
CHAPTER 2. OCCUPIED CONVEYANCE

SECTION I - POLICY

- 2-1 Occupied Conveyance. Properties must be vacant at the time of conveyance unless the occupant meets the conditions for continued occupancy as shown in this chapter.
- 2-2 Continued Occupancy. In all cases of continued occupancy, month-to-month leases at fair market rents for comparable properties are required. Occupied properties must not be held off the market and should be sold subject to occupancy if necessary.
- 2-3 Conveyed Occupied Without Consent. Requests for occupancy made after conveyance will only be considered for properties covered by Title 1 Home Improvement Loans.
- 2-4 Expenditures Prior to Acquisition. Expenditures may be authorized prior to acquisition only as necessary to obtain the services of a contractor to inspect properties being considered for occupied conveyance.

SECTION II - INTERNAL CONTROL OBJECTIVES

- 2-5 Authorization. Occupied conveyance is authorized and documented in accordance with the Department's program policies.
- 2-6 Lease. Tenants execute a month-to-month lease in compliance with the Department's program policies.
- 2-7 Rent. The amount of rent is based upon fair market rental values for comparable properties. Upon receipt, rental collections are timely deposited and documented.

SECTION III - GENERAL

- 2-8 General Conditions. HUD regulations concerning occupied conveyance are found at 24 CFR 203.670 - 203.685. Properties must be conveyed vacant unless one or more of the following conditions is met:
- A. It is in the Secretary's interest to accept conveyance of the property as shown in paragraph 2-24, the property is habitable as shown in paragraph 2-25, and each occupant desiring continued occupancy meets the eligibility criteria as shown in paragraph 2-26.
 - B. An individual residing in the property satisfies the illness or injury criteria shown in paragraph 2-27.
 - C. State or local law prohibits the mortgagee from evicting a tenant who is making regular monthly payments to the mortgagor, or prohibits eviction for other similar reasons beyond the control of the mortgagee, as shown in paragraph 2-14 A.

- D. A mortgagee would incur high eviction costs or is required by state or local law to pay excessive relocation expenses as part of the eviction process and the Field Office determines it is more advantageous to accept a property occupied rather than incur excessive eviction or relocation expenses. See paragraph 2-14 B.

SECTION IV - OCCUPIED CONVEYANCE PROCEDURES

2-9 Mortgagee's Notice to Occupants of Pending Acquisition:

- A. At least 60 days, but not more than 90 days, before the anticipated acquisition date, or within 10 days after learning that title will be acquired by deed-in-lieu of foreclosure, mortgagees (or, in the case of Section 312 loans, CPD's Master Servicer or for Secretary-held mortgages, the authorized foreclosure agent), are required to notify the mortgagor and each head of household who is actually occupying a unit of the property, using the Notice of Pending Acquisition, Appendix 1, that the property may be acquired by HUD. This Notice must be sent whether the property is occupied or vacant and whether the mortgagee is pursuing normal foreclosure or will accept a deed-in-lieu of foreclosure.

The mortgagee must send a copy of the Notice of Pending Acquisition to the Field Office on the same date it is sent to the occupants. The mortgagee must also inform the Field Office of the approximate foreclosure sale date and the expiration date (if any) of the redemption period.

- B. The date of mailing by the mortgagee of the Notice of Pending Acquisition may be entered in the SAMS Occupied Conveyance (OC) subsystem. (See SAMS procedures at Section XIII.) The actual mailing date (not the system-generated date) determines the 20-day response deadline by which an occupant may request continued occupancy.
1. Notice must be sent by regular mail. The mortgagee may, however, simultaneously send the notice by Certified Mail, Return Receipt Requested. This Notice provides the conditions under which continued occupancy is permissible and advises that a Request for Continued Occupancy must be made in writing to the Field Office within 20 days of the date of the Notice.
 2. Mortgagees must not begin foreclosure until HUD has rejected a request for mortgage assignment and, until that time, HUD shall not accept a mortgagee Notice of Pending

Acquisition. If the Field Office becomes aware that the mortgagee has sent the Notice of Pending Acquisition prematurely, the notice must be returned to the mortgagee with instructions to resend the notice 60-to-90 days before title is acquired.

