# A GUIDE TO MANAGEMENT CONTRACTS

**By Rich Berendson**

# PREFACE

The most common problems raised are those involving management. In many cases, the people involved do not understand the management contract under which their co-op is operating; often, they have never read or even seen a copy of it. They do not know who has what responsibilities, how to demand compliance with the terms of the contract, or how to seek its termination if management performance proves unsatisfactory.

Yet, every year or so, the board of directors faces the job of negotiating a new contract, either with the current agent or with a new management firm. Often these negotiations are a mere formality, and the new contract is not even read thoroughly before it is signed. If there have been problems with the previous manager, the emphasis is placed on what management has failed to do, and little attention is given to the remaining terms and conditions of the contract.

Boards of directors consist of unpaid volunteers; they seldom include individuals who possess highly developed contract-negotiating skills. Even if the directors are aware of their responsibilities in this regard, they may feel hesitant and ill-equipped when hammering out a contract with a professional manager. The resulting contract often does not reflect the actual needs of the cooperative.

The Management Contracts Course, explicitly intended for directors of HUD-insured co-ops, is designed to help boards understand the management plan and agreement that comprise the management contract. The course provides guidelines for developing management services specifications and negotiating a satisfactory management contract. Emphasis is placed on helping the board learn how to establish specifications. To develop specifications, the board must have a clear picture of what it wants the manager to do, what services are to be provided, and what procedures are to be followed.

If the board were to plan to have a contractor put in the sidewalk, it would probably specify what kind of cement mix should be used--how much sand or gravel, how much cement, how thick the concrete should be, and whether or not the walk should be reinforced. The board would probably also write into the contract a schedule for the completion of the work and a clause that allows it to get the job done some other way if the contractor fails to live up to the terms that have been set.

A management contract differs from a sidewalk contract only in that it will be in effect for a long time, it will be much more costly, and its terms will affect the lives of every member of the coop through the collection of housing charges, the performance of maintenance work, etc. It is just as essential to developing detailed specifications for this contract as for one involving constricting a sidewalk.

**This summarizes the HUD-recommended review but is excellent for all reviews because it discusses the right things needed to review the management contracts.**

**We are held responsible for the governing of the cooperative when we are elected to the board. The manager is under the board, and the board will be held accountable for the operation of the cooperative even if we hire an outside management group.**

**The first session** of the course introduces the management plan concept, explaining its purpose and content, and reviewing HUD's requirements for the plan that must be submitted as part of the contract; boards formulate specifications for the services they will require from the management agent. The program provides a detailed description of the scope of service to be provided by management. Following this presentation, participants are assigned to work in small groups to develop a management plan for a hypothetical co-op and then to compare specifications with those required by HUD.

**The second session** deals with the management agreement, which is the part of the contract that outlines the board's responsibility of the board and the management agent. Special attention is given to the model agreement provided by HUD for the co-ops; it regulates the sections the council can modify to Some degree. This session also reviews the critical, related regulatory agreement, after which participants are asked to check their understanding of the management agreement using a comprehensive checklist. Also included is a survey of the management reports the board should receive regularly.

Participants are again asked to work in small groups to review a sample management report to identify potential problems. The small group tasks are an essential part of each training session, requiring participants to take an active role in teaching themselves. This participatory learning approaches allow people to apply what they have learned immediately. Those who take the course gain practical experience working with forms, agreements, and reports about a hypothetical but typical co-op--Gateway Terrace-- in situations they are likely to face directing their co-ops. It is strongly recommended, therefore, that participants join with others from their co-op to form the small group assigned to work on each task and that they take an active part in the small group sessions.

This training course has been challenging to design, for no rules or guidelines will apply equally to all cooperatives. Every board is different, every locality is other, each manager is different, and each group of members living in the coop is other in some way that makes each cooperative unique. Each housing program-236, 221(d)(3), 213 has its peculiarities. Therefore, whatever information each participant gains from this course must be tempered by their sit. The system is not intended to offer solutions to specific problems but rather to teach. Skills that will help each board of directors develops an effective management plan and agreement for its copper.

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# USE OF THIS GUIDE.

Each part of this guide supplements and corresponds with a part of the Management Contracts Course. The guide contains all the information presented in each session, including copies of HUD requirements and agreements, materials for small group task assignments, and a glossary of teams frequently used in discussing management contracts.

Readers are urged to review and return to the glossary as often as necessary to understand the terms used thoroughly. Readers expected to gain maximum bene guide by using it during and after taking the introductory course. Those unable to participate in the training may also find the guide helpful, mainly if they study it together with other Board of committee members, discussing the application of each concept to their particular co-op after each presentation of information and group task assignment.

# A NOTE ON TERMINOLOGY.

The term "management agent" means different things to different people, depending on their region and particular experience. When some speak of a management agent, they refer to the owner of a large property manage-firm employing several property managers who oversee the administration of several projects. In such cases, property managers may supervise on-site managers, who, if they live on the premises, are called "resident managers." In the case of a smaller firm that serves only a few properties, the management agent may be both owner and sole property manager and may either supervise a few on-site managers or visit the properties themself as a part-time on-site manager. In yet another arrangement, a co-op may contract with a self-employed, independent management agent who lives in the project and is the property and resident manager rolled into one. To approve money and achieve a closer relationship between the co-op and manager, a few boards hire and supervise a co-op resident to provide management services. In the absence of standard definitions use of the term 'management agent" in the guide refers to the person with whom the board contracts to provide management services for the co-op.

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# CONTRACTS

Before getting into management contracts, there is something to be said about contracts in general.

A contract is an agreement under which people arrange specific affairs by making certain promises to each other. In effect, they create a situation of law between themselves. A contract does. It does not always have to be written to be binding and have a basic premise. Of contract law is that any sane adult who agrees can be held to his promises (he also has to be sober; one man about town proved that he was falling down drunk when he signed a lease on a Chicago penthouse apartment and was able to get out of the commitment.)

If necessary, a court can compel a party to an agreement to honor it by carrying out his promises to the full or by paying damages for his failure to do so. Yet each day, countless numbers of people blithely Enter contractual commitments of all kinds - not only signing leases but also buying on credit, borrowing money, taking out insurance, hiring workers without fully understanding the possible legal consequences of their actions, and very often a person who makes a contract will break it without intending to do so, simply through inattention or negligence.

## A MATTER OF. FORMS.

The making of contracts has become so routine that many are executed simply by signing a preprinted form, the ubiquitous bank check. One example, today, approximately 63 million checks are signed every day. Yet, a little more than a century ago, bank checks were considered such complex legal documents that only experienced lawyers were believed qualified to draft them. Bank checks are still legal documents, of course; the signer of the check is ordering the bank to pay a certain amount of money to the recipient and is placing the responsibility on himself for ensuring that his checking account will cover the payment. People also affix their names to all kinds of other preprinted legal documents.

a contract to buy a refrigerator with 18 months to pay;

an application for a credit card,

a promissory note at the bank,

a lease for an apartment,

In some instances, the wide use of these standardized legal forms has created the impression that they cannot be altered in any way - that the signer must sign on a take-it-or-leave-it basis; this is not always so, although one or the other party to the deal often benefits from the assumption that it is. A standard contract may be unabashedly loaded in favor of the businessperson trying to get your signature on it - a seller pushing expensive goods, a lender who wants to collect your interest or a landlord. He hopes to control his tenants' actions. If you walk into a printing shop or stationery store specializing in legal forms and ask, for example, for a standard lease, you may be confronted with a bewildering variety.

One type is crammed with details. Clauses are designed to protect the landlord against every potential problem. Hence it is, in effect, a landlord's lease, but you may also find what can be described as a tenant's lease. A much briefer document obligates the tenant to not much more than paying his rent at regular intervals.

Moreover, not every clause in the standard landlord's lease is sacred. If you are preparing to sign such a document, you can seek to strike out any provision you object to, such as one that gives the landlord the right to enter. And inspect your apartment at any hour he chooses. Landlords are sometimes willing to omit such provisions; similarly, if you are preparing to sign a printed form used by money lenders, there are clauses in it that you may want to strike out. By one such clause, the borrower gives up his right to receive fair notice of any suit brought against him by the creditor because of a default in payments; another requires the debtor to pay the creditor's legal fees in the: event of such a suit. Eliminating these. Clauses call for bargaining: if the money lender wants the business badly enough, he may agree to delete these sections.

## A CONTRACT SHOULD HAVE

- Names and addresses
- Reasons and intentions
- Where made, performed, when
- Services Involved
- Cost and penalty price
- Responsibilities of each party
- Special conditions
- Emergencies conditions

**READY TO SIGN?  WAIT!**

- Read thoroughly before, not after
- Understand each term, and be sure of no concealing parts
- All blanks filled in
- Attorney for review

## WHEN TO CALL A LAWYER

- Consult a lawyer before you sign anything that you do not fully understand
- Consult a lawyer whenever you are faced with a significant domestic problem
- Consult a lawyer whenever you are implicated in any crime more severe than a standard traffic offense.
- Consult a lawyer of your own if you are implicated with others in a criminal action.
- Consult a lawyer before you sign an agreement involving a large sum of money or a long-term commitment.
- Always consult a. Lawyer of your own if the other party to a contract has one; his lawyer can't help you: a lawyer may advise only one side to a particular Legal transaction - and must do his best to represent that side.

# THE MANAGEMENT

## EXPLANATION OF THE MANAGEMENT PLAN

### WHAT IS THE MANAGEMENT PLAN?

When a board has selected a new manager or decided to renew its contract with its current manager, the next step is to prepare a legal and binding agreement between both parties. The management plan is part of that contract.

HUD has recently begun to require that a management plan be submitted with every management agreement it considers for approval. The plan can be considered as a list of the specifications that outline in -detail the services to be provided by management. This is the part of the contract through which the board can make substantial, specific demands of the managing agent. It describes how management will carry out its obligations defined in the contract. For example, it may explain how the manager will collect occupancy charges. The management plan is attached to the management agreement and is an equally critical part of the contract. In summary, then, a management plan is:

Part of the binding management contract

- A written plan describing:
- How will the contract requirements be met?
- Procedures the manager will follow in fulfilling contract obligations.
- Specifications for the work to be performed

## HOW IS THE MANAGEMENT PLAN DEVELOPED?

Like the management agreement, the management plan is the product of joint deliberations between the board of directors and the managing agent. Like the contract, it must be approved by HUD.

Typically, the prospective management firm draws up a proposal for a management plan as part of the contract it presents to the board for approval. The board then studies the proposal's details and indicates to the manager those areas where changes seem to be needed. When both parties are satisfied with the terms of the proposal and contract, they sign it and forward it to HUD the mortgage for approval.

A better approach is for the board to develop its management plan that clearly states what it will require before it even begins interviewing candidates for the job. This gives the board a firm basis for comparing competing agents' presentations. It also helps ensure that the resulting contract will be tailored to the co-op's needs as the board. See them. Arrangements designed by prospective managers are more likely to reflect the viewpoint of management. Regardless of whether the Manager or the board develops the plan, <u>the board should never give its final approval until it has critically reviewed and altered the program to fit the coop's needs.</u>

**To summarize, the following steps are taken in developing a management plan.**

Written by the board and managing agent. Reviewed, revised, and agreed on by both parties. Signed by the board and management agent. Approved by HUD and mortgagee.

## ABOUT HUD'S REQUIREMENTS FOR THE MANAGEMENT PLAN

The managing agent will be familiar with HUD's requirements for a management plan and should be able to provide the board with a copy of HUD's Form 9405, "Requirements for a Management Plan." The agent and the board must ensure that all the requirements listed by HUD are covered in the submitted plan. Otherwise, HUD may refuse to approve the contract and send it back for further revision,

HUD offices differ in how specific they require a plan to be. Board members must decide how detailed they want their goals to be. Is it enough to say that "the manager will collect late charges and proceed with eviction action as necessary"? Some co-ops may need an exact timetable with—the dates on which each action will be taken. The management plan's specifications will depend on each co-op's condition and its experience with its manager.

**A listing of HUD's essential requirements for each man tent plan follows:**

- The role and responsibility· of the co-op owners and their relationship and delegation of authority to the management agent.
- Personnel policy and. staffing arrangements
- Marketing plans and procedures for maintaining full occupancy
- Methods for determining initial applicant eligibility and regular recertification
- A detailed preventive and emergency maintenance and repair program, including a routine inspection. Dwelling units, scheduled for painting and redecorating, and inventory and servicing of appliances and equipment. Policies and procedures for the collection of monthly housing charges, including a method for handling delinquencies
- A program for maintaining accurate accounting records and meeting HUD-FHA requirements, including procedures for monthly reporting required for special programs, such as rent supplement or interest reduction subsidies

- Relationship between members and management agent, both before and after applicants become member-residents
- Where possible, a program for the training and employment of residents. The form of a management agreement is to be used.

# DESIGNING A PLAN TO FIT THE CO-OP

Each management plan must be tailored to meet the requirements of the individual co-op. A large co-op of 300 or more units may require an on-site manager five days a week and a complete on-site office where all records are maintained. For a 50-unit co-op, such an arrangement Would probably be financially impossible; a resident caretaker may be needed with members making their payments to the agent's office or a local bank. A board must also decide who has the right to hire and fire--the board or the agent. Who can sign checks on the co-op's account? The agent? Two board members? Or a representative of each? When is the agent to be paid? On the first, fifteenth, or last of the month? Settling these items at the start and incorporating them in a written and binding. The plan will make board-management relations immeasurably easier.

It is helpful for a board to list those factors that the directors feel should be considered in developing a management plan for their co-op. By listing any special needs of the co-op, the board can tailor the management plan around these considerations.

Some factors which the committee might list are:

- Co-op's size and location
- Financial needs
- Delinquency problem
- Vacancy rate
- Budget control
- Maintenance needs
- Physical condition
- Deferred maintenance
- Preventive maintenance
- Resident needs
- Security
- Social services
- Existing board-management relationship
- Potential management problems

This list Will not necessarily cover all the items a board might consider relevant to its management needs. Each panel should develop its list of significant factors affecting the management plan.

