


# Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

# 481 Commerce/Banking Division

RULES REVIEW CHECKLIST

DATE RULES RECEIVED 10/25 Temporary Rule —

Resubmitted and Received _____

DUE DATE 11/14

a. Returned to Agency w/o filing w/Secy of State _____
b. Approved ✓ Date Sent Back to Agency 10/13

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1. Rules as Adopted n/a - rules were repealed here
2. Rules as Proposed ✓
3. Certificate of Board's Authorizing Resolution, where applicable _____
4. Order for Hearing ✓
5. Notice of Hearing ¶ 8 of new rules is not there — see last folder re: Order has letter re: subm to AG's office
   (i) Sufficiency ✓
6. Secretary of State's List No xeroxed copy was kept of this list! (there is a certif two) * (See HE Report two)
7. Certificate of Acquisition of Secretary of State's List ✓
8. Affidavit of Mailing ✓
   (i) At least 30 days prior to hearing ✓
9. Statement of Need and Evidence ✓
10. Hearing Examiner's Report ✓
11. Agency's Findings of Fact ✓
12. Certificate of Board's Resolution Adopting Rules, where applicable _____
13. Order Adopting ✓
14. Report of Chief Hearing Examiner ✓
    (i) Finding of No Substantial Change ✓
    (ii) Permission to Incorporate by Reference, where applicable _____
15. Certificate of Compliance with Rulemaking Procedures ✓
16. Copy of Notice of Intent to Solicit Outside Opinion, where applicable _____
17. Petition by Public, where applicable _____.

problems:

1) these rules are > 1 yr late to our office?

Time Delay } Hrng was 9-20-77 /
HE Report was 10-17-77
Ag Findings/Order = 8-3-78
Duane's Report = 8-10-78

problem w/ ¶ 8 of HE rules re notice of shift to AG's office

2) No xerox sec of state label list kept → HE Report at p. 2 says it was filed I doubt it?

3) No publishing of repeal in S.R.?
The orig rules were in [SR 12-20-76]
→ HE Report says there was publicat of notice on Aug 8 1977

4) Notice is in an older form

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Look at A.G. rules / Ch 15 Stat. re: REPEAL

[15.051] (Supp. 1977): Register shall contain all repeals of rules
[subd 1]

RECEIVED
JUL 19 1977
OFFICE OF HEARING
EXAMINERS

The attached are Minnesota Rules BD 226 and 227 of the Banking Division of the Minnesota Department of Commerce. The Banking Division is proposing to repeal these rules in their entirety.

ord. adopted
on 11-13-78
Joanne E. Hinderle

# Department of Commerce
# Consumer Credit Division
## Definitions and Eligibility Requirements for Conventional Home Loans

**BD 226** Eligible conventional home loan lenders or mortgagees. The following persons, organizations, and financial institutions are authorized to make conventional home loans pursuant to the Conventional Home Loan Assistance and Protection Act (the "Act"):

**A.** Banks, savings banks, mutual savings banks, building and loan associations, and savings and loan associations organized under the laws of this state or the United States, trust companies, trust companies acting as fiduciaries and other banking institutions subject to the supervision of the commissioner of banks, and

**B.** Mortgagees or lenders approved or certified by the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation.

**BD 227** Eligibility requirements for conventional loans.

**A.** Any conventional loan is an eligible loan for purposes of the Act so long as it has been approved or would be eligible for purchase in whole or in part by the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation at the time such conventional loan is closed.

**B.** Any conventional loan that is not otherwise eligible pursuant to paragraphs A or C of Section 227 must meet the following requirements of the Federal National Mortgage Association in order to be an eligible loan for purposes of the Act:

**1.** Unless the context indicates otherwise, the following definitions and rules of construction apply to paragraph B of Section 227:

**a.** Home mortgage means a mortgage which is secured by real property upon which is located a dwelling unit designed for residential use for not more than one family and where the real estate is owned in fee simple or consists of an acceptable leasehold estate.

**b.** Unit mortgage means a mortgage which is secured by real property consisting of a dwelling unit designed for residential use for no more than one family and which is owned in fee simple or consists of an acceptable leasehold estate. A unit mortgage is secured by the dwelling unit itself and an undivided interest in the common areas, or, membership or stock interest in an association having title to the common areas.

**c.** Mortgage means the security instrument, the obligation secured thereby, the title evidence, and all other documents and other papers pertaining to the mortgage loan.

**d.** Purchase price, property means the contract price paid or payable by the purchaser (original mortgagor) after adjustment for any discounts to sales price, rebates or other allowances paid, payable or allowed to the purchaser on account of the sale of the property covered by the mortgage. If there was no sale of the property incident to the inception of the mortgage, the purchase price of the property shall be deemed to be the same as the appraised value.

**e.** Security instrument means an instrument (mortgage, deed of trust, or other) creating and evidencing a first lien on (1) a fee simple estate in the mortgaged premises or (2) a leasehold estate.

**f.** Secured obligation means a valid and enforceable note or bond secured by a conventional mortgage.

**g.** Market value means the highest price estimated in terms of money which a property will bring if exposed for sale in an open market with a reasonable time allowed to find a purchaser, buying with knowledge of all the uses and purposes to which it is adapted and for which it is capable of being used.

**h.** Appraised value means the market value of the property securing the mortgage as estimated by an appraiser.

**i.** Value means the lower of the purchase price or the appraised value.

**j.** Leasehold estate means an estate having a remaining term running or renewable at the option of the lessee, for a period of not less than ten years from and after the maturity of the mortgage loan, or to any earlier date at which the fee simple title will vest in the lessee, which leasehold estate is assignable or transferable if the same is subject to the lien of the mortgage, and the term

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of the mortgage must not exceed the term of the set ground rent by more than five years.

k. Condominium means a form of ownership of real property characterized by title (created by statute) to a unit in a project together with an undivided real estate interest in the common elements which are part of said project in accordance with state enabling law. The common elements generally are maintained by, but not owned by, the Owners Association. The common elements typically include among other things, the land, roofs, floors, lobbies and community space and facilities.

l. Planned unit development (PUD) means a real estate development which consists of separately owned lots with contiguous or non-contiguous areas or facilities usually owned by an owners association in which the owners of the lots have a stock or membership interest. Title to the real estate under the dwelling units is held by the individual lot owners and not by the association. The association usually has title to and administers the common areas, and levies monthly charges against lot owners for common area expenses. Membership in the Owners Association cannot be severed from the ownership of an individual unit.

m. De minimis PUD means a PUD in which the common areas are relatively insignificant in terms of their influence upon the enjoyment of the premises and have little or no effect upon the value of the property securing the unit mortgage.

n. Owners association means:

(1) In the case of a condominium, the Owners Association is a non-profit corporation or association as authorized by law, composed of the individual owners of the units in a condominium project, which manages but has no ownership interest in the common areas unless specifically approved by statute,

(2) In the case of a PUD, the Owners Association is a nonprofit corporation or association having management responsibility to the project as a whole and title to the common areas. The shares in such a corporation or membership in such association are transferred with the transfer of title to the individual units.

o. Master deed means the basic document used in the creation of a condominium. It is occasionally referred to as: "Matrix Deed", "Declaration of Horizontal Property Regime", "Enabling Declaration", or "Deed of Constitution". The recorded master deed indicates that the property is submitted to a condominium regime and describes the division of the project into units and common elements.

p. By-laws means the rules, codes or regulations providing for the administration and maintenance of a condominium project or PUD.

q. Unit means:

(1) Condominium unit is a designated space in a condominium project as described by the condominium documents, title to which is in the unit owner, together with an undivided interest in the common areas.

(2) PUD is the individual home, on its own lot, title to which is in the individual lot owner.

r. Development means a multiple unit real estate plan. The term typically includes subdivisions, de minimis PUDs, PUDs and condominiums. A development is the sum total of all individual dwelling units, if applicable, the common areas, rental apartments, offices, commercial, industrial, private, recreational facilities and any other uses of the real estate within the plan.

