holder of these rights may exercise them (for example, the rights are often triggered by a notice of sale from the borrower).
- **Payment Subsidy Recapture**

The borrower's ability to repay payment subsidies may be affected by the resale restrictions of the community land trust. Upon closing, the lease agreement and/or any other document(s) containing information about the community land trust's resale restrictions should be sent to the Servicing Office with the other applicable closing documents, to ensure accurate subsidy recapture calculations in the future.

Case-by-case exceptions to Agency recapture requirements may be approved by the Administrator if necessary to accommodate the restrictions imposed by the land trust.

E. Appraisals

A property located on a site owned by a community land trust must be appraised as a leasehold interest, with thorough analysis of the ground lease, and resale and other restrictions which may apply.

Because the community land trust may subsidize the sales price to a borrower, the sales price may be significantly less than the market value of the leasehold interest in the property. The appraised value of the leasehold interest must be accurately developed by the appraiser because the resale restrictions, as well as other restrictions that may be included in the ground lease, can also affect the value of the property.

The appraiser must use a three-step process to develop an opinion of value.

- Fee Simple Value = Sales Comparison Analysis Approach.

In determining the fee simple value of the subject property, the appraiser must use comparable sales of similar properties that are owned as fee simple estates. If this is not possible, the appraiser may use sales of properties that are subject to other types of leasehold estates as long as he or she makes appropriate adjustments, based on the terms of their leases, to reflect a fee simple interest.

When the community or neighborhood has sales activity for other leasehold estates held by a community land trust, the appraiser must discuss them in the appraisal report, but must not use them as comparable sales because, in all likelihood, the sales prices will have been limited by restrictions in the ground lease.

- Value of Leased Fee = Ground Rent / Capitalization Rate. The appraiser must provide support for the capitalization rate selected.
- Value of Leasehold = Value of Fee Simple – Value of Leased Fee

9.15 PLANNED UNIT DEVELOPMENTS

Loans may be made to finance the purchase of dwellings located in Planned Unit Developments (PUD) if the conditions described in this paragraph are met and the applicant and property otherwise meet the requirements outlined in this handbook.

A. Definition

A Planned Unit Development is a project or subdivision that includes common property that is owned and maintained by a homeowners' association for the benefit of and use by the individual PUD unit owners. A PUD can consist of detached single family homes, condominiums (which must also meet the requirements of Paragraph 9.13 of this Chapter), or townhomes. Certain properties may have the physical appearance of a townhome, but are owned as a condominium; in which case the requirements of Paragraph 9.13 of this Chapter must be followed.

B. Preservation of Agency Rights and Lien Position

The Owners Association must be controlled by the homeowners and any restrictions imposed on the owners in the PUD Constituent Documents must not jeopardize the Agency's rights or lien position. The "Constituent Documents" are the declaration, articles of incorporation, trust instrument or any equivalent document which creates the Owners Association and any by-laws or other rules or regulations of the Owners Association.

C. Closing Documents

Form RD 3550-11, "Planned Unit Development Rider" must be used to amend and supplement the security instrument to accommodate special requirements. For example, the Owners' Association may maintain a "master" or "blanket" Hazard Insurance Policy.

SECTION 3: MANUFACTURED HOMES [7 CFR 3550.73]

9.16 AUTHORIZED LOAN PURPOSES

A. Definition

Manufactured homes are built to different construction standards and codes and have different inspection requirements than those manufactured structures generally referred to as “modular” or “panelized” homes. The major difference between manufactured homes and modular or panelized homes is the construction standard or code to which they are built and the inspection requirements. Modular or panelized homes, as described in Exhibit B of RD Instruction 1924-A, are not affected by the requirements of this section.

B. Authorized Loan Purposes

When a real estate mortgage or deed of trust covers the unit **and** the site, Section 502 loans may be used to finance the following:

- Site development work that conforms to the requirements of RD Instruction 1924-A;
- Purchase of an eligible new unit, transportation and set-up costs, and purchase of an eligible site if not already owned by the applicant. The following criteria further outlines an eligible new manufactured unit:
 - Must be a new unit in stock that has never been installed or occupied at any other site or location. Manufactured units may be moved only from the manufacturer’s or dealer’s lot to the site on which the unit will be financed.
 - Must be placed on a permanent foundation built to FHA guidelines in effect at the time of certification. Guidelines are presently published in the “Permanent Foundation Guide for Manufactured Housing” (HUD-4930.3G) which is found at <https://www.huduser.gov/portal/publications/destech/permfound.html> .
 - Meet or exceed the Federal Manufactured Home Construction and Safety Standard (FMHCSS) Uo Value Zone for the geographic area the unit will be placed. The Uo Value Zone will be indicated on the Comfort Heating and Cooling Certificate. Builder must certify thermal requirements at time of purchase have been met.