3. In states that have a redemption period, the 60-to-90 day requirement must be timed to expire with the redemption period. Field Offices must monitor the mortgagees' compliance with this requirement by reviewing information submitted by the mortgagee for the foreclosure sale date and redemption period expiration date. Premature notices must be returned to the mortgagee with instructions to send the Notice 60-to-90 days before title is acquired after the redemption period.

2-10 Secretary-Held Mortgage (SHM).

- A. The HUD Field Office Single Family Loan Management Branch refers the case to a foreclosing agent. (see paragraph 3-11 C.)
- B. The foreclosing agent will inspect the property monthly and notify the Field Office of whether the property is occupied or vacant. Sixty to 90 days before the anticipated acquisition of the property by foreclosure, or within 10 days after learning that title will be acquired by deed-in-lieu of foreclosure, whether or not the property is occupied, the foreclosure agent will send the initial Notice of Pending Acquisition with instructions to the occupants to contact the Field Office if they wish to remain in the property. If the occupant does contact the Field Office, the Field Office should notify the foreclosure agent immediately, since the foreclosure agent is instructed to begin eviction proceedings 45 days

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after the date of the Notice of Pending Acquisition, if not notified to the contrary by the Field Office.

- C. Field Offices must process Requests for Occupied Conveyance as soon as possible. If after receiving notice that the occupant has contacted the Field Office, the foreclosure contractor does not receive a request from the Field Office to evict the occupants prior to acquisition of the property, the agent has the authority to convey the property occupied.
- D. If the property is conveyed occupied, the Field Office must execute a lease if occupancy is approved or arrange for eviction proceedings if occupancy is denied.

- 2-11 Requests for Occupancy After Conveyance. Requests for occupancy after conveyance will not be considered except for properties which were covered by Title 1 Home Improvement Loans. Although the regulations do not require that a Notice of Pending Acquisition be sent to occupants of properties covered by Title I properties, if the foreclosure contractor's inspection indicates that the property is occupied, the Field Office must provide the Notice of Pending Acquisition. Modify the Notice of Pending Acquisition (Appendix 1) for use in this circumstance. Make a determination of whether continued occupancy will be allowed based upon the criteria and standard procedures in this chapter. See paragraphs 3-11 D. for additional information on the Title I program.
- 2-12 Occupied Conveyance Before HUD Completes Review of Request for Occupied Conveyance. If the mortgagee provided a Notice of Pending Acquisition to the occupant, and the Field Office notified the mortgagee that it is considering a Request for Occupied Conveyance, but the Field Office fails to make a determination and notify the mortgagee of its decision on said request within 90 days after the date of notification to the mortgagee, the mortgagee may convey the property occupied without consent. In these cases, the Field Office should decide within 30 days whether the occupant may remain.
- A. Make a determination of whether continued occupancy will be approved according to the criteria and standard procedures in this chapter. If continued occupancy is subsequently denied, the Field Office must immediately take action to evict the occupants and market the property, subject to occupancy.
 - B. If continued occupancy is approved, any resulting lease will be dated effective as of the date of acquisition, with the first month's rent computed as of the date of the lease.
- 2-13 Occupied Conveyance Without HUD Approval or Contrary to Regulatory Requirements. When a property is conveyed occupied without HUD approval or contrary to regulatory requirements, the Field Office must first determine whether the occupant is an adverse occupant, i.e., an occupant who occupied the property without permission of the owner. The Field Office has no obligation to adverse occupants and must take action to evict.
- A. If the occupant is not an adverse occupant, i.e., they occupied the property with permission of the owner, contact the mortgagee to ensure that occupied conveyance procedures were followed, as shown in paragraph 2-9. If the mortgagee followed procedures but the occupant did not make a timely request for continued occupancy, either request the mortgagee to evict the occupant or pursue eviction through the REAM and disallow any eviction costs included in the mortgagee's claim.
 - B. If the occupant is not an adverse occupant, and the mortgagee simply did not properly follow occupied conveyance procedures, the Field Office must provide the Notice of Pending Acquisition to ensure that the occupant is given an opportunity to apply for continued occupancy. Modify the Notice in Appendix 1 to fit this circumstance. Follow mailing procedures shown in paragraph 2-9. Upon receipt of a Request for Occupied

Conveyance, determine whether occupancy will be allowed based upon the eligibility

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requirements in this chapter. Also, notify the mortgagee that they erred in not following occupied conveyance regulations, and notify Loan Management of this potential servicing problem. If continued occupancy is subsequently denied, pursue eviction through the REAM and disallow any eviction costs in the mortgagee's claim. See paragraph 3-25 if it is necessary to seek mortgagee reimbursement.