2. Amortization. Full amortization of the mortgage amount is required over the term of the loan by level installments of principal and interest payable [the first day of] each month.

3. Mortgage term, minimum and maximum. A mortgage must mature within a term generally acceptable to private institutional investors in conventional mortgages, but the original term of a mortgage loan may not exceed thirty (30) years from the date of commencement of amortization of principal. The original term shall not be less than ten (10) years.

4. Mortgage amounts. The original mortgage amount shall not be less than $10,000. The mortgage shall involve an original principal obligation in multiples of $50.

5. Loan to value percentage.

a. To be eligible a mortgage may have a principal balance not exceeding eighty percent (80%) of the value of the security property.

b. Except that the unpaid principal balance may be in excess of eighty percent (80%) of value if the excess is insured by a mortgage insurer for a term that will end, unless the mortgage is then delinquent, when the unpaid principal balance has been reduced to eighty percent (80%) of the original value of the property. The maximum loan-to-value percentage (LTV%) for such mortgage secured by a single-family home, a unit in a de

minimis PUD or a unit in a PUD project may not exceed ninety-five percent (95%). The maximum loan-to-value percentage for a mortgage secured by a unit in a condominium project may not exceed ninety percent (90%).

6. Interest rates. Mortgage interest rates must be stated in the note and mortgage decimally in increments of either one-tenth of one percent (1/10 of 1%), one-eighth of one percent (1/8 of 1%), or one-fourth of one percent (1/4 of 1%), and shall not include any portion of the private mortgage insurance premium, if applicable.

7. Property appraisals. The property must be appraised:

a. After all improvements to the property have been substantially completed for existing construction, except that minor items not affecting livability, whether on or off site, may be incomplete at the time of the appraisal, provided the lender establishes an escrow to guarantee timely completion of such improvements, and

b. from plans and specifications for proposed construction.

8. Location of mortgaged premises. The mortgaged premises must be located in the United States, the District of Columbia, the Commonwealth of Puerto Rico or the Virgin Islands.

[b. Property in outlying rural areas will be eligible provided:

(1) The land value is equal generally to no more than thirty percent (30%) of the total appraised value of the property offered as security; and

(2) the lender determines that adequate sewerage and water facilities and other utilities are available and in service on the premises; and

(3) the property is readily accessible by a federal, state, or county highway or an all weather secondary road; and

(4) the present or immediate anticipated use adjacent real estate does not, in the appraiser's opinion, adversely affect the value or present marketability of the property for residential use.

c. Property will be ineligible if a specific physical or environmental influence seriously endangers the health and safety of prospective occupants. Such conditions may arise from unsafe construction, serious danger of flooding, excessive smoke or chemical fumes, excessive noise endangering health, danger from fire or explosion, or inadequate water and sewerage facilities or other utilities.]

9. Type of property. The mortgage property must consist of one dwelling unit designed for single-family occupancy. The unit may be detached, semi-detached, row, townhouse, part of a condominium, de minimis PUD or a PUD, with the real estate owned in fee simple or under an acceptable leasehold estate.

Mortgages on older dwellings are eligible. The bath(s), kitchen, heating, plumbing, and electrical facilities must be functional. [and of a quality acceptable generally to typical purchasers in the community.

Each dwelling must contain sufficient square footage to be acceptable generally to typical purchasers in the community.]

10. Owner occupancy. Borrower's application must establish that the property securing the mortgage is or will be occupied by the borrower and serve as his principal residence.

11. Lien requirements. The security instrument, any evidence of "open-end" advances, the mortgagor's estate and his title thereto, and the lien of the security instrument (which must be a first and paramount lien on the mortgagor's estate in the real property subject only to liens for taxes and special assessments not in arrears) must be such as to be acceptable to private institutional investors, informed buyers, title insurance companies, and leading attorneys, generally, in the community where the mortgaged premises is situated. The documents submitted must indicate, either in the title evidence, or by copies of tax receipts, closing statements or ledger cards, that current installments of taxes and assessments which, though not in arrears, have attached as prior liens, have been paid or that sufficient deposits therefore are being collected. The note, the related security instrument, and the evidence of insurance from the private mortgage insurer, if any, must be properly executed and when appropriate, properly acknowledged and recorded. Nothing must be contained therein which would, or might, affect the priority of the mortgagee's first lien on the mortgagor's estate or preclude recovery by the mortgagee from the private mortgage insurer, if

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applicable, of the full amount under the policy of mortgage insurance, if it be assumed that the claim was properly to be made under applicable requirements as of the effective date of the related mortgage insurance.

**12.** Title evidence required. The title evidence must be in such substance and form as to assure full title protection to the mortgagee. The title evidence will establish that the title to the mortgaged premises is such as to be acceptable to private institutional investors, informed buyers, title insurance companies, and leading attorneys, generally, in the community where the mortgaged premises is situated, and that the mortgage constitutes a lien of the required priority on a fee simple or leasehold estate in the mortgaged premises. Such title evidence [will] may consist of a mortgage title policy in an amount not less than that of the original principal amount of the mortgage indebtedness.

**13.** General title waivers. The title to the real estate which secures a mortgage must be good and merchantable and free and clear of all liens and encumbrances. Title will be deemed eligible even though it is subject to the following:

**a.** Public utility and other subsurface easements which are in place and are completely covered at the time of closing of the mortgage loan. Such easements must not extend under any buildings on the subject property.

**b.** Easements above the surface of the property for public utilities for distribution purposes (not transmission) along one or more of the property lines, and for drainage along the rear property line, provided the easements [extend not more than twelve (12) feet from the property lines] and the exercise of the rights thereunder do not interfere with any of the buildings or improvements located on the subject property or the use and enjoyment of property not subject to improvement.

**c.** Mutual easement agreements recorded in the public records which establish joint driveways and party walls constructed partly on the subject property and partly on adjoining property, provided the easement agreement allows all future owners, their heirs and assigns forever, unlimited use of these driveways or party walls without restriction.

**d.** Violations of cost, minimum size of dwelling structure or setback restrictions which do not provide a penalty of revision or forfeiture of title or a lien of any kind for liquidated damages. Violations of such restrictions which do not provide for penalties, reversions, or result in a lien of any kind, will be acceptable only if a policy of title insurance expressly insures the mortgagee against loss by reason of such.

**e.** Encroachments on the subject property by improvements on adjoining property where such encroachments do not exceed one (1) foot, do not touch any buildings and do not interfere with the use of any improvements on the subject property.

**f.** Encroachments by garages or improvements, other than those which are attached to or a portion of the main dwelling structure, over easements for public utilities, provided such encroachment does not interfere with the use of the easement or the exercise of the rights of repair and maintenance in connection therewith.

**g.** Encroachments on adjoining property by eaves and overhanging projections attached to improvements on the subject property where such encroachments do not exceed one (1) foot and encroachments on adjoining property by driveways belonging to subject property where such encroachments are not in excess of one (1) foot, provided that there exists a clearance of at least eight (8) feet between the buildings on the subject property and the property line affected by the encroachment.

**h.** Encroachments by hedges or removable fences belonging to the subject or adjoining property.

**i.** Outstanding oil, water or mineral rights which are customarily waived by prudent lending institutions, and will not result in damage to the property or impairment of the use of the property for residential purposes.

**j.** Variations between the length of the subject property lines as shown in the appraisal report and as shown by the record of possession lines, provided such variations do not interfere with the current use of any of the improvements on the subject property and do not involve a deficiency of more than two percent (2%) with respect to the length of the front line or more than five percent (5%) with respect to the length of any other line.

**14.** Title company single risk maximums. The maximum single risk (the risk in connection with any one mortgage) assumed by any one title company may not exceed fifty percent (50%) of the sum of its capital and surplus, and its reserves other than its loss and claim reserves; excess amounts may be covered by reinsurance or co-insurance of other title companies.

**15.** Condominiums and PUD's. If the mortgage is secured by a condominium or PUD unit the title evidence must be consistent with Sections 12, 13 and 14.