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- Must have a manufacture date that is within 12 months of the purchase agreement contract. The manufactured home must be affixed with a data plate located inside the home. The manufacture date can be found on the data plate. The certification label that must be affixed in a location that will remain visible after all work is completed that is necessary to complete the installation of the home at the home site.
 - As an alternative to the original HUD Certification Label(s), the Agency may accept a verification letter with the same information contained on the HUD Certification Label(s) from the Institute for Building Technology and Safety (IBTS). A duplicate HUD Data Plate may be available from IBTS or by contacting the In-Plant Primary Inspection Agency (IPIA) of the manufacturer.
- Purchase of an eligible existing unit and site. The following criteria outlines an eligible existing manufactured unit:
 - Must be an existing unit that has never been previously installed on a different homesite.
 - Must be installed on a permanent foundation in accordance with RD Instruction 1924-A, Exhibit J and HUD installation standards found in the “Permanent Foundation Guide for Manufactured Housing (HUD-4930.3G). Certification of a proper foundation is required, e.g. HUD Form 92051, or a signed certification from a licensed engineer or licensed architect.
 - Loan funds may be used to retrofit the foundation of an existing manufactured housing unit to meet the requirements found in HUD-4930.3-G. Work must be completed by a qualified contractor. These funds will be held in escrow until completion and certification documentation is received from a licensed engineer or architect indicating the work completed satisfies these requirements.
 - If manufactured home title has not been eliminated, then loan closing instructions should include purging of the manufactured home’s title so future assessments for the home are considered real property per Paragraphs 9.20 D and E of this chapter. The foundation certification(s) should help facilitate its reclassification as real property.
 - Must have not had any alterations or modifications since construction in the factory, except for porches, decks or other structures which were built to engineered designs or were approved and inspected by local code officials.

- Must have a manufacture date that is within 20 years from the date of loan closing and meets or exceeds the Federal Manufactured Home Construction and Safety Standard (FMHCSS) as evidenced by both an affixed HUD Certification and HUD Data Plate. The manufacture date can be found on the data plate located inside the home.
 - As an alternative to the original HUD Certification Label(s), the Agency may accept a verification letter with the same information contained on the HUD Certification Label(s) from the Institute for Building Technology and Safety (IBTS). A duplicate HUD Data Plate may be available from IBTS or by contacting the In-Plant Primary Inspection Agency (IPIA) of the manufacturer.
- Subsequent loans for equity or repair in conjunction with an assumption or Real Estate Owned (REO) sale; and
- Subsequent loans for repair of units that are financed with Section 502 loans.

C. Loan Restrictions

The Agency will not use Section 502 loan funds to finance:

- The purchase of an existing unit that was not constructed in conformance with the Federal Manufactured Home Construction Standards (FMHCSS) as evidenced by an affixed HUD Certification label and was not installed on a permanent foundation complying with manufacturer and HUD installation standards (HUD 4930.3-G);
- Existing manufactured home units with a manufacture date exceeding 20 years from the date of loan closing unless the unit and site are already financed with a Section 502 direct loan;
- The purchase of a site without also financing the unit;
- A unit that does not meet Federal Manufactured Home Construction and Safety Standards (FMHCSS); A unit that does not meet or exceed the FMHCSS thermal requirements for the county in which the home is to be located (see Attachment 9-B, Thermal Requirements for a Manufactured Home);

Paragraph 9.16 Authorized Loan Purpose

- Alteration or remodeling of the unit when the initial loan is made, unless repairs are needed in conjunction with an assumption or REO sale;
- Repairs not associated with a transfer, REO sale, or unit that is already financed with a Section 502 loan;
- Existing debt owed by the applicant; or
- Furniture, including movable articles of personal property such as drapes, beds, bedding, chairs, sofas, divans, lamps, tables, televisions, radios, stereo sets, and other similar items of personal property (furniture does not include wall-to-wall carpeting, refrigerators, ovens, ranges, washing machines, clothes dryers, heating or cooling equipment, or other similar equipment).

