

CHAPTER 7

MONITORING CONDOMINIUM BULK SALES

7.1 OVERVIEW

Some agencies may have condominiums that were sold to buyers under a **Condominium Bulk Sale LURA**. These properties may be operated as rental units, subject to the compliance obligations of other AHP rental properties, or they may be sold to individual buyers, subject to certain limitations. Agencies must monitor condominium units in both rental use and as resold.

Many condominium bulk purchases will include **only a Total Set-Aside**, and not a VLI Set-Aside. In such cases, agencies need only monitor owner compliance with the Total Set-Aside.

It is important that agencies and owners understand that no units – including unrestricted units -- may be sold without a release from the Condominium Bulk Sale LURA by the monitoring agency as described in this Chapter.

7.2 MONITORING RENTAL OF BULK SALE CONDOMINIUM UNITS

Bulk sales of condominium units result in a group of dwelling units that may be available for rental for any portion of the compliance period. When rented, these units are governed by occupancy requirements and rent restrictions comparable to AHP multifamily rental properties. Agencies can treat the condominium units in a bulk purchase as they would a multifamily rental property, following the procedures presented in earlier chapters of this Manual.

The principal monitoring activities are:

- ◇ Providing owners with compliance materials;
- ◇ Initiating compliance reporting and establishing a monitoring file;
- ◇ Monitoring pre-compliance performance;
- ◇ Reviewing annual reports once full compliance is attained;
- ◇ Performing periodic on-site reviews;
- ◇ Taking enforcement actions in cases of non-compliance;
- ◇ Collecting annual monitoring fee; and
- ◇ Maintaining property monitoring files and reporting to FDIC.

7.3 SALE OF CONDOMINIUMS TO INDIVIDUAL HOMEBUYERS

Owners eventually may sell some or all of the condominium units in these purchases to individual homebuyers. The LURA for bulk condominium purchases establishes a specific number of units that must be set-aside for Low Income households, either for rental or ownership. When units are sold, the same Set-Aside number must go to Low Income homebuyers. Owners may sell units one at a time, subject to the release conditions noted below. Owners are encouraged, but not required, to sell units to LI buyers before selling the remaining units in the purchase.

Conditions of Condominium Resales to Homebuyers

- ◆ **Low Income (LI) Sales Requirement.** Owners may sell units not needed to meet the Total Set-Aside to buyers of any income. All other sales must be to income eligible LI or VLI households.
- ◆ **Certification from LI Buyers.** Owners must obtain a written income certification from LI (or VLI, if applicable) buyers documenting that their annual (gross) income. The buyer's income must be verified by the owner following Chapter 4 the Owner's Manual, and certified as eligible. Appendix M contains the Homebuyer Income Certification (HIC) form and instructions.
- ◆ **LURA for LI Sales.** LI buyers must execute a LURA (see Appendix N) establishing that the purchaser will retain ownership of the unit for a period of at least 12 months after the date of sale, or FDIC will recapture profits from any resale of the unit before the end of this 12-month period.
- ◆ **Price Not Restricted for LI Sales.** There is no ceiling on the price an owner can charge LI buyers for a unit. The unit need only be purchased by an income-eligible buyer, and affordability is determined by the underwriting standards of the lender(s).
- ◆ **Notice to Agency of Unit Sales.** Owners must notify the monitoring agency of all pending unit sales, provide a copy of the sales contract for each unit sold, submit income documentation if an eligible LI buyer, and prepare a listing of the remaining units held by the owner, indicating the units that are QUs or held available for rental by Low Income tenants.
- ◆ **Release from Condominium Bulk Sale LURA.** For each unit sold, the owner should request that the agency execute a release for that unit from the provisions of the Condominium Bulk Sale LURA.
- ◆ **Pay Processing Fee to Agency** Owners must pay the monitoring agency a reasonable fee for processing recapture LURAs and requests to release unrestricted units from the Condominium Bulk Sale LURA.

In addition to these AHP requirements, bulk purchasers must comply with all applicable Federal, state and local laws when reselling condominium units to individual homebuyers.

7.4 MONITORING CONDOMINIUM SALES

Agencies must monitor owner compliance with the LI resale provisions of the Condominium Bulk Sale LURA as well as the affordability requirements governing the rental of these units.