2-14 State or Local Law.

- A. Eviction Prohibited. In some areas, State or local law prohibits eviction of a tenant who is making regular monthly payments to the mortgagor, or prohibits eviction for other reasons beyond the control of the mortgagee. Mortgagees cannot legally evict in these cases, whether or not the occupant qualifies under these guidelines for occupied conveyance. Thus, the mortgagee cannot file its claim for insurance benefits unless the occupant meets the conditions for occupied conveyance. In these cases, mortgagees have been instructed to contact their local HUD office for guidance.
1. In all cases of occupied conveyance under these circumstances, the mortgagee must provide HUD with documentation to support its claim that it cannot legally evict a tenant. The Field Office should accept the property occupied if it is likely that the mortgagee would not be able to convey the property for an extended period because of the tenant's desire to remain in the property, or if continued occupancy is clearly advantageous to HUD.
 2. Field Offices should not routinely accept occupied conveyance if it is likely that the mortgagee could legally evict the tenant within a reasonable period of time. The Field Office must consider the fact that, if the mortgagee retains the property, HUD must pay debenture interest on the conveyance claim. The Field Office must compare the difference in its daily holding costs to the cost of the mortgagee retaining title. Also, consider the potential for deterioration of the property the longer conveyance is delayed. In some cases, the Department's best interest is served by accepting the property occupied rather than waiting an extended period of time for the mortgagee to obtain possession.
 3. If HUD accepts the property occupied in this circumstance, the occupants need not meet occupied conveyance

eligibility criteria. Perform Habitability and Defective Paint Inspections as shown in paragraph 2-29, and execute a lease following the procedures shown in Section IX, Lease and Advance Rent.

4. Field Offices should contact local governments to determine whether and under what circumstances HUD, as the owner, is allowed to evict after conveyance.

B. Excessive Eviction or Relocation Expenses Required. In some areas, State or local law does not prohibit eviction of a resident tenant, but does require the payment of excessive eviction costs or relocation expenses as part of the eviction process. In these cases, mortgagees must advise the local Field Office and await a decision by the Field Office regarding whether occupied conveyance will be allowed. Field Offices should consider the following:

1. Determine if the high costs of eviction or relocation outweigh the potential complications of acquiring the property occupied. If eviction is chosen, the mortgagee will pay the legally required eviction and/or relocation expenses and claim those expenses on the Single Family Application for Insurance Benefits, Form HUD-27011.
2. Should a Field Office decide it is more cost effective to accept the property occupied because of excessive eviction or relocation expenses, the occupants do not have to

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meet occupied conveyance eligibility criteria. The property must, however, be habitable or be able to be made habitable with the expenditure of not more than five percent of the fair market value of the property. (See paragraph 2-25 for habitability standards.)

3. The mortgagee must be notified in writing of the Field Office's decision.
4. Field Offices should contact local governments where such relocation laws exist and attempt to obtain an exemption for HUD-acquired properties.