9.17 DEALER-CONTRACTOR REQUIREMENTS

A dealer-contractor must be: (1) financially responsible; (2) qualified and equipped to set up the unit on a site-built permanent foundation and develop the site; and (3) willing to provide a warranty acceptable to the Agency.

The applicant and the dealer-contractor will be notified of the Agency's thermal requirements for the county in which the home is to be located. Rural Development accepts the FMHCSS Uo Value Zones for new manufactured homes financed by the Agency. Attachment 9-B of this Chapter lists the FMHCSS Uo Value Zones for each state and Puerto Rico.

All new manufactured homes built to the FMHCSS are provided with a Comfort Heating and Cooling Certificate. This certificate (which may be combined with the Data Plate) is affixed in a permanent manner near the main electrical panel or other readily accessible and visible location inside the unit. The certificate specifies to FMHCSS Uo Value zone of the home as Zone 1, 2 or 3. (The U/O Value Zone Map on the certificate does not apply.) An example of the Comfort Heating and Cooling Certificate is provided as Attachment 9-A.

9.18 PROCESSING PROCEDURES

A. New Manufactured Home Submission Requirements

In addition to the documents required for a standard Section 502 loan, the applicant must submit the following before the loan can be approved:

- A plot plan and site development plan as described under RD Instruction 1924- A, Exhibits C and J;
- A foundation plan per RD Instruction 1924-A, Exhibit C adapting manufacturer's design to the specific site conditions. Specific site conditions that may require modification may include slope, soils type, frost depth and requirements of FD adopted code and/or local codes.
- Certification of site and foundation designs on Form RD 1924-25, Plan Certification;
- An itemized cost breakdown of the total package, including the base unit, eligible options, site development, installation, set up, lot costs, and any credit for wheels and axles;
- A statement signed by the dealer-contractor indicating that any cash payment or rebate as a result of the purchase will be deducted from the price of the unit and not paid to the applicant; and
- A statement signed by the dealer-contractor that the proposed cost is the full price of the unit and all development activities, and if furniture is being purchased by the applicant with other funds, that a lien will not be filed against the Agency's security property.

B. Appraisal Techniques

The site and unit must be appraised before loan approval, using normal single family residential appraisal techniques. Since other manufactured units and sites provide the most similar comparables, every effort must be made to obtain such comparables, even if their distance from the subject property is greater than preferred. If units are not available within a reasonable distance, the appraiser may use homes other than manufactured homes, after adjusting for factors such as location, construction material, size, and quality.

C. Loan Rates and Terms

The interest rates for manufactured homes are the same as for other real estate loans made with Section 502 loan funds, but the maximum loan term is 30 years. Applicants for Section 502 loans on manufactured homes may receive payment subsidy, if they are eligible.

9.19 CONSTRUCTION AND SITE REQUIREMENTS

The new manufactured housing unit must meet the requirements for new dwellings contained in Section 2 of Chapter 5 of this Handbook and new and existing manufactured housing units must have a floor area of 400 square feet or more, and a width of 12 feet or more for a single-wide unit, and 20 feet or more for a double-wide unit. In addition, the new or existing manufactured housing unit must meet the Agency's Thermal Performance Standards as set forth in RD Instruction 1924-A, for the winter degree day zone where the unit will be located. Finally, for a new manufactured housing unit, site development and set up must conform to Exhibit C and Exhibit J of RD Instruction 1924-A, and the environmental requirements of RD Instruction 1970 series "Environmental" must be met. Development under the Mutual Self-Help and borrower construction methods is not permitted for manufactured homes.

9.20 LOAN CLOSING

In general, loan closing procedures are the same whether the Section 502 loan is made for the purchase of a manufactured home or another type of single family home. However, the Loan Originator should be aware of the following requirements for the purchase of a new manufactured home.

A. Contract Requirements

The dealer-contractor must sign Form RD 1924-6, Construction Contract, which will cover both the unit and site development work. Multiple contracts are prohibited, but a dealer-contractor may use subcontractors if the dealer-contractor remains solely responsible for all work under the contract. Payment for all work will be made in accordance with Form RD 1924-6 and RD Instruction 1924-A, except that no payment will be made for materials or property stored on site (for example, payment for a unit will be made only after it is permanently attached to the foundation).

