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Mortgagee Informational Bulletin #15

The Detroit Multifamily Hub has implemented this informational bulletin to keep mortgagees up to date with changes or news from our Hub relating to development issues. We're happy to cover any issues in the bulletin on which you have questions; the bulletins are issued on an as-needed basis.

Zoning Ordinance or Law Coverage

The Detroit Hub has seen several deals recently where the projects are considered to be a legal non-conforming use under local zoning and use regulations. If a project is deemed to be a legal non-conforming use, as should be detailed in the required "zoning letter," then owners must provide a "law and ordinance" endorsement to the hazard insurance policy that fully insures against loss due to the operation of the applicable zoning ordinance which includes (1) law and ordinance coverage; (2) increased cost of construction and (3) demolition endorsements. The amount of coverage must be at least equal to the amount required by HUD on the Property Insurance Schedule (FHA form 92329).

Non-Critical Repair Escrows

The Detroit Hub has noticed that many of the projects that have closed with a Non-Critical Repair Escrow are not completing the required work within the 12 months allotted under the Escrow Agreement. In fact, there is a trend where repairs are actually taking nearly double the time to get accomplished. The Lender is responsible for monitoring construction progress to ensure repairs are timely made. HUD will contact the Lender when we become aware the repairs are not completed per the Escrow Agreement and ask for a plan and timeframe to get the repair work completed.

Concept Meetings – Student Housing

In Mortgagee Informational Bulletin Number 14, the Detroit Hub noted that Mortgagee Letter 10-21, HUD Multifamily Risk Mitigation, requires new project concept meetings with HUD for all 220, 221(d)(3), 221(d)(4), 231 and 241(a) projects before submitting either a pre-application or direct to firm application. The Mortgagee Letter further notes that concept meetings are not required but are strongly encouraged for Section 223(f) projects. Mortgagee Information Bulletin 14 stated that the Detroit Hub requires concept meetings for Section 223(f) deals only if the subject project is located in a declining market area, has occupancy issues or some other issue that the lender deems warrants a concept meeting. To further expand upon this, the Detroit Hub has started seeing deals that may be considered "student housing." Per Chapter 3 of the MAP Guide:

Projects financed with insured mortgages cannot be designed for student occupancy (e.g. 4 bedroom units with 4 baths). Students and families are eligible occupants for family housing financed with mortgage insurance. However, project mortgages in college areas must be underwritten at comparable rents for family housing in the area. Loans cannot be underwritten with rental rates assuming multiple student occupants which would result in a processing rent higher than a typical family apartment.

Therefore, prior to submitting an application for a project located in a college or university area with a significant student population, please schedule a concept meeting prior to submission of an application for FHA mortgage insurance.

Non-Critical Repairs Completed Prior to Closing

The Detroit Hub has noticed that several project owners have completed the non-critical repairs noted in the FHA commitment prior to closing. In the event an owner elects to complete non-critical repairs prior to closing, HUD will only reduce the repair escrow if a HUD Construction Analyst is able to visit the site and verify the completion of the non-critical repairs. Keep in mind, due to workload volume and having only two Construction Analysts on staff, this may not always be possible. In the case where a Construction Analyst is unable to verify completion of non-critical repairs, the entire amount will be escrowed and drawn down post closing using the normal draw procedure. If a Construction Analyst is able to verify completion of non-critical repairs prior to closing, HUD may reduce the non-critical repair escrow accordingly; however, the 2.5% required as a latent defects escrow will be maintained for 15 months after closing.

Electronic Submission of Applications and Draft Closing Dockets

Just a reminder that Mortgagee Informational Bulletin Number 9 (copy attached) details the procedures to be used when submitting electronic versions of applications and draft closing dockets. While not mandatory, the Detroit Hub encourages the use of electronic submissions because it is better for the environment and results in the use of less paper. Also, please keep in mind that any hard copies of the draft closing dockets must be submitted bound and tabbed. The Detroit Hub has received several recent submissions of draft closing dockets that were either loose or not tabbed. Any future submissions that are not bound and tabbed will be returned to the lender for correction.

Closing Matters

The Detroit Hub's Closing Coordinator is requesting that when the lender submits a regulatory or use agreement for HUD signature prior to closing for pre-recording purposes, at that same time it is helpful to also get HUD's signature on the Agreement and Certification, Escrow Agreements and any other document that requires HUD's signature (other than the Mortgage Note) in order to save time and make for a more efficient closing.