

§ 235.221

units. Sections 235.230 and 235.235 contain the comparable provisions applicable to mortgages involving condominium units.

[41 FR 1176, Jan. 6, 1976, as amended at 42 FR 29306, June 8, 1977]

SPECIAL PROVISIONS APPLICABLE ONLY TO MORTGAGES INVOLVING CONDOMINIUM UNITS

§ 235.221 Waived title objections.

(a) General provisions. All of the provisions of §203.389 of this chapter (relating to the waiver by the Secretary of objections to title) shall apply to mortgages insured under this subpart, with the exception of mortgages involving condominium units.

(b) Provisions applicable to condominiums. Where the mortgage involves a condominium unit, the Secretary shall not object to title by reason of the following matters:

(1) Violations of a restriction based on race, color or creed, even where such restriction provides for a penalty of reversion or forfeiture of title or a lien for liquidated damage.

(2) Easements for public utilities along one or more of the property lines, provided the exercise of the rights thereunder do not interfere with any of the buildings or improvements located on the subject property.

(3) Encroachments on the subject property by improvements on adjoining property, provided such encroachments do not interfere with the use of any improvements on the subject property.

(4) Variations between the length of the subject property lines as shown on the application for insurance and as shown by the record or possession lines, provided such variations do not interfere with the use of any of the improvements on the subject property.

(5) Customary buildings or use restrictions for breach of which there is no reversion and which have not been violated to a material extent.

(6) Federal tax liens and rights of redemption arising therefrom if the following conditions are observed. If the mortgagee acquired the property by foreclosure the mortgagee shall give notice to the Internal Revenue Service (IRS) of the foreclosure action. The Commissioner will not object to an

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outstanding right of redemption in IRS if (i) the Federal tax lien was perfected subsequent to the date of the mortgage lien, and (ii) the mortgagee has bid an amount sufficient to make the mortgagee whole if the property is in fact redeemed by the IRS.

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§ 235.225 Changes in plan of apartment ownership.

The mortgagee shall notify the Secretary of any change in the plan of apartment ownership and in the administration of the property. Such notification shall be given either at the time of the conveyance of the property or at the time of the assignment of the mortgage. Any change in such plan shall require approval by the Secretary.

§ 235.230 Condition of multifamily structure.

(a) When a family unit is conveyed or a mortgage is assigned to the Secretary, the family unit and the common areas and facilities (including restricted common areas and facilities) designated for the particular unit shall be undamaged by fire, flood, earthquake, tornado, or boiler explosion, or, as to mortgages insured on or after June 8, 1977, due to failure of the mortgagee to take action as required by §203.377. If the property has been damaged, either of the following actions shall be taken:

(1) The property may be repaired prior to its conveyance or prior to the assignment of the mortgage to the Secretary.

(2) With the prior approval of the Secretary, the property may be conveyed or the mortgage assigned to the Secretary without repairing the damage. In such instances, the Secretary shall deduct from the insurance benefits either his estimate of the decrease in value of the family unit or the amount of any insurance recovery received by the mortgagee, whichever amount is the greater.

(b) If the property has been damaged by fire and such property was not covered by fire insurance at the time of

the damage, the mortgagee may convey the property or assign the mortgage to the Secretary without deduction from the insurance benefits for any loss occasioned by such fire if the following conditions are met:

(1) The property shall have been covered by fire insurance at the time the mortgage was insured.

(2) The fire insurance company shall have later canceled or refused to renew the policy.

(3) The mortgagee shall have notified the Secretary within 30 days (or within such further time as the Secretary may approve) of the cancellation of the fire insurance or of the refusal of the insuring company to renew the fire insurance. This notification shall have been accompanied by a certification of the mortgagee that diligent efforts were made, but it was unable to obtain fire insurance coverage at reasonably competitive rates and that it will continue its efforts to obtain adequate fire insurance coverage at competitive rates, including coverage under the FAIR Plan. A *reasonable rate* is a rate not more than 25 percent in excess of the rate or the advisory rate filed or used by the principal rating organization doing business in the state. If the property is located in a state which has no rate or advisory rate as provided in the preceding sentence, the mortgagee shall consult the Director of the local HUD office as to a reasonable rate. When hazard insurance coverage has been cancelled or renewal has been refused after the mortgage is insured, and other hazard insurance coverage cannot be obtained in an amount equal to the unpaid principal balance of the loan but insurance can be obtained in a reduced amount from a FAIR Plan or another insurance carrier, the Commissioner will accept the reduced coverage without reduction of mortgage insurance benefits, if the rates do not exceed the guidelines stated herein. If coverage in any amount is only available at rates in excess of a reasonable rate as defined herein, the mortgagor may but shall not be required to purchase such coverage. If coverage is purchased, the amount of any claim for insurance benefits under this part shall be reduced by the amount of any recov-

ery of hazard insurance benefits by the mortgagee.

(c) The mortgagee shall not be liable for damage to the property by waste in connection with mortgage insurance claims paid on or after July 2, 1968. However, the mortgagee shall be responsible for damage to or destruction of security properties on which the loans are in default and which properties are vacant or abandoned due to the mortgagee's failure to take reasonable action to inspect, protect and preserve such properties as required by § 203.377, as to all mortgages insured on or after January 1, 1977, but such responsibility shall not exceed the amount of its insurance claim as to a particular property.

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§ 235.235 Certificate or statement of condition.

The mortgagee shall either certify that as of the date of the filing of deed for record, or assignment of the mortgage to the Secretary, the property was (a) undamaged by fire, flood, earthquake, tornado, or boiler explosion, and (b) as to mortgages insured or for which commitments to insure are issued on or after June 8, 1977, undamaged due to failure of the mortgagee to take action as required by § 203.377 of this chapter, or its claim shall be accompanied by a statement describing any such damage that may still exist together with a copy of the Secretary's authorization to convey the property in damaged condition. In the absence of evidence to the contrary, the mortgagee's certificate or its statement as to damage shall be accepted by the Secretary as establishing the condition of the family unit and the common areas and facilities designated for the particular unit.

[42 FR 29306, June 8, 1977]

§ 235.240 Assessment of taxes.

When a family unit is conveyed to the Secretary or a mortgage is assigned to the Secretary, the unit shall be assessed and subject to assessment for taxes pertaining only to that unit.