U.S
Form Approved
OMB No. 63—R1321 .

# DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

## MANAGEMENT PLAN REQUIREMENTS

It is required that at least a broad outline of a Management Plan be submitted with the feasibility application for HUD-insured multifamily housing projects, subsidized and unsubsidized. A detailed Management Plan and Management Agreement must be submitted for approval before the issuance of a firm commitment. For Rent Supplement and

HUD Management Staff will use section 236 projects, the Management Plan submitted with the feasibility application in evaluating the rating given Criterion 118 of the Project Selection Criteria. For unsubsidized projects (as well as subsidized projects), the Management Plan will be used by HUD Management Staff in evaluating the feasibility of the project from a management standpoint. A Management Plan for Rent Supplement and Section 236 projects should address the following ten areas. In contrast, a Management Plan for unsubsidized projects need not cover those areas preceded by an asterisk. A Management Plan will be considered detailed if it is responsive in depth to each of the following application areas. This submission is to be a plan. Not simply a response to the following questions. The project's substance should be such that it covers at least what is specifically asked.

1. The role and responsibility of the sponsor and his relation and delegations of authority to the managing agent. This Section of the Management Plan should be responsive at least to the following questions:
    a. What are the supervisory relationships, and to whom are the persons responsible for the day-to-day operation of the project accountable?

    b. Under what conditions must the managing agent consult the sponsor before taking action?

    c. What areas in which the managing agent may make decisions without consulting the sponsor?

    d. Who in the sponsoring organization is the key contact person for the managing agent? What decision-making powers does this contact person have?

    e. Who is responsible for carrying out any social services which may be provided? For referring tenants with problems to the appropriate agency as necessary?

    f. Are the respective responsibilities of the sponsor and the managing agent listed? Are these responsibilities clearly defined so as not to overlap? Are they assigned? Are all basic responsibilities covered?

    g. Is it clear which expense items will be paid for by the managing agent out of his fee? Out of rental income from the project?

2. Personnel policy and staffing arrangements. This Section of the Management Plan should be responsive at least to the following questions:
    a. Is all hiring in conformance with equal employment opportunity requirements? What is the minority composition of your present staff? What level positions are held by such minority employees?
    b. What plans are for employing project residents to assist in the management functions?
    c. What are the projected staffing needs for the project? (This should include a breakdown of jobs and salary schedules.)
    d. What is the personnel policy in the following areas:
        i. Training and promotion opportunities
        ii. Fringe benefits?
        iii. Employee grievance procedures?
        iv. Employee termination procedures?
    e. What are the lines of authority, responsibility, and accountability within the management entity?

3. Plans and procedures for publicizing and achieving early occupancy. This Section should be responsive at least to the following questions:
    a. How and when will the units be advertised as available?
    b. Will affirmative marketing practices be utilized? If so, what are your plans for such an affirmative marketing program?
    c. What plans are being made to ensure tenants' economic and racial mix?
    d. When will the on-site office be available and open to taking applications at times convenient to potential occupants?
    e. What are the procedures to allow tenants to inspect the units before they are available for occupancy?
    f. To acquaint tenants with the project, what orientation services will be provided to tenants? Care of the unit?
    g. Who is responsible for selecting the tenants? Is this selection subject to review? If so, under what conditions and by whom?

4. Procedures for determining tenant eligibility and for certifying and recertifying incomes. This Section should be responsive at least to the following questions:
    a. Who will be responsible for carrying out this function?
    b. Is the responsible person knowledgeable regarding certification and recertification requirements? If not, what provisions are being made to provide this person with the necessary training?
    c. Is the responsible person aware of HUD requirements covering family size and composition related to unit size?

5. Plans for carrying out an effective maintenance and repair program. This Section should be responsive at least to the following:
    a. What procedures have been developed to inventory and service appliances and mechanical equipment? To check out all such equipment to ensure it is properly installed and operating before releasing units for occupancy?
    b. What are the procedures for inspecting and carrying out maintenance activities in units before a move-out? Before re-renting the team?
    c. What is the schedule for interior and exterior painting and redecorating?
    d. How are garbage and trash removal to be handled?
    e. How will significant repairs be handled?
    f. How will grounds upkeep and maintenance be carried out?
    g. What is the schedule for cleaning entryways, halls, and other common areas?
    h. How will tenants be instructed to report minor maintenance repair needs?

6. Rent collection policies and procedures. This Section should be responsive at least to the following:
    a. Is there a provision for on-site rent collections? After-hours depository?
    b. Will partial payments or pre-payments be accepted?
    c. Are late fees charged on delinquencies?
    d. What is the follow-up procedure when a tenant misses a rent payment? When is a price considered to be "missed"? What arrangements are allowed to make up a "missed" payment?
    e. Can the agent provide referral services to families with budget problems?
    f. What are the eviction policies and procedures?
    g. Are rent payments adequately recorded and kept in a separate account?

7. Program for maintaining adequate accounting records and handling necessary forms and vouchers. This Section should be responsive at least to the following:
    a. Are accounting and purchasing procedures consistent with the HUD Handbook of FHA Requirements Governing Fiscal Operations, Accounting, and Financial Reports for Multifamily Housing Projects, Form No.2230?
    b. How will monthly reporting requirements be handled? (Forms 2505 and SF-1034 in Section 221(d)(3) Rent Supplement projects; Form 3104 in Section 236 projects)?
    c. Are tenant certifications and recertification’s kept on file?
    d. Is the accounting system such that the project's cash flow can be easily monitored?
    e. During the initial rent-up period, by what day in the month will the Sponsor and HUD Office receive the monthly accounting report? Will the Sponsor continue to receive a monthly accounting after the rent-up period,

8. Plans for tenant-management relations. This Section should be responsive at least to the following questions:
    a. What are the policies and procedures covering the handling of tenant grievances?
    b. What are the policies and procedures covering the servicing of tenant requests?
    c. How will tenants be oriented to the project?
    d. What are the leasing policies and procedures?
    e. If necessary, are leases available in foreign languages?
    f. Is the lease to be used fair and nonpunitive?
    g. Can you now give HUD a copy of your proposed lease for the project?
    h. Is the managing agent willing to work with a tenants' organization and local and national groups with which such an organization may affiliate? Has he successfully worked with such organizations in the past?
    i. How does the managing agent propose to enlist the tenants' support and participation?

9. Social Services This Section should be responsive at least to the following:
   a. What are social or referral services to be provided? How will they be carried out, and by whom? How will they be paid for?
   b. How does the social service program relate to the anticipated needs of the tenants? Are the services adequate in scope to ensure a viable project?
   c. What role will the tenants play in shaping and overseeing the social service program?
   d. What services are to be provided in the following areas:
   e. Childcare.
   f. Vocational training and placement
   g. Health care.
   h. Recreation for children and youth. Financial and credit counseling.

10. Management Agreement (Contract)
    a. What form of Management Agreement (Contract) will be used? If possible, provide a specimen copy.

# 2. THE MANAGEMENT AGREEMENT AND MANAGEMENT REPORTS

## EXPLANATION OF THE MANAGEMENT AGREEMENT

**Part 1**
was concerned with specifications for management. It was explained how to develop a management plan acceptable to the board of directors and meet the needs of its particular cooperative.

**Part 2**
is concerned with the management agreement itself.

The terms "management contract" and "management agreement" are often used interchangeably when referring to the binding legal document between the board and agent. It is helpful for the board, however, to think of the contract as consisting of two parts:

> (1) the management plan, which states the co-op's actual specifications for the management services it agrees to buy, and
>
> (2) the management agreement, which provides a broader outline of the relationship that is being established between the co-op and manager. Unless a contract contains both parts, it is incomplete. Often, a board considers the management agreement binding and does not emphasize the management plan. The plan, however, is equally critical since it is the document that specifies the essential services the co-op requires.

The management agreement is a legal document. It is a binding agreement between the owners of a housing cooperative (the board of directors) and a management firm [4] that outlines the responsibilities of each party regarding the ongoing functioning of the development. It also defines the benefits each party will receive. Unlike the management plan, the agreement does not go into minute detail; instead, it outlines the established working relationship.

### HUD'S SUGGESTED MANAGEMENT AGREEMENT (FORM 4351.1)

Every federally insured co-op's management contract must be reviewed and approved by its local U.S. Department of Housing and Urban Development office. Because hundreds of such documents go through their offices, HUD officials have developed a model management agreement form that they prefer all cooperatives to use for standardization.

Many directors are discouraged by the legal terminology used in the management agreement. Yet it is essential that each director read and fully understand the document; In. this section, "Board Members will be provided with good working knowledge of the agreement so that they will be more capable of negotiating sound management contracts that protect their coop's interest.

## THE MANAGEMENT AGREEMENT

Once the board has well-defined specifications, it is in a solid position to negotiate a sound management agreement. Unlike the management plan, which prescribes the board's specifications in considerable detail, the agreement provides a broad outline of the working relationship that is being established. The agreement plus the management plan comprise the complete management contract.

The management contract for a federally insured co-op must be approved by its mortgagee and officials of the U.S. Department of Housing and Urban Development. Because of the hundreds and hundreds of complex contractual documents it must review, HUD has developed a model management agreement form that it prefers all its insured projects to follow for the sake of standardization. A local HUD office may choose that a different version of the model agreement is submitted, depending upon the program involved and circumstances in the area. Federally insured co-ops should contact their local HUD officials to be sure they are working with the locally preferred model form.

The model agreement designed for the 221(d)(3) and 236 programs in 1974 provides a valuable base from Which to negotiate (see Appendix B). It states the relationship between the co-op owners and the manager and the responsibilities of each; lists the services to be provided by the manager: to collect housing charges, keep records and accounts, handle members' requests and complaints, coordinate move-ins, and move-outs, make contracts for needed goods and services, etc.; and establishes how co-op management expenses will be divided between owners and management, and how much the agent will be paid.

Though the model form draws attention to many essential aspects of board-management relations, it does not necessarily cover everything the board will want to include. Nor, from the co-op's point of view, is it perfect. It serves as a model, not an exact prescription the board is bound to follow, for no single agreement can suit all co-ops. Just as managers seeking a co-op's business make a practice of modifying the suggested contract to do their purposes, the board, which is the purchaser of the services, should feel free to make any changes, additions, or deletions it feels are necessary to tailor the agreement to fit its particular needs.

Directors of federally insured co-ops sometimes feel unduly limited by HUD when contracting for management. Their management contracts require HUD approval, and HUD has the legal right to cancel them, with or without cause, upon thirty days' notice. Yet as a practical matter, it rarely does so. (With mixed results, some of HUD's efforts to intervene between owners and managers have been challenged in court.) Nor does HUD approval ensure that the plan and agreement meet the needs of the cooperative. The Department's primary concern in approving contracts is that a co-op's agent is an acceptable manager and that the fee is not excessive. HUD has generally viewed the agreement as between the board and manager, with the board having the responsibility of ensuring the contract it signs is advantageous to the co-op. The board must rely primarily upon its resources to develop a satisfactory agreement. (Note, however, that HUD has refused to approve self-management for co-ops it insures under the 236 programs.)

The board should scrutinize every aspect of the management agreement before it signs. Every term is subject to alteration. For instance, the board might wish to insert, at the outset, a complete definition of the essentials of cooperative housing than appears in the model form since many management agents have dealt only with rental developments and may not fully understand why co-op members expect to be treated as owners, not tenants. The board may want to alter the model agreement's provisions for hiring and firing management personnel, or it may wish to state special conditions for the co-op's liaison with HUD, subcontractors, or anyone else with whom it does business. The board should insist on having the following fundamental aspects of the agreement spelled out to its satisfaction before it signs the contract: property manager's office arrangement and provision for on-site staff; services to be performed by management, including submission of management reports; the management fee and what it entails; the termination clause; and provision for the fidelity bond.

## THE PROPERTY MANAGER'S OFFICE ARRANGEMENT; PROVISION FOR ON-SITE STAFF.

This is an essential consideration for the board. A large co-op of more than 300 units may need the services of an on-site manager five days a week, with all records maintained at a complete, on-site office. Small co-ops of fifty units or fewer may not be able to afford such compre-hensive service and thus may choose to employ a resident. Caretaker members make payments to the management agent’s office or a local bank. In such arrangements, the management agent visits the co-op on a prearranged schedule, and, often, all records are kept at the management firm's central office, where all the co-op's accounting is done. Unless a resales office is maintained at the co-op, prospective members must go to the main office to sign subscription and occupancy agreements.

Coops choosing a visiting property manager system may wish to specify in the agreement the minimum number of hours the manager must spend at the co-op each week, even though the amount of service the co-op can afford may be limited. Some management firms assign so many developments to their property managers that they cannot provide adequate manage-ment to all of them. The board can protect itself from such a situation by inserting a clause specifying the time the manager will spend on site and limiting the property manager's duties to a specified number of projects or units beyond its co-op.

The board should strive to ensure all its records and accounts are stored on-site so that it can easily access them. Should the board decide to change managers, this becomes a matter of prime impor-tance.

## SERVICES TO BE PROVIDED BY MANAGEMENT.

The management agreement should contain a clear statement of the services the manager is required to perform. Each co-op has its peculiarities, and by tailoring the agreement, the board can fit management services to its needs. Does the board expect the manager to be represented at board meetings? The agreement should say so. Will the manager be asked to serve the process on delinquent members? If so, the requirement should be in the contract. Unless the board's requirements appear in the agreement, there is no assurance that they will be met.

The board should specify the written reports its manager will be required to make, for these are valuable tools for evaluating the condition of the co-op and the quality of management services it is receiving. All boards should insist on receiving an up-to-date monthly review of finances, vacancies, move-outs/move ins, delinquencies, and maintenance, plus any other reports they need. (See Chapter 5 for a more detailed discussion of evaluating management reports.) It should be required that reports. Be submitted at least three days before each board meeting so that directors can read them and prepare themselves to ask further questions.

