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CHAPTER 6  
ON-GOING MANAGEMENT RESPONSIBILITIES  
FOR MIP AND HUD-OWNED PROJECTS

- 6-1 Introduction. This chapter furnishes the policies and procedures for the on-going management of MIP and HUD-owned projects. Certain policies are specific to MIP, HUD-owned or other programs. Coverage of those areas can be found in separate chapters.
- 6-2 Fair Housing and Equal Opportunity. All contracting, marketing, occupancy, rental and sales activities in the MFPD program, including the day-to-day management of projects, must be conducted on a nondiscriminatory basis without regard to race, color, religion, sex, national origin, age, familial status or disability. \*
- 6-3 Affirmative Fair Housing Marketing (AFHM) Policy. It is HUD's policy to administer its housing programs affirmatively so as to achieve a condition in which individuals of similar incomes in the same housing market area have a like range of housing choices available regardless of their race, color, sex, religion, national origin or age. \*
- A. The DHM must assure that each PM, in the conduct of its business with the local office:
1. Refrains from discrimination on the basis of race, color, sex, religion, national origin, or age in the rental of any property; \*
  2. Identifies those groups it considers least likely to apply for the housing and conducts special outreach activities. \*
  3. Instructs staff in the policies of nondiscrimination and all applicable local, State and Federal fair housing laws and regulations;
  4. Prominently displays the Fair Housing Poster in all offices in which sale or rental activity takes place;
  5. Uses the approved Equal Housing Opportunity logo, slogan or statement in advertising in conformance with the advertising Guidelines for Fair Housing 24 CFR Part 109; \*

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- 6. Utilizes minority owned media as appropriate;
  - 7. Maintains a nondiscriminatory hiring policy in affirmatively recruiting staff from both minority and majority groups.
- B. The Equal Opportunity staff may be consulted for suggestions relating to the AFHM Policy.
- \* C. The PM will be prosecuted for violations of the Fair Housing Act. The PM could be subject to actual damages, including out-of-pocket expenses and damages for emotional distress, civil penalties, punitive damages, attorneys' fees and costs. \*
- D. The AFHM Policy must be discussed at pre-proposal conferences and industry meetings and post contract award orientations.

6-4 Equal Housing Opportunities Information Register. Each Field and Regional Office must make available a register of all HUD-owned and MIP projects in their jurisdiction that have units available for rent. This register is available from PMS. An updated register should be printed by the Regional and Field Offices upon the close of PMS's monthly accounting (around the fifth of each month). The updated register must be available to the general public in the Field and Regional Office lobbies.

The DHM must assure that PMS information on the register is current and is input accurately.

6-5 Payment of Bills. Requests for payment of bills incurred during MIP or ownership must be sent to PMS, pursuant to the procedures in the PMS User Manual.

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6-6 Section 8. The GTR/GTM shall assure that the PM follows the billing procedures in Chapter 5 for HUD-owned projects and billing and renewal procedures in Chapter 7 for MIP project's Section 8 offset payments. \*

6-7 Project Budget.

- A. The approved budget, as developed pursuant to Chapter 5 of this Handbook, constitutes a \*
- \* limitation of cost which the PM exceeds at its own risk (see FAR 52.216-8), unless increased pursuant to the procedures in the PMS User Manual.
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- B. The GTR/GTM must assure that the PM only makes purchases in accordance with the HUD authorized budget and HUD approved Management Plan. Approval of the Plan and the Budget does not authorize the PM to purchase supplies and services in excess of the subcontracting authority provided in Section B of the PM's contract.
- C. Using PMS, the GTR/GTM and the DHM must monitor income and expenses against the budget. If it appears that actual project expenses will exceed budgeted amounts, the GTR/GTM must obtain a recommended amendment to the budget from the PM. Budget modifications shall be implemented pursuant to the procedures in the PMS User Manual.
- D. A project's first budget covers the remainder of the Fiscal Year in which the project becomes owned or MIP. A new budget is required for each fiscal year thereafter. For each project assigned to a PM, a proposed new fiscal year budget must be prepared pursuant to the instructions in the PMS User Manual.
- 6-8 Authorization of Rental Rates and Services. Procedures for the authorization of rental rates during MIP or HUD-ownership continue as described in Chapter 5 with the following additions:
- \* HUD-ownership continue as described in Chapter 5 with \* the following additions:
- A. Rental rates must be reviewed and updated at least annually.
- B. When a change in rental rates is justified, affected residents must be given written notice of the proposed change, pursuant to 24 CFR Part 290.17(e).
1. If an increase is proposed, affected residents shall be given 30 calendar days to review and comment on the proposed increase and supporting documentation.
  2. If, after consideration of any comments, the DHM determines to increase the rents, all affected residents must be given an additional 30-day notice before the rent increase becomes effective. Such notice must provide the amount of increase and justification.
  3. Notice to residents must be personally delivered and sent by first class mail. \*

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4. If a project-wide increase is proposed, a general notice must also be posted in the project office and, to the extent feasible, in conspicuous locations throughout the project.