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SECTION V - MONITORING REQUESTS FOR OCCUPIED CONVEYANCE

- 2-15 Initial Processing. Requests for Occupied Conveyance and any required documentation submitted in response to the mortgagee's Notice of Pending Acquisition, are due the 20th day after the date of mailing of the Notice of Pending Acquisition except, if the 20th day is not a workday, the response deadline is the next workday. Oral responses will not be considered. Process as follows:
- A. Field Offices must process Requests for Occupied Conveyance as soon as possible after receipt. Requests are to be date stamped immediately upon receipt and the date of receipt is to be entered into the SAMS OC subsystem. (The date entered must be the date of receipt in the Field Office, and not the system-generated date.) See Section XIII for requirements for SAMS processing.
 - B. The mortgagee must be notified if the Field Office receives and is considering a Request for Occupied Conveyance. (Use HUD's Notice to Mortgagee Acknowledging Receipt of a Request for Occupied Conveyance, Appendix 2.) If the mortgagee has not been notified by HUD within 45 days after the date of the mortgagee's mailing the Notice of Pending Acquisition that a request for continued occupancy is under consideration, the mortgagee shall convey the property vacant, unless the mortgagee is otherwise directed by the Field Office. This may occur if the Field Office receives a late response, as described in paragraph 2-17.
 - C. The Field Office must inform the mortgagee whether the occupant has been accepted or rejected after receiving a request. In addition, where Notice of Pending Acquisition has been given to the occupant and the Field Office has notified the mortgagee that it is considering a Request for Occupied Conveyance, but the Field Office fails to make a determination and notify the mortgagee of its decision on said request within 90 days after the date of notification to the mortgagee, the mortgagee may convey the property occupied without consent. The Field Office must, however, continue to process the request, even after 90 days.
- 2-16 No Response From Occupant. If no response is received within 20 days after the date of the mortgagee's Notice of Pending Acquisition, the Field Office must immediately advise the mortgagee, using Appendix 3, that No Request for Occupied Conveyance was Received and to Convey Vacant.
- 2-17 Late Response from Occupant. Late requests will not be considered unless there is reasonable doubt regarding the date of mailing of the mortgagee's Notice of Pending Acquisition or Field Office receipt of the occupant's request. Reasonable doubt may exist only if there is a serious discrepancy between the Postal Service cancellation stamp and the date of the mortgagee's Notice and/or between the cancellation stamp on the mortgagor's request and the Field Office's date stamp.

- 2-18 HUD Notice of Approval. If occupancy is approved, the Field Office concurrently notifies the mortgagee and the occupant in writing. Use the format provided in Appendices 4 and 5. Occupied properties must not be held off the market, and should be sold subject to occupancy if efforts to vacate the property prove unsuccessful.
- 2-19 Initial Approval or Denial Authority. This authority rests with the Chief Property Officer (CPO). If the occupant appeals a denial, the final decision will be made by the Field Office Manager or a representative of the Field Office Manager other than the CPO. The CPO is responsible for ensuring that all requests for occupied conveyance are processed properly and expeditiously.

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- 2-20 Notice of Preliminary Denial. If the request for occupancy is denied, the Field Office must send the occupant the Notice of Preliminary Disapproval (Appendix 6), which must be signed by the CPO. This notice sets forth the reasons for denial and the occupant's rights to an informal conference, to appeal, to review material and to counsel if a request for a conference or appeal is made. Only material in HUD's possession which directly pertains to conditions for continued occupancy may be considered relevant for an occupant's review. Such material includes Habitability Inspection Reports and vacancy/vandalism data. The occupant may either request an informal conference with a representative of the Field Office Manager or appeal an adverse decision in writing to the Field Office Manager, or both. Requests for an informal conference with a representative of the Field Office Manager must be made in writing within 10 days of the date of HUD's notice. Appeals are made to the Field Office Manager, must be in writing, and must be made within 20 days of the date of the Notice, after which the preliminary decision becomes final.
- 2-21 Consideration of Informal Conference and Occupant Appeal. An occupant may request an informal conference with a representative of the Field Office Manager to discuss the preliminary denial and/or appeal the preliminary decision to the Field Office Manager. Assertions by the occupant will be carefully considered and verified. If habitability is a point of contention, reinspection may be needed. If the denial stands but is based upon new grounds after reconsideration, the occupant must be advised of the specific new grounds and it must be processed as a preliminary denial with the occupant again allowed 10 days for another informal conference and 20 days for appeal.
- 2-22 Final Denial. The Field Office must send HUD's Final Disapproval of Occupied Conveyance (Appendix 7) to the occupant in either case; i.e., whether the occupant requests an informal conference and/or appeals the Preliminary Denial and the denial stands. The Notice of Final Disapproval must be signed by the Field Office Manager or a

representative of the Field Office Manager other than the CPO. The Notice must briefly explain the basis of HUD's decision, reflect consideration of the issues raised by the occupant, and include information on relocation and/or counseling services. Send the mortgagee a copy of HUD's Notice to Mortgagee Of Its Final Decision to Disapprove Occupied Conveyance (Appendix 8) if either the Preliminary Denial is not appealed or the Preliminary Denial is upheld on appeal.

