

## 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 \$400 fee for each dwelling for which a conditional commitment is requested. 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, 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.
- **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.
- **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.
- **Dwelling requirements.** If the dwelling is to be constructed or substantially rehabilitated, it must meet the requirements listed in Section 2 of Chapter 5. If it is a new manufactured home, it must meet the requirements of Paragraph 9.19.



## 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.

## 9.5 PRELIMINARY APPROVAL

In general, the Loan Originator must review the application materials and visit the site for which a commitment is requested within 7 days of receiving a completed application. During the site visit, 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 completing the site visit, 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.

### A. Rejecting the Application for Conditional Commitment

If any of the requirements outlined in Paragraph 9.4 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 CSC 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).

### **B. Ordering an Appraisal**

If the site visit and document review indicate that all of the requirements outlined in Paragraph 9.4 can be met, an appraisal should be ordered in accordance with the guidelines set forth in Paragraph 5.17. Because the application fee cannot be refunded after the appraisal is conducted, the appraisal should never be ordered until the site visit and document review are complete.

## **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 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 both the property's appraised value and 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 alter the value of a property, a revised appraisal report (to be paid for by the conditional commitment contractor) should be ordered, and *Form RD 1944-11, Conditional Commitment*, should be revised based upon the 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 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 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.

### 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 in a building, 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 the Department of Housing and Urban Development (HUD), the Federal National Mortgage Association (Fannie Mae), Federal Home Loan Mortgage Corporation (Freddie Mac) or the 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 [www.hud.gov](http://www.hud.gov) and a list of Fannie Mae approved projects can be found on their website at [www.efanniemae.com](http://www.efanniemae.com). Freddie Mac does not currently publish a list of approved projects on their website.

### **C. Rural Development Acceptance of a Condominium Project**

In recent years, condominium approval entities have been relying on individual lenders to review condominium documentation and self certify that the project meets the appropriate requirements. For condominium projects that the Loan Originator is unable to verify prior approval by one of the entities listed in paragraph 9.13 (B), Rural Development will conduct a review of the project to determine if a unit is eligible for Agency financing. The review will be conducted by completing Attachment 9-C, "Condominium Questionnaire", and will consist of acceptability of the structure, site and location, financial stability of the owners association and OGC approval of the condominium legal documents. The Condominium Questionnaire must be filed in position 3 of the applicant's file and may be used to document approval for additional request in the same project if the initial review is less than 12 months old.

### **D. 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.

- The condominium project must have been created under and must fully comply with the requirements of the condominium enabling statute, and all other applicable laws of the jurisdiction where the condominium project is located. If state or local laws require the Condominium Association to provide the buyer a "Condominium Resale Certificate", a copy of the certificate must also be provided to Rural Development prior to loan approval. The Certificate must include the most current copy of the association legal documents and audited financial statement from the association's independent accountant. For smaller projects that contain less than 10 units, an audited financial statement is only required when it is a requirement by the constituent documents.
- The Condominium Association must provide minutes of the last two association meetings. The minutes should be reviewed to determine if there are any items of concerns, i.e., the operating balance is less than outstanding bills, there is a possibility of additional assessments, and there is property management or maintenance issues. In addition, a statement of the annual operating budget and reserve account balance must be provided. There must be adequate reserves for repair or replacement of common areas. The reserve funds must be clearly separate from the operating funds and the balance must be funded at a level that is sufficient to meet planned expenses and ongoing maintenance of the project without assessing additional fees to the unit owners.



## Paragraph 9.13 Loans for Condominium Units [7 CFR 3550.71]

- For existing projects, the project, including all common elements and amenities, must be complete and all amenities must be covered by the mortgage, at least to the same extent as the common elements. To be considered an existing project, construction of all phases and common elements must be complete and control of the owners association must have been turned over to the unit owners for at least 12 months.
- Projects that are under construction must be complete prior to loan approval. However, if the project is being constructed in legal phases a loan may be approved on a phase-by-phase basis provided: (1) the developer submits a development plan which shows the total number of units, common elements and all planned amenities; (2) there is a reasonable expectation that the developer will complete the project as planned; (3) the amenities and common elements (for the project) in the initial phase are completed or escrowed at 150 percent at loan closing; and (4) each phase meets the presale and owner occupancy requirements.
- For projects that are under construction or construction is proposed, the developer must provide a one year construction warranty. The warranty must provide that the contractor will correct any defects due to faulty materials or workmanship for the entire project and for the individual condominium unit.
- If the condominium project is on a leasehold, the underlying lease must provide adequate security of tenure.
- 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 or Freddie Mac, such as condominium hotels, timeshares or houseboats, are not eligible for Agency financing.