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- 6-9 Leasing. In accordance with the approved Management Plan, residential units and commercial space must be leased as stated in Chapter 5 with the following addition: \*

Prior to execution of either a residential or commercial lease, the PM must conduct such investigations of financial and personal responsibility of prospective residents as is necessary and reasonable to protect HUD against financial loss, physical damage to the project(s), damage to the reputation of the project(s), and to protect the health and safety of the other residents.

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- 6-10 Appropriate Unit Size. To the extent feasible, overhoused and underhoused conditions must be minimized in (formerly) subsidized residential units (i.e., unit size should reflect resident needs).

The GTR/GTM must assure that the PM surveys the number of people residing in each (formerly) subsidized unit annually, and if overhoused or underhoused conditions exist, steps must be taken to promptly correct the situation.

All MIP and HUD-owned project units that were governed by the occupancy guidelines set forth in HUD Handbook 4350.3 prior to HUD possession shall continue to be governed by the Handbook. In addition, occupancy standards for all HUD-owned and MIP projects must be maintained in accordance with Fair Housing and Equal Opportunity regulations and reasonable State and Local Housing codes.

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- 6-11 Security Deposits. Security Deposits must be collected and administered for all HUD-owned and MIP rental housing projects as stated in Chapter 5, with the following additions: \*

- A. The GTR/GTM must obtain from the PM a copy of the monthly bank statement reconciled with the PMS Security Deposit Liability Report, with any discrepancies noted.

The GTR/GTM must assure that the PM reconciles the

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Security Deposit Account monthly and must assure the account equals the aggregate of all outstanding security deposit obligations.

- B. Refunds of Security Deposits must be made promptly by PM's in accordance with local law, except:
  - 1. HUD has no authority to fund security deposit accounts which may have deficits when HUD assumes management of a project. PM's and HUD can only refund monies turned over when HUD assumed management and those collected during HUD management.
  - 2. In the case of partially funded security deposit accounts turned over to HUD, refunds up to the amount turned over to HUD may be handled:
    - a. On a case-by-case basis upon presentation by the resident of sufficient evidence of payment to the owner, in the case of MIP, or former owner, in the case of HUD-owned; or
    - b. As determined by the DHM.
- C. To properly document the condition of a unit at the time of move-out to determine the appropriateness of refund or forfeit, the GTR/GTM must assure that the PM promptly inspects the unit and documents each resident file. A suggested Unit Inspection Report format is contained in APPENDIX 5-1. \*
- D. In those jurisdictions where it is not required by local law to apply earned interest (either all or in part) to the credit of the resident, the interest earned must periodically be forwarded to the PMS Lockbox in accordance with the PMS User Manual.
- E. All forfeited security deposits must be forwarded to the PMS Lockbox in accordance with the PMS User Manual.
- F. Upon written notice of PM contract termination or pending sales closing, the GTR/GTM must obtain from the PM:

1. A complete accounting of security deposit funds, together with a listing of their source

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(individual residents) and any accrued interest;  
and

2. A check representing the total amount of all security deposits in the PM's possession.

#### 6-12 Rental Collections from Current Residents.

- \* A. The GTR/GTM must assure that the PM is attempting to collect rent in the correct amounts from each unit. Collections and certifications of collections must be performed in accordance with the PMS User Manual.
  - B. The GTR/GTM must assure that the Management Plan has the appropriate policies and procedures in place to collect delinquent rent, i.e., rent, legal and court costs, and fees owed from previous months. \*
  - C. The GTR/GTM must review PM collection activity to assure that collections are mailed to the PMS Lockbox on the day of receipt, in accordance with the PMS User Manual.
  - D. The GTR/GTM must assure that proper late fees are added if the PM has not received the full amount of a resident's net rent or rent due under a rental workout agreement within the time allotted in the lease.
  - E. Workout Agreements. When a resident who has previously had a good payment history becomes delinquent in rent payments due to circumstances beyond the resident's control, e.g., layoff at work, loss of wages due to personal injury, that resident may be permitted to pay off a delinquency generally not exceeding one month's rent at a rate mutually agreeable to the resident and the PM. A sample Rental Workout Agreement is provided in APPENDIX 6-1. \*
1. Workout periods can be up to six months, but in most cases, the delinquency should be cured in one to three months.

2. The resident's file must be documented with a copy of the formal Rental Workout Agreement containing the terms of the agreement to bring the total delinquency current.