B. Lien Release Requirements

All firms furnishing materials or labor in connection with the contract must sign Form RD 1924-10, Release by Claimants, except for the manufacturer of the unit. The manufacturer of the unit must furnish an executed manufacturer's certificate of origin indicating that the unit is free and clear of all legal encumbrances. Form RD 1924-10 and the manufacturer's certificate of origin should be filed in the case file.

C. Warranty Requirement

A dealer-contractor must provide the borrower with a warranty in accordance with the provisions of RD Instruction 1924-A. The warranty must identify the unit by serial number. The dealer-contractor must certify that the unit substantially complies with the plans and specifications, and the home has sustained no hidden damage during transportation.

If the home was manufactured in separate sections, the dealer-contractor also should certify that the sections were properly joined and sealed according to the manufacturer's specifications. The dealer-contractor must furnish the applicant with a copy of all manufacturers' warranties.

D. Real Estate Tax Requirement

Whether manufactured homes are considered personal or real property may vary state-to-state. When the loan closes, the unit and site must be taxed as real estate by the jurisdiction in which it is located, if such taxation is permitted under applicable law.

E. Title and Lien Requirements

A standard real property title insurance policy is required for the mortgage. Additionally, if the manufactured home title has not been eliminated due to local/state laws, the Agency must then be specified as a lienholder on that title, and both the unit and the site must be indicated in the legal description of the recorded mortgage or deed of trust.

ATTACHMENT 9-A

HB-1-3550
Attachment 9-A

Manufacturer Address _____

Plant Number _____

Date of Manufacture _____ HUD Label No.(s) _____

Manufacturer's Serial Number and Model Unit Designation _____

Design Approval by (D.A.P.I.A.) _____

This manufactured home is designed to comply with the federal manufactured home construction and safety standards in force at time of manufacture.
(For additional information, consult owner's manual.)

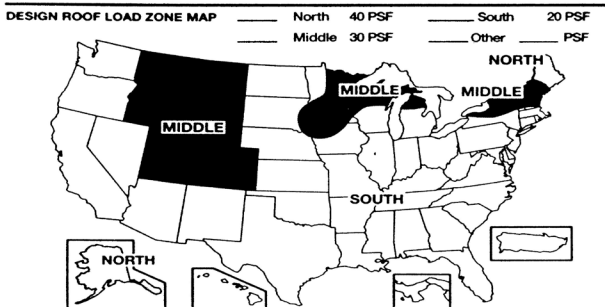
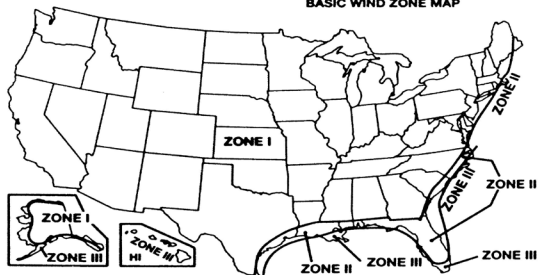
The factory installed equipment includes:

Equipment	Manufacturer	Model Designation
For heating	_____	_____
For air cooling	_____	_____
For cooking	_____	_____
Refrigerator	_____	_____
Water Heater	_____	_____
Washer	_____	_____
Clothes Dryer	_____	_____
Dishwasher	_____	_____
Garbage Disposal	_____	_____
Fireplace	_____	_____

HOME CONSTRUCTED FOR Zone I Zone II Zone III

This home has not been designed for the higher wind pressure and anchoring provisions required for ocean/coastal areas and should not be located within 1500' of the coastline in Wind Zones II and III, unless the home and its anchoring and foundation system have been designed for the increased requirements specified for Exposure D in ANSI/ASCE 7-88.

This home has _____ has not _____ been equipped with storm shutters or other protective coverings for windows and exterior door openings. For homes designed to be located in Wind Zones II and III, which have not been provided with shutters or equivalent covering devices, it is strongly recommended that the home be made ready to be equipped with these devices in accordance with the method recommended in manufacturers printed instructions.



COMFORT HEATING

This manufactured home has been thermally insulated to conform with the requirements of the federal manufactured home construction and safety standards for all locations within U/O value zone _____ (See map at bottom)

Heating equipment manufacturer and model (See list at left)

The above heating equipment has the capacity to maintain an average 70° F temperature in this home at outdoor temperatures of _____°F.

To maximize furnace operating economy, and to conserve energy, it is recommended that this home be installed where the outdoor winter design temperature (97.1/2%) is not higher than _____ degrees Fahrenheit.