**16.** Insurance requirements. Property securing each mortgage must be covered by insurance in the kinds and amounts specified in this section. Insurance policies on homes, condominium units and PUD units shall be held in the custody of the mortgagee.

The insurance company, association or organization must be specifically authorized by law or licensed by the jurisdiction to transact business within the state or territory where the property is located, and whose policy contract and forms do not provide that contribution or assessments may be made against the mortgagee or become a lien on the property superior to the lien of the mortgagee.

**17.** Insurance required for home mortgages. Insurance coverage in the following kinds and amounts is required on property covered by a home mortgage at the time the loan is closed:

**a.** Property insurance affording protection against loss or damage from fire and other hazards covered by the standard extended coverage endorsement must be provided in an amount at least sufficient to pay the mortgage balance in the event of a covered loss. Insurance in an amount less than the mortgage balance is permitted only where the appraisal made in connection with the mortgage loan provides separate valuations for the land and improvements and in such instances the insurance must cover the full replacement cost of the improvements.

**b.** Policies containg a deductible clause in the maximum amount of $250, unless a higher amount is required by state statute, applicable to either fire or extended coverage, or both, are acceptable.

**18.** Insurance required for individual condominium mortgages. Insurance coverage substantially in conformity with the following is acceptable:

**a.** A "master" or "blanket" policy of property insurance in an amount equal to full replacement value (100% of current "replacement cost" exclusive of land, foundation, excavation and other items normally excluded from coverage) of the condominium project (including all building service equipment and the like and any fixtures or equipment within the condominium unit which are financed under the mortgage) with an "Agreed Amount Endorsement" or its equivalent, [a "Demolition Endorsement" or its equivalent, and, if necessary, an "Increased Cost of Construction Endorsement" or "Contingent Liability from Operation of Building Laws endorsement" or the equivalent,] if available, or an Inflation Guard Endorsement and such insurance to afford protection against at least the following:

**(1)** Loss or damage by fire and other hazards covered by the standard extended coverage endorsement, and by sprinkler leakage, debris removal, cost of demolition, vandalism, malicious mischief, windstorm, and water damage; and

**(2)** in the event the condominium project contains a steam boiler, a broad form policy of repair and replacement boiler and machinery insurance in the amount of at least $50,000 per accident per location; and

**(3)** such other risks as shall customarily be covered with respect to projects similar in construction, location and use.

**b.** A comprehensive policy of public liability insurance covering all of the common areas and commercial spaces in the condominium project, with a "Severability of Interest Endorsement" or equivalent coverage which would preclude the company from denying the claim of a unit owner because of the negligent acts of the Owners Association or another unit owner, with such limits not less than $1,000,000 covering all claims for personal injury and/or property damage arising out of a single occurrence, such coverage to include protection against water damage liability, liability for non-owned and hired automobile, liability for property of others, and, if applicable: elevator collision, garage-keeper's liability, host liquor liability, and such other risks as shall customarily be covered with respect to projects similar in construction, location and use.

**c.** Any insurance obtained pursuant to Section 18 shall be subject to the following provisions and limitations:

**(1)** The named insured under any such policies shall be the Owners Association of the condominium project, as a trustee for the owners of the condominium units, or its authorized representative, including any trustee with which such association may enter into any insurance trust agreement, or any successor trustee, each of which shall be hereinelsewhere referred to as the "Insurance Trustee" who shall have exclusive authority to negotiate losses under said policies; and

**(2)** in no event shall the insurance coverage obtained and maintained pursuant to the requirement of this Section be brought into contribution with insurance purchased by the owners of the condominium units or their mortgagees; and

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(3) such policies shall provide that coverage shall not be prejudiced by:

(a) any act or neglect of the owners of condominium units when such act or neglect is not within the control of the Owners Association or,

(b) by failure of the Owners Association to comply with any warranty or condition with regard to any portion of the premises over which the Owners Association has no control; and

(4) all policies shall provide that coverage may not be cancelled or substantially modified (including cancellation for non-payment of premium) without at least 30 days prior written notice to any and all insureds named thereon, including the mortgagees; and

(5) all such policies shall contain a waiver of subrogation by the insurer as to any and all claims against the association, the owner of any condominium unit and/or their respective agents, employees or tenants, and of any defenses based upon co-insurance or upon invalidity arising from the acts of the insured.

d. All policies of property insurance shall provide that, notwithstanding any provisions thereof which give the carrier the right to elect to restore damage in lieu of making a cash settlement, such option shall not be exercisable without the prior written approval of the association (or any insurance trustee) or when in conflict with the provisions of any insurance trust agreement to which the Association may be a party, or any requirement of law; and

e. The Owners Association of a condominium project shall be required to maintain adequate fidelity coverage to protect against dishonest acts on the part of officers, directors, trustees and employees of such association and all others who handle, or are responsible for handling funds of the association. Such fidelity bonds shall meet the following requirements:

(1) All such fidelity bonds shall name the association as an obligee; and

(2) such fidelity bonds shall be written in an amount equal to at least 150% of the estimated annual operating expenses of the condominium project, including reserves; and

(3) such fidelity bonds shall contain waivers of any defense based upon the exclusion of persons who serve without compensation from any definition of "employee" or similar expression; and

(4) such bonds shall provide that they may not be cancelled or substantially modified (including cancellation for nonpayment of premium) without at least thirty (30) days prior written notice to the mortgagee.

19. Insurance required in PUD's and de minimis PUD's. Insurance coverage substantially in conformity with the following is acceptable:

a. A policy of property insurance meeting the requirements of Section 17 shall be obtained by the mortgagee with respect to each unit mortgage.

b. A policy of property insurance in an amount equal to the full replacement value (100% of current "replacement cost" exclusive of land, foundation, excavation and other items normally excluded from coverage) of the common facilities owned by the Owners Association (including all building service equipment and the like) with an "Agreed Amount Endorsement" or its equivalent, [a "Demolition Endorsement" or its equivalent and, if necessary, an "Increased Cost of Construction Endorsement" or "Contingent Liability from Operation of Building Laws Endorsement" or the equivalent,] if available, or an Inflation Guard Endorsement and such insurance to afford protection against at least the following:

(1) loss or damage by fire and other hazards covered by the standard extended coverage endorsement, and by sprinkler leakage, debris removal, cost of demolition, vandalism, malicious mischief, windstorm, and water damage; and

(2) such other risks as shall customarily be covered with respect to projects similar in construction, location and use.

c. A comprehensive policy of public liability insurance covering all of the common areas and commercial spaces located in the "planned unit development" insuring the Owners Association (and, in the case of an unincorporated Owners Association, the members of such association), with such limits not less than $1,000,000 covering all claims for personal injury and/or property damage arising out of a single occurrence with such coverage to include protection against water damage liability, liability for non-owned and hired automobile, liability for property of others, and, if applicable: garage-keeper's liability, host liquor liability, and such other risks as shall customarily be covered with respect to projects similar in construction, location and use.

d. The Owners Association of a "planned unit development" shall be required to maintain adequate fidelity coverage to protect against dishonest acts on the

part of officers, directors, trustees and employees of such association and all others who handle, or are responsible for handling funds of the association. Such fidelity bonds shall meet the following requirements:

(1) All such fidelity bonds shall name the Owners Association as an obligee; and

(2) such fidelity bonds shall be written in an amount equal to at least 150% of the estimated annual operating expenses of the planned unit development project, including reserves; and

(3) such fidelity bonds shall contain waivers of any defense based upon the exclusion of persons who serve without compensation from any definition of "employee" or similar expression; and

(4) such bonds shall provide that they may not be cancelled or substantially modified (including cancellation for nonpayment of premium) without at least 30 days prior written notice to the mortgagee.

