

CHAPTER 13: SPECIAL PROPERTY TYPES

13.1 INTRODUCTION

This chapter describes the requirements for processing loans for special property situations. Section 1 of this Chapter deals with processing requirements for community land trusts, properties with restrictions on resale price, leasehold estates, Native American restricted land, and loans on Hawaiian Home Lands. Section 2 describes the specific processing requirements for loans made on manufactured homes. Section 3 outlines loan processing requirements for modular housing.

SECTION 1: SPECIAL FORMS OF OWNERSHIP

13.2 OVERVIEW

This section discusses processing requirements for guaranteed loans for dwellings that fall under special ownership types: Community land trusts, properties with restrictions on resale price, leasehold estates, Native American restricted land, and loans on Hawaiian Home Lands. Unless otherwise indicated in this section, the same basic requirements for loan guarantee approval discussed elsewhere in this Handbook applies to these loans.

13.3 LOANS FOR UNITS IN A COMMUNITY LAND TRUST [7 CFR 3555.206]

Loans to finance the purchase of dwellings located on land owned by a community land trust may be guaranteed if the conditions described in this paragraph are met, and if the applicants 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 owns and leases land at affordable prices. A community land trust sells the property improvements (i.e., buildings, streets, sewers) that normally increase the land's value, but leases the land under a long-term ground lease to low- and moderate-income households. The organization must:

- Be organized under State or local laws.
- Have no part of its net earnings benefiting any member, founder, contributor, or individual.

- Comply with financial accountability.
- Maintain, through significant representation on the organization's governing board, accountability to low-income community residents regarding decisions on the design, siting, development, and management of affordable housing.
- Have its corporate membership open to any adult resident of a geographic area specified in the by-laws of the organization.
- Be established to carry out all 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.
 - 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.

The lender must ensure that the lease contains provisions for continued use of the land for low- and moderate-income housing.

- The lender's mortgage file must contain documentation that the community land trust has received local market acceptance, as evidenced by market acceptance of comparable community land trust projects in the area.
- The lender must verify that the community land trust has broad-based community representation, and that the community land trust has a two-year record of providing affordable housing.

B. Protection of Lender Rights and Lien Position

The relevant legal documents must contain language that ensures all restrictions relating to community land trusts will automatically and permanently terminate upon foreclosure or lender 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 lender.

If the Lender acquires title to the home through foreclosure or acceptance of a deed in lieu of foreclosure, the Lender shall give the community land trust written notice of such acquisition and the community land trust shall then have an option to purchase the home from the Lender for the full amount owed to the Lender under the Mortgage.

To exercise this option to purchase, the community land trust must give written notice to the Lender of the community land trust's intent to purchase the home within thirty (30) days following the community land trust's receipt of the Lender's notice. The community land trust must then complete the purchase of the home within sixty (60) days of having given written notice of its intent to purchase. If the community land trust does not complete the purchase within this 60-day period, the Lender shall be free to sell the home to another entity.

C. Appraisals

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

D. Title Policy

The leasehold estate must constitute real property, be subject to the mortgage lien, and be insured by a title insurance policy. Refer to title insurance policy requirements outlined in Chapter 16 of this Handbook.

13.4 RESTRICTIONS ON RESALE PRICE

Restrictions on the resale price of the property or recapture of equity are permitted. A maximum sales price may be imposed or the sales proceeds due to the borrower may be limited, with any excess funds payable to a governmental body or nonprofit organization for reuse in a community land trust or to preserve long term affordability. When such restrictions apply, the requirements listed below must be met.

- 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.
- 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 zero, provided that within two years the homeowner would be permitted to retain 50 percent of the appreciation.

- The borrower must be permitted to recover a reasonable amount of appreciation, as determined by the lender. Appreciation is measured by the difference between the original purchase price and the actual price at which the property is resold.
- If the program sets a maximum sales price restriction, the borrower must be permitted to retain 100 percent of the appreciation.

A. Right of First Refusal

One method to ensure that housing remains part of an affordable housing program is 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 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 borrowers to recover their investment plus reasonable shares of appreciation.