The above information has been calculated assuming a maximum wind velocity of 15 mph at standard atmospheric pressure.

COMFORT COOLING

Air conditioner provided at factory (Alternate I)

Air conditioner manufacturer and model (see list at left)

Certified capacity _____ B.T.U./hour in accordance with the appropriate air conditioning and refrigeration institute standards.

The central air conditioning system provided in this home has been sized assuring an orientation of the front (hitch end) of the home facing _____. On this basis the system is designed to maintain an indoor temperature of 75° F when outdoor temperatures are _____°F dry bulb and _____°F wet bulb.

The temperature to which this home can be cooled will change depending upon the amount of exposure of the windows of this home to the sun's radiant heat. Therefore, the home's heat gains will vary dependent upon its orientation to the sun and any permanent shading provided. Information concerning the calculation of cooling loads at various locations, window exposures and shadings are provided in Chapter 22 of the 1989 edition of the ASHRAE Handbook of Fundamentals.

Information necessary to calculate cooling loads at various locations and orientations is provided in the special comfort cooling information provided with this home.

Air conditioner not provided at factory (Alternate II)

The air distribution system of this home is suitable for the installation of central air conditioning.

The supply air distribution system installed in this home is sized for a manufactured home central air conditioning system of up to _____ B.T.U./hr. rated capacity which are certified in accordance with the appropriate air conditioning and refrigeration institute standards, when the air circulators of such air conditioners are rated at 0.3 inch water column static pressure or greater for the cooling air delivered to the manufactured home supply air duct system.

Information necessary to calculate cooling loads at various locations and orientations is provided in the special comfort cooling information provided with this manufactured home.

Air conditioning not recommended (Alternate III)

The air distribution system of this home has not been designed in anticipation of its use with a central air conditioning system.

To determine the required capacity of equipment to cool a home efficiently and economically, a cooling load (heat gain) calculation is required. The cooling load is dependent on the orientation, location and the structure of the home. Central air conditioners operate most efficiently and provide the greatest comfort when their capacity closely approximates the calculated cooling load. Each home's air conditioner should be sized in accordance with Chapter 22 of the American Society of Heating, Refrigerating and Air Conditioning Engineers (ASHRAE) Handbook of Fundamentals 1989 edition, once the location and orientation are known.

INFORMATION PROVIDED BY THE MANUFACTURER NECESSARY TO CALCULATE SENSIBLE HEAT GAIN

Walls (without windows and doors) "U" _____

Ceilings and roofs of light color "U" _____

Ceilings and roofs of dark color "U" _____

Floors "U" _____

Air ducts in floor "U" _____

Air ducts in ceiling "U" _____

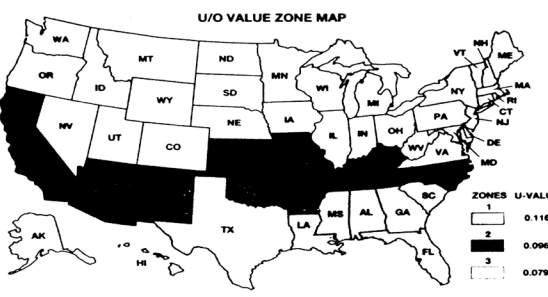
Air ducts installed outside the home "U" _____

The following are the duct areas in this home

Air ducts in floor sq ft _____

Air ducts in ceiling sq ft _____

Air ducts outside the home sq ft _____



SAMPLE COMFORT HEATING AND COOLING CERTIFICATE

(01-23-03) SPECIAL PN
Revised (09-23-09) PN 433

ATTACHMENT 9-B

THERMAL REQUIREMENTS FOR MANUFACTURED HOMES

BACKGROUND: The minimum thermal requirement for new manufactured homes acceptable to Rural Development is the Federal Manufactured Home Construction and Safety Standard (FMHCSS) Uo Value Zone(s) indicated on the Comfort Heating and Cooling Certificate for the following States:

NOTE: For a FMHCSS Uo Value Zone 1 or higher, higher means a FMHCSS Uo Value Zone 2 or 3. For a FMHCSS Uo Value Zone 2 or higher, higher means a FMHCSS Uo Value Zone 3. Also, Attachment 9-A is an example of a Data Plate containing the Comfort Heating and Cooling Certificate; however, the U/O Value Zone Map on the Certificate does not apply to Rural Development. Rural Development will continue to use Attachment 9-B.