20. Flood insurance.

a. No mortgage will be eligible if secured by a property located in an area which has been identified by the Secretary of Housing and Urban Development as having special flood hazards (by publication in the Federal Register of a Flood Insurance Boundary Map or Insurance Rate Map), for which flood insurance is not available because the community in which such property is located is ineligible for participation in the National Flood Insurance Program except for any mortgage which is closed prior to one year following the publication of the Flood Hazard Boundary Map.

b. Flood insurance in the amount specified in this Section must be provided in connection with any mortgage secured by property which is located in a community for which flood insurance has been made available under the National Flood Insurance Program (NFIP) and which is located in a designated special flood hazard area.

c. Flood insurance required by this Section shall be in the form of the standard policy issued by members of the National Flood Insurers Association or in the form of a policy which meets the criteria set forth in the Guidelines published by the Flood Insurance Administration in the Federal Register on July 17, 1974. The minimum amount of flood insurance required is the lowest of:

(1) the principal balance of the mortgage,

(2) the value of the insurable improvements, or

(3) the maximum amount of flood insurance which was available on the date upon which the mortgage was closed.

d. For condominium unit loans, a "blanket" policy of flood insurance in the name of the Owners Association or a designated trustee must be obtained in accordance with the foregoing requirements. The amount of coverage required for each building within the project is the maximum amount available under the NFIP or the aggregate amount of the unpaid principal balances of the mortgages covering the condominium units contained in the building, whichever is less.

e. Flood insurance requirements for mortgages financing properties located in planned unit developments are the same as those for other home mortgages.

21. Evidence of insurance. All insurance policies shall be held in the custody of the mortgagee. Prior to the closing of a mortgage loan of the first unit mortgage in the condominium project the mortgagee will have obtained for its files a copy of the "master" or "blanket" policy of property insurance and, where applicable, flood insurance, a copy of the comprehensive policy of public liability insurance, and, if required, the boiler and machinery policy. Prior to the closing of the mortgage loan of the first unit mortgage in a planned unit development, policies insuring against similar risks in the common areas will be obtained. In addition, the mortgagee shall obtain from the carrier an appropriate certificate or memorandum of insurance as to each unit in the condominium project which is the subject matter of a mortgage loan from the mortgagee.

22. Mortgage clauses. All policies of property (hazard) insurance in connection with home mortgages, including mortgages financing properties located in a planned unit development, and the "blanket" policy of property insurance in connection with condominiums must contain or have attached thereto a standard

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mortgage clause (without contribution) customarily used in the area in which the property is located. The mortgagee must be named therein as first lienor.

23. Notice of loss. The Owners Association of a condominium project must agree in writing to notify the mortgagee at the mortgagee's address whenever:

a. damage to a family unit covered by a mortgage held by the mortgagee exceeds $1,000, and

b. damage to common areas and related facilities exceeds $10,000.

With respect to planned unit development projects, the Owners Association must agree in writing to notify the mortgagee at the mortgagee's address whenever damage to common areas or related facilities exceeds $10,000.

24. Refinancing. A mortgage which involves refinancing of a short-term loan used to finance the original construction or substantial rehabilitation of a dwelling is acceptable. Refinancing of an existing permanent mortgage is eligible provided:

a. A portion of the mortgage funds will be used to pay for substantial improvements to the security property, including incidental closing costs and outstanding assessments, such as streets, water, sewer; and

b. any existing mortgage(s), or loan(s) related to prior improvements in the security property is liquidated in full; and

c. the mortgage is otherwise eligible.

25. Special assessments. The improvement to the premises, if any, resulting from a special assessment must be included in the appraised value. In such instances, the monthly payments from the borrower must include 1/12th of the estimated annual payment toward such assessments.

26. Payment of prepaid expenses, [settlement costs, loan fees, discounts, rebates and other allowances.]

a. Certain prepaid expenses must be paid by the purchaser of the property. Payment of these expenses by any party other than the purchaser will make the mortgage ineligible. The following expenses must be paid by the purchaser:

(1) Interest charges covering any period subsequent to loan settlement date.

(2) Real estate taxes covering any period subsequent to loan settlement date.

(3) Hazard insurance premiums.

(4) Mortgage insurance renewal premiums.

27. Trade equities. It is acceptable for the property seller to take the borrower's existing property in trade as all or part of the downpayment for the property being purchased.

The amount of the borrower's equity contribution (downpayment) will be considered to be the net amount after deducting the balance of indebtedness and any customary transfer costs, discounts, closing costs, etc. from the lesser of:

a. the appraised value of the property being traded by the borrower, or

b. the trade-in value allowed by agreement between the parties.

C. Any conventional loan that is not otherwise eligible pursuant to paragraphs A or B of Section 227 must meet the following requirements of the Federal Home Loan Mortgage Corporation in order to be an eligible loan for purposes of the Act:

1. Unless the context indicates otherwise, the following definitions and rules of construction apply to paragraph C of Section 227:

a. Condominium unit means a one family dwelling which:

(1) is a part of real property which has been subject to a recorded declaration of condominium (or a master deed or a similar instrument) pursuant to the Minnesota Condominium Act or condominium (horizontal property or unit ownership) act of the jurisdiction in which the property is located; and

(2) the ownership of which includes the ownership in fee (or in an acceptable leasehold estate) of a specified residential unit together with an undivided pro-rata interest in appurtenant real estate and any improvements thereon.

b. First lien means a lien meeting the requirements of any statutes, or regulations issued thereunder by any governmental agency under state or federal law authorized to supervise and examine the operations of the authorized lender relating to "first mortgages", "unencumbered property", "first liens" or words of similar import.

c. Flexible payment loan means a note secured by a home mortgage where amortization of principal is not required during an initial period (not to exceed five (5) years) of the mortgage loan term; however, the required payments during such period must be sufficient to pay the interest. Such note must require repayment in monthly installments in accordance with a payment schedule stated in the note and the required payments after the end of the initial period must be sufficient to retire the entire obligation, both interest and principal, within the remainder of the mortgage loan term (such mortgage loan term must not exceed thirty (30) years, including the initial period). The interest rate must not be subject to increase during the initial period, unless pursuant to a subsequently negotiated agreement [(such as an assumption)], and the amount of the first required principal and interest payment after the end of the initial period must be fixed at the beginning of the mortgage loan term, with no required payment after the end of such initial period being greater than the first required principal and interest payment.

d. Home mortgage means an instrument creating a valid first lien on real estate (held in fee simple or an acceptable leasehold) upon which there is located either:

(1) a structure or structures designed principally for residential use by not more than four families or

(2) a one to four family unit in a planned unit development, or

(3) a one family unit in a condominium project.

e. Mortgaged premises means the land and improvements thereon secured by the first lien of the mortgage.

f. Planned unit development (PUD) means a parcel of land which contains property and improvements thereon owned and maintained by a homeowners association, corporation or trust, for the benefit and use of individual PUD units (a one to four family dwelling located in a PUD) within that parcel of land (herein referred to as "common property"), and such association, corporation or trust, requires automatic non-severable membership of each individual unit owner, with mandatory assessments. The common property enhances the enjoyment of the premises and value of the property securing the PUD unit mortgage. (Zoning is not the basis of classification as a PUD.)

A De Minimis PUD unit means a PUD unit located in a PUD, in which the common property has a relative insignificant influence on the enjoyment of the premises, or has little or no effect on the value of the property securing the PUD unit mortgage.

g. Value means the lower of:

(1) the appraised value of the mortgaged premises at the time the mortgage loan is closed, or

(2) the purchased price paid for the mortgaged premises by the borrower.

2. Loan to value ratio; minimum loan amounts.

a. No mortgage loan amount may exceed ninety-five percent (95%) of value. However, mortgage insurance is required on all mortgage loans that have a loan to value ratio in excess of eighty percent (80%). Coverage is required on the amount in excess of seventy-five percent (75%) of value and must remain in force until the mortgage loan is reduced to eighty percent (80%) of the original value at which time the coverage may be cancelled.

b. Mortgage loans secured by a two, three, or four family dwelling must not exceed eighty percent (80%) of value.

c. Refinance loans (not including construction/permanent loans) must not exceed eighty percent (80%) of the appraised value at the time such loan is closed.

d. The principal balance of mortgage loans must not be less than five thousand dollars ($5,000) at the time the loan is closed.

