CHAPTER 4. CHATTEL MORTGAGE, ATTORNEY'S OPINION & FIRST PAYMENT TO PRINCIPAL

4-1. ALTERNATIVE SECURITY INSTRUMENTS.

a. The commitment requires the mortgagee at final endorsement to obtain either:

(1) An attorney's opinion that the so-called non-realty items are covered by the lien of the real estate mortgage or

(2) A chattel mortgagee or other appropriate security instrument covering such items.

b. The attorney's opinion is that of the mortgagee's attorney and the chattel mortgage or security instrument runs in favor of the mortgagee.

c. The HUD-FHA Closing Attorney is responsible for obtaining either an acceptable attorney's opinion or the chattel mortgage or security instrument.

d. Under the Uniform Commercial Code the security instrument or agreement is accompanied by a financing statement. In those jurisdictions, where the Code is in effect, copies of both will be obtained if they are used.

4-2. NON-REALTY ITEMS. Prior to final endorsement the Field Office Director will forward to the mortgagee and the HUD-FHA Closing Attorney a list of easily movable items which would be included in the non-realty category. Among these are ranges, refrigerators, washers, dryers, water heaters, dishwashers, venetian blinds, removable air conditioning units, lobby furniture and similar items necessary for the operation of the project. All such items must be covered by the mortgage lien, whether or not paid for with mortgage proceeds, so long as such items are required in the operation of the project.

4-3. ESTABLISHING FIRST PAYMENT TO PRINCIPAL.

a. Start of Amortization. ether construction has been completed or not, amortization must start on the date specified in the mortgage, unless a deferment has been recommended by the mortgagee and approved in advance by the Director, Office of Loan Management.

b. Advance Amortization Requirements. In order that the Field Office Director may determine whether or not advance amortization is required, the mortgagor must account for all operating income for the period ending three months prior to the originally scheduled date of the first principal payment under the mortgage (i.e., through June 30 if first principal payment is scheduled for October 1).

c. Income and Expense Statement Requirement. In connection with cost certification, the mortgagor will already have reported the results of occupancy during the cost certification period. (See Paragraph 5-10.) Therefore, when more than three months intervene between the cost certification period and the first principal payment as originally scheduled, the Field Office Director will require an income and expense statement covering the period beginning at the end of the cost certification period and ending three months prior to the date of the first principal payment under the mortgage as originally scheduled.

4-4. AGREEMENT OF MORTGAGOR. When final closing is scheduled after the close of the accountability period, the income and expense statement should, of course, be submitted prior to final closing. When final closing is scheduled before the expiration of the accountability period, the mortgagor must agree in writing, as an inducement to the Commissioner to approve the final disbursement of mortgage proceeds prior to the expiration of the accountability period:

a. To furnish an income and expense statement for the required period within 30 days after its expiration, and

b. To immediately apply, as a mandatory prepayment to the mortgage, such portion of the net operating income as the Commissioner may require.

4-5. TREATMENT OF ITEMS IN STATEMENT. In the preparation of the income and expense statement, all rents received, exclusive of security deposits, shall be included as income. All expenses for operation, including taxes, insurance, HUD-FHA MIP, interest and reasonable management fees (but not officers' salaries or depreciation), may be deducted in determining net income for this purpose. If the statement required by Paragraph 5-9 reveals an excess of expense over income, such excess (to the extent recognized by the Commissioner) may be carried forward to the statement required by this paragraph as "unrecovered expense prior period."

4-6. PREPAYMENT REQUIREMENTS. The amount of, and the handling of, the prepayment required is subject to the following:

a. In no case shall the required prepayment exceed the amount which would have been due in cumulative principal payments if the first scheduled payment had been on the first of the month in which the accounting period started.

b. Prepayment will be required only to the extent that the amount of the net income permits payment of one or more full monthly principal payments as scheduled.

c. If the circumstances are such that the operating statement is submitted before final endorsement, the mortgagee and mortgagor may elect to have the mortgage endorsed for less than the face amount by a sum equal to that which would have been required as mandatory prepayment.