FMHCSS Uo Value Zone 1 or higher is acceptable in the following states:
Alabama, Florida, Georgia, Hawaii, Louisiana, Mississippi, Puerto Rico, Texas, South Carolina, and Virgin Islands

FMHCSS Uo Value Zone 2 or higher is acceptable in the following states:
Arizona, Arkansas, California, Kansas, Kentucky, Missouri, New Mexico, North Carolina, Oklahoma, and Tennessee

FMHCSS Uo Value Zone 3 or higher is acceptable in the following states:
Alaska, Colorado, Connecticut, Delaware, Idaho, Illinois, Indiana, Iowa, Maine, Maryland, Massachusetts, Michigan, Minnesota, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New York, North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island, South Dakota, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming

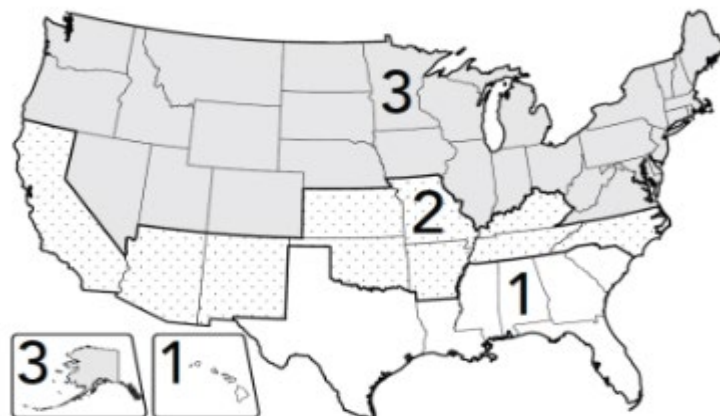


Figure III.1 U_o Zones in the HUD Code

**ATTACHMENT 9-C
CONDOMINIUM QUESTIONNAIRE**

Project Name and Address:		
Documents that are needed to complete this questionnaire are as follows:		
<ul style="list-style-type: none"> Y Recorded covenants, conditions and restrictions (CC&Rs)/Declaration/Master Deed; Y Articles of Incorporation (Articles of Association or Condominium Trust); Y Bylaws; Y Current year's budget, and current balance sheet (less than 90 days old); Y Prior fiscal year-end financial statement(s) Y Minutes of last two (2) Homeowner Associations meetings; Y Condominium association master insurance policy (flood, liability, hazard insurance, fidelity bond). 		
Questions:	YES	NO
1. Does the condominium consist of 4 or more units?		
2. Have current and complete copies of the condominium project's legal documents been submitted for review?		
3. Has OGC determined that the condominium project complies with the requirements of the enabling statute and all applicable state and local laws?		
4. When required by state or local laws, has the "Condominium Resale Certificate" been provided to the buyer?		
5. Has OGC determined that the condominium project's legal documents preserve the rights and lien position of the Agency?		
6. Has control of the owners' association been turned over to the unit owners?		
7. Is the owners' association currently involved in any litigation?		
8. If the condominium project is on a leasehold, does the underlying lease provide a term that is equal to or greater than the life of the loan?		
9. Is the project professionally managed?		

Questions:	YES	NO
10. Does the project contain commercial or non-residential space?		
11. Did the owners' association provide a current copy of the financial statement (audited financial statement if the project contains 10 or more units)?		
12. Are the reserve funds clearly separate from the operating funds?		
13. Is the reserve account funded at a level that is sufficient to meet planned expenses and ongoing maintenance of the condominium project, without assessing additional fees to the unit owners? (Funding of replacement reserves for capital expenditures and deferred maintenance should be at least 10% of the budgeted income.)		
14. Are more than 15% of the unit owners more than 1 month delinquent in payment of homeowners' association dues or assessments?		
15. Are at least 70% of the units sold?		
16. Are the common elements of the project well maintained?		
17. Does the owners association have adequate insurance coverage for the project and common elements? (i.e. - hazard insurance must cover 100% of the replacement cost)		

Comments: (Responses in any of the shaded boxes require explanation if approval is recommended)

Recommendation: The project has been reviewed and the unit (check one) is is not acceptable for Agency financing.

 SIGNATURE OF REVIEWER

 TITLE

 DATE OF INSPECTION

 SIGNATURE OF STATE DIRECTOR

 DATE OF INSPECTION