SECTION VI - CRITERIA FOR APPROVING REQUESTS FOR OCCUPIED CONVEYANCE

- 2-23 Criteria for Approval of Requests for Occupied Conveyance. Except for the requirements of state or local law as discussed in paragraph 2-14 A and B., and occupants who qualify for continued occupancy under the illness or injury criteria in paragraph 2-27, all three of the following conditions must be met: Occupied conveyance must be in the Secretary's best interest as described in 2-24; the property must be habitable as described in paragraph 2-25; and each occupant who intends to remain in the property after conveyance must meet the eligibility criteria shown in paragraph 2-26.
- 2-24 Secretary's Interest. It is in the Secretary's interest to accept occupied conveyance when one or more of the following conditions are met (24 CFR 203.671).
- A. Severe and costly vandalism would probably occur if the property were vacant. The Field Office must determine on a case-by-case basis whether there have been instances of significant and costly vandalism in the immediate area. Blanket determinations are prohibited and minor vandalism such as broken windows does not meet this criterion.
 - (a) Field Offices must make their determination as to whether a property is likely to be vandalized based on information pertaining to past acts of vandalism in the immediate area of the subject property. To support determinations, Field Offices may use information from all sources including personal observations of the area, property inspection reports, REAM reports, and information reported by area residents.
 - (b) Vandalism determinations are to be documented and maintained in the property case file.
 - B. The vacancy criterion. This criterion is satisfied when the average time in inventory for HUD's unsold inventory in the residential area in which the property is located exceeds six months. Field Offices must obtain the average time in inventory information from SAMS Report OC RP RC, Residential

Area Computations.

- (1) Properties that are occupied, sold but not closed, or without a structure (vacant lot) are not used in determining whether the vacancy criterion is satisfied.
- (2) Field Offices must define residential areas and determine for each whether occupied conveyance is in HUD's interest. A residential area must be a manageable size and be justified in writing or drawn on a map based on defensible rationale such as a jurisdictional area for a REAM, county, town, city, census tract, zip code area, or school district. As acquired properties are entered into the Case Management (CM) subsystem of SAMS, they are assigned to the appropriate residential area by a two digit code. Field Offices must design their own coding system to reflect the residential areas they have established.
- (3) Documentation pertaining to residential areas must be maintained in a subject file available for review. At least every six months, the Field Office must review each residential area to determine whether the areas continue to reflect local housing markets.

- C. Marketability of a Multi-unit Property Would Be Improved by Occupancy of A Rent Paying Tenant in One or More Units. In general, assume that qualified, rent-paying tenants will improve the marketability of such properties.
- D. Excessive Eviction or Relocation Costs. The high cost of eviction or relocation expenses makes eviction impractical. See paragraph 2-14 B.

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2-25 The Property Must Be Habitable.

- A. The habitability standard is met if each unit of a property meets the requirements of this paragraph or if the property can be made habitable with the expenditure of not more than five percent of the property's estimated fair market value. For multi-unit properties, repairs cannot exceed five percent of the estimated fair market value for the entire property. The cost of treating defective paint hazards is excluded from the five percent cost limitation.

If repairs are required to make the property habitable, the Field Office must initiate repairs expeditiously according to normal repair procedures. See paragraph 2-25 C. for repairs while occupied. See paragraph 2-29 A. for the necessary habitability inspection report.