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3. Rental Workout Agreements in excess of a six month term must receive the prior written approval of the RHD.
4. All Rental Workout Agreements must be entered and tracked in PMS in accordance with the PMS User Manual.
5. After the Agreement is executed, the first payment under its terms is due the first day of the following month.
  - a. The rental workout payment, as well as rent, will continue to be due the first day of each month.
  - b. If the resident fails to meet the terms of the Agreement, eviction must be pursued or the PM may request GTR/GTM approval for extensions based on individual circumstances. If eviction is pursued, a resident can only be evicted for non-payment of rent and not non-payment of legal and court costs or fees.
- F. All payments are applied first to reduce the delinquency and then to reduce the current rent due.
- G. Adjusting resident accounts. Subject to the approval of the GTR/GTM, the PM may adjust a resident account in any case involving refund or unused rental payments in accordance with the PMS User Manual.
- H. When a project is or has been poorly maintained, residents occasionally may obtain a court order enabling them to pay their rent into an escrow account instead of to the owner.
  1. When a resident is paying rent into a court ordered escrow account, the rent shall be shown as delinquent in PMS. The GTR/GTM shall assure that the PM makes monthly contact with the court or financial entity which controls the escrow

account to determine whether the account is current. If rent is being put into the escrow account properly, no court judgment or eviction proceedings shall be instituted. If the rent is not being paid into the escrow account, the GTR/GTM shall assure that the PM pursues a court

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judgment (and eviction) against the delinquent resident for the amount of the delinquent rent.

2. As conditions improve at the project, the GTR/GTM must assure that the PM works with residents and the courts to have the escrow released to the PM to pay rent directly.

6-13 Eviction. Evictions are governed by 24 CFR Part 247. All eviction and termination actions must be coordinated between the PM and the GTR/GTM, and must be by judicial action pursuant to State or local law.

A. HUD may terminate tenancy only upon the following grounds:

1. Material noncompliance with the lease agreement, which includes:
  - a. One or more substantial violations of the lease agreement;
  - b. Repeated minor violations of the lease agreement that disrupt the livability of the project, adversely affect the health or safety of any person or the right of any resident to the quiet enjoyment of the leased premises and related project facilities, interfere with the management of the project, or have an adverse financial effect on the project.
  - c. Failure of the resident to timely provide all required information on the income, composition, or eligibility factors of the resident household, or failure to sign and submit correct forms for obtaining wage and claim information from State Wage Information Collection Agencies, or knowingly provide incomplete or inaccurate information.



- d. Non-payment of rent or any other financial obligation due under the lease agreement (including any portion thereof) beyond any grace period permitted under State law. (Payment of rent or any other financial obligation due under the rental agreement after the due date, but within the grace

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permitted under State law, constitutes a minor violation.)

- 2. Material failure to carry out obligations under any state landlord and resident act; or
- 3. Other good cause.

If eviction is pursued for other good cause, the resident must be notified in writing of the objectionable conduct, and that such conduct in the future shall constitute a basis for termination of occupancy. Such notice must be in writing and delivered as follows:

- a. Sending the letter by first class mail, properly stamped and addressed, to the resident at the project address, with a proper return address; and
- b. Serving a copy of the notice on any adult person answering the door at the leased dwelling unit, or, if no adult responds, by placing the notice under or through the door, if possible, or affixing the notice to the door.
- c. Service will not be deemed effective until both notices have been served.

B. If a decision is made to terminate for one of the reasons noted above, a notice must be provided in writing containing the following:

- 1. The date the tenancy is terminated;
- 2. The reasons for the termination action, with enough specificity to allow the resident to prepare a defense;

3. A statement that if the unit is not vacated by the date specified for termination, HUD may seek to enforce the termination by bringing a judicial action, at which time the resident may present a defense.
4. If termination is for failure to pay rent, the notice must state the dollar amount of the balance due on the rental account and the date

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of such computation.

5. The notice must be served as follows:
  - a. By sending a letter first class mail, properly stamped and addressed, at the resident's address at the project, with a proper return address; and
  - b. By delivering a copy of the letter to any adult person answering the door at the leased dwelling unit, or if no adult responds, by placing the letter under or through the door, if possible or attaching the notice to the door.
  - c. The date of the notice is either the date the first class letter is mailed, or the date the notice is delivered, whichever is later.
- C. The effective date of the termination shall be:
  1. If termination is based on other good cause, the termination shall be effective at the end of the term of the lease and in accordance with the termination provisions of the lease, but in no case earlier than 30 days after receipt of the notice by the resident.
  2. If termination is based on material noncompliance with the lease or material failure to carry out obligations under a state landlord and resident act, the termination date shall be in accordance with the lease agreement and state law.

3. All eviction actions must be entered and tracked in PMS. See the PMS User Manual.
- D. HUD or PM's, based on review and approval by the DHM and Field Counsel, may procure the services of contractors to handle eviction and rent collection proceedings.
1. Local law may require the presence of an attorney or the project owner at eviction proceedings. When cost effective, if an attorney must be involved in eviction

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proceedings, action to obtain a judgment for delinquent rent should be subcontracted to the same attorney.

2. Payment. When subcontracted, payment will be made through PMS with normal review by the PM. When evictions are performed in-house by the PM, these duties may be assigned to on-site, HUD authorized PM project employees.

6-14 General Termination of Occupancy Procedures. The GTR/GTM must assure that the PM promptly updates PMS to indicate all terminations in accordance with the PMS User Manual.