13.5 LOANS ON LEASEHOLD ESTATES [7 CFR 3555.203(b)]

Loans to finance the purchase of dwellings located on a leasehold estate may be guaranteed if the conditions described in this paragraph are met, and the applicants and the property otherwise meet the requirements outlined in this Handbook.

A. Definition

A leasehold estate is the right to use and occupy real estate for a stated term and under certain conditions that have been conveyed by a lease. In most cases, improvements to real estate are purchased in fee simple, subject to ground rent. Rent is paid for the right to use and occupy the land.

The lender’s mortgage file must have documentation indicating the appropriate legal documents have been reviewed for compliance with Agency regulations.

B. Lease Requirements

Mortgages subject to leasehold estates must meet the following conditions:

- The mortgage must cover both property improvements and the leasehold interest in the land.
- The leasehold estate must constitute real property, be subject to the mortgage lien, and be insured by a title policy.
- The estate's term runs fifteen or more years beyond the maturity date of the loan closing, except in the case of properties located on Native American restricted land. See Section 13.6 for guidance regarding loans on Native American restricted land.
- The leasehold estate must be assignable or transferable.
- The lease cannot be terminated except for nonpayment of lease rents.

The lease must:

- Provide for lender notification of any default by the borrower and the option to cure the default.
- Provide that the borrower will pay taxes, insurance, and association dues (as applicable) on the land and retain voting rights in the association.
- Provide that the leasehold can be transferred, mortgaged, and sublet without restriction.
- State rental increases in exact dollar amounts.
- Be recorded and constitute an interest in real estate.
- Permit mortgaging of the leasehold.
- Provide for written notice of default.
- Provide renewal options for the leasehold mortgagee.

13.6 LOANS ON NATIVE AMERICAN RESTRICTED LAND

A. Definition

Native American restricted lands are lands in which title is held by the United States in trust for an Indian tribe or which is held by an Indian tribe or individual subject to a restriction by the United States against sale, transfer, or encumbrance.

B. Requirements

Trust or restricted land must remain in trust or restricted status. The mortgage, deed of trust, leasehold interest, or other security interest must be approved by the Secretary of the Interior. For loans to Native Americans on restricted or trust land, the lender must obtain:

- Evidence that the tribe has enacted legally binding and effective foreclosure procedures and will enforce those procedures upon notice of default from a lender.
- Evidence that the tribe has enacted legally binding and effective eviction procedures and will enforce those procedures upon notice of default from a lender.
- Evidence that the tribe has adopted procedures ensuring that the guaranteed loan will always have first lien priority (if applicable) and will be satisfied before all other property debts (with the exception of tribal taxes) or has adopted legislation requiring the tribe to follow state or local priority of lien procedures.
- A copy of the tribe's lease for use on residential land.
- The lender will adhere to the tribe's mortgage, foreclosure, and eviction procedures.
- The mortgage must cover both property improvements and the leasehold interest in the land.
- The leasehold estate must constitute real property, be subject to the mortgage lien, and be insured by a title policy.
- The leasehold estate must be assignable or transferable.
- The lease cannot be terminated except for nonpayment of lease rents.

The lease must:

- Have an unexpired term at least equal to the term of the loan. Leases for a period of 25 years, renewable for a second 25 years are permissible.
- Provide for lender notification of any default by the borrower and the option to cure the default.
- Provide that the borrower will pay taxes, insurance, and association dues (as applicable) on the land and retain voting rights in the association.
- Provide that the leasehold can be transferred, mortgaged, and sublet without restriction.
- State rental increases in exact dollar amounts.
- Be recorded and constitute an interest in real estate.
- Permit mortgaging of the leasehold.
- Provide for written notice of default.
- Provide renewal options for the leasehold mortgagee.

13.7 LOANS ON HAWAIIAN HOME LANDS

A. Definition.

Hawaiian Home Lands consists of property owned by the State of Hawaii, Department of Hawaiian Home Lands (DHHL) and held in trust for Native Hawaiians. An applicant purchasing a home on Hawaiian Home lands must be a Native Hawaiian, as determined by DHHL.