A HUD-insured co-op should make sure that the manager's system of financial reporting corresponds with methods designed or approved by the Department; for instance, with Form 93211, the Monthly Report of Housing Corporations, the Use of another form may delay prompt analysis of monthly reports by HUD personnel, who are trained to read the 93211 or cause them to miss spotting some early signs of financial trouble. Not using the proper report form may indicate that the co-op is not keeping its books according to HUD's system of accounting, a breach of contract that might later cause the co-op to undergo a very costly audit.

## MONEY • MATTERS: DIVISION OF EXPENSES, THE MANAGEMENT FEE, AND WHAT IT ENTAILS.

The management agreement should clearly state which expenses the manager assumes and which are to be assumed by the co-op. It should also note the amount of the management fee and whether extra compensation is to be provided for such provided recertifying member income and handling resales; usually, the management fee is a percentage of gross occupancy charges, though some co-ops pay their managers a flat fee.

The argument for the percentage method of determining fees has been that it creates an incentive for management to make all collections due to the co-op. As a practical matter, this may prove ineffective if the expense of making intricate collections is more than the fee the manager stands to lose by failing to collect. Those who prefer to pay a flat fee object to the automatic raise the manager pays a percentage of collections to receive every time the co-op's expenses make an increase in housing charges neces-sary. Many directors, and some managers, prefer to contract for services at a fixed, flat rate, allowing the co-op to predict the fee exactly and allowing management to know how much income it can rely upon from the co-op.

HUD prefers that the percentage method be used by the co-ops it insures; it has withheld approval of flat-rate fees for some 22l(d)(3) co-ops while allowing them for some developments insured under the 213 programs.

Some cooperatives have devised a workable alternative to the percentage method, however. They do establish a percentage for the fee but state a maximum amount they will pay, writing into the agreement a clause that states, for example, "The management fee shall be 5 percent of gross occupancy income, but in no case shall it exceed $15,000 in any one fiscal year. ·· This approach has been used successfully in many areas, meeting no obstruction from local HUD officials.

Recertification of member income is an added requirement that boards of Section 236 and 22l(d)(3) co-ops must contend with. They must decide whether to pay their managers an extra fee for performing this task or to include it in the management fee and write appropriate provisions into the contract. The board must also decide whether to retain resale fees and otherwise compensate its manager for the extra work involved in handling resale and transfer trans-actions, or perhaps to split the cost between co-op and manager, or simply to give all these fees to the manager. The latter choice is generally made, for it increases the manager's incentive to fill vacant units promptly.  The resale income may prove extremely useful to the co-op, however. Each board must decide which arrangement is best for its co-op and write it into the management agreement.

## THE TERMINATION CLAUSE.

One aspect of HUD's model form that directors should always insist on altering, or rewriting altogether, is the provision requiring mutual consent of the owners and the management firm before the agreement can be terminated earlier than the period stated in the contract.

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Unfortunately, it is sometimes necessary for the good of the co-op, or even its very survival, to terminate an unsatisfactory relationship before the agreement expires. Early termination is almost impossible to achieve if the deal requires mutual consent termination. This is a severe problem for co-ops bound themselves in long-term, three-to-five-year contracts and have no legal means of relief if management performance proves unsatisfactory.

The board should change this portion of the agreement to give itself a method of termination not tied to mutual consent or any form of arbitration or intervention from HUD, which may needlessly delay or altogether prevent necessary board action. Most desirable is a clause allowing the board to terminate the agreement upon 30-day or, at the most, 60-day written notice, without cause and consent of the management agent.

Unnecessarily long-term agreements should be avoided. A one-year contract containing a clause giving the board the right to cancel upon providing written notice--without the agent's consent--provides the co-op with maximum protection.

## THE FIDELITY BOND.

To protect the co-op owners from the misappropriation of funds, the HUD model agreement requires the management firm to purchase a bond equal to at least the potential gross income for two months. The board should insist that the contract include a requirement that it receive a copy of the bond or a copy of the receipt naming the co-op as obliging (whom the bonding company must pay in the event of misappropriation).

Neglect of any of these critical points may open the door to problems with management; they deserve the board's special attention and are well worth taking time to consider seriously, for they are crucial to negotiating an advantageous contract.

**MODEL FORM OF**
**MANAGEMENT AGREEMENT**
For Cooperative Housing Projects Under
Section 213 and 221(d)(3)

Agreement made this ____________ day of _______________ 20___
Between ______________________, a corporation organized and existing under the laws of ______________ having it's principal office. At __________________, hereinafter called the "Owner", and ____________________________having its principal office at ________________________________________________
hereinafter called the "Agent",

**WITNESSETH:**
In consideration of the terms, conditions; and covenants from now on set forth, the parties hereto mutually agree as follows:

**FIRST. (a)**
The Owner hereby appoints the Agent, and the Agent hereby accepts appointment on the terms and conditions hereinafter provided, as exclusive managing agent of the development known as
__________________________________________ , located in the County of ___________________ State of __________________ and consisting of ________ dwelling units, which property is also designated as FHA Project ___________________ and together with the land on which erected hereinafter referred to as the ''Project".

**(b)**
The Agent fully understands that the Owner is e non-profit cooperative ownership housing corporation, providing accommodations in the Project principally for residential use by its stockholders, referred to as "Members." And the Agent agrees, notwithstanding the authority given to the Agent in this Agreement, to confer fully and freely with the Owner in performing its duties as herein. Set forth. The Agent agrees to keep himself informed on cooperative housing end FHA. Policies relative to it and to encourage, whenever possible,

the principles of a collective effort among the Members and to attend stockholders' and directors' meetings at any time or times requested by the Owner.

**SECOND**,

To facilitate efficient operation, the Owner shall inform. The Agent about standards to be kept and furnish the Agent with a set of community or house rulers and a complete set of the plans and specifications of the Project as finally approved by the Federal Housing Administration. With the aid of these documents and inspection made by competent personnel, the Agent will inform itself concerning the layout, construction, location, character, plan, and operation of the lighting, heating, plumbing, and ventilating; systems, se well as elevators, if any and other mechanical equipment in the Project, Copies of guarantees and warranties about the construction of the project and in force at the time of the execution of this Agreement shall be furnished to the Agent, From the Agent's predecessor, the Owner shall procure and provide the Agent a set of books and financial reports complying with the FHA Unions System of Accounts for Cooperative Housing, Projects.

**THIRD,**

The Agent shelf hires in its name all managerial personnel, including the resident manager, where necessary for the efficient discharge of the duties of the Agent hereunder. Compensation for the services of such employees shall be the responsibility of the Agent, the agent directly, and those employees of the Agent who handle or are responsible for the handling of the Owner's monies shall, without expense to the Owner, be bonded by a fidelity bond acceptable both to the Agent and the Owner, in an amount and company adequate to the Agent, the Owner, and the Mortgagee. The Owner shall be obliged under such bond.

**FOURTH.**

Under the personal and direct supervision of one of its principal officers, the Agent shall render services and perform duties as follows:

a. Based on an operating schedule, job standards said wage rates previously approved by the Owner on the recommendation of the Agent or resulting from wage negotiations, investigate, hire, pay, supervise, and discharge the personnel necessary to be employed to operate the Project. Such personnel shall, in every instance, be in the Owner's and not in the Agent's employ. Compensation of such employees (as evidenced by certified payrolls) shalt be considered an operating expense of the Project,

b. Immediately ascertain the general condition of the property, and if the accommodations there afforded have yet to be occupied for the first time, establish liaison with the general contractor to facilitate the completion by him of such corrective work, if any, as is yet to be also done, cause an inventory to be taken of all furniture, office equipment, maintenance tools and supplies, including a determination as to the amount of fuel on hand.

c. Coordinate the plans of Members for moving their personal effects into the Project or out of it to schedule such movements to that there shall be a minimum of inconvenience to other Members.

d. Maintain businesslike relations with members whose service requests shall be received, considered, and recorded systematically to show the action taken concerning each.   After a thorough investigation, complaints of a severe nature shall be reported to the Owner with appropriate recommendations. As part of a continuing program to secure full performance by the members of all items and maintenance for which they are responsible, the Agent shall make an annual inspection of all dwelling units and report its findings to the Owner and the consenting parties.

e. Collect all monthly carrying charges from Members, all rents owing from users of garage spaces, forms or lessees of other non-dwelling facilities in the Project, and all sums due from concessionaires. The owner at this moment authorizes and directs the Agent to request, demand, collect, receive, and receipt any charges or rents which may at any time be or become due to the Owner and to take such legal action as necessary to evict members delinquent its payment of monthly carrying charges for 30 days or more. As a standard practice, the Agent shall furnish the Owner with an itemized list *of* all delinquent accounts immediately following the tenth day of each month.

f. Cause the building appurtenances and grounds on the Project to be maintained according to standards acceptable to the Owner. Including but not limited to interior and exterior cleaning, painting, and decorating, plumbing, steam fitting, and carpentry. And such other regular maintenance and repair work as may be necessary, subject to any limitations imposed by the Owner in addition to these contained herein, except payments required under the mortgage and taxes. Insurance, utilities, and Own-approved contractual obligations, no disbursement shall be made more than _____________ unless specifically authorized by the Owner, excepting, however, that emergency repairs. Involving manliest danger to life or property, or immediately necessary for the preservation and safety of the property, or the safety of the Members, or required to avoid the suspension of any essential service to the Project, may be made by the Agent irrespective of the cost limitation imposed by this paragraph. Notwithstanding this authority regarding emergency repairs, it is understood and agreed that the Agent will, if possible, confer immediately with the Owner regarding every such expenditure and its effect on the budget. The Agent shall not incur liabilities (direct or contingent) which will at any time exceed the aggregate of _________________, or any liability maturing more than one year from the creation thereof, without first obtaining the approval of the Owner.

g. Take such action as may be necessary to comply promptly with any federal, state, or county orders or requirements affecting the premises. Or municipal authority having jurisdiction there over, subject to the same limitation contained in Paragraph (f) of this Article in connection with making repairs and alterations. The Agent shall not take any action under this Paragraph (g) so long as the Owner is contesting or has affirmed its intention to challenge any such order or requirement. The Agent shall promptly, and in no event later than 72 hours from the time of their receipt, notify the Owner in writing of all such orders and notices of requirements.

h. Subject to approval by the Owner, make contracts for water, electricity, gas, fuel oil, telephone, vermin extermination, and other necessary services, or such of them as the Owner shall deem advisable; also, place purchase orders for such equipment, tools, appliances, materials, and supplies as are necessary adequately to maintain the Project. All such contracts and charges shall be made in the name of the Owner and shall be subject to the limitations outlined in Paragraph (f) of this Article. When taking bids or issuing purchase orders, the Agent shall act at all times under the direction of the Owner and shall be under a duty to secure for and credit to the latter any discounts, commissions, or rebates obtainable as a result of such purchases.

i. Obtain recommendations and prices from at least three different insurance companies and cause to be placed and kept in force all forms of insurance needed adequately to protect the Owner (or as required by law), including, where appropriate, workers' compensation insurance, public liability insurance, boiler insurance, fire and extended coverage insurance, and burglary and theft insurance. All of the various types of insurance coverage required for the benefit of the Owner shall be placed with such companies, in such amounts, and with such beneficial interests appearing therein as shall be acceptable to the owner and the consenting parties and otherwise be in conformity with the requirements of the mortgage. The Agent shall promptly investigate and make a full written report as to all accidents or claims for damage relating to the ownership, operation, and maintenance of the Project, including any damage or destruction to the Project, the estimated cost of repair, and shall cooperate and make any reports required by any insurance company in collection in addition to that.

j. The funds collected and deposited in the particular account from now on are provided cause to be disbursed regularly and punctually (1) salaries and any other compensation due and payable to the employees. Of the Owner, and the taxes payable under Paragraph (k) of this Article; (2) the single aggregate payment required to be made monthly to the mortgagee, including the amounts due under the mortgage for premium charges under the contract of insurance, ground rents of any, taxes and assessments, fire and other hazard insurance premiums, interest on the mortgage, amortization of the principal of the mortgage, and the amount specified in the Certificate of Incorporation or Regulatory Agreement for allocation of the Fund for Replacements; and (3) sums otherwise due and payable by the Owner as operating expenses authorized to re-incurred under the terms of this Agreement, including the Agent's commission. After disbursement in the order herein specified, any balance remaining in the particular account may be disbursed or transferred from time to time, but only as specifically directed by the Owner in writing, but such credit must be within the limits of the fidelity bond, which shall be in the amount equal to at least the amount of each gross monthly collection.

k. Working in conjunction with an accountant, prepare for execution and filing by the Owner all forms, reports, and returns required by law in connection with unemployment insurance; workman's compensation insurance, disability benefits, Social Security, and other similar taxes now in effect or hereafter imposed: and also requirements relating to the employment of personnel.

l. Maintain a comprehensive system of office records, books, and accounts in a manner satisfactory to the Owner and to the consenting parties, which records shall be subject to examination by their authorized agents at all reasonable hours. As a standard practice, the Agent shall render to the Owner by no later than the tenth of each succeeding month statement of receipts and disbursements, a schedule of accounts receivable and payable, and a reconciled bank statement of the end of the preceding month. He shall render a comparison quarterly of income and expense to the budget.

m. On or about ______________ and after that, at least 60 days before the beginning of each new fiscal year, prepare with the assistance of an accountant. If need be, an operating budget setting forth an itemized statement of the anticipated receipts and disbursements for the new fiscal year based upon the then current schedule of monthly carrying charges and taking into account the general condition of the Project and the cooperative's objectives for the ensuing year. Each such budget, together with a statement from the Agent outlining a plan of operation and justifying the estimates made in every important particular, shall be submitted to the Owner in final draft at least 30 days before the commencement of the annual period for which it has been made. Following its adoption by the Owner, copies of it shall be made available, upon request, for submission to the consenting parties; the budget shall serve as a supporting document for the schedule it monthly carrying charges proposed for the new fiscal year. It shall also constitute a significant control under which the Agent shall operate. And there shall be no substantial variances from that place, except such as may be sanctioned by the Owner by this is meant that no expenses may be incurred or commitments made by the Agent in connecting, with the maintenance and operation of the Project over the amounts allocated to the various classifications of expense in the approved budget without the prior consent of the Owner, except that. If necessary, because of an emergency or lack of sufficient time to obtain such prior approval, an overrun may be experienced, provided it is brought promptly to the owner’s attention in writing.

n. Maintain a current list of prospective Members and make such record changes as are appropriate in connection with all transfers of memberships approved by the Owner. It (shall) (shall not) * be the Agent's duty to use his best efforts to cause available memberships held by the Owner to be sold. (In cases where membership is sold by an individual member end, not by the Owner, the Agent shall not be required to assist such individual member in connection with the sale unless the Agent and the respective member separately contract.) The Agent shall actively handle the renting of any garage spaces or either non-dwelling accommodation, arranging for the execution of such leases or car mats as may be required.

o. It shall be the Agent's duty at all times during this Agreement to operate and maintain the Project according to the highest standards achievable and consistent with the overall plan of the Owner and the interests of the consenting parties. Full compliance by the Members with the terms and conditions of their respective Occupancy Agreements shall be secured. To this end, the Agent shall see that all Members are informed concerning such rules, regulations, and notices as may be promulgated by the Owner from time to time. The Agent shall be expected to perform suck other acts and deeds as are reasonable, necessary, and end appropriately in the discharge of its duties under this Agreement.