6-15 Collection from Ex-Residents.

- A. The GTR/GTM must assure that the PM attempts to collect the amount of the delinquent rent and costs or, in the case of eviction, the amount of the court judgment against the ex-resident.
1. The GTR/GTM must assure that the PM sends a demand letter for payment to the ex-resident's new address, if known, as soon as possible after occupancy is discontinued.
  2. The demand letter must be sent by:
    - a. Regular first class mail; and
    - b. Certified mail, return receipt requested.

The receipt must be filed in the resident's file.

B. Collection by a Collection Agency. To the extent that these services are available, the DHM must assure that a contract, or PM subcontract, is awarded for the services of a collection agency to further pursue recovery of amounts due. The amount due from each ex-tenant shall be obtained from PMS. The account shall be forwarded for collection agency activity through a contract work order and entered into PMS pursuant to the PMS User Manual.

1. A resident's delinquent account is composed of:  
a. The total of:

(1) All delinquent rent;

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(2) Other charges incurred by the resident;

(3) Court costs;

(4) Legal fees; and

(5) Collection agency fees;

Minus an amount equal to:

\* (1) The forfeited security deposit amount which has been mailed to the PMS Lockbox, and accounted for by PMS, for that resident; and \*

(2) Any other rental credits which may exist for that resident.

2. Referral to a collection agency. The GTR/GTM must assure that delinquent accounts are referred to a collection agency for continuing collection efforts no later than 14 days after the resident has ceased occupancy or the date of the PM's demand letter, whichever is later. The GTR/GTM must assure that:

a. Information provided to the contractor includes information on any guarantors on the lease and other pertinent data;

b. The PM maintains the information in PMS

regarding Collection Agency activity.

3. Selection of collection agencies. When placing a contract or subcontract, the GTR/GTM must assure that the following requirements are met:
  - a. The agreement with the selected agency does not provide for any advance payments but for payment of an amount based upon a percentage of collected account funds (contingent fee).
  - b. The contractor/subcontractor must mail all funds collected to the PM (or GTR/GTM if a HUD contractor) within 24 hours of receipt. The PM (or GTR/GTM) must then promptly

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forward them to the PMS Lockbox in accordance with the PMS User Manual.

- c. If required by state or local law, the contractor/subcontractor must be appropriately licensed and agree not to utilize harassing or questionable collection practices.
- d. The collection agency subcontract must provide a specified period of time after contract termination during which the terminated agency will be entitled to collect fees on accounts previously assigned to it. Generally, this period of time should not exceed 90 days. To prevent claims for fees from two separate agencies, these accounts shall not be assigned to a new contractor until the stated period of time has expired.

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4. The GTR/GTM for a contractor, or the PM for a subcontractor, must investigate and satisfactorily resolve any complaints regarding harassing or questionable collection practices.

6-16 Write-Offs. To minimize the accrual of uncollectible receivables, all outstanding receivable balances shall be written off approximately 60 days after an ex-resident's occupancy is discontinued or at some other time determined by the Director, OMHPPD. See the PMS User Manual.

6-17 Recoveries of Previous Write-Offs. If amounts are recovered on accounts that have been written off, the GTR/GTM must assure that PMS is properly updated. See the PMS User Manual.

6-18 Project Security. Security measures, if required, were implemented when the project entered the MFPD inventory, in accordance with Chapter 5. The GTR/GTM must assure that the PM includes any security concerns in the monthly report to the GTR/GTM. \*

The GTR/GTM must review the security of the project during each quarterly management review's physical inspection (see Chapter 6). \*

If required to meet security needs, the GTR/GTM must, to the extent feasible and practical, assure that security

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measures are updated and modified.

6-19 Drug-Free Housing.

HUD, its PM's, the residents and community have a vested interest in combating and eliminating drugs in the living environment. The standard PM Contract solicitation format outlines specific responsibilities to be undertaken by project managers in this regard.

There is no one solution for addressing the complexities of drug-related problems; however, the development of any successful anti-drug strategy would have to include strong resident and community involvement and cooperation.

When developing strategies for drug-free housing, the following actions should be taken by the PM:

- A. Survey and analyze the project to identify security concerns. (Involve residents in this process)
- B. Develop uniform written resident selection procedures and house rules that inhibit illegal drug activities.
- C. Implement and enforce the lease terms, where appropriate, to make effective use of the eviction process to remove residents who are engaging in drug activities.

\* Existing regulations and the MFPD Model Lease, APPENDIX 5-2, provide for termination of tenancy for illegal activities which include drug-related criminal activity. The MFPD Model Lease stipulates that illegal drug activity on the part of the residents, members of the household or their guests constitutes substantial violation of the lease agreement and is ample grounds for seeking the eviction of the resident through the courts. While eviction procedures should be swift, policies should assure due process and be legally sound. This will result in the full protection of individual rights while assuring that the court sustains the eviction request in each appropriate case. \*

- D. Undertake networking activities and organize around the issue of drug protection.
  - 1. Work with law enforcement agencies, resident associations, civic and youth organizations and

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similar organizations, such as churches, social service agencies, and professional associations.