B. Requirements

In order for a mortgage with a Hawaiian Home Lands lease to be eligible for guarantee, the property shall be located within an area designated as Hawaiian Home Lands, and DHHL shall have granted to the applicants a homestead lease covering the property. For loans to Native Hawaiians on Hawaiian Home Lands, the lender must obtain:

- Certification that the lease provided by DHHL is not in default and has not been cancelled.
- All other requirements set forth in 7 CFR Part 3555 and any successor regulation.
- All other requirements set forth in an MOU between DHHL and USDA Rural Development which is available in the USDA LINC Training and Resource Library, located at www.rd.usda.gov/resources/usda-linc-training-resource-library/loan-origination.

C. Recording

Mortgages on Hawaiian Home Lands leaseholds are recorded in the recording system established at DHHL.

SECTION 2: MANUFACTURED HOMES [7 CFR 3555.208]

13.8 DEFINITION

Manufactured homes are single-or multi-width units constructed partially off-site and transported to a site to be completed and anchored to a permanent foundation.

Manufactured homes are structures built to the Federal Manufactured Home Construction and Safety Standards (FMHCSS) and evidenced by an affixed HUD Certification Label. They are not the same as a modular home. The primary distinction between manufactured homes and modular lies in the construction standards or code and the inspection processes they must adhere to.

Unless otherwise specified in this section, the guidelines and procedures outlined in Chapters 6 and 12 for new construction should be followed.

13.9 AUTHORIZED LOAN PURPOSES

The following are eligible loan purposes for the financing of manufactured homes:

- Site development work that conforms to the standards imposed by the state and local government.
- Purchase of an eligible new unit, transportation, and set-up costs. The following criteria outlines an eligible new manufactured unit for guarantee with the Single Family Housing Guaranteed Loan Program (SFHGLP):

- Must be a new unit in stock that has never been installed or occupied at any other site or location. Manufactured units may be moved only from the manufacturers or dealer's lot to the site on which the unit will be financed.
 - Must have a floor area of not less than 400 square feet.
 - Must be placed on a permanent foundation built to FHA guidelines in effect at the time of certification. Guidelines are presently published in the "Permanent Foundation Guide for Manufactured Housing" (HUD-4930.3G).
 - Meet or exceed the Federal Manufactured Home Construction and Safety Standard (FMHCSS) Uo Value Zone for the geographic area the unit will be placed. The Uo Value Zone will be indicated on the Comfort Heating and Cooling Certificate. Builder must certify thermal requirements at time of purchase have been met.
 - Must have a manufacture date that is within 12 months of the date of loan closing. The manufactured home must be affixed with a data plate located inside the home in which the date the unit was manufactured can be found. The certification label must be affixed in a location that will remain visible after all work is completed that is necessary to complete the installation of the home at the home site.
 - As an alternative to the original HUD Certification Label(s), the lender may obtain a verification letter with the same information contained on the HUD Certification Label(s) from the Institute for Building Technology and Safety (IBTS). A duplicate HUD Data Plate may be available from IBTS or by contacting the In-Plant Primary Inspection Agency (IPIA) of the manufacturer. A list of IPIA and DAPIA offices is posted on HUD's website.
 - Construction and site requirements for new dwellings can be found in section 13.11.
- Purchase of an eligible existing unit and site. The following criteria outlines an eligible unit manufactured unit for guarantee under the SFHGLP:
 - Must be an existing unit that has never been previously installed on a different homesite.
 - Must have a floor area of not less than 400 square feet.

- Must have not had any alterations or modifications since construction in the factory, except for porches, decks, or other structures which were built to engineered designs or were approved and inspected by local code officials.
- Must be installed on a permanent foundation in accordance with the manufacturer's requirements and HUD installation standards. Guidelines are presently published in the "Permanent Foundation Guide for Manufactured Housing" (HUD-4930.3G). Certification of a proper foundation is required.
- Must meet or exceed the Federal Manufactured Home Construction and Safety Standard (FMHCSS) Uo Value Zone for the geographic area.
- Must have a manufacture date that is within 20 years from the date of loan closing and meets or exceeds the Federal Manufactured Home Construction and Safety Standard (FMHCSS) as evidenced by both an affixed HUD Certification label and HUD Data Plate. The manufacture date can be found on the data plate located inside the home.
 - As an alternative to the original HUD Certification Label(s), the lender may obtain a verification letter with the same information contained on the HUD Certification Label(s) from the Institute for Building Technology and Safety (IBTS). A duplicate HUD Data Plate may be available from IBTS or by contacting the In-Plant Primary Inspection Agency (IPIA) of the manufacturer. A list of IPIA and DAPIA offices is posted on HUD's website.
- Financing of an existing unit due to a transfer of an existing Section 502 Direct or Guarantee loan or purchase of a Real Estate Owned (REO) property. Repairs associated with these transactions may be included.