Each residential unit must contain:

1. Heating facilities adequate for healthful and comfortable living conditions, taking into consideration the local climate;
 2. Adequate electrical supply for lighting and for equipment used in the residential unit;
 3. Adequate cooking facilities;
 4. A continuing supply of hot and cold water; and
 5. Adequate sanitary facilities and a safe method of sewage disposal.
- B. Structural Soundness. The property shall be structurally sound, reasonably durable, and free from hazards that may adversely affect the health and safety of the occupants or may impair the customary use and enjoyment by the occupants. Unacceptable hazards include, but are not limited to, subsidence, erosion, flood, exposure to the elements, exposed or unsafe electrical wiring, or an accumulation of minor hazards, such as broken stairs.
- C. Repairs While Occupied. If repairs, including defective paint removal, are to be made while the property is occupied, the following guidelines apply:
1. If the repair work would in itself create a hazard to the resident, the property must be determined uninhabitable unless the occupants agree in writing to vacate the property at their own expense during repairs.
 2. The occupant must agree to let HUD correct problems and must sign a Hold Harmless Agreement (Appendix 9) at the time occupancy is approved.
 3. If temporary relocation of the occupant is necessary during repairs for habitability, Field Offices do not arrange temporary shelter or pay for alternate housing.
 4. Habitability of multi-unit properties must be determined for each living unit, allowing no more than five percent of the property's estimated fair market value for repairs for the entire property.

2-26 Eligibility Criteria. An occupant must meet all the following additional eligibility criteria.

- A. The occupant must make a written request to continue to occupy and the request must be received by HUD within 20 days after the date of the mortgagee's Notice of Pending Acquisition.
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- B. Occupant must have been in residence at least 90 days before the lender acquires title to the property. (Does not apply if occupant qualifies under the illness/injury criterion shown at paragraph 2-27.)
- C. Occupant must agree to execute a month-to-month lease at the time of acquisition by HUD. The rental rate will be fair market rent, based on the rents charged for other properties in comparable condition after completion of repairs for habitability, if any. (See paragraph 2-25 for habitability.)

The occupant must also agree to pay the rent for the first month in advance at the time the lease is executed. (Advance rent does not apply if occupant qualifies under the illness/injury criterion shown at paragraph 2-27.) The lease is to be dated effective as of the date of acquisition of the property. The lease term may not begin, nor rent collected, until title is taken in the Secretary's name. The first month's rent is not a security deposit, and HUD is not responsible for security deposits or rent paid to a previous owner.

- D. Occupant must have the financial ability to make the monthly rental payments under the terms of the lease. This may be evidenced by any of the following:
- (1) Records of payment;
 - (2) Income verification supporting calculations that show that housing costs (rent plus utilities paid by the occupant) do not exceed 38 percent of the occupant's net effective income (gross income less federal income taxes). Field Offices may permit the housing costs to be higher than 38 percent if, for example, the tenant has been successfully paying at least the required rental amount for the property or the occupant has cash savings or can rely on contributions from family members to cover a portion of the housing costs.
 - (3) A Section 8 tenant would continue paying the customary portion of rent, with the remainder paid out of Section 8 funds. If for any reason the subsidy is terminated, the tenant will be expected to pay full fair market rent, against which the tenant's financial ability will be measured.
- E. Occupant must agree to allow access to the property during normal business hours and upon a minimum of two days' advance notice by the HUD Field Office staff or by HUD representatives. Access may be required so that the property may be inspected and any necessary repairs accomplished, or so that it may be

previewed by real estate brokers and their clients.

- F. Occupant must disclose and verify the Social Security Numbers of all family members six years of age and older.

2-27 Illness or Injury. As an alternative to approval under conditions as shown in paragraph 2-23, occupancy may be approved if an individual residing in the property suffers from a temporary, permanent or long-term illness or injury that would be aggravated by the process of moving from the property, under the following conditions:

- A. The occupant makes a written request for occupied conveyance that is received by the HUD Field Office within 20 days after the date of the mortgagee's Notice of Pending Acquisition. At the time of the request, the occupant must provide a written statement by a State-certified physician establishing the validity of the occupant's claim including an estimate of the time when the patient could be moved without severely aggravating the illness or injury. The Field Office may require more than one medical opinion or may arrange an examination by a physician approved by HUD. The illness or injury criterion

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is not met by mental stress of trauma incident to moving, including financial hardship or inability to find comparable housing.