## **E. 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;

## Paragraph 9.13 Loans for Condominium Units [7 CFR 3550.71]

- 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.
- 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.

**F. 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.

**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.

**A. Definition**

A community land trust is defined as a private nonprofit community housing development organization that:

- Is organized under State or local laws;
- Has no part of its net earnings benefiting any member, founder, contributor, or individual;
- Complies with standards of financial accountability;

- Has among its purposes significant activities related to the provision of decent housing that is affordable to low- and moderate-income people;
- Maintains, 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;
- Has 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. When such restrictions apply, the requirements listed below must be met.

## Paragraph 9.14 Loans for Units in a Community Land Trust

- The borrower must be permitted to recover at least the original purchase price, sales commission, and cost of capital improvements when the borrower sells the property.
- The borrower must be permitted to recover a reasonable amount of appreciation as determined by the Agency. 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).

Any option price must allow the borrower to recover the borrower's investment plus a reasonable share of appreciation.

### **E. Payment Subsidy Recapture**

The borrower's ability to repay payment subsidies may be affected by the resale restrictions of the community land trust. 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.

### **F. Appraisals**

A property located on a site owned by a community land trust must be appraised as a leasehold interest.

## **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 Condominiums (which must also meet the requirements of paragraph 9.13 of this Handbook), Town homes or Detached Single Family Homes that are served by a homeowners' association.

### **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;
- 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 and site, unless the property is already financed with a Section 502 loan or is Agency REO property;
- 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).
- 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**

No loans will be made on a manufactured home sold or serviced by any entity that is not an approved dealer-contractor. Once the applicant has submitted the name of the selected dealer-contractor, the Loan Originator should check the State Office's list of approved dealer-contractors. If the dealer-contractor is approved, the Loan Originator should notify the applicant of what information must be submitted to the Agency for review and approval.

If the dealer-contractor is not approved, the Loan Originator should offer the applicant the opportunity to select another dealer-contractor who is on the approved list, or to request that the Loan Originator inform the dealer-contractor about the Agency's procedures for approval.

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 lists the FMHCSS Uo Value Zones for each state, by county, 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.



## Paragraph 9.17 Dealer-Contractor Requirements

An entity may apply to become an approved dealer-contractor by submitting *Form RD 1944-5, Manufactured Housing Dealer-Contractor Application*, credit reports and supplementary data sources, such as financial statements and tax returns should be used to verify or determine employment, income, held assets and credit history. An entity that owns multiple locations within a state, and will be responsible for meeting all of the Agency requirements for each branch location listed on the application needs only submit one application. The entity must identify sales personnel, sales area, and number of branches as well as the addresses of all branch locations to be covered by the individual application. Independent retailers of manufactured homes are required to obtain individual approval in their company name. To qualify to participate, 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 evaluation of applications for dealer-contractor status involves a joint effort by Loan Originators, Loan Approval Officials, and State Directors.

When evaluating these applications, the Loan Originator should perform the following tasks.

- Maintain an operational file for each dealer-contractor who submits *Form RD 1944-5* and a certified financial statement.
- Obtain a commercial credit report on the firm and consumer credit reports on each of the principals through the appropriate Regional Coordinator assigned to order Dun & Bradstreet reports. Do not use UniFi to order individual reports.
- Make direct checks on trade and bank references and check with the local Better Business Bureau.
- Inspect the dealer's place of business to determine its permanency and the adequacy of available equipment.
- Obtain copies of brochures, descriptive literature, guarantees, sales contracts, and price lists.