3. Cash down payment. The current appraised value in dollars of the subject lot owned by the borrower upon which the improvement was constructed or the net proceeds of the trade-in of a previous home towards the purchase of the mortgaged premises are considered "cash equity" for the purposes of this section.

a. For mortgage loans with a loan-to-value ratio of more than ninety percent (90%), the difference

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between the purchase price of the mortgage premises and the mortgage loan must be paid from the borrower's liquid assets or cash equity.

b. For mortgage loans with a loan-to-value ratio of more than eighty percent (80%), but not in excess of ninety percent (90%), the difference between the purchase price of the mortgaged premises and the mortgage loan must be paid from the borrower's liquid assets or cash equity or its equivalent. The amount paid from the borrower's liquid assets or cash equity must be a minimum of ten percent (10%). No secondary financing is permitted.

c. For mortgage loans with a loan-to-value ratio of eighty percent (80%) or less, no less than ten percent (10%) of the purchase price of the mortgaged premises must be paid from the borrower's liquid assets or cash equity. Secondary financing is permitted.

d. All prepayments for real estate taxes, hazard and mortgage insurance impounds/escrows must be paid from the borrower's liquid assets or cash equity.

e. For refinance loans, borrowers equity must be at least twenty percent (20%) of the appraised value at the time of the mortgage loan closing.

4. Occupancy. To the best of the mortgagee's information and belief, the borrower occupies all or part of the mortgaged premises as a primary residence and the borrower is an individual or individuals.

5. Type of structure.

a. The mortgage premises must consist of a detached or semidetached dwelling, row dwelling, townhouse, a unit within a vertical or horizontal condominium project, or a dwelling unit within a PUD, undamaged by fire, windstorm or other casualty. Construction of the mortgaged premises, including subsurface facilities, must be completed as of the date of the loan closing. In the event the improvements cannot be completed for valid reasons, such as inclement weather, an adequate escrow for the uncompleted items must be established. The principal residence comprising the mortgaged premises must not be a mobile home, a vacation property or a seasonal property. The mortgaged premises must be in conformance with all applicable zoning and use restrictions and local building and housing codes. The mortgaged premises must also enable the mortgage to qualify as a "residential mortgage" as defined in Section 302 of the Emergency Home Finance Act of 1970, and Section 7701(a)(19)(C)(v) of the Internal Revenue Code and rules and regulations promulgated under each such section.

b. A unit in a new or newly converted condominium project or PUD will be deemed seasonal property and the mortgage thereon not eligible unless at least eighty percent (80%) of the units sold in the condominium project or PUD have been sold to individuals for use as their primary year-round residence. In an existing condominium project or PUD, at least eighty percent (80%) of the units must be occupied by unit owners as their primary year-round residence.

6. Amortization. Each mortgage note must provide through regular, monthly payments, for full amortization by maturity. Amortization must commence not later than sixty-two (62) days after the final disbursement of the mortgage proceeds, except that for flexible payment loans amortization of principal is not required during the initial period of the mortgage loan term (such initial period must not exceed five years).

7. Term. The original term of a mortgage must not exceed thirty (30) years. In the case of a construction/permanent loan, the term must start no later than the end of the period allowed for construction. The original term of a home mortgage must not be less than ten (10) years.

8. Rate of interest. The rate of interest specified in the evidence of indebtedness secured by the mortgage instrument must be evenly divisible by eights or tenths of one percent. Mortgage insurance premiums shall not be included in the interest rate.

9. Location of mortgaged premises. The mortgaged premises must be located:

a. within the state of the mortgagee's principal office; or

b. within a radius of one hundred (100) miles of the mortgagee's principal office.

10. Execution, acknowledgement and recordation. Each mortgage must be duly executed, acknowledged, delivered and recorded in all places where the mortgage loan must be recorded to perfect a first lien security interest in the mortgaged premises in favor of the mortgagee.

11. Mortgage valid first lien. Each mortgage must be a valid first lien on the mortgaged premises. The mortgaged premises must be free and clear of all encumbrances and liens prior to the first lien of the mortgage loan and no rights may be outstanding that could give rise to such liens, subject only to liens for real estate taxes and special assessments not yet due and payable, and the prior liens and encumbrances found in BD 227 C, section 16. The mortgage loan must be a legal,

valid and binding obligation of the maker(s) thereof, enforceable in accordance with its terms and conditions, and free from any right of settoff, counterclaim or other claim or defense, and no part of the mortgaged premises may have been released from the mortgage. There must be no encroachments, overlaps, boundary line disputes or other matters which would be disclosed by accurate survey or inspection of the mortgaged premises. The tax lot must be the same as the mortgaged premises.

**12.** Principal amount advanced; no mandatory future advances. The full principal amount of each mortgage loan must be advanced to the borrower at the loan closing or advanced in accordance with the direction of the borrower. The borrower must not have an option under the mortgage loan to borrow, from the mortgagee or any other person, additional funds secured by the mortgage without consent of the mortgagee.

**13.** Compliance with law. All requirements of all federal, state and local laws, rules and regulation applicable to mortgage loans and mortgage loan transactions, including, without limitations, truth-in-lending laws and usury laws, must be complied with, and the mortgage loan must not violate any such laws, rules or regulations.

**14.** No circumstances adversely affecting value of mortgage. No proceeding may be pending for condemnation of all or any part of the mortgaged premises.

**15.** Title insurance requirements; other title evidence.

a. Each mortgage loan must be covered by a paid-up mortgage title insurance policy. Such title insurance policy must not be subject to any exception other than those which are permitted as provided in BD 227C.16. However, a title insurance policy is not required if a home mortgage is a "spot loan" and if:

(1) title insurance coverage is not commonly required by private institutional mortgage investors in the area in which the mortgaged premises are located; and

(2) the mortgagee holds a certificate of title; or

(3) such other evidence of title commonly required by such private institutional mortgage investors which evidence is issued by an attorney carrying malpractice insurance, and which evidence of title is not subject to any exceptions other than those referred to in Section 16. However, a title insurance policy is required on mortgages securing condominium or PUD units or mortgages on a leasehold estate.

b. Every title insurance policy must protect the mortgagee up to the original principal balance of the mortgage loan.

**16.** Waiver of exceptions. The prior liens and encumbrances listed below are acceptable:

a. Any subsurface public utility easement for local residential distribution, such as liens for gas and water, and cable for electric, telephone or CATV utilities, the location of which is ascertainable and fixed, provided that the exercise of the rights thereunder will not interfere with the use of any present or potential future improvements on the mortgaged premises.

b. Any surface easement for public utilities for local residential distribution along one or more of the property lines of the mortgaged premises [and extending not more than twelve (12) feet therefrom,] the location of which is ascertainable and fixed, provided that the exercise of the rights thereunder will not interfere with the use of any present or potential future improvements on the mortgaged premises or the use of that part of the mortgaged premises outside of the easement and not occupied by improvements.

c. Encroachment on an easement for public utilities by a garage or any other improvement, other than those which are attached to or a portion of the main dwelling structure, provided such encroachment does not interfere with the use of the easement or the exercise of rights of repair and maintenance in connection therewith.

d. Agreements or restrictive covenants of record related to costs, use, set-back, minimum-size, building materials, architectural, aesthetic or similar matters (other than single family use restrictions on 2-4 family properties; provided there is no reversion or forfeiture of title in the event of violation thereof, that such agreements or restrictive covenants do not create or provide for a lien of any kind which would be prior to the lien of the home mortgage, that the terms and provisions of such agreements or restrictive covenants are commonly acceptable to private institutional mortgage investors in the area in which the mortgaged premises

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are located and that no violation of any such agreement or restrictive covenant exists.

e. Mutual easement agreement of record which establishes a joint driveway or a party wall constructed either partly on the mortgaged premises and partly on adjoining property, or wholly on the mortgaged premises, or wholly on the adjoining property, provided the easement agreement allows all present and future owners, their heirs and assigns forever, unlimited use of the driveway or party wall without any restriction other than restriction by reason of the mutual easement owner's rights in common and duties as to joint maintenance.

