CHAPTER 4. SETTLEMENT OF CLAIMS

4-1. INTRODUCTION. When a claim for loss on a defaulted, repossessed, and resold Mobile Home Loan insured under Title I of the National Housing Act, as Amended, is received by HUD-FHA, every effort is made to process it expeditiously so that its certification for payment by the Treasury Department can be made promptly. This chapter was prepared for the guidance of the lender in preparing its claim for submission. It not only outlines the required documents, forms, and papers, but also explains what information is necessary so that the claim can be processed, in most cases, without further correspondence. Careful adherence to these procedures will result in payment of Title I claims within a minimum of time and thereby reduce processing costs of both the lenders and HUD-FHA.

a. If the Claim Submitted is Accurate and Complete in every detail, its examination for compliance with statutory and regulatory requirements and the calculation of the allowable loss can be completed within a few days. In such cases the lender receives its check from the Treasury Department in a relatively short time. When inaccuracies and omissions require correspondence with the lender to obtain clarification or completion of information, payment of the claim is unavoidably delayed.

b. An Accurate and Complete Claim Requires certain data and documentation which must be obtained at the inception of the loan. Some of these requirements will vary, depending on the HUD-FHA Title I Regulations in effect at the time the loan was made. It is important, therefore, that personnel engaged in initiating transactions as well as those who are responsible for preparing and submitting claims be familiar with these requirements. Chapters 1 and 2 contain the current administrative policy and requirements concerning the disbursement of eligible loans. For an explanation of insurance reserves, and for other requirements and information concerning claims for loss including the cancellation or voluntary repurchase of claims, also see Chapter 1.

4-2. ASSEMBLING THE NECESSARY PAPERS. When the lender decides that it has exhausted all collection efforts, and when default exists either in nonpayment of installments on the mobile home loan or failure to make payments of rents, taxes, or other charges incurred in connection with the lot or site where the mobile home is emplaced, the lender must repossess and sell the mobile home prior to filing its application for reimbursement of insurance loss. The lender's next step is to assemble its complete file, this includes, all documents, forms, certification, collection history, and correspondence history, and correspondence relating to the transaction.

4-3. EXAMINING PAPERS FOR COMPLETION. The documents in this file should be carefully examined for completeness with particular emphasis on the items listed below.

a. Credit Application, Form FH-1 (MH).

(1) This form should be examined to determine:

(a) that it has been properly dated;

(b) that the certification section has been completed indicating that the mobile home will serve as the applicant's principal residence and that the unit will be located in an approved mobile home park or privately owned site complying with all local requirements;

(c) that the description of the mobile home unit with accessories and furnishings together with their costs have been fully stated;

(d) that all other items on the form have been completed;

(e) that the application has been properly signed by the borrower, and

(f) that, the application has been signed by either the person selling the mobile home unit or by a person other than the borrower who prepared the credit application.

(2) In all instances the credit application must be supplemented by either a commercial credit report on the borrower or evidence of the lender's investigation of the borrower's credit.

(3) If the examination discloses inaccuracies or omissions,

an explanation should be prepared for inclusion in the Title I Claim For Loss Transmittal Letter, Form FH-7 (Appendix 4).

b. Obligation or Evidence of Indebtedness. The obligation or evidence of indebtedness may be in a form of a Conditional Sales Contract, Chattel Mortgage, Purchase Money Mortgage, Promissory Note, or other form which is complete and regular on its face and valid and enforceable against the borrower in the jurisdiction issued. Similarly, the obligation or evidence of indebtedness must be secured by a properly recorded financing statement or security agreement which creates a first lien against the mobile home and its furnishings, equipment, and accessories.

(1) The obligation should be examined to determine:

(a) that it fully describes the mobile home unit and furnishings;

(b) that full disclosure of items are in compliance with the Truth in Lending Law;

(c) that the written and numerical gross amount of the obligation are stated with the amount of periodic payments;

(d) that it is otherwise completely executed with the genuine signatures of the borrower(s).

(2) The reverse of the obligation should be examined to assure that it bears a complete endorsement and transfer of interest from the dealer-seller.

c. Placement Certificate For Mobile Home, Form FH-2 (MH). The placement Certificate should be examined to determine that it has been completely executed by the borrower and the dealer-seller. As in the case of the obligation or evidence of indebtedness all signatures to the certificate must be genuine.

d. Dealer Contract, Purchase Orders.