**FIFTH.**

Everything done by the Agent under the provisions of Article FOURTH shall be done as Agent of the Owner, and all obligations or expenses tested thereunder shall be for the account, on behalf, and at the cost of the Owner, except that the Owner shall not be obligated to pay the overhead expenses of the Agent's office. Any payments to be made by the Agent hereunder shall be made out of such terms as are available in the extraordinary account of the Owner or as may be provided by the owner. The Agent shall not be obliged to make any advance to or for the history of the Owner or to pay any sum. Except *out* of funds held or provided as aforesaid, nor shell the Agent be obliged to incur any liability or obligation for the account of the Owner without assurance that the necessary funds for the discharge thereof will be provided.

**SIXTH.**
The Agent shall establish and maintain, in a bank whose deposits are insured by the Federal Deposit Insurance Corporation and in a manner to indicate the custodial nature thereof, a separate bank account as Agent of the Owner for the deposit of the monies of the Owner, with authority to draw thereon for any payments to be—made by the Agent to discharge any liabilities or obligations incurred under this Agreement. The end for the amount of the Agent's fee, all of which payments shall be subject to this limitation. Agreement.

**SEVENTH.**
The sole compensation which the Agent shall be entitled to receive for all services performed under this Agreement shall be a fee computed end payable monthly in an amount equivalent _________________________( __%) of gross collections, exclusive of all surcharges."

**EIGHTH**

a. Unless canceled under section (b). (c), or (d): of this Article, this Agreement shall be in effect from ____________________ to _________________ provided that in no event shall it be of any force and effect until there is endorsed hereon the consent of the consenting parties.
b. This Agreement may be terminated by mutual consent of the parties as of the end of any calendar month, but not without prior written notice to the consenting parties.
c. If a petition in bankruptcy is filed by or against either Owner or Agent, or *if* either shall make an assignment for the benefit of creditors or take advantage of any insolvency act, either party hereto may terminate this Agreement without notice to *the* other. Still, prompt advice on each action shall be given to the consenting parties.

d. *It* is expressly understood and agreed by and between the parties hereto that the Federal Housing Administration or the Mortgagee shall have the right to terminate this Agreement at the end of any calendar month, with or without cause, on 30 days written notice to the Owner and the Agent of its intention so to do, except that in cases default of the owner has occurred under its Articles of Incorporation, or under the obligation of the mortgage, the Federal Housing Administration or the Mortgagee shall have the right to terminate this Agreement Immediately upon the issuance of a notice of cancellation to the Owner and the Agent. It is further understood that no liability shall attach to the Federal Housing Administration or the Mortgagee in the event of termination of this Agreement under this section.

e. Upon termination, Agent Hall will submit Financial Statements under the Uniform System of Accounts for Cooperative Housing; Projects, and after the contracting parties have accounted to each other concerning all matters outstanding as of the date of termination, the Owner shall furnish the Agent security, satisfactory to the Agent, against any exceptional obligation or liabilities which the Agent may have recurred hereunder,

**NINTH**

As used in this Agreement;

a. The term "mortgage" shall mean that certain indenture of mortgage dated The ___________________________, day of **_____________________, 20___** and between the Owner, as mortgagor, end the ________________________________ , *as* mortgagee, which mortgage is insured by the Federal Housing Administration pursuant to the authority contained in Title U, Section 213 or 221 (d3) of the National Housing Act and the regulations promulgated thereunder,

b. The term "mortgage" shall mean ________________________________ or any other holder of said mortgage.

**** Delete Inappropriate Clause**

*U desired, a first fee may be inserted in lieu of the percentage arrangement. Also, if desired, the following clause may be added: "except that the Agent shall also be entitled to receive the sum of $ ___________ for each membership sold by him on behalf of the Owner, and a service charge of $15 for each transfer of membership processed by him regardless of by whom it wits.*

c. The term "consenting parties" shall mean (i) the mortgagee as herein defined. and (ii) the Federal Housing Administration acting through its commissioner or his duly authorized representatives.

d. The term "Occupancy Agreements" shall mean those certain forms of agreement between the Owner and its stockholder, members (and any renewals thereof) under the terms of which said stockholder Members are entitled to enjoy possession of their respective dwelling units.

e. The term "carrying charges" shall mean those monthly rates stockholder Members are bound to pay to the Owner pursuant to their respective Occupancy Agreements.

**** carrying charges or as rents.**

**TENTH.**

(a) This Agreement, which is made subject and subordinate to all rights of the Federal Housing Administration as the insurer of the mortgage, shall inure to the benefit of and constitute a binding obligation upon the contracting parties, their respective successors, and assigns. To the extent that it confers rights, privileges, and benefits upon the consenting parties, the same shall be deemed to inure to their use, but without liability to either, in the same manner and With the same force and effect as though the mortgagee and the Federal Housing Administration were signatories to this Agreement.

(b) This Agreement shall constitute the entire Agreement between the contracting parties, and no variance or modification thereof shall be valid and enforceable, except by supplemental agreement in writing, executed and approved in the same manner as this Agreement.

(c) For the convenience of the parties, this Agreement has been executed in several counterparts, which are in all respects similar and each of which shall be deemed to be complete in itself so that anyone may be introduced in. evidence or used for any other purpose without the production of the other counterparts. Immediately following endorsement of the consenting parties, counterparts will be furnished to the consenting parties so that each may be advised of the rights, privileges, and benefits which this Agreement confers,

IN WITNESS, the parties hereto have executed this Agreement the day and year written above.

By________________________________________

**(cooperative)**

By________________________________

________________________________
**(agent)**

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__________________________ hereby consents to the foregoing Management Agreement and the Managing Agent designated therein.

DATE: _______________________ _______________________________

***(Mortgagee)***

By ______________________________

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The Federal Housing Administration at this moment consents to the preceding **Management Agreement and the Managing Agent designated therein,**

DATE: _______________ ____________________________

**(Federal Commissioner)**

By _____________________________

***(Authorized Agent)***

# ADDENDUM: TO MANAGEMENT AGREEMENT

**Bids and Purchase Discounts, Rebates, or Commissions.**
The Project owner and Management Agent agree to obtain contract materials, supplies, and services at the Lowest possible cost or on the terms most advantageous to the project and to secure and credit to the project all discounts, rebates or· Commissions obtainable concerning purchases. Service contracts and other transactions on behalf of the project. The Project Owner and the Management Agent agree that all goods and services purchased from individuals or companies having an identity of interest with the Agent, Project Owner· or Management Agent shall be bought at costs not; more than those that would be incurred in making Arms-length purchases on the open market,

The Management Agent shall solicit written. Cost estimates (i.e.., bids) from at least three contractors or suppliers for any work item which the Project Owner or the secretary estimates will cost $5,000 or more and for any contract or ongoing supply or service arrangement which to-estimated to exceed $5.000 per year The Management Agent agrees to accept the bid. which represents the lowest price, taking into consideration the bidder's reputation for the quality of artistry or material. And timely performance., and the time frame within which the service or goods are needed. For any contractor or ongoing supply or service arrangement obtainable from more than one source and estimated to cost less than $5,000, the management agent shall solicit verbal or written cost estimates as necessary.  To ensure that the project obtains services, supplies, and purchases at the lowest possible cost. The Management agent must make a written record of any verbal estimate obtained. Copies of all required bids and documentation of all other written or oral cost comparisons made *by* the Management Agent shall *be* part of the project's records and shall be retained for three years from the date the work was completed. This documentation shall be subject to inspection by the Secretary or their designee, and the Management Agent agrees to submit such documentation upon request.

The management Agent further agrees to include the following clause in any contract entered into with an identity-of-interest firm for the provision of goods or services to the project, the cost of which services are to be paid from project funds; "Upon request by the (Project Owner or Management Agent) or the Secretary. (Name of contractor or supplier) will make available to the Secretary at a reasonable· time and place; (name of contractor or supplier's) records which relate to goods or services provided to the project." The Management Agent agrees to request such records from the contractor or supplier within seven days. Of receipt of a written request from the secretary or their designee.

The Management Agent agrees to make available to the Secretary all records of the Agent's management company and its identity-of-interest company(s), if any, which relate to the provision of goods or services to the project whenever project funds have been used to pay for such goods and services (other than management services).

In. the event charges levied by an identity-of-interest firm exceed demands which were or would have been set by non-identity-of-interest firms for similar services or materials, the Project Owner, at the request Department, ‘s refund. Any excessive amount that was paid from the project funds. If the Project. The owner and Field Office cannot agree on the amount of refund due to the Loan. The management branch Chief shall request the Office of the Inspector General to review the management agent or the identity-of-interest firm’s records related to the transactions under review. The Inspector General shall provide the Loan Management Branch Chief with an estimate of the amount of refund due. The Deputy Director¯ for Housing Management and the Chief shall review the inspector General's report and shall notify. Project 7rwner of the amount of refund due. Within 20 days of receipt of the Field Office's letter, the Project owner shall refund any amounts found to be excessive.

Date ________________ By ________________________________________

Date ________________ By ____________________________________

# THE REGULATORY AGREEMENT

The regulatory agreement forms the legal basis by which HUD exercises control and influence over the owner and mortgagee of the development. This document is signed by the mortgagor (sponsor) at the initial closing. Coop board members must be familiar with this agreement because it sets the basic requirements that the co-op must fulfill in terms of HUD. Board members should be friendly with their regulatory agreement because it specifies certain conditions that the cooperative is required to meet. The board must ensure that other contracts, such as the management agreement, do not violate the regulatory agreement. A summary of the terms of this vital document follows on the next page. Each housing program will have its form of regulatory agreement. A copy of a typical one is also included for review.

REGULATORY AGREEMENT

With this document, the Secretary of the Department of Housing and Urban Development obligates the mortgagor to:

a. Pay the monthly mortgage
b. Keep replacement and general operating reserves
c. funded and under the control of the HUD
d. Set up a residual receipts fund:
    a. Surcharges (221(d)(3) program)
    b. Collections over introductory rates (236 programs)
e. Restrict occupancy to limited-income families (221(d)(3) and 236)
f. Give preference to certain families (221(d)(3) and 236)
g. Certify and recertify income on a scheduled basis (221(d)(3) and 236)
h. Have HUD approve monthly charges and not charge rates over the approved schedule

The Regulatory Agreement prohibits the owners unless they have prior approval from:

a. Selling the property
b. Making physical changes to the property
c. Merging with another corporation
d. Incurring liabilities above a maximum amount
e. Entering into any supervisory or management contract
f. Withholding any information requested by HUD

The Regulatory Agreement instructs the owners to Submit to HUD:

a. Regular operating reports.
b. Annual financial reports prepared by a certified public accountant
c. Minutes of stockholder's meetings
d. Other information on request

# U. S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT FEDERAL HOUSING ADMINISTRATION

## REGULATORY AGREEMENT

AGREEMENT dated the ________ day of _______________ , 20___ , by and between ___________________________________________________ (hereinafter called the Mortgagor), whose address is _________________________________ party of the first part, and _____________________________________ , an Federal Housing Commissioner (from now on called the Commissioner) acting under authority granted him by the National Housing Act, as amended (From now on referred to as the act.), the party of the second part,

WHEREAS, the Mortgagor is the owner of the premise upon which it is to be erected or has been erected, a cooperative housing project designated as FHA Project No. ____________ and has requested __________________________ (Hereinafter referred to as the Mortgagee) to lend the sum of ____________ Dollars ($ _________________ ) to he secured by a certain Note and Mortgage (hereinafter referred to as the Mortgage); and

WHEREAS, the premises encumbered (or to be encumbered) by the above referred to mortgage are located in _________________ , County of _____________________________________ and State of __________________ and are more particularly described in Exhibit A attached hereto, and made a part hereof; and ____________________________________________________

WHEREAS, the Mortgagor and Mortgagee have requested the commissioner to endorse said Note for mortgage insurance under (Section 213) (actors 221)* of Title II of the Act: and

WHEREAS the Mortgagee is unwilling to lend the said sum to the Mortgage without a Contract of Mortgage insurance evidenced by such endorsement, and the Commissioner is reluctant to endorse the Note for mortgage insurance unless and until the Mortgagor shall, by entering into the covenants and agreements set forth below, consent to be regulated and restricted by the Commissioner as provided in the Act;

NOW, THEREFORE, *in* consideration of the sum of One Dollar ($1.00) in hand paid and other good and valuable reviews by each party to the other, the receipt of which is at this moment acknowledged, and to induce the Commissioner to endorse for mortgage insurance of the Note secured by said Mortgage, and so that the Mortgagor m*ay* be regulated and restricted by the Commissioner as provided for in said (Section 213) (Section-221). and the applicable rules, the parties hereto agree to as follows.; that as long as the Contract of Mortgage Insurance continues to be in effect, and during the such further period as the Commissioner shall be the holder, or coinsurer- of the mortgage, or during any time the Commissioner is obligated to insure a mortgage on the mortgaged property!