f. Fence misplacements of one foot or less on either side of the property line of the mortgaged premises, provided that neither the misplacement, nor a future correction thereof, will interfere with the use of any improvements of the mortgaged premises or the use of the balance of the mortgaged premises not occupied by improvements.

g. Encroachments on the mortgaged premises by improvements on adjoining property where such encroachments extend one foot or less over the property line of the mortgaged premises, have a total area of fifty (50) square feet or less, do not touch any buildings, and do not interfere with the use of any improvements on the mortgaged premises or the use of the mortgaged premises not occupied by improvements.

h. Encroachments on adjoining property by eaves or other projections attached to improvements on the mortgaged premises or by a driveway appurtenant to the mortgaged premises where such encroachments extend one foot or less beyond the property line of the mortgaged premises, provided that as to a driveway encroachment there exists a clearance of at least eight feet between the buildings on the mortgaged premises and the property line of the mortgaged premises affected by such encroachment.

i. Outstanding oil, gas, water, or mineral rights which are commonly waived by private institutional mortgage investors in the area in which the mortgaged premises are located and will not result in damage to the mortgaged premises or impairment of the use of the mortgaged premises for residential purposes[, provided that such rights only attach below five hundred (500) feet]. That there are no rights of surface entry incident to such oil, gas, water, or mineral rights, and that rights of subadjacent support of the mortgaged premises are provided.

j. Liens for real estate or ad valorem taxes and assessments not yet due and payable.

k. The priority of the lien as to any sum repaid and subsequently readvanced under the terms of the mortgage insured thereby.

17. Hazard insurance requirements.

a. General. Each mortgage loan must be covered by hazard insurance meeting the requirements set forth in this section and must be in effect the date of the mortgage loan closing.

b. Scope and amount of coverage required for home mortgages other than planned unit development and condominium unit home mortgages. Insurance coverage in the following kinds and amounts is required on the mortgaged premises and this basic coverage must provide:

(1) The scope of coverage shall be equal to or greater than fire and extended coverage and shall be at least equal to that commonly required by private institutional mortgage investors in the area in which the mortgaged premises are located. The policy shall provide, as a minimum, fire and extended coverage insurance on a replacement cost basis in an amount not less than that necessary to comply with any co-insurance percentage stipulated in the policy, but not less than eighty percent (80%) of the insurable value (based upon replacement cost of the mortgaged premises). Except for insurance under the National Flood Insurance Act of 1968, as amended, and for deductibles, as permitted below, the amount of coverage shall be sufficient so that in the event of any damage or loss to the mortgaged premises of a type covered by the insurance, the insurance proceeds shall provide at least the lesser of:

(a) compensation equal to the full amount of damage or loss, or

(b) compensation to the first mortgagee under the mortgage equal to the full amount of the unpaid principal balance of the mortgage loan.

All buildings valued at $1,000 and over must be insured.

If the area is one identified by the Secretary of Housing and Urban Development as an area having special flood hazards, flood insurance shall be maintained in the amount of the outstanding principal balance of the mortgage loan or the maximum limit of coverage available under the National Flood Insurance Act of 1968, as amended, whichever is less.

(2) Policies containing a deductible clause up to $200 applicable to either fire or extended coverage, or

both, are acceptable in states or areas where such provisions are mandatory or commonly acceptable to private institutional mortgage investors. When policies contain a fall of building clause, such clause must be waived.

c. Scope and amount of coverage required for planned unit developments. Insurance coverage in the following kinds and amounts is required on property covered by a PUD unit home mortgage:

(1) All coverages in the kinds and amounts required for home mortgages pursuant to Section 17a are required also for PUD unit home mortgages.

(2) The PUD corporation, homeowners association or trust must have fire and extended coverage insurance for no less than one hundred percent (100%) of replacement cost of insurable PUD common property. Such insurance must name as the insured the PUD corporation, homeowners association or trust for the benefit of the unit owners in a PUD. (No mortgagee clause in favor of PUD unit mortgagees is required on insurance covering common property.)

(3) The PUD corporation, homeowners associations or trust must have fidelity coverage against dishonest acts on the part of directors, managers, trustees, employees or volunteers responsible for handling funds collected and held for the benefit of the unit owners in a PUD if the PUD has more than thirty (30) units. The fidelity bond or insurance must name the PUD corporation, homeowners association or trust as the named insured and shall be written in an amount sufficient to provide protection which is in no event less than one and one-half times the insured's estimated annual operating expenses and reserves. In connection with such coverage, an appropriate endorsement to the policy to cover any persons who serve without compensation shall be added if the policy would not otherwise cover volunteers.

(4) The PUD corporation, homeowners association or trust must have a comprehensive policy of public liability insurance covering all of the PUD common property. Such insurance policy shall contain a "severability of interest" clause or endorsement which shall preclude the insurer from denying the claim of a unit owner in a PUD because of negligent acts of the PUD corporation, homeowners association or trust, or other unit owners. The scope of coverage must include all other coverage in the kinds and amounts commonly required by private institutional mortgage investors for projects similar in construction, location and use. If the project has more than thirty (30) units, coverage shall be for at least $1,000,000 per occurrence for personal injury and/or property damage.

d. Scope and amount of coverage required for home mortgages on individual condominium units. Insurance coverage in the following kinds and amounts is required on property covered by a condominium unit home mortgage:

(1) A multi-peril type policy is required covering the entire condominium project providing as a minimum fire and extended coverage and all other coverage in the kinds and amounts commonly required by private institutional mortgage investors for projects similar in construction, location and use on a replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value (based upon replacement cost). If there is a steam boiler in operation in connection with the mortgaged premises, there must be in force boiler explosion insurance evidenced by the standard form of boiler and machinery insurance policy and providing as a minimum, $50,000 per accident per location. If the condominium project is located in an area identified by the Secretary of Housing and Urban Development as an area having special flood hazards, a "blanket" policy of flood insurance on the condominium project must be maintained in the amount of the aggregate of the outstanding principal balances of the mortgage loans on the condominium units comprising the condominium project or the maximum limit of coverage available under the National Flood Insurance Act of 1968, as amended, whichever is less. The name of the insured under each required policy must be stated in form and substance similar to the following: "Association of Owners of the _____ Condominium for use and benefit of the individual owners" (designated by name, if required.

(2) Each such policy must contain the standard mortgage clause which must be endorsed to provide that any proceeds shall be paid to the Association of Owners of the _____ Condominium for the use and benefit of mortgages as their interest may appear.

(3) The association of owners must have fidelity coverage against dishonest acts on the part of directors, managers, trustees, employees or volunteers responsible for handling funds belonging to or administered by the condominium association of owners if the condominium project has more than thirty (30) units.

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The fidelity bond or insurance must name the condominium association of owners as the named insured and shall be written in an amount sufficient to provide protection which is in no event less than one and one-half times the insured's estimated annual operating expenses and reserves. In connection with such coverage, an appropriate endorsement to the policy to cover any persons who serve without compensation shall be added if the policy would not otherwise cover volunteers.

(4) The association of owners must have a comprehensive policy of public liability insurance covering all of the common elements, commercial spaces and public ways in the condominium project. Such insurance policy shall contain a "severability of interest" endorsement which shall preclude the insurer from denying the claim of a condominium unit owner because of negligent acts of the condominium association of owners or other unit owners. The scope of coverage must include all other coverage in the kinds and amounts required by private institutional mortgage investors for projects similar in construction, location and use. If the project has more than thirty (30) units, coverage shall be for at least $1,000,000 per occurrence, for personal injury and/or property damage.

e. No assessments; other requirements. Policies are unacceptable where:

(1) under the terms of the carrier's charter, bylaws or policy, contributions or assessments may be made against the borrower or the mortgagee; or

(2) by the term of the carrier's charter, bylaws or policy, loss payments are contingent upon action by the carrier's board of directors, policyholders, or members; or

(3) the policy includes any limiting clauses (other than insurance conditions) which could prevent the mortgagee or the borrower from collecting insurance proceeds.

f. Mortgagee clause. All policies of hazard insurance must contain or have attached the standard mortgagee clause commonly accepted by private institutional mortgage investors in the area in which the mortgaged premises are located. The mortgagee clause must provide that the insurance carrier shall notify the first mortgagee (or trustee) named at least ten days in advance of the effective date of any reduction in or cancellation of the policy.