- Determine that the dealer-contractor has the necessary equipment and experience to perform or subcontract all site development work. If the firm uses subcontractors, obtain the names of the subcontractors and their qualifications. A field inspection of recently-developed sites and set-ups is desirable in determining whether the dealer-contractor has the necessary experience.
- Carefully analyze the collected information to determine if the dealer-contractor is able to provide the full service of sales, service, erection, and warranty of manufactured units and developing sites for them. Based on this analysis, the Loan
- Originator should develop a recommendation with supporting documentation as to whether or not the dealer-contractor is acceptable.
- If necessary, the Loan Originator should maintain a complaint file to establish a basis for limiting future business with the dealer-contractor.

The Loan Approval Official should review the Loan Originator's recommendations and forward them, with any additional comments, to the State Director for review.

The State Director will make the decision on the dealer-contractor's acceptability and, if applicable, issue a letter of acceptance. The State Director also will issue a list of acceptable dealer-contractors in the State. The list of dealer-contractors should include only acceptable dealer-contractors that are active. Active is defined as a dealer-contractor who has sold a manufactured home within the last two years that was financed by a Rural Development direct or guaranteed loan borrower. Dealer-contractors that have not been active in a two year period may be removed from the active list of approved dealer-contractors. If the State Director determines that the dealer-contractor is not acceptable, appeal rights will be granted. Any dealer-contractor determined to be unacceptable may reapply for acceptance at any time the dealer-contractor has reason to believe the conditions leading to the determination have been removed.

## **9.18 PROCESSING PROCEDURES**

### **A. 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, Exhibit C;



## Paragraph 9.18 Processing Procedures

- 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 FD 1924-25;
- 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.

The appraiser will use Marshall and Swift cost data for average-construction manufactured housing to determine the appraised value using the cost approach. The National Office may authorize the use of an alternate cost method. For more information on appraisals, see Section 5 of Chapter 5.



### **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 unit must meet the requirements for new dwellings contained in Section 2 of Chapter 5 and 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 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, site development and set up must conform to Exhibit J of RD Instruction 1924-A, and the environmental requirements of RD Instruction 1940-G 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.

### 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 manufacturer's 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.



## ATTACHMENT 9-A

### SAMPLE COMFORT HEATING AND COOLING CERTIFICATE

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(This attachment is available as a pdf document only. Go to the RD Intranet site (<http://teamrd.usda.gov>) and click on **Doc Library**. Scroll down under **Document Libraries** and click on **Rural Housing (CP, MFH, SFH, PSS)**. Then click on **Handbooks** and **Subject: HB-1-3550 Direct Single Family Housing Field Office Handbook.**)

**ATTACHMENT 9-B**

**RURAL DEVELOPMENT**

**THERMAL REQUIREMENTS**  
**FOR**  
**MANUFACTURED HOMES**

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(This attachment is available as a pdf document only. Go to the RD Intranet site (<http://teamrd.usda.gov>) and click on **Doc Library**. Scroll down under **Document Libraries** and click on **Rural Housing (CP, MFH, SFH, PSS)**. Then click on **Handbooks** and **Subject: HB-1-3550 Direct Single Family Housing Field Office Handbook.**)

**ATTACHMENT 9-C**

**CONDOMINIUM QUESTIONNAIRE**

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<p><b>Documents that are needed to complete this questionnaire are as follows:          Declaration or any other document which creates the condominium project; by-laws; code of regulations; and other equivalent documents; Statement of annual operating budget and reserve account balance; minutes of last two Homeowner Association meetings; and condominium association master insurance policy.</b></p>		
<p><b>Project Name and Address:</b></p>		
<b>Questions:</b>	<b>YES</b>	<b>NO</b>
1. Does the condominium project consist of 4 or more units?		
2. Have current and complete copies of the condominium project 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 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?		
10. Did the owners' association provide a current copy of the financial statement (audited financial statement if the project contains 10 or more units)?		
11. Are the reserve funds clearly separate from the operating funds?		
12. Is the reserve account funded at a level that is sufficient to meet planned expense and ongoing maintenance of the condominium project without assessing additional fees to the unit owners?		
13. Are more than 15% of the unit owners more than 1 month delinquent in payment of homeowners' association dues or assessments?		
14. Are at least 70% of the units sold?		
15. Are the common elements of the project well maintained?		
16. Does the owners association have adequate insurance coverage for the project and common elements?		

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

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Recommendation:

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

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SIGNATURE OF REVIEWER                      TITLE                      DATE OF INSPECTION

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