- B. The occupant must agree to execute a month-to-month lease at the time of acquisition by HUD. The rental rate will be fair market rent, based on the rents charged for other properties in comparable condition after completion of repairs for habitability, if any. Leases are to be dated effective as of the date of acquisition of the property.
- C. Eligibility criteria relating to HUD's interest, habitability, 90 days of prior occupancy, and the payment of the first month's rent in advance at the time the lease is executed does not apply and are not to be considered when evaluating eligibility under the illness or injury criterion. The three additional conditions for eligibility including the ability to make monthly rental payments, requirements for access and for providing Social Security Numbers are applicable, however, and are as shown in paragraph 2-26 D. E. and F.
- D. Rent may not be collected until title is taken in the Secretary's name. Tenants approved under this criterion are also allowed the 10-day grace period discussed at paragraph 7-33 A. for payment of the first month's rent. The

first-month's rent is not a security deposit and HUD is not responsible for security deposits or rent paid to a previous landlord.

For additional information on rent and rent collection, see Section IX, Lease and Advance Rent.

- E. Occupancy because of illness or injury of an individual residing in the property will be limited to a reasonable time, to be determined by the Field Office on a case-by-case basis.
- 2-28 Sales Subject to Occupancy. If occupied conveyance is approved, properties must not be held off the market and should, if necessary, be sold subject to occupancy.

SECTION VII - INSPECTIONS

- 2-29 Required Inspections and Reports. Upon receipt of a Request for Occupied Conveyance, and prior to an initial determination of eligibility, a Habitability Inspection Report and Defective Paint Inspection Report must be prepared by qualified staff, the REAM, or inspectors under contract to HUD. If an occupant denies access to the property, thereby preventing the completion of either of the reports, continued occupancy shall be denied and eviction action must be initiated immediately by either HUD or the mortgagee, as appropriate.
- A. Habitability Inspection Report. The Property Maintenance Inspection Report, Form HUD-9519-A, (Appendix 44) should be used for this inspection. The report shall itemize the property's deficiencies related to the standard of habitability (see paragraph 2-25.) Only information that relates to habitability should be put in this report. Repair costs and calculations shall be developed on a separate worksheet and made part of the administrative record. For multi-unit properties, individual inspection reports must be prepared for each living unit but shall include consideration of the common area. At acquisition, the occupant's oral confirmation that there has been no fire damage since the habitability inspection may suffice for claim settlement.
 - B. Defective Paint Inspection. A Defective Paint Inspection is required on any property constructed prior to 1978. The information required is shown on Appendix 56, Certification of Inspection for Defective Paint Surfaces. Use of the format shown on Appendix 56 is not mandatory, but the format used for the inspection report must include all the information shown on Appendix 56.

SECTION VIII - DEFECTIVE PAINT HAZARD

- 2-30 Defective Paint Hazard. This hazard is not grounds for denying occupied conveyance, unless the procedure for treating defective paint would itself create a health hazard. (See paragraph 13-9.) In such a case, occupancy will be denied unless the occupant agrees in writing to vacate the property at their own expense during the procedure. Such agreement would be in addition to the Hold-Harmless Agreement in Appendix 9. The Field Office must remove the hazard as quickly as possible after acquiring title to a property approved for occupancy.
- A. Upon approval of occupancy, the tenant will be given Form HUD-9538, Hold-Harmless Agreement (Appendix 9) to sign before treatment begins and the Notice: Watch Out for Lead-Based Paint Poisoning! (Appendix 10).
- B. Continued occupancy will be denied if the tenant either refuses to let HUD treat the defective paint hazard or refuses to relocate, if necessary, during the procedure.
- 2-31 Field Offices do not arrange temporary shelter or pay for alternate housing during defective paint treatment.
- 2-32 Exclusion of Cost to Treat Lead-Based Paint Hazard. In figuring the cost of repairs for habitability, the cost of treating a defective paint hazard is not to be included.