18. Survey requirements. Each mortgage must meet the following survey requirements:

a. An improvement survey, or, as sometimes referred to, a plat of survey, must have been obtained prior to the loan closing. However, if private institutional mortgage investors in the area in which the mortgaged premises are located do not commonly require a plat of survey, a plat of survey will not be required. The plat of survey must be based upon the results of an instrument survey made, dated and certified by a licensed civil engineer or registered surveyor, within one year of the date of the title insurance policy or an attorney's opinion of title obtained in connection with that particular mortgage loan, the certification of which should run to the mortgagee and the title insurance company which is furnishing the title insurance policy, if required by the title insurance company.

b. The survey must show, among other things:

(1) the location by courses and distances of the plot to be covered by the mortgage, the relation of the point of beginning of said plot to the monument from which it is fixed, all easements appurtenant to said plot, any established building line, and the line of the street or streets abutting the plot and the width of said streets;

(2) encroachments and the extent thereof in terms of feet and inches upon said plot or any easement appurtenant thereto;

(3) all structures and improvements on said plot with horizontal lengths of all sides and the relation thereof by distances to all boundary lines of the plot, servient easements, established building lines and street lines. If the plot is described as being on a filed map, the survey must contain a legend relating the plot to the map on which it is shown.

19. Legal description. The legal description of the mortgaged property as set forth in the mortgage and title insurance policy or other evidence of title must be in one of the following basic forms:

a. Metes and bounds. A metes and bounds description should comply with the following standards:

(1) The beginning point should be established by a monument located at the beginning point, or by reference to a nearby monument.

(2) The sides of the mortgaged premises must be described by giving the distances and bearings of each. In lieu of bearings, it is equally acceptable to use the interior angle method, provided that the beginning point is located on a dedicated public street line or a fixed line on other property or the course of the first side can be otherwise properly fixed.

(3) The distances, bearings and angles should

be taken from a recent instrument survey, or recently recertified instrument survey, by a licensed civil engineer or registered surveyor.

(4) Curved courses should be described by data including:

(a) length of arch,

(b) radius of circle for the arc and

(c) chord distance and bearing.

However, if commonly accepted by private institutional mortgage investors in the area in which the mortgaged premises are located, when a survey course is part of a dedicated public street or road line, the course may be described merely by indicating the distance and direction which the course takes along the street line from the end of the previous course.

(5) The legal description should be a single perimeter description of the entire plot. Division into parcels must be avoided unless a special purpose of the specific mortgage loan is served. Division is necessary, however, if the plot is located on two sides of a public way. (It is also customary in many areas to describe an easement appurtenant to a fee parcel by using a separate parcel description.)

b. Lot and block description. A description composed of lots and/or blocks which includes reference to a recorded map or plat on which said lots or blocks are delineated is usually deemed adequate.

However, when all of the lots or blocks in the description do not appear on the same recorded map or plat, the location of the apparently identical sides of lots or blocks in different recorded maps or plats, fixed in both maps or plats by the same monuments (a rare situation), is usually deemed adequate.

c. Additional acceptable descriptions. Although encountered in only a few cases, a description of a parcel bounded on all sides by dedicated streets or alleys can acceptably refer only to the bounding lines of the streets or alleys. A description of registered property is acceptable, if in the form required by the local Torrens Act.

20. Acceptable leasehold. For each home mortgage on a leasehold estate, mortgagee must obtain an unconditional opinion of counsel stating that each leasehold mortgage loan constitutes an interest in the real estate and complies with the requirements of this section. The following leasehold requirements must be fully complied with:

a. Mortgagee must obtain an unconditional opinion of counsel stating that:

(1) the use of leasehold or ground rent estates for residential properties is a customary practice in the area in which the mortgaged premises are located,

(2) residential properties in the area consisting of such leasehold or ground rent estates are readily marketable,

(3) mortgages covering such residential properties are commonly acceptable to private institutional mortgage investors and

(4) the provisions of the leasehold or conveyance reserving ground rents are those commonly acceptable to private institutional mortgage investors in the area in which the mortgaged premises are located.

b. The lease (including all amendments thereto) must be recorded.

c. The leasehold must be in full force and effect and be subject to no prior lien or encumbrance by which the leasehold can be terminated or subjected to any charge or penalty.

d. The remaining term or exercised renewal of the lease together with any renewals enforceable by the mortgage must terminate no earlier than ten (10) years after the maturity date of the mortgage.

e. The lease must be in a standard form commonly acceptable to private institutional mortgage investors in the area in which the mortgaged premises are located for leasehold mortgage purposes and must contain no conditions under which the leasehold may be terminated for lessee's default without the mortgagee having the right to receive from the lessor written notice of, and a reasonable opportunity to cure, such default.

21. Condominium home mortgages, organizational requirements. By virtue of the condominium constituent documents, a written agreement in favor of all mortgagees of units in the project with the homeowner's association of the condominium, state law, or a combination thereof:

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a. A first mortgagee, upon request, will be entitled to written notification from the homeowners association of any default in the performance by the individual unit borrower of any obligation under the condominium constituent documents which is not cured within sixty (60) days.

b. Any first mortgagee who obtains title to the condominium unit pursuant to the remedies provided in the mortgage, or foreclosure of the mortgage, or deed (or assignment) in lieu of foreclosure will be exempt from any "right of first refusal" contained in the condominium constituent documents.

c. Any first mortgagee who obtains title to the condominium unit pursuant to the remedies provided in the mortgage or foreclosure of the mortgage will not be liable for such unit's unpaid dues or charges which accrue prior to the acquisition of title to such unit by the mortgagee.

d. Except where otherwise provided in the Minnesota Condominium Act, unless at least seventy-five percent (75%) of the first mortgagees (based upon one vote for each first mortgage owned), or owners (other than the sponsor, developer or builder) of the individual condominium units have given their prior written approval, the condominium home owners association shall not be entitled to:

(1) By act or omission, seek to abandon or terminate the condominium project;

(2) change the prorata interest or obligations of any condominium unit for the purpose of:

(a) levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards, or

(b) determining the prorata share of ownership of each condominium unit in the common elements;

(3) partition or subdivide any condominium unit;

(4) by act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the common elements. (The granting of easements for public utilities or for other public purposes consistent with the intended use of the common elements by the condominium project shall not be deemed a transfer within the meaning of this clause);

(5) use hazard insurance proceeds for losses to any condominium property (whether to units or to common elements) for other than the repair, replacement or reconstruction of such condominium property, except as provided by statute in case of substantial loss to the units and/or common elements of the condominium project.