1. The mortgagor shall promptly make all payments under the note and mortgage.
2. The mortgagor shall establish and maintain a reserve fund for replacements by the allocation to such reserve fund in a separate account with the mortgagee or in a safe and responsible depository designated by the Mortgagee commencing on the date of the first payment towards amortization of the principal of the Mortgage insured by the Commissioner of an amount equal to $ _______________ and a like amount monthly after that. Such funds may be in the form of cash deposit air invested in obligations. Or fully guaranteed as to principal by the United States *of* America and shall at all times be under the mortgagee's control. Such fund is to effect replacements of structural elements and mechanical equipment of the project and other purposes as the Commissioner may have agreed to in writing. Disbursements from such fund may be made only after receiving the consent in writing of the commissioner.

3. Commencing with occupancy the mortgagor shall establish and maintain a general operating reserve by allocation and payment thereto monthly a sum equivalent to not less than 3 percent of the monthly amount otherwise chargeable to the members persistent to their occupancy agreements  Upon accrual in said general operating reserve account, of an amount equal to 15 percent of the current annual amount otherwise chargeable to the members pursuant to their occupancy agreement, the rate of such monthly allocation may by appropriate action of the mortgagor be reduced from 3 percent to 2 percent provided however, that in the event withdraws from such account reduce it to below 15 percent accrual the rate of such monthly deposits shall immediately be restored to 3 percent; at any time thereafter upon accrual in the general Operating reserve account of an amount equal to 25 percent of the current annual amount chargeable to the members pursuant to their occupancy agreement such monthly deposits may by appropriate action by the mortgagor be discontinued and no other payments need be made into the general operating reserve so long as 25 percent level is maintained and provided further that upon any reduction of sum reserve below said 25 percent level monthly deposits shall forthwith be made at the 3 percent rate until the 25 percent is restored.   (This reserve shall remain in a particular =count and may be in the form of a cash deposit or invested in obligations of, or fully guaranteed as to principal by, the United States of America,     shall at all times be under the control of the Mortgagor.  This cumulative reserve is intended to measure financial stability during periods of particular stress. It may be used to meet deficiencies from time to time due to delinquent payments by individual cooperators. To provide funds for re-purchase stock of withdrawing members and other contingencies. Disbursements totaling more than 20 percent of the total balance in reserve as of the close of the preceding annual period may not be made during any yearly period without the consent of the Commissioner. Reimbursement shall be made to the account upon payment of delinquencies or sale of stock for which funds were withdrawn from the reserve),

4. The Mortgagor shall establish and collect monthly carrying charges to the conditions set forth from now on; monthly taking, the mortgagor shall make costs charged to members during the initial occupancy period by a schedule of charges filed with and approved in writing by the Commissioner before the opening of the project for occupancy. Such payments shall be sufficient to meet the FHA estimate of cooperative management expense, operating expense and maintenance expense, debt service, taxes, special assessment, and ground rents, if any, reserves, and all other costs of the Mortgagor. After the initial occupancy period, charges made by the Mortgagor for its accommodations shall be by a schedule of charges filed with and approved in writing by the Commissioner and shall be in amounts sufficient to meet the Mortgagors estimate of expenses outlined in as operating budget, which shall be prepared and submitted to the FHA 60 days before the beginning of each fiscal year. The operating budget shall set forth the anticipated income of the project and sufficiently detailed estimate expenses, which will include separate estimates for administration expenses, operating expenses, maintenance expenses, utilities, hazard insurance, taxes and assessments, ground rent, interest and amortization, mortgage insurance premiums—replacement reserve and, operating budget. The Mortgagor shall not permit occupancy of its accommodations except by a schedule of charges approved by the Commissioner, and such program shall not be changed except with the written approval of the Commissioner; nor shall occupancy be permitted by the Mortgagor except upon the execution of an occupancy agreement in a form approved by the Commissioner. The property of the Mortgagor shall not be rented as an entirety. Commercial accommodations end non-dwelling facilities, if any, shall be rented only according to a schedule of charges fixed by the directors and approved in writing by the Commissioner. The lease form shall be subject to the Commissioner's written approval. Mortgagor shall provide for the management of the project in a manner satisfactory to the Commissioner. Any management contract entered into by the mortgagor involving the project shall contain a provision that it shall be subject to termination, without penalty and with or without cause upon written request by the Commissioner addressed to the mortgagor and the management agent. Upon receipt tit arch request, the mortgagor shall immediately terminate the contract within a period of not more than thirty (30) days and

shall make arrangements satisfactory to the Commissioner for continuing proper management of the project.

5. The Mortgagor shall not, without prior approval of the Commissioner, given in writing,
    a. sell, assign, transfer, dispose of, or encumber any real or personal property, except as expressly permitted by the terms of the Mortgage.
    b. Remodel, reconstruct, demolish or subtract from the premises constituting the project end subject to the Mortgage.
    c. Permit the occupancy of any of the dwelling accommodations of the Corporation except at the charges fixed by the schedule of charges provided herein.
    d. Permit occupancy- of any of the dwelling accommodations of the Corporation except by members of the Corporation.
    e. Consolidate or merge the Corporation Into or with any other corporation; go into voluntary liquidation; carry into effect any plan of reorganization of the Corporation; effect any changes whatsoever in its capital structure. Alter or amend its Certificate of incorporation or amend its by-laws.
    f. Fail to establish and maintain the Fund for replacements and general operating reserve as set forth herein.
    g. Incur liabilities (direct or contingent) which will at any time exceed in the aggregate $ ______________ * except the indebtedness encored by the Mortgage or necessarily incidental to the execution and delivery thereof;
    h. Enter into any contract or contracts for supervisory or managerial services.
    i. Invest any funds of the Corporation in any property, real, personal, Or mixed, except obligations of or fully guaranteed as to principal by the United Staten of America;

j. Encumber or dispose of in any manner whatever funds derived from the proceeds of its insured Mortgage over sums required to pay the applicable statutory percentage of the actual cost of legitimate obligations incurred in the construction of the physical improvements on the mortgaged property and for which mortgage funds were made available, nor fail to apply such excess funds to the reduction of the principal due under the insured Mortgage.

k. Fail to keep in full force and effect a contract satisfactory to the FHA covering the maintenance and replacement of parts of any elevator, air conditioning, or related equipment, or, if such agreement shall be allowed to expire, then fail to accrue an additional sum in such amount as shall be designated by the Commissioner to be sufficient to permit for deferred and future replacements as part of the annual Reserve for Replacement Fund collected by the Corporation an as to ensure that funds will be available for replacement of related parts end equipment.

6. During the period between the initial and final endorsement for mortgage insurance by the Federal Housing Administration, no compensation or fee shall be paid, nor obligation therefore incurred by the mortgagor except with the prior written approval of the Commissioner. After that** no payment or fee shall be paid by the Mortgagor except for necessary services aid except at such rate as is fair and reasonable in the locality for similar services, nor, except with the prior written approval of the Commissioner, shall any compensation be paid by the Mortgagors to its officers, directors or stockholders, or any person or corporation for supervisory or managerial services nor shall any balance be paid by the corporation to any employee more than $5,000 per annum except with such prior written approval. No officer, director, stockholder agent, or employee of the Mortgagor shall become indebted to the Mortgagor except on approved occupancy charges.

7. The Mortgagor shall maintain its project, the grounds, buildings, and equipment appurtenant to it, to good repair and in such condition as will preserve the health and safety of its occupants.

8. The Mortgagor, its property, equipment, buildings, plans, office, apparatus, devices, books, contracts, records, documents, and papers shall be subject to inspection and examination by the Commissioner or his duly authorized agent at all reasonable times.

9. The books and accounts of the Mortgagor shall be kept by the Uniform Sperm of accounting prescribed by the Commissioner. The Mortgagor shall file with the Commissioner and the Mortgagee the following reports verified by the signature of such officers of the mortgagor as may be designated and, in such form as may be prescribed by the Commissioner.
    a. monthly quarterly operating reports, when required by the Commissioner.
    b. When required by the Commissioner,
    c. the semi-annual financial statement must be within sixty days after the semi-annual period.
    d. Annual reports prepared by a certified public accountant or another person: acceptable to the Commissioner within sixty days after the end of each fiscal year.
    e. specific answers to questions upon width information desired from time to time relative to the operation and condition of the property and the status of the mortgage.
    f. Copies of all stockholder meetings certified to by the secretary of the Mortgagor within thirty days after such sessions, and when required by the Commissioner, copies of minutes of directors' meetings.

10. The Mortgagor shall not execute or file for record any instrument which imposes a restriction upon the sale, leaning, or occupancy of the property subject to the insured mortgage, or any part thereof, based on race, color, or creed:

11. No litigation seeking the recovery of a sum over $3,000 nor any action for specific performance or other equitable relief shall be instituted, nor shall any claim for a sum over $3,000 be settled or computerized by the Mortgager unless prior written consent to it has been obtained from the Commissioner. Such permission may be subject to such terms and conditions as the Commissioner may prescribe.
12. The Mortgagor agrees to observe and perform every one of the covenants and provisions required to be monitored and performed under or under the terms of the Mortgage or of the Building Loan Agreement referred to in said Mortgage. or of the Construction Contract for the construction of the project, or any rent supplement contract executed by the Mortgagor and the Commissioner or of any modification thereof. Any rent supplement contract executed by the Mortgagor and the Commissioner is incorporated and made a part hereof.
13. The Mortgagor agrees that any member shall be sold by the Mortgagor or by a member only in the manner and for the amount provided in the By-laws. Certification shall support that to this and a sale by a member by the seller and the purchases as to the amount of the sales price, not over that permitted by the By-Laws.
14. The Mortgagor agrees that if, during the term of any occupancy Agreement. Lease, or rental agreement, the total current family income exceeds a maximum for occupancy, which may from time to time be established by the Commissioner; it will at its option either (a) Cause the over-income family to vacate in favor of a family whose income does not exceed the prevailing established maximum or (b) Collect Additional monthly carrying charges from the over-income family commensurate with the increased family income, under plan previously developed by the cooperative and approved by FHA for the collection and use of such overages.

15. The Mortgagor covenants that occupancy of rent supplement units shall be permitted only upon executing an Occupancy Agreement in the form the Commissioner prescribes. Mortgagor agrees that occupancy of units not involving rent supplement payments by members or subleasing or renting of such units in the project (where approved by the Commissioner) shall be permitted only upon the execution of an Occupancy Agreement in the case of a member and a lease or rental agreement is the case of a non-member which must contain provisions, among others, that the member-occupant or non-member lessee:

    a. certifies the accuracy of the statements made in the application and income survey;
    b. Agrees that the family income family composition and other eligibility requirements shall deem substantial and material conditions of his initial and continuing occupancy or tenancy; that he will comply promptly with all requests for information and certifications concerning it from the Mortgagor or the Commissioner and that his failure, or refusal to comply with a request for information and certificates relating to it shall be deemed a violation of a substantial requirement of his occupancy or tenancy;
    c. Agrees that if the total current (eerily income limitations for occupancy or tenancy which may be established from time to time by the Commissioner are exceeded, upon receiving a thirty (30) day notice in writing from the Mortgagor, he will either
        a. quit and deliver up possession of the premises, or
        b. pay such additional monthly carrying charges as have been agreed upon under a plan previously developed by the Mortgagor and approved by FHA for the collection and use of such additional carrying charges.

16. The Mortgagor agrees that no person has been approved or shall be approved for membership or tenancy without the following conditions having been met at the time of such approval:
    a. The person is a member of a low or moderate-income family as defined by the Commissioner and certifies that the membership or tenancy is to provide housing for a family in the project.
    b. The total current income of such person's family shall not exceed the limits established by the Commissioner then in effect, and such person has certified to the Mortgagor the tool current family income; and
    c. The Mortgagor has extended a preference or priority of occupancy to persons whose families qualify as low or moderate-income families as defined by the Commissioner and whose families have certificates of eligibility as displaced families, and persons from such preferred or priority families have been given priority in initial occupancy in the project and their placement on a waiting list maintained by the Mortgagee.

17. The Mortgagor agrees to pursue diligently to complete the termination of membership, the eviction, and removal of members or termites who no longer meet the family composition and occupancy per unit limitations, which may be established from time to time by the Commissioner for §221. (d)(3) below-market interest projects and units receiving the benefits of rent supplements.
18. The Mortgagor agrees to pursue diligently to complete the termination of membership, the eviction and removal of members or tenants who no longer meet the income limitations for occupancy, which may be established from time to time by the Commissioner or at the Mortgagor's option, to collect additional monthly carrying charges from said over-income members or tenants under a plea previously developed by the Mortgagor and approved by FHA for the collection mid use of Betel additional moving charges.

19. The Mortgagor agrees to adhere to the priorities and preferences for membership and occupancy by families displaced from an urban renewal area or as a result of governmental action as provided in the By-Laws,
20. The Mortgagor shall not file any petition in bankruptcy or for a receiver, or in insolvency, or for reorganization or composition or make any assignment for the benefit of creditors or to a trustee for creditors, or permit an adjudication to bankruptcy, or the taking possession of the mortgaged property or any part thereof by a receiver, or the seizure and sale of the mortgaged property or any part thereof under judicial process or any power of sale.
21. Mortgagor agrees that they shall be in full compliance with the provisions of
    1. any laws prohibiting discrimination in housing based on race, color, creed, or national origin. and
    2. with the Regulations of the Federal Housing Administration providing for nondiscrimination and equal opportunity in housing. It is understood and agreed that failure or refusal to comply with any such provisions shall be s proper basis for the Commissioner to take any corrective action he may deem necessary, including, but not limited to, the rejection of his future applications for FHA mortgage insurance and the refusal to enter into future contracts of any kind with which the Mortgagor is identified, and further, if the Mortgagor is a corporation or any other type of business association or organization which may fail or refuse to comply with the provisions above, the Commissioner shall be a similar right of corrective action
    a. (1) concerning ray individuals who are offices, directors, trustees, managers, partners, associates, or stockholders of the mortgagor, and
    b. (2) concerning any corporation or any other type of business association or organization with which the officer, directors, trustees, Managers, partners, associates, or stockholders of the Mortgagor may be identified.