SECTION IX - LEASE AND ADVANCE RENT

- 2-33 Agreement to Lease and Pay Rent. All occupants approved under Occupied Conveyance must agree to execute a month-to-month lease at the time title is taken in the Secretary's name, and to pay fair market rent for comparable properties after repairs for habitability, if any. (See paragraph 2-25 for habitability.) Occupants must pay the rent for the first month in advance at the time the lease is executed; otherwise, HUD must refuse occupancy. Except, occupants approved under the illness or injury criterion are allowed the grace period discussed at paragraph 7-33 for payment of the first month's rent.
- 2-34 Right of First Refusal. Information on the Right of First Refusal is provided at paragraphs 7-30 and 10-29 B.
- 2-35 Rent. The Chief Property Officer is responsible for determining the fair market rent based upon comparable rented properties. The responsibility for determination of fair market rent and notifying the occupant of the rent level cannot be delegated to the REAM or other individual. Fair market rent will be based on comparable

rented properties. Documentation supporting this determination must be filed in the individual case file.

- A. The Field Office must state the rent level at the time the occupant is notified of approval of occupancy. If the occupant then retracts the request, the Field Office will advise both the mortgagee and the occupant that the property must be conveyed vacant.
- B. The requirement to pay the first month's rent in advance at the time the lease is executed is not applicable to tenants approved under the illness or injury criterion. See paragraph 2-27 for the illness or injury criterion. All other tenants approved under Occupied Conveyance must pay the first month's rent in advance at the time the lease is executed. Lease terms may not begin, nor rent collected, until title is taken in the Secretary's name.
- C. The Chief Property Officer must execute the lease. This responsibility cannot be delegated to the REAM.
- D. The first month's rent is not a security deposit, and HUD is not responsible for security deposits or other fees paid to previous landlords.

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- E. REAMS may be used to collect the rent pursuant to the terms of the REAM contract.

2-36 Lease Form. When occupied conveyance is approved, leases must be executed on the standard lease (Appendix 29). Any and all modifications or alterations to the lease form except as shown in this handbook must have the prior approval of the Director, Office of Insured Single Family Housing, in Headquarters.

2-37 Original, Executed Lease. The original, signed and dated lease must be maintained in the individual case file.

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SECTION X - TEMPORARY NATURE OF CONTINUED OCCUPANCY

2-38 Temporary Lease Period/Eviction for Cause. Occupancy is temporary in all cases, and is subject to termination when necessary to

facilitate preparing the property for sale and completing the sale or when the property is assigned to another use or program. The Field Office must notify the occupant in writing to vacate and, if necessary, will evict for any of the following reasons:

- A. Failure to execute the lease.
- B. Failure to pay the required rent, including the initial payment at the time of execution of the lease.
- C. Failure of the occupant to comply with terms of lease.
- D. Failure to allow access to the property to accomplish necessary repairs, inspect the property, or allow real estate brokers to show the property to a prospective purchaser.
- E. Preparation of the property for sale.
- F. Assignment of the property to a different use or program.

SECTION XI - DOCUMENTATION

- 2-39 Requirements for Documentation. Field Offices must maintain thorough documentation of all matters relating to occupied conveyance. All correspondence and documentation, such as a copy of the Mortgagee's Notice of Pending Acquisition, letter(s) to the mortgagee, inspection reports, lease and doctor's statements, must be maintained in the individual case file.

SECTION XII - WAIVER

- 2-40 Waiver. Upon completion of a determination of a finding of good cause, the Assistant Secretary for Housing-Federal Housing Commissioner may waive any regulatory requirement of any particular case. Requests for waivers from Field Offices must be in writing signed by the Regional Administrator, addressed to the Director, Office of Insured Single Family Housing, Attention: Director, Single Family Property Disposition Division. Such a request must be supported by documentation of the pertinent facts. The authority to waive regulations may not be redelegated. (24 CFR 203.685). All regulatory waivers are periodically published in the Federal Register to inform the public of waivers granted and all relevant information concerning the waiver.

SECTION XIII - PROCESSING REQUIREMENTS FOR SAMS

- 2-41 SAMS. SAMS tracks occupied conveyance (OC) through six phases and requires the completion of specific data screens corresponding with each of these phases. At the discretion of the Field Office, data entry, which normally begins with the receipt of the Mortgagee's Notice of Pending Acquisition, may be delayed until a Request for Occupied Conveyance is received. See the SAMS User Handbook for processing requirements for occupied conveyance.