- 2. Work with or encourage the establishment of a resident organization in the project to cooperate with management and local law enforcement agencies in creating a Neighborhood Watch Program. Encourage regular meetings of the residents and/or resident organizations to deal with drug issues and problems.
- 3. Join forces with other neighborhood organizations and church groups dealing with the local drug problem. Work with and encourage these groups to provide drug rehabilitation programs and/or prevention activities for adolescents which deflect interest away from drug-related activities.
- 4. Work with the local chapter of the Association of HUD Management Agents, Institute of Real Estate Management or a similar organization in the area, to:
  - a. Share information on residents evicted for engaging in drug-related criminal activity;
  - b. Assist in the development of uniform house

rules and resident selection criteria for use in rental housing;

- c. Sponsor workshops and training which teach how to identify the presence of drugs in a project and effective strategies to address the issue; and
  - d. Meet with public officials to develop a local strategy for eliminating the drug problem.
  - e. Encourage changes in local housing laws which strengthen the ability to remove those engaged in drug-related criminal activity, while protecting due process.
5. With respect to both HUD-owned and MIP projects, Insurance funds may be advanced to defray the costs of such training (as specified in paragraph D.4.c) only if the DHM determines

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that such expenditures are necessary in order to protect the interests of the Insurance Fund (See Section 207(1) of the National Housing Act).

- E. PM's must not discriminate on the basis of illegal use of drugs against any ex-drug user who is not currently engaging in the illegal use of drugs and who has successfully completed a supervised drug rehabilitation program or has otherwise been successfully rehabilitated, is participating in a supervised rehabilitation program, or is erroneously regarded as engaging in such illegal use.

#### 6-20 Real Estate Tax Appeals.

- A. A major expense of owning and managing multifamily projects is real estate taxes. To minimize the cost to HUD, RHDs must assure that real estate tax assessments are reviewed annually and appropriate action is taken to appeal the real estate tax assessments if they appear to be too high.
- B. Each RHD with multifamily inventory, in the Region's annual management plan, must determine the techniques to be employed in pursuing tax appeals.



- C. Such determinations may be made on a Region-wide or office-by-office basis. In either case, they should take into account the circumstances in the jurisdictions where the projects are located with particular attention to local courts and administrative appeal systems.
- D. A Regional Office may determine that it would be appropriate and cost-effective to contract, or have the PM subcontract, for the real estate tax appeal process, particularly in areas with a large number of projects, given staffing limitations and/or lack of expertise. Contracting out tax appeals may permit savings of scale, if appeals in several local jurisdictions can be handled under one contract.

Alternatively, where HUD staff have successfully pursued tax appeals or have the resources and expertise to do so, contracting may not be desirable. Use of Field or Regional Counsel (or a contract with local counsel), may be the best approach.

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- E. Regional Counsel should be consulted in determining the manner in which tax appeals will be sought. Regional Counsel, as well as Field Counsel, can be helpful with regard to the attitudes of local authorities and local courts, the requirements of tax court system and the more informal procedures available in many jurisdictions. Counsel can also advise on the advantages or disadvantages of contracting, or having the PM subcontract, for the services of private counsel on a contingency fee basis. In addition, it is important for counsel to monitor the progress of tax appeals, including possible settlement negotiations, and possible reimbursements to HUD.
- F. Sale before real estate tax assessment settlement. A knowledgeable purchaser, believing a favorable adjustment to be probable, might reflect the savings from a tax appeal in its bid price as long as the case was continued for settlement at some future time. Accordingly, all tax appeals must be undertaken in such a manner that, in the event a final adjudication does not occur prior to the sale of the property:
  - 1. HUD will continue the appeal through final

settlement.

2. On settlement, pursuant to the terms of the Contract of Sale, any savings realized as a result of the appeal will be prorated according to ownership during the payment period.

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6-21 Payment of Personal Property Tax & Local License Fees.

Personal Property Tax on project-owned items (such as motor vehicles) should be paid by HUD. \*

License fees that cities, counties and/or states require from private sector owners to operate multifamily residential properties should be paid by HUD, if invoiced.

However, HUD is not subject to any locally mandated interest, penalties, compensatory damages, or criminal fines due to the non-payment of such license fees. In addition, HUD is not subject to local government imposed injunctions resulting from the non-payment of such license fees.

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\* HUD may not be subject to enforcement for failure to pay personal property taxes and fees, it does not justify non-payment of late payment of such taxes and fees. \*

6-22 Liability/Tort Claims - General information.

A. Claims for personal injury or property damage at a HUD-owned or MIP project can be brought against HUD and/or project managers, and/or their employees or project employees. Claimants may file tort claims against HUD under the Federal Tort Claims Act (FTCA), under the procedures at 24 CFR 17. Claimants may also file administrative claims against PM's with HUD for such injuries or property damages under the procedures in Chapter 6.