22. As security for the payment due under this Agreement for the Reserve Fund for Replacements, and to secure the Commissioner because of his liability under the endorsement of the Note for insurance, and as security for the other obligations under this Agreement, the Mortgagor assigns, pledges and mortgages to the Commissioner its rights to the rents, profits, income and charges of whatever sort which it may receive or be entitled to receive from the operation of the 'mortgaged property, subject, however, to any assignment of rents is the insured mortgage referred to herein: provided, however, that permission is granted to the Mortgagor to collect and retain under the provisions of this Agreement the rent, profits, income and charges, during any such period or periods of time for which the Commissioner has not declared a default Upon declaration by the Commissioner of a default, the said permission is terminated and shall not be deemed to be reinstated until the Commissioner has announced the default to be cured.

23. Upon a violation of any of the above provisions of this Agreement by the Mortgagor, the commissioner may give written notice thereof to the mortgagor by registered- or certified mail addressed to the addressees stated to this Agreement if such violation is not corrected to the satisfaction of the Commissioner within 15 days after the date such notice is mailed, or within the such additional period as is outlined in the information, or where the Mortgagor proceeds immediately and diligently, within such further time as the Commissioner determines is necessary to correct the violation, without further warning the Commissioner may declare a default under this Agreement and upon such default, the Commissioner may:

    a. (i)if the Commissioner holds the note - declare the whole of said indebtedness immediately due and payable and then proceed with the foreclosure of the mortgage.

       (ii) If the Commissioner holds the said note - notify the holder of the notice of 'such default, and the holder, with the prior written consent of the Commissioner, may declare the whole indebtedness due and thereupon proceed with foreclosure of the mortgage, or assign the note and mortgage to the Commissioner as provided in the Regulations.

b. Collect all rents and charges in connection with the project's operation and use such collections to pay the Mortgagor's obligations under this Agreement and the note and mortgage, and the necessary expenses of preserving the property and operating the project.

c. Take possession of the mortgaged property; bring any action necessary to enforce any rights of the Mortgagor of the project and any rights of the Commissioner arising because of the Agreement and operation. The project is in accordance with the terms of this Agreement until the Commissioner, in his discretion, determines that the Mortgagor is again in a position to operate the project by the terms of this agreement and compliance with the requirements of the note and mortgage.

d. Apply to any court, State or Federal, for specific performance of this Agreement, for an injunction against any violation of the Agreement, for the appointment of a receiver to take over and operate the project by the terms of the Agreement, or for such other relief as may be appropriate, since the injury to the Commissioner arising, from a default under any of the terms of this Agreement would be irreparable. The immure of damage would be difficult to ascertain.

24. This regulatory agreement and its covenants and agreements herein shall be of no effect as to any property released from the blanket mortgage of the Mortgagor under Section 213(d) of the National Housing Act.

25. As used in this Agreement, the term

a. "Mortgage" shall include "Deed of Trust."

b. "Note" shall include "Bond";

c. “Mortgagor" shall include "grantor" under any deed of trust.

d. "Mortgagee" shall include the "beneficiary under Mortgage or Deed of Trust however designated.

e. Default" means a default declared by the commissioner when a violator of this Agreement is not corrected to his satisfaction within the time allowed by this Agreement, or such further time as may be permitted by the Commissioner after written notice.

f. 'Stock" shall include Membership certificates or other forms designating member ownership.

g. Family means:

1. Not less than two persons related by blood, marriage, or operation of law who occupy the same unit or:

2. A handicapped. A person who has a physical impairment that is expected to be of a long-continued and indefinite duration which impedes his ability to live independently and is of such a nature that more suitable housing conditions could improve his ability to live independently; or

3. a single person 62 of age or older; or

4. as to rent supplement units in the project, any single person qualifying to receive the benefits of rent supplement; or,

5. any single person who is not (a) 62 years of age or older, nor (b) handicapped as defined above, nor (c) receiving the benefits of rent supplement; provided, however, that such single persons shall occupy not more than 10 percent of the dwelling units in the project shall be occupied by single persons.

h. Total current family income" means all gross income, before taxes and other deductibles, received by all members of the family, except a dependent child or children, as the internal revenue Service defines the latter,

<u>(The use of the plural shall include the singular plural, and the use of any gender shall be deemed to include all gender.)</u>

26. This instrument shall bind, and the benefit shall inure the respective parties hereto, their legal representatives, executor, administrators, successors in office or interest, and cosigns.

27. The invalidly of any clause, part, or provision of this agreement shall not affect the validity of the remaining portions thereof:

28. The Mortgagor agrees and assumes the obligation to have the agreement recorded in the appropriate land records in the jurisdiction where the real property is described. In the event of failure to do so, it is agreed that the Commissioner may have the same recorded at the expense of the Mortgagor.

29. It is expressly agreed between the parties hereto that the breach of any of the terms of this agreement by the Mortgagor will Substantially damage and injure the Commissioner in. the proper performance of his duties under the provisions of the Act and will impede and injure the permissible operations intended under such Act; that such damage will be irrespective of and in addition to saying damage to the security of the mortgaged premises or to any financial damage the Commissioner may suffer as an insurer; that, except for the agreements herein contained; the Commissioner would not issue and would not be authorized to give his Contract of Mortgage Insurance, and that the Mortgagee would not lend the sum above mentioned on the security of the said mortgage unless the Commissioner insured the same.

IN WITNESS of which the parties hereto have duly executed this agreement the day and year first above written:

WITNESS:

_______________________________      ___________________(SEAL)

_______________________________      ___________________ (SEAL)

FEDERAL HOUSING COMMISSIONER

_______________________________ By _________________________

(Authorized Agent)

ACKNOWLEDGEMENT OF MORTGAGOR

(By the form in State where the property is located)

# EVALUATING THE MANAGEMENT AGREEMENT

When a board decides to sign a management agreement, the directors make a significant decision for the cooperative. They are committing the co-op to a working relationship with a management firm for a considerable period and a substantial amount of money. For this reason, the board's steps in preparing to sign the management agreement are critical. These steps can help determine the effectiveness of the agreement for its contract period.

On the next page, readers will find a checklist for evaluating the management agreement. They should fill out the list by checking "yes" or "no" for each question, according to their board's process in entering into its most recent management contract.

# Evaluating The Management Agreement

| | Yes | No |
|---|---|---|
| **1.** Has the board developed its management plan as part of the management Plan? | ____ | ____ |
| 2. Has the board modified the management agreement to meet its co-op's needs? | ____ | ____ |
| **3.** Does the agreement permit the board to terminate the contract within 60 days or less without the consent of the management agent? | ____ | ____ |
| 4. Has the board had its attorney review the proposed management agreement before signing it? | ____ | ____ |
| 5. Have all board members read and discussed the management agreement and management Plan before signing? | ____ | ____ |
| 6. Does the contract provide a clear statement of what services the management agent will provide for the management fee? | ____ | ____ |
| **7.** Does the contract specify which written reports will be submitted monthly by the manager? | ____ | ____ |
| 8. Has the board interviewed more than one management agent before entering its current management agreement? | ____ | ____ |
| 9. Has the board obtained and checked references from other clients of its candidate management firm? | ____ | ____ |
| 10. Has the board developed procedures to ensure the manager complies with the contract requirements? | ____ | ____ |

## Now that the checklist has been completed let us discuss the importance of each item,

1. Has the board developed its management plan as part of the management agreement?

    The first part of this Guide stressed the importance of the board developing its own management plan. By working out a management plan, the board considers all aspects of the co-op's management and decides what management procedures are needed. Since the co-op's needs will change over time, this periodic review allows the board to consider how its management requirements have changed and What kind of management is appropriate to the current situation. For example, the co-op may need additional maintenance during the coming year or perhaps a way to reduce increasing delinquencies. The board would then want to write its management. Plan to meet these needs.

    The alternative to the board writing its management plan is to have the management firm provide a project; when this occurs, the board has to realize that the resulting program will reflect the management firm's approach to the co-op's needs. If the management firm is new to the co-op, the agent may not be aware of the needs of the development. If it is being retained for a second contract period, it will be likely to continue working as it has in the past unless the board makes specific changes in the management plan.

2. Has the board modified the management agreement to meet its co-op's needs?

    The management agreement provided by HUD is a model contract form. As with any contract form, both parties usually modify it to fit their needs before signing. The board should be aware that the management firm usually will have altered the agreement to hold its requirements. The board should ask the management agent what Changes have been made, and they review these modifications. If the board does not agree with the changes, it should inform the management agent and develop an alternative agreement.

Although the board may request any changes it desires in the management agreement, HUD somewhat regulates the nature and extent of these changes. It is especially challenging to make substantive changes in the sections that are marked with asterisks. Making changes in these areas may create problems with HUD area office personnel and cause a delay in approval. Changes frequently made by the boards include:

<u>Section 10, Rentals</u>
The co-op's actual rental procedure may differ from the one outlined in the agreement. Changes also may specify whether the management agent is to have an on-site office or take applications at the management firm's office.

<u>Section 11, Collection of Rents</u>
Like many co-ops, the board may prefer to have a separate checking account in its co-op's name rather than in the management agent's name.

<u>Section 13, Maintenance</u>
A co-op should consider the amount of money it will authorize the management agent to spend on maintenance without prior approval,

<u>Section 28, Terms of Agreement</u>
Co-ops should modify the "mutual consent" clause to allow the board to terminate the contract without the management agent's consent.

3. Does the agreement permit the board to terminate the contract within 60 days or less without the consent of the management agent?

   Section 28. b states that the agreement may be terminated by mutual consent of both parties. This clause should be modified by the board so that it can terminate the contract without the management agent's permission, arbitration, and HUD approval. Since the agreement is supposed to meet the board's needs, the board should have the right to cancel the contract if it is in the cooperative's interest. Unless this clause is changed, getting the management agent to agree to the cancellation might be challenging. Termination might not be in the management firm's interest.

   In addition, the board may want to change the time needed for termination. A period of 30 to 60 days is preferable; any more extended amount of time might be detrimental to the best interests of the cooperative.

4. Has the board had its attorney review the proposed management agreement before signing it?

   The board should have its attorney review the proposed management agreement before signing. The attorney might identify specific clauses that are not in the best interest of the cooperative or which cannot be interpreted. The attorney can also review any modifications the board has made to ensure that the new wording meets with the board's intent. The attorney might also identify modifications that could be illegal, such as a procedure that would violate the regulatory agreement. Under no circumstances should the cooperative use the exact attorney as the managing agent.

5. Have all the board members read and discussed the management agreement and plan before signing?

   Since the management agreement involves one of the most significant financial commitments a board makes in a year, since it binds the co-op for a considerable period, all board members must read both documents before signing. The management agreement needs careful review and discussion by the board so that all directors know its contents. Through this process, the board can identify any changes it might want to make. If the entire board has not helped to develop the management plan, all the directors should also read this document since it gives the procedures through which the agent will implement the management agreement.

6. Does the contract clearly state what services the management agent will provide for the management fee?

   The board should have a clear idea of what costs the management agent will cover through the management fee and what costs, such as on-site office expenses, the co-op will be expected to pay. A management fee that may look reasonable may not cover the co-op's on-site management office expenses, such as printing. The board should also clarify whether resale fees should be received by the co-op or the management agent. It is essential that the board thoroughly understand what the management fee includes before signing the contract. Once the contract is signed, the board is not in a favorable position to negotiate changes.

   Usually, the management fee is a percentage of gross occupancy charges, though some co-ops pay their managers a flat fee. Many directors--and some managers--prefer to contract for services at a fixed, flat rate, allowing the co-op to predict the cost and management to know how much income it can rely upon from the co-op. HUD prefers that the percentage method be used by the co-ops it insures. It has withheld approval of flat-rate fees for some 221(d)(3) co-ops while allowing them for some developments insured under the 213 programs.

Some cooperatives have devised a workable compromise between the two approaches. They do establish a percentage for the fee but state a maximum amount they will pay, writing into the contract a provision that states, for example, "The management fee shall be 5 percent of gross occupancy income, but in no case shall it exceed $15,000 in any one fiscal year," This tactic has been used with success in many areas, meeting no opposition from HUD officials.

The co-op's local HUD office may assist by providing guidelines as to the appropriate percentages of gross income that should go to the management fee. Other area cooperatives may be willing to advise on the market conditions. A lot may depend on how much competition is available. It is advisable to talk to several companies, if possible, and to let them know that you are talking with more than one. If the board has clear-cut specifications, and each bidding company knows them, the fees should not vary substantially. If they do, the board will want to find out why and make a well-informed choice.

Another aspect of the management fee is how much of the cost of other management-related personnel, such as the on-site manager and maintenance staff, is the responsibility of the co-op. In addition to knowing what services the management agent will provide, it is essential to know how many of these services will be given. For example, management firms vary in how much on-site coverage they will provide the co-op. The board should know how many hours of on-site management will be included and how much time the property manager will spend at the cooperative. Many management agents point out that they are working for the cooperative even when they are not on site. Although this *is* true, a cooperative may find that it requires a certain amount of on-site management. The board should be sure that the management contract provides for this time.

Another consideration for the board will be the method of accounting used by the new manager. Some cooperatives have been faced with exceedingly high audit fees because their managers were not keeping the books in conformity with HUD requirements. The board will also want ready access to the co-op's financial records in the event they wish. to change. Management in the future, since some management firms may be reluctant to turn over the books.