(1) This is generally the dealer-seller work order form which reflects the overall cost to the purchaser, including:

(a) the cost of the mobile home, its furnishings, equipment, and accessories;

(b) the downpayment made;

(c) insurance charges;

(d) other fees and charges;

(e) financing charges stated in dollars as well as percentages; and

(f) warranty of the home as guaranteed by the manufacturer and dealer-seller.

(2) This document should be examined to determine that the amount to be financed does not exceed 115% of the manufacturer's invoice price of the mobile home unit, its furnishings, equipment, and accessories.

e. Manufacturer's Invoice. A document identifying the mobile home unit by serial number and officially issued to the dealer stating the true wholesale price of the mobile home, its furnishings, equipment, and accessories.

f. Advance Notice to Borrower. At least six calendar days prior to making disbursement, the lender must give the borrower written notice of the approval of his credit application.

(1) It is not required that the borrower acknowledge receipt of such notice. The lender must, however, produce a record of having mailed or delivered such notice. An acceptable record of delivery would be a dated carbon copy of the notice or a dated entry in the borrower's loan file.

(2) Supplies of the advance notice are not furnished by HUD-FHA since lenders should issue the notice on their own letterhead stationery. (Suggested forms of this notice are illustrated in Chapter 2.)

g. Certificate of Design and Construction - Mobile Home Loan. Determine from inspection that the manufacturer's certificate of design and construction has been completely executed and signed on behalf of the manufacturer. The certificate must also state that the mobile home was constructed in accordance with the requirements prescribed in Mobile Home

Standard No. A 119.1, as approved by the American National Standard Institute.

h. Documentation Required When Mobile Home Placed on Borrower's Site. The two certificates which are required when a mobile home is emplaced on an owner's site should be inspected to assure that they have been fully executed and signed.

(1) One certificate by an authorized local official should establish that the site has adequate sanitary facilities and is in conformance with applicable sanitary codes in the jurisdiction where the mobile home is to be located.

(2) The second certificate by the dealer and the borrower stating that the current zoning of the site does not preclude emplacement of a mobile home.

i. Certificate of Origin - Mobile Home Loan. Determine from inspection that the manufacturer's certificate of origin has been completely executed and signed on behalf of the manufacturer and states that the mobile home is free and clear of all legal encumbrances.

4-4. CORRESPONDENCE FILE. The file should contain a resume or copies of all collection correspondence pertaining to the account, including letters exercising the lender's option to accelerate the maturity of the obligation.

4-5. REPOSSESION COSTS. A statement of expense incurred in repossesing and selling the mobile home unit should be included in the claim file. These expenses are reimbursable as a part of the insurable loss and are not subject to the 10% co-insurance feature.

a. Allowable Expenses. The cost of repossessing and refurbishing the mobile home not to exceed $500. Such as:

(1) Unpaid taxes or park rental fees

(2) Unpaid utility bills

(3) Lock replacements

(4) Cleaning and painting

(5) Transportation or freight to relocated site

(6) Replacement or repair of fixtures and/or appliances.

b. Attorney Fees. The cost of attorney fees incurred in connection with court orders to repossess are not to exceed $100.

c. Uncollected Court Costs including fees paid for issuing, serving, and filing summons.

d. Sale Commission. A sales commission not to exceed 3% of the sale price of the mobile home unit. While the commission in most instances will be paid to the dealer, it may, if circumstances warrant, also be paid to mobile home park owner or recognized realty salesman.

4-6. DEFICIENCY JUDGMENTS. The regulations do not specifically require a lender to litigate on the remaining balance of an account following repossession and resale. However, in any instance where a deficiency judgment or other security device has been obtained, it must be assigned to the United States of America, on a form recordable in the jurisdiction in which the judgment or other security device was taken.

4-7. INSURANCE REFUNDS. Following repossession and resale of the mobile home unit, insurance coverage should be cancelled and any refund of insurance premiums, whether prepaid or escrowed, must be credited to the unpaid balance of the borrower's account.

4-8. TITLE I CLAIM FOR LOSS (FORM FH-7). When the examination of the claim papers has been completed, the next step is the preparation of the subject form, which includes a cover sheet and six parts comprised of the Transmittal Letter (parts 1 and 2) and the

Application Voucher (parts 3 through 6). This form is illustrated in Appendix 4, with instructions for its preparation and transmittal.

4-9. COMPUTATION OF INSURED LOSS. From the information furnished by the lender on Form FH-7, the computation of the insured loss is made by HUD-FHA. The HUD-FHA computation is entered on the Application Voucher in the column headed "FOR FHA USE ONLY - Determination of Amount Due," and the claim number is also entered by HUD-FHA. Part 4 is forwarded to the lender with the treasury check issued in payment of the claim.