B. The Office of General Counsel, Regional Counsel and the Department of Justice consider claims against HUD filed under the Federal Tort Claims Act. HUD is self-insured for claims filed against the Department. HUD indemnifies PM's when claims are made against the PM, up to the amount and to the extent set forth in the PM contract.

1. The MFPD Division has a centralized process to

review all administrative claims against PM's where an administrative claim (but not a lawsuit) has been filed. However, the RHD, in consultation with Regional Counsel, may request that liability claims be processed and/or reviewed by the Regional Office. If the RHD and Regional Counsel want to process administrative claims, or otherwise be involved to some lesser extent, the RHD must obtain the written approval of the Director, OMHPPD. The Director, OMHPPD will consult with the Office of General Counsel on all such requests. If approved, the RHD must notify all Field Offices in the RHD's region of the procedures that the Field Offices and the Regional Office must follow.

2. If a claim is made against HUD under the FTCA, the Office of General Counsel and Regional Counsel staff and the Department of Justice, where required, will process the administrative tort claim and defend the Department in any resultant litigation.
3. If a claim is made against a PM, the claim will

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be processed in the MFPD Division, or the Regional Office (if approved under B.1. above), and if the matter results in a lawsuit filed against the PM, and the PM's contract with HUD included an indemnification clause covering the type of claim made on the date of the alleged occurrence, HUD must procure the services of private legal counsel to represent the PM.

Note: Neither HUD nor Department of Justice attorneys will represent the PM.

4. Where a claim is made which doesn't specify whether it is against the PM or HUD, and it involves alleged injury or damage on a property controlled by a PM at the time of the alleged injury or damage, the claim shall be processed administratively as though it were a claim against the PM. In such cases, Regional Counsel must be provided copies of all documents in the event the matter is litigated under the Federal Tort Claims Act.

5. Some claims for injuries/damages concern injuries/damages which allegedly occurred during a period when a project had Comprehensive General Liability (CGL) insurance coverage, and such insurance usually covers the project manager and the owner. If the project had CGL insurance covering the date of an alleged occurrence, the GTR/GTM or the PM, as appropriate, should forward the claim to the insurer or the insurer's agent.

C. In order to obtain legal services pursuant to Paragraph B.2. above, RHDs, RCDs and DHMs must assure that each Field Office with MFPD inventory has access to a HUD awarded, indefinite quantity contract for attorney services to represent PM's if PM's are sued for damages covered under the indemnification clause of the PM contract.

1. The MFPD Division can assist in preparing a statement of work to procure these services. When procuring these services, Regional Counsel, or designee, should be designated the Source Selection Official.

2. If a PM procures the services of an attorney to

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\* represent itself in a claim for injury/property damage arising from its work for HUD, the PM will do so at the PM's expense, without HUD's reimbursement or payment, unless such action receives the specific prior written approval of the GTR. However, such approval may only be given on an emergency basis, and only if the field office does not have a private attorney available, as provided above. \*

D. The GTR/GTM must assure that each PM maintains a detailed record or log of all injury or loss reports for each project.

E. The GTR/GTM must assure that all claims for personal injury or property damage are promptly investigated by the PM.

F. HUD's failure to make a final disposition of a tort claim against HUD within six months after it is filed may, at the option of the claimant any time

thereafter, be deemed a final denial of the claim.

While this six month time frame does not apply to claims against PM's, claims against PM's should be expedited by the PM and HUD staff because a claimant could file a law suit against the PM which would result unnecessarily in the Department incurring expenses for an attorney to represent the PM.

- G. Regional Counsel must promptly be notified when the Department is sued or threatened with suit concerning any occurrence, even if CGL insurance is in place on a project covering the time of the alleged occurrence.

6-23 Liability/Tort Claims - Administrative Process.

- A. When a person claims that he/she has been injured or his/her property has been damaged at a project, and there is no insurance covering the period of the alleged occurrence, if the PM wants the claim processed pursuant to the indemnification provision of its contract with HUD, the PM must, within five business days, verify that HUD was either MIP or owner on the date of the alleged occurrence.
  - 1. If HUD was not owner or MIP, the PM, to the extent possible, should inform the claimant that

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HUD was not in possession and refer the claimant to the prior owner/manager of the property.

- 2. If HUD was the owner or MIP:
  - a. Have the claimant submit a written claim. A Standard Form-95 (SF-95) may be used for this purpose;
  - b. Investigate the claim and to the extent feasible, obtain pictures to substantiate the occurrence and obtain any supporting documentation;
  - c. Complete the Liability Claim Format provided in APPENDIX 6-2, and \*
  - d. Forward all of the above to the GTR/GTM.