7. Does the contract specify which written reports will be submitted by the manager every month?

   The monthly reports management provides the board are critical for determining the cooperative’s health and how well it is managed. The board must receive a. variety of management reports that will allow it to assess the co-op's functioning. The next section of this Guide will review the monthly statements of the board. Should receive. In addition, the board might find other management reports critical to the functioning of the cooperative. It should be if the committee wants to obtain specific information from the management agent. Make this clear before signing the contract. The contract should also specify when and how the manager will present the monthly reports. A report that is several months overdue is of little value to the cooperative.

8. Has the board interviewed more than one management firm before entering its current management agreement?

   The management agreement represents a large expenditure of co-op funds and also commits to work with a specific managing agent for a considerable period. The agent's effectiveness and ability to relate to the board are critical elements in the satisfactory operation of the co-op. Thus the board should consider alternative firms that provide co-op management services. The board should shop around to make sure that it makes the best choice of its available options, as it would when making any other significant expenditure. Even if a co-op is satisfied with its current management and is considering entering into another contract with the same firm, it is essential that the board interview other management candidates. Other management firms can make the board aware of alternatives and approaches in different settings. The board might then be in a position to require some of these alternative services from its current management firm. Similarly, a board can use contract renewal as an opportunity to learn how other agents manage cooperatives. This knowledge may increase the directors' ability to evaluate their current management firm.

9. Has the board obtained and checked references from other clients of its candidate management firm?

    If the board is planning to sign a contract with a new management firm, the cooperative needs to learn how the candidate is regarded by other developments that it manages. Other cooperatives currently controlled by the candidate firm are a rich source of information for evaluating the management agent. A board may ask the managing firm to supply the names of some cooperatives it manages. Telephone or visit directors of these cooperatives to learn how they view their agent and whether they are satisfied with the services they have received; if the board should know that others are having problems with the candidate firm, it would want to reconsider its choice, or to build in certain safeguards to make sure that similar problems do not evolve in its cooperative. If the management firm is not managing other cooperatives, a similar check can be made on its rental properties. In that case, the board would want to ensure that the management firm understands how cooperatives differ from rental properties and understands the management firm's responsibilities for reporting to HUD.

10. Has the board developed procedures to ensure the manager complies with the contract requirements?

    It is the board's responsibility to develop procedures that ensure adequate compliance by the manager with the contract requirements. The board must specify the methods and be sure they are part of the management agreement before signing the contract. These specifications should indicate how often and in what manner the manager will report to the cooperative. The manager is usually required to do this reporting at the monthly board meeting. In addition, the board might establish a timetable for periodic review of specific elements related to management functioning. For example, one month, I may want to review with the management agent the functioning of rent collection procedures and methods used to collect delinquency charges. In another month, the board might want to check the functioning of the maintenance department. Other management services that might benefit from the periodic review include the resales program, the financial situation of the cooperative, or problems with members. The board should be aware that it can request any form of management review it desires. - It should, however, make the management firm- aware of these requests in time to allow the agent to prepare an adequate report.

# MANAGEMENT REPORTS

Once a board of directors has signed a management agreement, it must develop a working relationship with the managing agent. Much of the joint work between the board and the manager centers on ensuring that the co-op’s management is effective. The monthly management reports are the primary means of reviewing management performance and the co-op's needs.

The board should decide which reports it wants monthly and list these in the management plan. The board must insist that the manager provide up-to-date monthly reports regularly; by studying these carefully, the directors can gain a clear picture of the co-op’s financial situation, its vacancy rate, and possible maintenance problems. Controlling problems in these three areas is critical to the successful management of the co-op.

Board members should remember that they may have input into the structure of these reports. If the board cannot understand the format being used, it should work with the manager to come up with something more easil3 understood. Some boards ask the managing agent to change the reporting format to meet their needs; if some of the co-op's members have professional expertise in accounting and are willing, they can assist in redesigning the reports. The board might also consider using its auditor for this. Purpose, and it might also ask other cooperatives to share the types of messages they have found useful. If directors cannot understand a management report, they should ask questions so that all of them can follow what is being presented.

The board can also ask the managing agent for special reports, such as an analysis of the waiting list showing seasonal highs and lows. This analysis could show the board whether a vacancy problem is severe or temporary. Another helpful special report is an analysis showing the co-op's average checkbook balance every month per year. Perhaps the co-op has too much money in its checking account and could put some in an interest-bearing account. The board might also find special maintenance reports helpful in reviewing the co-op's functioning.

Generally, the reports listed on the following page should be received by all boards of directors regularly.

# MONTHLY FINANCIAL REPORT

This should include the following:

**Form 93211.** A statement of the co-op's income and expense for the previous month shows where the money came from and how it was spent and compares actual expenditures with the budget.

**Status of Accounts** shows the current balances in reserve accounts and escrows.

**Bank Reconciliation.** Summarizes transactions in the co-op checking account,

**Delinquent Report.** Lists all members who owe money. Some co-ops prefer to have an:

Accounts Receivable List. Lists not only outstanding
members but also all parties who owe the co-op money, even if the funds are not past due.

Accounts Payable List. Should list any outstanding bills not yet paid by the co-op.

**VACANCY REPORT.**
A listing of all vacant units detailing the amount of money the co-op has lost on these

**RESALES REPORT OR MOVE-IN/MOVE-OUT REPORT.**
A listing Of all units that changed hands in the past month with names of outgoing and incoming members,

**MONTHLY MAINTENANCE REPORT,**

The format may vary, but
This report should answer the board's questions about how maintenance time is used, major problem areas, reasons for delays, projected equipment, inventory needs, and staffing needs and problems.

**COPIES OF ALL CORRESPONDENCE**

about the co-op, Or at least a listing of all correspondence.

**SPECIAL REPORTS**

**ANNUAL REPORT OR ANNUAL. AUDIT.**

This should be received unopened by the board from its auditor, who should meet with the directors to explain the contents in detail.

# SUMMARY

**In Part 1,**

participants learned about the management plan. After reviewing the project’s basic requirements, a small group task was presented. Using a hypothetical co-op as an example, participants developed specifications for the management plan that would meet that co-opts particular needs. Later, participants compared these specifications with HUD's actual requirements for a cooperative management plan.

**In Part 2,**

the management agreement was explained, and the terms of the regulatory deal were discussed. Participants were then asked to complete a checklist evaluating the process their boards used to enter their management agreements. Each item was discussed in detail. Participants received a listing of reports a board should receive to properly monitor management performance, then reviewed a sample report.

The purpose of the course was to give board members a better understanding of management contracts and how they are developed. Participation in group tasks gave those taking the system a chance to simulate actual board discussion and negotiation.

As everyone who lives in a housing cooperative knows, problems do arise. Many times, rightly or wrongly, these problems are blamed on management. However, by skillful development of a set of management specifications and thoughtful consideration of the terms of the management agreement, a board can understand who has what responsibilities and demand compliance with the words that have been agreed upon.

# GLOSSARY

**-ACCOUNTS PAYABLE.**
Money owed by the cooperative to some other party. Bills are accounts payable from when they are incurred until they are paid.

**ACCOUNTS RECEIVABLE.**
Money owed to the cooperative from any source.

**AFFIRMATIVE MARKETING PLAN.**
A plan for selling co-op memberships that actively seeks to reach minority and disadvantaged groups.

**AFTER-HOURS DEPOSITORY.**
Mailbox, drop slot, or another secure place where members can leave checks, letters, complaints, and other items for the manager when the office is closed.

**AGENT.**
See MANAGEMENT AGENT.

**ANNUAL FINANCIAL REPORT.**
Also called an audit, a report prepared annually by a certified public accountant summarizes the finances. Condition of the cooperative. This is a HUD requirement in all the co-ops it ensures.

**ANNUAL INSPECTION.**
An inspection is made annually to determine if the co-op units are. They are safe, sanitary, and in good repair.

**BANKRUPTCY.**
The inability of persons or corporations to pay their debts.

**BMIR.**

This is an FHA acronym for Below Market Interest Rate; it applies to specific mortgage insurance programs in which the mortgage carries a low-interest rate to make it possible for low- to moderate-income families to secure housing.

**BUDGET.**

A plan is generally prepared once each year to project income and expenses for the coming year based on previous experience and plans for the future. The approved budget is the basis for the calculation of the monthly housing charges for each unit,

**BUILDING CODES.**

Laws that specify the minimum standards for constructing buildings--kinds of materials that may be used, how strong the structure must be, the minimum size, etc.

**BY-LAWS:**

A set of rules and regulations governing the operation of an organization.

**CARRYING CHARGES,**

See MONTHLY HOUSING CHARGES.

CASH FLOW.

Reports showing the continuing financial status of development. A cash flow analysis for a federally insured cooperative typically includes HUD Form 93211 and subsidiary schedules as required by the board, such as listings of delinquent accounts, a program of payables, and reconciliation of all reserves, escrow, and checking accounts.

**CERTIFICATION. •**

Refers to the process of determining the eligibility of an applicant for housing before occupancy, according to the regulations governing income and family composition for the co-op's particular program,

**CODE ENFORCEMENT,**

Inspection, notification, issuance of citations, or court action requiring property owners to maintain or improve their property according to minimum standards set by the government.

**CODES.**

Government regulations (Building, Housing, Health, Fire, Electrical, Plumbing, etc.) regulating the construction and operation of public and private facilities; are usually intended to protect and promote health and safety through the establishment of minimum standards for building and operating conditions.

**COLLECTION LOSS.**

The development loses money when it fails to collect charges from residents of occupied units or from persons who are responsible for paying but perhaps not occupying units.

**COMMISSION.**

A percentage payment is given to an employee in return for sales made,

**CONSENTING PARTIES.**

Parties who must consent to any management agreement before it is valid, i.e., HUD and the mortgagee,

**CONTRACT.**

A legal and binding agreement between two or more parties.

**COOPERATIVE HOUSING**.

A corporation marketing housing units to persons or families who have purchased shares (membership) in the development; a form of home ownership by which a corporation Or association made up of the occupants owns the property and leases individual units back to the member-cooperators.

**CPA (CERTIFIED PUBLIC ACCOUNTANT).**
An accountant who has passed a state examination that certifies their ability to perform specific tasks,

**DECORATING POLICY.**
A policy states who is responsible for the interior (and occasionally exterior) 'decoration of units.

**DEFAULT**.
Failure to fulfill an agreement, contract, duty, or obligation.

**DELINQUENT.**
A firm, entity, or person who has not kept the terms of an agreement. In a housing co-op, this usually refers to someone who has not paid monthly housing charges or other charges as agreed. It may also refer to a development that has not been delivered to its various contractors, suppliers, or mortgage holders as agreed.

**DEPRECIATION.**
Loss of value through ordinary wear and tear.

**DEVELOPER,**
A person or company that organizes and carries out the construction. Of commercial or housing developments,

**DISCOUNT.**
A deduction from the original price allowed for paying promptly or in cash.

**ELIGIBILITY**.
Refers to the requirements and standards a person must meet to qualify for various governmental programs,

**EQUAL OPPORTUNITY.**
Equal treatment of all persons, regardless of race, sex, marital status, religion, or national origin.

**EQUITY.**
The difference between the value of the real property and the total amount of all mortgages or liens against the property (reflects the dollar value of the owner's interest),

**ESCROW.**
We are placing property (either actual or cash) in the hands of a second party for delivery to a third party according to terms previously agreed upon.

**EVICTION.**
We are terminating a co-op membership for nonpayment or cause and removal of the member from the property. Displacement always requires court action.

**EXCESS INCOME.**
An FHA/HUD term refers to income generated for the development by residents who, at certification or recertification, have income above the prescribed limits and are thus required to pay a monthly rate above the introductory rate. In Section 236 developments, excess income over gross potential collected by the co-op must be returned to the federal government.

**FAIR HOUSING.**
Housing is available equally to all applicants regardless of race, color, marital status, national origin, or religion, also called OPEN HOUSING.

**FAMILY.**
Refers, in HUD regulations, to two or more persons related by blood, marriage, or operation of law who occupy the same unit. In exceptional cases, single persons over 62 years old and single disabled persons living together may be considered a family.

**FEDERAL HOUSING ADMINISTRATION (FHA).**
An agency within the U.S. Department of Housing and Urban Development (HUD) that insures mortgages and provides subsidies making financing available to buyers, owners, and sponsors of housing developments.

**FEDERAL NATIONAL MORTGAGE ASSOCIATION (FNMA).**
Formerly a private corporation regulated by a federal commission, created by the National Housing Act to establish a secondary market facility for home mortgages by buying and selling such mortgages and providing liquidity for mortgage investments. It also acts as an agent for GNMA in some localities.

**FEDERAL PROGRAMS**
Two hundred thirteen developments are those insured under Section 213 of the National Housing Act, designed to insure mortgages of private lenders to develop housing.

**221(d)(3) BMIR developments**
are those insured under Section 221(d)(3) of the National Housing Act, designed to assist private industry in providing housing at below-market interest rates (EMIR) for low- and moderate-income families as well as displaced families.

Two hundred thirty-six developments are those insured under Section 236 of the National Housing Act, designed to encourage private enterprises to develop housing for low-income families by providing interest reduction subsidies to the owners so that the effective mortgage rate is one percent.

The rent Supplement program makes it possible for private enterprises, through direct federal payments to project owners, to provide housing for low-income families and individuals who qualify under the statutory limits (See also RENT SUPPLEMENT.)

**FEE,**
A payment asked or given for the performance of professional services, such as those of a management agent or attorney,

**FEE, FLAT. A management fee**
is fixed each month, irrespective of collections made.

**FEE, PERCENTAGE.**
A management fee is based on a fixed percentage of gross collections.

**FHA.**
See FEDERAL HOUSING ADMINISTRATION.

**FIDELITY BOND.**
An insurance bond purchased by a firm protects against money loss because of misappropriation by persons handling funds. Such bonds are often purchased by management agents who employ staff for each development managed and by cooperatives for those employees and officers with access to funds,

**A FISCAL YEAR**
is a financial or tax year, often different from a calendar year. A fiscal year might, for example, begin on June 1 and end on May 31 of the following year.