4-10. EXAMPLE OF COMPUTATION OF INSURED LOSS. The following hypothetical case is prepared for the information of lenders to illustrate the manner in which an insured loss is determined. Let us assume that a 10 year note for $11,766.49 payable in monthly installments of 598.06 with a date of first payment July 1, 1970 was executed on June 1, 1970. The financing charge was $3,766.49 and the dealer received net proceeds of 58,000. Installments were paid when due up to and including the payment of January 1, 1972, but the February payment was not made until April 10.

On May 2, 1972, the lender having received no further payments, exercised its option to accelerate the maturity of the loan, and on May 10, 1972, instituted proceedings to repossess the mobile home. The mobile home was repossessed on June 20, 1972, and resold on July 15, 1972 for $6,200. The cost of repossession totaled $480, and the cancellation of a comprehensive insurance policy resulted in a refund of $240. On August 10, 1972, the lender decided to file claim and furnish the required information on the Title I Claim of Loss, Application Voucher, Form FH-7.

a. Comments. The computation is made in accordance with the following comments and is inserted on Form FH-7 (Application Voucher) as illustrated in Appendix 4. The item numbers listed relate to the numbers in the left margin of the Application Voucher.

(Item 1). - In this case the maximum financing charge, obtained from FHA Title I Payment Schedule Booklet, FHA No. 1359 was taken.

(4-10) (Item 2). - The charge is considered distributed over the period of the loan and is prorated to the date of default. The proration is based upon the outstanding balances for the total period of time from the date of the note. Twenty of the 120 regular payments were received, the default being in the 21st period. The factor to be used, therefore, is 0.31818 based on the formula in sub-paragraph b, below for the 21st period of a "120" Period to Maturity Loan where the number of days from the date of note to the date of first payment is 30 days. The charge to be prorated ($3,766.49) multiplied by this factor represents the charge earned prior to default.

The amount that will be allowed under this claim is $3,766.49 X 0.31818, or $1,198.42.

(Items 3 and 4) - Since the proceeds were $8,000, the total amount due up to the time of default was $9,198.42 (the proceeds paid to the borrower plus the earned charge).

(Items 5 and 6) - Since $1,961.20 was received in regular installments, this amount is subtracted from the total amount due to the time of default, leaving a balance due of $7,237.22.

(Items 7 and 8) - On July 15, 1972, the mobile home unit was resold for $6,200 and insurance refund of $240 was received. The total of $6,440 subtracted from the total amount due to the time of default reduced the balance remaining to $797.22.

(Item 9) - Interest at 7% was due, therefore, on $797.22 from March 1, 1972 to August 10, 1972, the date on which application for reimbursement was made. The table headed "Exact Number of Days in Fractional Parts of a Year" (see Appendix 4) shows the number of days between March 1, 1972 and August 10, 1972, to be 162 days. The interest factor for 162 days at 7% per annum as shown in the interest table (see Appendix 4) is .0310685. This factor multiplied by the outstanding balance due as of March 1, 1972, $797.22 results in interest for this period of $24.77.

(4-10) (Item 10) - The earned interest is added to the net unpaid principal and prorated charge to determine the principal prorated charge, and interest earned by the lender.

(Items 11 and 12) - The co-insurance loss 10, which is borne by the lender is deducted to determine the net unpaid principal, prorated charge, and interest due the lender. (The co-insurance loss is not recoverable from either the borrower, dealer or HUD-FHA).

(Item 13) - The costs of repossession and resale are not subject to the co-insurance deduction, therefore, the total costs are added to the net unpaid principal, prorated charge, and earned interest to arrive at the total insured loss, which in this case is $1,219.79.

b. Formula for Determining Proration Factor. Outlined below is the formula for determining the proration factor required to compute the earned charge to date of default.

m = number of days to first payment

n = number of periods in loan

d = number of payments made before default

$$\frac{\frac{m\,n}{30} + dn - \frac{d}{2}\,(1 + d)}{\frac{m\,n + n\,(n-1)}{30 \qquad 2} \qquad \frac{mn}{30} + \frac{n(n-1)}{2}} = \text{Proration Factor}$$

(1) To illustrate how this formula is used, the following shows how the factor was determined for the hypothetical case explained in subparagraph a, above and illustrated in Appendix 4.

$$\frac{\frac{30 \times 120}{30} + 20 \times 120 - \frac{(20}{2}\;(1 + 20)}{\frac{30 \times 120}{30} + \frac{120\,(120-1)}{2}} = 0.31818$$