\*

- B. Within two weeks of receipt of a claim from a PM, the GTR/GTM must assess the claim and prepare and send a Recommendation for Claim Disposition (APPENDIX 6-3). \*

Upon receipt of a liability claim from a PM, the GTR/GTM must date stamp the SF-95. When assessing the claim, the GTR/GTM must:

1. Review the SF-95 and Liability Claim Format (APPENDIX 6-2) provided by the PM, assuring that all data and original pictures (if applicable) \* are legible. The GTR/GTM should immediately perform a routine investigation that includes:
  - a. Verifying that HUD was either MIP or owner on the date of the alleged occurrence;
  - b. Determining if Comprehensive General Liability (CGL) Insurance was in place at the time of the alleged occurrence.
  - c. Verifying the date the alleged occurrence was reported;
  - d. Analyzing the alleged cause of the claim;
  - e. Visiting the project, if possible;
  - f. Assuring that corrective actions, if needed, have been taken by the PM or HUD to

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avoid further injury or damage;

2. Upon completion of the above, and unless claims are being handled in the Regional Office, all required information must be sent by overnight mail to:

Liability Claims  
Multifamily Property Disposition Division  
Washington, DC 20410-8000.

3. Copies of the Recommendation for Claim Disposition and all supporting documentation must be retained by the GTR/GTM and copies sent to Regional Counsel.

- C. MFPD Division Processing. The MFPD Division will

promptly review all claim packages received and, if further investigation is required, either forward them to a claims investigator under contract with HUD, or process them in Headquarters if there appears to be sufficient basis to make a decision on the facts presented.

1. If no further investigation is required, the claim will be considered an "in-house claim" and will be forwarded for review by a Headquarters Claims Review Committee. (See C.3. below.)
2. If further investigation is required, an investigator will visit the project involved and interview, as appropriate, the PM, project employees, residents, etc., to gather information. The GTR/GTM may also be contacted. PM's and their staff must fully cooperate with the investigator.
3. The Headquarters Claim Review Committee, comprised of staff from the MFPD Division and the Associate General Counsel, will consider whether to accept, deny or settle each claim, based upon the reports and recommendations of the PM, GTR/GTM, RHD and the claim investigator.
  - a. If the Committee decides to accept or settle a claim, the MFPD Division will obtain a check from PMS and forward the check to the claim investigator, or the GTR/GTM if the claim was handled "in-house,"

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who must obtain a signed release from the claimant prior to delivering the check.

- b. If the recommendation of the Headquarters Claims Review Committee is to deny the claim, the MFPD Division will recommend denial by the Associate General Counsel. When a denial letter is signed, the MFPD Division will forward copies of the letter to the GTR/GTM, DHM, RHD and Regional Counsel.
4. Copies of correspondence related to settlement and releases from claimants will also be

forwarded to the GTR/GTM and Regional Counsel by the claim investigator or MFPD, as appropriate.

6-24 Damage to HUD Property.

- A. In the event of damage to HUD-owned and MIP property as a result of fire, accident, natural catastrophe (flood, tornado, etc.), vandalism or other cause, the GTR/GTM must obtain from the PM a written report, with pictures, stating:
  - 1. Date and time of occurrence;
  - 2. Address and location of occurrence;
  - 3. Nature and extent of damage or loss;
  - 4. Estimated dollar cost of repair or replacement;
  - 5. Plan and schedule for repair;
  - 6. A detailed narrative description covering the conditions and circumstances which caused the damage or loss;
  - 7. Any scheduled, immediate or temporary repairs in process;
  - 8. Notices posted, e.g., warning signs of any existing potential hazards; and
  - 9. Copies of any reports filed with local police, fire officials, FBI, etc.
  
- B. Damage by a resident or guest.
  - 1. If the damage occurred in or affects an occupied unit, the report must state positively, to the extent observable, whether the resident, by act or neglect, caused the damage.
  
  - 2. If resident responsibility is established, the

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GTR/GTM should instruct the PM to report on arrangements that the PM is making with the resident to obtain restitution.

- C. Severe Vandalism and Fire.
  - 1. The GTR/GTM must assure that the PM promptly reports vandalism of a serious nature, i.e., damage to structure or extensive damage to furniture, fixtures or equipment on the property, fire of suspicious origin, or any theft, to the FBI and local police.



2. The GTR/GTM must obtain from the PM a memorandum showing the date of referral to the enforcement agency(s) and names of the officials to whom the information was sent. The memorandum must also have a detailed description of the alleged offense.
3. The DHM must send the reports, referrals and memoranda to the following officials in a double-sealed envelope marked "Administratively Confidential" to the:
  - a. Regional Inspector General for Investigation;
  - b. Investigation Field Director of the appropriate FBI Regional Office;
  - c. RHD; and
  - d. Director, MFPD Division.

6-25 Management Review. Reserved.

6-26 Quarterly Physical Inspection. Reserved.