**FNMA.**
See FEDERAL NATIONAL MORTGAGE ASSOCIATION,

**FORECLOSURE.**
A mandatory transfer of property ownership for an unpaid debt,

**FRINGE BENEFITS.**
Benefits in addition to salary, such as health insurance, pension contribution, etc.

**FULL OCCUPANCY.**
The situation that exists when no units are vacant.

**GENERAL OPERATING RESERVE (GOR).**

A reserve is required by HUD to be funded at a level specified in a co-op's regulatory agreement to provide funds in emergencies. The funding of the GOR as a given percentage drops and is eliminated at specific funding levels according to terms of the regulatory agreement.

**GOVERNMENTAL ORDERS.**

Orders given by a government agency, for example, HUD.

**GOVERNMENT NATIONAL MORTGAGE ASSOCIATION (GNMA).**

A corporation within the federal government that purchases FHA- and VA.-insured mortgages (especially below-market-interest--rate mortgages) from banks that made the mortgage loans. GNMA absorbs mortgages unattractive to private enterprises.

**GROSS COLLECTIONS.**

In co-ops, this refers to some programs' collected occupancy charges plus surcharges.

**HAZARD INSURANCE.**

A contract whereby, for an agreed premium, one party undertakes to compensate the other for loss due to specified hazards.

**HIGH-RISE.**

A tall apartment house, office building, etc.

**HOUSEHOLD.**

An individual or family that occupies a dwelling unit.

**HOUSING CHARGES.**

See MONTHLY HOUSING CHARGES.

**HOUSING COOPERATIVE.**
See COOPERATIVE, HOUSING.

**HUD (U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT).**
An executive department of the federal government with chief administrative responsibility for providing a wide range of assistance for housing and community development throughout the nation.

**HUD HANDBOOK.**
The primary publication of the Department describes its operations and its programs. Handbooks are prepared to give detailed information about the various programs.

**INCOME LIS OW.**
Refers to the payment of persons or families eligible for public housing or rent supplement. Limits are set locally, subject to the approval of the HUD.

**INCOME, LIS OWER.**
Lower-income housing is a term used in the Housing and Urban Development Act of 1968; it refers to persons and families whose revenue, for the most part, does not exceed 135 percent of the limits established for admission to public housing and a limited amount of the appropriation, not more than 90 percent of the limits established for occupants of projects insured under FHA Section 221(d)(3).

**INCOME MIS OPERATES.**
A term not expressly defined in federal legislation but found in Section 221. As noted above, FHA establishes income limits for various districts nationwide for FHA 221(d)(3) programs.

**INCOME LIMITS.**
Requirements for eligibility for admission or continued. Occupancy in housing developments. The term is used both in public housing, where the local housing authority sets the limits, and in housing involving federal subsidies or below-market-interest rate financing, in which case the boundaries are either set by HUD/FHA or are related to public housing income limits.

**INITIAL RENT-UP.**
Process of obtaining commitments for membership in a new co-op.

**LATE CHARGE.**
Penalty for any payment not made by a specific date.

**LIMITED-DIVIDEND CORPORATION.**
As used by FHA, a housing corporation formed under federal or state laws or regulations of a state banking insurance department, which is restricted as to rents, charges, capital structure, rate of return, or methods of operation. Generally, state laws provide certain property tax benefits for such entities in exchange for dividend limitations and assurance that housing will be available for moderate-income families.

**LOAN.**
The letting out, or renting, of a certain sum of money by a lender to a borrower, the money to be repaid with or without interest.

**LOW-COST HOUSING.**
A misnomer usually refers to housing for low-income people.

**MAINTENANCE, DEFERRED.**
Care needs to be performed but has been postponed for some reason, such as lack of money.

**MAINTENANCE, EMERGENCY.**
Maintenance work to relieve an immediate problem. For example, in winter, a nonoperating furnace would require emergency maintenance.

**MAINTENANCE, PREVENTIVE.**

Maintenance work performed to prevent future problems, done on a scheduled, regular basis, such as regular oiling and cleaning of furnaces.

**MANAGEMENT AGENT.**

Refers to the firm or entity hired by the owners to manage the development on their behalf.

**MANAGEMENT AGREEMENT.**

A contractual agreement between the owner(s) of development and a firm or entity (management agent) outlining responsibilities and rewards for performance.

**MANAGEMENT COOPERATIVE.**

A form of cooperative housing development in which a central body owns and operates the product for the occupant members on a nonprofit basis, It is generally distinguished from a sales cooperative, in which the units are built through a cooperative body and sold to individual buyers.

**MANAGEMENT PLAN,**

A specific plan of operation provided by a management agent to the owner(s) of a development in substantially greater detail than that provided in the management agreement. In federal-or state-assisted developments, the management plan is often incorporated into the management agreement by reference so that it becomes binding on the parties,

**MANAGEMENT REPORTS.**

Reports, usually in writing, are prepared for the board of directors by their manager.

**MANAGER.**

See MANAGEMENT AGENT, ON-SITE MANAGER, PROPERTY MANAGER, RESIDENT MANAGER.

**MARKETING,**
The sale or resale of co-op memberships.

**MARKET-RATE INTEREST.**
The interest rates a bank or other lending institution typically charges for lending money.

**MARKET VALUE.**
The highest price a buyer would pay, the lowest offer the seller would accept.

**MEMBER.**
A resident of a cooperative who has executed a subscription agreement and purchased a membership in the co-op.

**MEMBERSHIP CERTIFICATE.**
A document showing evidence of membership in a cooperative development; such certificates indicate the value of the membership and usually will be numbered consecutively as they are issued and transferred.

**MODERATE-INCOME FAMILY.**
A family whose income is near the national average.

**MONTHLY HOUSING CHARGES.**
The amount determined by a co-op's board of directors to be sufficient to meet the financial and operating costs of the cooperative, proportioned to the various unit sizes within the development, sometimes referred to as CARRYING CHARGES. There are several different types of monthly housing charges, depending on the kind of cooperative:

**BASIC.**
Used in Section 236 developments, It is based solely on operating the project with principal and interest payments on a one percent-interest-rate mortgage.

**BMIR.**

In 221(d)(3) cooperatives, the amount necessary to operate the development is based on the below-market-interest-rate mortgage and the absence of the mortgage insurance premium.

**MARKET RATE.**

Used in 236 developments, deter Mined based on operating the development with payment of principal, interest, and mortgage insurance premium on a market-interest rate mortgage, i.e., without the benefit Of the interest reduction subsidy. (In general, commercial real estate, this term is taken to mean the highest rate obtainable on the open market. However, under the subsidy programs, such rates are HUD-controlled. and are based on debt service, approved expenses, and distributions only; this definition should not be used in discussing the
subsidy programs.)

**ADJUSTED MARKET RATE. In 221(d)(3) BMIR**

cooperatives, any amount charged more than the BMIR unit rate; is computed by adding to the BMIR rate 20 percent of the EMIR rate.

**ECONOMIC RATE.**

in Section 221 cooperatives, the HUD-approved dwelling unit rate in a development with a market-interest-rate A mortgage that pays its mortgage insurance premium,

**MORATORIUM.**

A period during which one has a legal right to delay meeting an obligation.

**MORTGAGE.**

A loan secured by real property. One obtains a mortgage loan by giving (temporarily) the ownership of the property to the lender as a. security that the loan will be repaid; if the loan is not repaid, the lender can take actual and permanent possession of the property.

**MORTGAGEE_**

The institution (usually a bank) or individual borrows money to buy, build, or rehabilitate a building or other property.

**MORTGAGE INSURANCE PREMIUM.**

The annual charge made by FHA as a premium for the insurance it provides against default on the mortgage, generally at one-half of one percent. It has been waived for the BMIR mortgage insurance program.

**MORTGAGOR.**

The technical term is for the individual or group that borrows money to buy some property.

**MOTION.**

A formal proposal is deciding to vote in a meeting or an assembly, such as a meeting of a cooperative's board of directors. See RESOLUTION.

**MULTIFAMILY DEVELOPMENTS.**

Housing developments for four or more families without limit on the number of units, as distinguished from the FHA's home loan program, which generally deals with tiny homes and other dwelling structures containing not more than eleven units.

**NEGOTIATION.**

Conferring, discussing, or bargaining in reaching an agreement.

**NONPROFIT CORPORATION.**

A corporation whose objective is not to make money for its members. Any cash or profits above operating expenses are usually used for facilities and services for the members.

**OCCUPANCY AGREEMENT.**
An agreement that allows occupancy of a specific - unit in a. cooperative development by a member of the joint; in many regards, the occupancy agreement is similar to a lease in a rental product,

**OCCUPANCY CHARGER.**
See MONTHLY HOUSING CHARGES.

**OFFICE PROCEDURES**.
Systems used in running an office.

**ON-SITE MANAGER.**
A manager who works on the property; may or may not be a RESIDENT MANAGER.

**ON-SITE OFFICE,**
Office set up within the co-op itself.

**OPERATING COST.**
The expenses involved in running a housing development or apartment; include maintenance, mortgage payments, insurance, utilities, and the loss of revenues from vacant units.

**ORIENTATION.**
In a co-op, familiarizing members or potential members with the co-op structure, environment, rules, and regulations.

**OVER-INCOME.**
The status of an applicant or resident whose income exceeds the income limitations imposed by HUD on given programs. See also EXCESS INCOME and SURCHARGE.

**OWNER.**
In the case of a cooperative, the owner is the membership, represented by the board of directors.

**PARTIAL PAYMENT.**
An incomplete payment.

**PERSONNEL _POLICY.**
A policy establishing requirements for hiring and terminating employees, which outlines the terms of their employment and sets up a grievance procedure,

**POTENTIAL INCOME.**
Total monthly housing charges that can be made for all of the development units may be stated as monthly or annual. Collections will equal potential if each team is income-producing and pays the total amounts due.

**PRINCIPAL.**
The principal is the amount of. The loan itself; loan payments consist of two parts: principal and interest. See AMORTIZATION.

**PROPERTY MANAGER.** –
Usually a member of a management team who supervises the RESIDENT MANAGER. This term is used in different parts of the country; in a small management operation, the property manager may also perform the functions of a resident manager.

**PROXY (PROXY VOTE),**
The authorization of one person to act on behalf of another; an individual is acting as proxy for a second person. The proxy is free to act as s/he sees fit and is not bound by any directive from the person authorizing the proxy.

**QUORUM.**
The minimum number of officers and members of an organization or assembly must be present for the valid business transaction. The requirements of a quorum are usually set in the by-laws.

**REBATE.**
Return of part of an amount already paid. Some co-ops have received rebates on their taxes.

**RECERTIFICATION.**
Regular redetermination of occupants' eligibility according to income and family composition regulations. Recertification is to be done annually in a Section 236 development and every two years in a 221(d)(3) action.

**REGULATORY AGREEMENT.**
A contractual agreement between the agency insuring the mortgage (often HUD), the mortgagor, and the mortgagee, stating mutual obligations and responsibilities.

**REHABILITATION. •**
Substantial upgrading or improvement of property, generally done as part of an area-wide program to arrest the deterioration of neighborhoods. Special mortgage insurance provisions are available under FHA to encourage rehabilitation. Applies both. To residential and non-residential properties.

**RENT SUPPLEMENT.**
A federal program under which direct payments are made to the development owner to make up the difference between the monthly charges for a unit and 25 percent of a low-income family's total income. The resident must qualify by being

(1) physically handicapped,
(2) sixty-two years or older,
(3) displaced by governmental action,
(4) presently in substandard housing,
(5.)- a disaster victim, or
(6) in military service on active duty. The amount of federal assistance to any specific resident at the time of initial occupancy cannot be less than 10 percent of the introductory rate, nor-at any time may reduce the amount Of supplement exceeds 70 percent of the market rate established for the unit.

**REPLACEMENT RESERVE.**
The reserve is required by HUD to be -funded at a regular monthly rate for the life of the mortgage. For timely replacement of major appliances and structures.

**RESERVE.**
Money set aside for specific purposes by the owners of a development, Cooperatives are required to fund a General Operating Reserve (GOR) and 'a Replacement Reserve; Equipment Reserves, Painting Reserves, etc.: are optional.

**RESIDENT MANAGER.**
A manager who resides in the co-op, See also, ON-SITE MANAGER, PROPERTY MANAGER •

**RESIDUAL RECEIPTS.**
Income received by a coop over and above occupancy charges.

**RESOLUTION.**
A formal statement of a decision or expression of opinion put before or adopted by an assembly such as a cooperative board of directors.

**SECURITY DEPOSIT.**
A deposit is required in addition to rent as security against subsequent damages.

**SOCIAL SERVICES.**
Various state and local organizations aim to assist people with social problems, such as the location of housing and emergency rent assistance.

**SPONSOR.**
Individual or group that proposes the construction of a development; may continue with either the ownership or management of the product or may transfer one or both at final endorsement or later.

**SUBSCRIPTION AGREEMENT.**
An agreement whereby an applicant promise to purchase a membership in the cooperative in return for consideration and promises of residency if qualified and approved,

**SUBSIDY.**
The government gave monetary assistance to a person or a private commercial enterprise; rent supplement, interest reduction subsidy, etc.

**SURCHARGE INCOME,**
Income generated for the development by residents who, at recertification, have income higher than prescribed limits and thus must pay a monthly rate above the EMIR rate if they are to stay in the co-op. This term is most commonly used for developments insured under Section 221(d)(3). For Section 236 co-ops, excess income is sometimes referred to as surcharges, but it must be returned to the federal government. See also EXCESS INCOME.

**TERMINATION CLAUSE.**
A clause in a contract that details how the contract may be canceled or terminated.

**TERMINATION OF MEMBERSHIP.**
-invalidation. of membership according to provisions of the cooperative by-laws. Such action may be taken by a resident/member to terminate their membership and effect a transfer to another member or may be taken by the board of directors to deal with a problem member.

**U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT.**
See HUD.

**VACANCY LOSS.**
The monetary loss to a development resulting from vacant units that are not producing income.

**VACANCY RATE.**

The percentage of unoccupied dwelling units within an area at any given moment. A meager vacancy rate (below 4 percent) indicates that avail-cable housing is scarce,