A. Procedures for Processing Low Income Unit Sales

When an owner notifies an agency of the anticipated sale of a unit to a LI (or VLI, as applicable) household, the owner must provide the agency with:

1. a completed Homebuyer Income Certification (HIC) establishing that the buyer is an income-eligible household;
2. a copy of the signed sales contract with the purchaser;
3. a completed AHP Recapture LURA, signed by the owner and buyer; and
4. payment of any processing fee required by the agency.

These items are necessary to confirm that the unit will be sold to an income eligible buyer. Monitoring staff must review the items submitted to assure that:

- ◇ the homebuyer is an income eligible purchaser;
- ◇ the owner has accepted the purchaser's offer; and
- ◇ the owner and buyer have properly executed the LURA.

If each of the items has been properly prepared and the proposed buyer meets the applicable income limits, the agency should sign the AHP Recapture LURA on behalf of FDIC and forward the executed document to the closing agent for the sale. The agency should instruct the closing agent to transmit a copy of the recorded Recapture LURA to the agency for its records. Once the Recapture LURA has been recorded properly, the unit may be formally released from the requirements of the Condominium Bulk Sale LURA as noted below.

B. Sales of Unrestricted Units

When owners sell units to buyers who do not qualify as LI or VLI purchasers, agencies must confirm that the required number of QUs are being maintained. Owners must submit:

1. a request for a release from the LURA for the unrestricted unit to be sold;
2. a list of the remaining units under their control at the time they notify the agency of the proposed sale; and
3. payment of any processing fee required by the agency.

Before preparing a release, the agency must review the list of units remaining to determine if the number of QUs and vacant units held available for Qualified Tenants is sufficient to meet the Total Set-Aside in the Condominium Bulk Sale LURA.¹

Precondition For Sale of Unrestricted Units				
Number of QUs	+	Number of Vacant Units	≥	Total Set-Aside

If the owner has the necessary units to meet the occupancy requirements and has paid the proper processing fee to the monitoring agency, the agency should prepare a release from the Condominium Bulk Sale LURA for the units to be sold. If an owner is out of compliance with the occupancy requirements, the agency should not execute a release and should follow the procedures in Chapter 4 to compel the owner to restore compliance.

C. Changes in the Rental Set-Aside

When units are sold to qualified LI or VLI buyers, the number of remaining units that must be held available for rental to LI (or VLI, as applicable) households is reduced by the number of units sold.

¹ If a bulk purchase must also meet a VLI Set-Aside, the number of LI and VLI QUs together with the number of vacant units must satisfy the Total Set-Aside. In addition, the number of VLI QUs and the number of vacant units must meet the VLI Set-Aside.

Once the agency receives a copy of the recorded Recapture LURA from the closing agent, the agency must amend the Condominium Bulk Sale LURA to reduce the required number of QUs and update its monitoring file to reflect the revised number of restricted rental units. Copies of all amended documents should be sent to the owner/manager.

When an unrestricted unit is sold, it is released from the Bulk Sale LURA, but the Set-Aside requirements are not reduced.

7.5 FEES AND ADMINISTRATIVE REQUIREMENTS

A. Annual Monitoring Fee

The annual monitoring fee is determined by the same method used for multifamily rental properties. The additional administrative fee for non-compliance is also set in the same way. These fees are based on the number of units in the Total Set-Aside for the Bulk Purchase.

B. Processing Fee for Release from LURA

Agencies may also charge owners a reasonable fee for processing Recapture LURAs and requests to release unrestricted units from the provisions of the Condominium Bulk Sale LURA. Such a fee should be paid when the owner notifies the agency of a proposed sale and submits a Recapture LURA for review or requests a release of an unrestricted unit.

FDIC recommends that each agency establish a fee per unit released that will remain in effect during the current monitoring fee period. Monitoring staff could advise owners of revisions to the fee when sending the monitoring fee invoice for the coming period.

C. Administrative Requirements

As part of the agency's annual monitoring report to FDIC, monitoring staff should include the agency's monitoring activities of condominium bulk sales and attach a listing of both the total units and the number of LI units reported as sold during the year.