

## **Some Recommendations for a Successful Closing**

### **Joint OGC/ABA Program on Multifamily Loan Origination From Conception to Closing May 23, 2007**

#### **1. Find the Correct Checklist and Follow it**

- a. Located in Appendix 12 of the MAP Guide or contact local office
- b. Ensure that ALL documents on the checklist are submitted together as deficiencies and partial submissions cause delays

#### **2. Common Problems**

- a. DO NOT AMEND HUD FORMS and bring any proposed amendments to the attention of the local office as soon as possible
- b. Variations in Legal Descriptions
  - i. It is very, very common for there to be discrepancies in the legal descriptions within the closing documents. You should ensure that all legal descriptions are an exact match (pay particular attention to the survey and title work). Any discrepancies should be investigated and corrected immediately.
  - ii. It is of key importance that all legal descriptions match because this is the parcel of property HUD is insuring.
- c. Ensure Owner's/Lender's Names is used consistently throughout closing documents
  - i. Make sure the correct entity is indicated. (Often with similar entity names it is easy to make a mistake).
- d. Organizational Documents
  - i. Ensure that you include the required HUD provisions within the Articles of Incorporation/Articles of Organization
    - 1. See MAP Guide, Chapter 12.1.4 (F) – follow the provision for each type of entity.
  - ii. Ensure that you will have a certificate of good standing/continued existence dated within 30 days of closing
  - iii. Ensure that the representative named in the resolution as who can sign closing documents is the individual that comes to the closing to sign on behalf of the mortgagor.
- e. Title Work
  - i. Carefully follow the MAP Guide – see 12.1.4 (D)(4)

1. NOTE: the MAP Guide indicates that an 1997 ALTA Policy is required, but it is actually an **ALTA 1992** policy that is required
2. Common problems
  - a. Ensure you submit a pro-forma LENDER'S policy for review (you should not be submitting an OWNER'S policy)
  - b. Ensure that the pro-forma shows the mortgage/deed of trust in schedule A in a first lien position. The regulatory agreement should also be listed on the schedule A and the policy should specifically note that the regulatory agreement is incorporated into the mortgage/deed of trust
  - c. Ensure that all underlying title exception documents are submitted for HUD review, both recorded and proposed to be recorded.
  - d. Secondary Financing
    - i. Any underlying secondary financing should be discussed with HUD and HUD counsel as early as possible documents
- f. The Note
  - i. Ensure that any proposed pre-payment provisions follow the rules within the MAP Guide – 12.1.4. (H)(2).
- g. Mortgage/Deed of Trust
  - i. Ensure that you are using the correct state form – contact local counsel if you are unsure
- h. Regulatory Agreement
  - i. In paragraph 2, you must insert the monthly payment to the reserve for replacement. The yearly amount is found in the commitment; make sure you divide the yearly amount in the firm commitment by 12 so that you come up with the correct monthly amount.
- i. Survey
  - i. Ensure that all exceptions to title are listed/depicted on the survey. (Note: these should be an exact match to the exceptions in the title policy).
  - ii. Ensure that the legal description is an exact match to all other legal descriptions in the documents – including the title policy.
  - iii. Ensure that the current surveyor's certification is on the survey – note: this was recently updated – see the model certification on the surveyor's report – Form HUD 92457.

- iv. If there is any type of easement running under the building, notify HUD immediately so that we can work with you to evaluate the situation.
  - v. HUD needs to receive the title/survey and exception documents at the same time to ensure an adequate review.
- j. Opinion by Counsel
- i. Do not modify the language.
  - ii. A red-lined version helps speed review.
  - iii. If an item is not applicable, simply note that but do not delete it, as re-numbering will make it harder to track the rest of the opinion
    - l. i.e.
      - a. 20. N/A or
      - b. 20. Intentionally deleted
- k. Mortgagee's Certification
- i. This must be carefully reviewed and completed – ensure all numbers are an exact match to what HUD has approved. All funds should be documented on this form.
- l. At Final Closing
- i. Ensure that both the mortgagor and mortgagee submit a Certification for Contracts, Grants, Loans and Cooperative Agreements (Byrd Amendment).