13.10 LOAN RESTRICTIONS

The Agency will not guarantee loans to finance the following:

- The purchase of a unit without an eligible site.
- The purchase of an existing unit that was not constructed in conformance with the Federal Manufactured Home Construction and Safety Standards (FMHCSS) as evidenced by an affixed HUD Certification label and HUD Data Plate.

- The existing unit was not installed on a permanent foundation complying with manufacturer and HUD installation standards.
- 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.
- Additions and modifications on new or existing units are prohibited except for porches, decks, or other structures built to engineered designs and inspected and approved by a local building code official.
- Purchase of a unit to be moved from a site other than the manufacturer/dealer lot to the site securing the mortgage loan.
- Existing manufactured home units with a manufacture date exceeding 20 years from the date of loan closing unless the unit and site are already financed with a Section 502 loan.
- A unit with a tow hitch or running gear remaining.

13.11 CONSTRUCTION AND SITE REQUIREMENTS FOR NEW DWELLINGS

The borrower will contract with a licensed manufactured dealer. Manufactured homes must meet the site and other requirements for new dwellings in accordance with Chapter 12 of this Handbook. The lender's permanent loan file must contain the following:

- 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.
- Dealer certification that any cash payment or rebate as a result of the purchase will be deducted from the price of the unit and not paid directly to the applicants.
- Dealer certification that proposed cost is the full price of the unit. If furniture is being purchased by the applicants with personal funds, a lien will not be filed against the security property.
- Foundation plan designed to meet the HUD Handbook 4930.3G, Permanent Foundations Guide for Manufactured Housing (PFGMH), guidelines.

- Plot and site development plans.
- Inspections in accordance with Chapter 12 of this Handbook.
- Contractor certification that multi-sectioned units were properly joined and sealed according to the manufacturer's specifications and the home sustained no damage during transportation and set-up.

13.12 LOAN CLOSING FOR MANUFACTURED HOUSING

Loan closing procedures are the same whether the guarantee is made for the purchase of a manufactured home or another type of single-family home. However, the lender should be aware of the following requirements.

A. Warranty Requirement

A dealer must provide the borrower with a copy of all manufacturer warranties. The warranty must identify the unit by serial number. A copy of all warranties and certifications will be retained in the lender's permanent loan file.

B. Lien Release Requirements

The dealer must furnish a manufacturer's certificate of origin indicating that the unit is free and clear of all legal encumbrances. A copy of the manufacturer's statement or certificate of origin will be retained in the lender's permanent loan file.

C. Real Estate Tax Requirement

As required by the local taxing authority, the unit and site must be classified, zoned, and taxed as real estate. Certificate of title to the manufactured home must be surrendered to the appropriate state government authority if state law permits.

D. Title and Lien Requirements

The mortgage must be insured by a standard real property title insurance policy. Refer to title insurance policy requirements outlined in Chapter 16 of this Handbook. Additionally, both the unit and the site must be evidenced by a recorded mortgage or deed of trust. A combination of a chattel and real estate mortgage is not acceptable. If the certificate of title cannot be surrendered, the lender must indicate its lien on the certificate of title.

SECTION 3: MODULAR HOMES

Modular homes are sectional prefabricated houses that consist of multiple modules or sections which are typically manufactured in a remote facility and delivered to their site of intended use. They differ from manufactured homes largely in their absence of axles or frame. Modular dwellings are commonly transported to their site by means of flat-bed trucks and set in place with the assistance of a crane. Modular homes, whether “off frame” or “on frame”, are considered stick-built homes; therefore, the guidance outlined in Chapter 12 of this Handbook will be followed for new and existing modular homes.