6-27 Project Close-Out. Within one week after a project's sale closing date is determined, the GTR/GTM must notify the PM that the project will be withdrawn from the PM's inventory of HUD projects. The notification must include:

- A. The scheduled closing date;
- B. A statement that if the closing is delayed or canceled, the PM will continue to manage the project;

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- C. Instructions to the PM to close out or terminate subcontracts, accounts, PMS reports, etc. APPENDIX 6-4 provides guidance in a sample notice. \*

6-28 Relief Provisions for Disaster Areas. Following the declaration of a major disaster by the President of the United States, the Federal Emergency Management Agency (FEMA) may authorize emergency and temporary housing assistance through the FEMA Regional Director or State official in whose jurisdiction the disaster occurred. Federal regulations authorize the use of any unoccupied and readily available housing owned by the United States

under any program of the Federal Government. It is FEMA's policy to maximize the use of available units in HUD-owned projects, when available, and if within a reasonable commuting distance of the affected disaster area. Upon receipt of a request for available units for disaster victims from the FEMA Regional Director or designee, the Field Office Manager shall advise the FEMA Disaster Field Office (DFO), in writing, of the HUD-owned projects having units available for disaster victims.

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6-29 Lease and/or Purchase of Motor Vehicles. Motor vehicles (trucks, vans, etc.) may be purchased and/or leased if required for the operation of a MIP or HUD-owned project only if authorized in writing by the GTR/GTM and included in the Management Plan and Operating Budget.

A. The GTR/GTM should assure that the PM analyzes and determines the transportation needs in managing a project and documents those needs as part of the Management Plan and establishes a line item in the Operating Budget for the lease/purchase, liability and comprehensive vehicle insurance, and maintenance of the motor vehicle. The GTR/GTM will approve lease/purchase requests for motor vehicles from the PM only if those requests include a justification and a cost comparison.

1. The justification shall identify the type of motor vehicle requested, the purpose for the motor vehicle indicating where and when it shall be used, who will be operating the vehicle and what benefit the vehicle would have on project operations.
2. The cost comparison must be based on three "best deal available" price quotes which \*

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\* compare leasing a motor vehicle vs. purchasing a motor vehicle and a cost comparison on the best insurance rates available.

3. Based on this cost analysis, the GTR may authorize the purchase and/or lease of a motor vehicle, whichever is in the best interest of the Government.

B. Once authorization has been received, the PM shall:

1. Purchase/lease the motor vehicle;
  2. Register the motor vehicle in the project's name;
  3. Obtain state license plates;
  4. Obtain the minimum liability and comprehensive insurance required by the state; and
  5. Maintain the vehicle in good working condition for the life of the purchase/lease.
- C. The DHM shall ensure that the motor vehicles are managed in accordance with the procedures contained herein.
1. The GTR/GTM must ensure that the PM is notified and understands his/her responsibilities while operating the vehicle. Those responsibilities are:
    - Vehicles are to be used to conduct official business only.
    - Operators must wear seat belts.
    - Operators must operate the vehicle safely.
    - Operators must comply with all traffic laws.
    - Out-of-pocket payment must be made by the operator for all traffic violations committed by the operator.
    - Timely completion and submission of all accident reports.
    - Completing all preventive maintenance work, scheduled in accordance with the vehicle's operating manual.
    - Completing the Vehicle Log for each vehicle trip. \*

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- \* 2. The GTR/GTM must ensure that the PM receives and maintains a Vehicle Log for each motor vehicle authorized.

Each Vehicle Log Sheet must have a heading section which identifies the project name and FHA number, the license plate assigned, and the make, model, year and VIN of the vehicle.

Each sheet must contain a section with data fields that provide for the recording of the following information: start date of trip; operator's name; odometer reading at the start of the trip; reason for the trip; the cost of gas or tolls during the trip, end date of trip, odometer at the end of the trip; date of maintenance/repair work; description of maintenance/repair work; cost of maintenance/repair work; and operator's initials.

At the end of each quarter, the GTR/GTM should obtain, from the PM, the original Vehicle Log Sheets completed during that quarter. The GTR/GTM shall maintain a copy the Log Sheets.

3. Prior to the end of each Fiscal Year, as part of the annual PMS Budget Process, the GTR/GTM shall conduct an Annual Vehicle Utilization Analysis. The analysis should consist of a review of each vehicle's Log Sheets to determine if the vehicle is: cost efficient; being used to conduct official business; being maintained properly; and being used properly (mileage is within logical parameters based on the type of trip).

A written Analysis Summary should be developed to document that the Analysis took place, what was analyzed, how it was analyzed and the end result. Analysis Summaries should be maintained at the Field Office. At the option of the Regional Office, Analysis Summaries may be forwarded to the RHD for their use.

4. When a project is sold, if a motor vehicle has been leased - the lease should either be terminated or transferred to the new owner, whichever is in the best interest of the \*

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\* Government. If the motor vehicle was purchased, it should be transferred to the new owner. Liability and comprehensive insurance must be cancelled before transfer to the new owner.

5. When a motor vehicle owned by the project is

either damaged beyond feasible repair or is no longer needed for project operations, the DHM should sell the vehicle at public auction. \*

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