In the case of a condominium project subject to additions or expansions, in which sections or phases are established by the condominium constituent documents (hereafter referred to as "phasing" or "add-ons"), satisfying the requirements of Section 22d (2) and (4) and Section 21n will be deemed waived to the extent necessary to allow the phasing or add-ons in accordance with the condominium constituent documents.

e. First mortgagees shall have the right to examine the books and records of the condominium homeowners association or the condominium project.

f. Condominium dues or charges shall include an adequate reserve fund for maintenance, repairs and replacement of those common elements that must be replaced on a periodic basis, and shall be payable in regular installments rather than special assessments.

g. All taxes, assessments and charges which may become liens prior to the first mortgage under local law shall relate only to the individual condominium units and not to the condominium project as a whole.

h. No provision of the condominium constituent documents gives a condominium unit owner or any other party, priority over the rights of first mortgagees of condominium units pursuant to their mortgages in the case of a distribution to condominium unit owners of insurance proceeds or condemnation awards for losses to or a taking of condominium units and/or common elements.

i. All amenities (such as parking, recreation and service areas) are a part of the condominium project and are covered by the mortgage at least to the same extent as are the common elements. All such amenities are fully installed, completed and in operation for use by condominium unit owners. If such amenities are not common or special elements under the condominium project, but are part of a PUD of which the condominium project is a part, such an arrangement is acceptable provided that the warranties applicable to PUD units are also satisfied.

j. The condominium project has been created and is existing in full compliance with requirements of the condominium enabling statute of the jurisdiction in which the condominium project is located and all other applicable laws.

k. Fifty-one percent (51%) of the units in the condominium project have been sold to bona fide pur-

chasers who have closed or who are legally obligated to close. Multiple purchases of condominium units by one owner are to be counted as one sale when counting the number of sales within a condominium project to determine if this sales requirement has been met. In a condominium project subject to phasing or add-ons, in which sections or phases are established by the condominium constituent documents and under a common homeowners association, a section or phase may be combined with other completed, sold and occupied sections or phases.

A section/phase is one which is of sufficient size to contain an adequate number of units to support any common elements or recreational facilities which are included in the sale price or appraised value of the individual unit, and in a condominium project, the section/phase is generally established by the condominium constituent documents.

l. In a new or newly converted condominium project, at least eighty percent (80%) of the units sold in the condominium project are sold to individuals for use as their primary year-round residences. In an existing condominium project, at least eighty percent (80%) of the units in the condominium project are occupied by unit owners as their primary year-round residences.

m. If the condominium project is on a leasehold estate, the condominium unit lease is a lease of the fee, and the provisions of the condominium unit lease comply with the following leasehold requirements:

(1) The lease (including all amendments thereto) must be recorded.

(2) The leasehold must be in full force and effect and must not be subject to any encumbrances or liens and must contain no terms requiring or permitting subordination to liens or encumbrances without mortgagee's consent.

(3) The original term or exercised renewal of the lease, together with any renewals enforceable by the mortgagee, must not terminate earlier than ten (10) years after the maturity date of the mortgage.

(4) The lease must contain provisions which:

(a) permit mortgaging of the leasehold estate;

(b) permit assignments without lessor's consent;

(c) provide for releasing of an assigning lessee;

(d) permit leasehold mortgagee to be an insured under hazard insurance policies;

(e) provide for payment of hazard insurance proceeds to leasehold mortgagee or insurance trustee;

(f) provide for written notice of default by lessor to leasehold mortgagee as a condition of validity of such notice of default;

(g) provide for right of leasehold mortgagee to cure default for account of lessee within time permitted to lessee for such cure plus reasonable additional time;

(h) provide for new lease of same priority to be given to leasehold mortgagee if lease terminates because of default not curable by a leasehold mortgagee, or in the alternative, for no termination for noncurable default as long as no default in rent exists;

(i) provide for payment to leasehold mortgagee (or trustee for restoration in the case of partial awards) of condemnation award to which lessee is entitled, which award must not be less than the total award minus the value of the land considered as unimproved;

(j) provide that in case of partial taking, lessee will rebuild and restore the improvements on the mortgaged premises unless leasehold mortgagee consents to distribution of proceeds in lieu thereof. (Application of such proceeds shall be made first towards reduction of the leasehold mortgage debt.)

(k) provide for leasehold mortgagee's right to acquire lease in its own name or in the name of the nominee upon foreclosure or assignment in lieu of foreclosure;

(l) provide for leasehold mortgagee's right to exercise renewal option; and

(m) contain no provisions for termination in the event of damage or destruction so long as leasehold mortgage is in existence.

**KEY:** New rules and material proposed to be added to an existing rule are printed in boldface. Material proposed to be deleted from an existing rule is printed in [single brackets]. Underlining indicates additions to proposed rules, while [[double brackets]] indicate matter stricken from proposed rules. Existing material is printed in standard type face.

In addition, such lease does not contain any provisions providing for an increase(s) in the ground rent (lease payment) earlier than ten (10) years after the maturity date of the note and mortgage.

(n) Any proposal or plan pursuant to which the condominium project is subject to phasing or add-ons complies with the following limitations:

(i) Condominium unit owners shall have a minimum percentage undivided interest in the common elements, and the corresponding maximum interest subject to diminution to no less than such minimum, in each such percentage interest must be stated in the declaration of condominium (or master deed or similar instrument);

(ii) the conditions whereby any change in such percentage of undivided interest in common elements may take place are fully described in the declaration of condominium (or master deed), together with a description of the real property which will become subject to the condominium project if such alternative percentage interest becomes effective; and

(iii) no change in the percentage interest in the common elements may be affected pursuant to such phasing or add-on plan more than seven years after the declaration of condominium (or master deed) becomes effective.

(o) Any agreement for professional management of the condominium project, or any other contract providing for services by the developer, sponsor or builder, must provide for termination by either party without cause or payment of a termination fee on ninety (90) days or less written notice and a maximum contract term of three years.

(p) The condominium homeowners association has agreed to give the mortgagee notice in writing of any loss to, or taking of, the common elements of the condominium project if such loss or taking exceeds $10,000 or damage to a condominium unit covered by a mortgage exceeds $1,000.

22. Planned unit development (PUD) mortgages, organization requirements. By virtue of the PUD constituent documents, a written agreement in favor of all mortgagees of units in the PUD with the PUD association, corporation or trust, state law, or a combination thereof:

a. A first mortgagee, upon request, is entitled to written notification from the homeowners association of any default in the performance by the individual PUD unit borrower of any obligation under the PUD constituent documents which is not cured within sixty (60) days.

b. Any first mortgagee who obtains title to a unit in the PUD pursuant to the remedies provided in the mortgage or foreclosure of the mortgage, or deed (or assignment in lieu of foreclosure), will be exempt from any "right of first refusal" contained in the PUD constituent documents.

c. Any first mortgagee who obtains title to a unit pursuant to the remedies provided in the mortgage, or foreclosure of the mortgage, will not be liable for such unit's unpaid dues or charges which accrue prior to the acquisition of title to such unit by the mortgagee.

d. Unless at least seventy-five percent (75%) of the first mortgagees (based upon one vote for each first mortgage owned), or owners (other than the sponsor, developer or builder) of the individual units in the PUD have given their prior written approval, the PUD home owners association, corporation or trust shall not be entitled to:

(1) by act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the common property owned, directly or indirectly, by such homeowners association, corporation or trust for the benefit of the units in the PUD.

The granting of easements for public utilities or for other public purposes consistent with the intended use of such common property by the PUD shall not be deemed a transfer within the meaning of this clause;

(2) change the method of determining the obligations, assessments, dues or other charges which may be levied against the PUD unit owner;

(3) by act or omission change, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to architectural design or the exterior appearance of units, the exterior maintenance of units, the maintenance of the common property party walks or common fences and driveways, or the upkeep of lawns and plantings in the PUD;

(4) fail to maintain fire and extended coverage on insurable PUD common property on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value (based on current replacement cost);

(5) use hazard insurance proceeds for losses to any PUD common property for other than the repair,

replacement or reconstruction of such common property.

e. First mortgagees shall have the right to examine the books and records of the PUD homeowners association, corporation, trust or any entity which owns the common property of the PUD.

f. First mortgagees of PUD units may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any PUD common property and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for such common property and first mortgagees making such payments shall be owed immediate reimbursement thereof from the PUD homeowners association, corporation or trust. Entitlement to such reimbursement is reflected in an agreement in favor of all first mortgagees of units in a PUD duly executed by the PUD homeowners association, corporation or trust, and an original or certified copy of such agreement is possessed by the mortgagee.

g. No provision of the PUD constituent document gives a PUD unit owner or any other party, priority over any rights of first mortgagees of units in a PUD pursuant to their mortgages in the case of a distribution to PUD unit owners of insurance proceeds or condemnation awards for losses to or a taking of PUD common property.

h. Homeowners association dues or charges shall include an adequate reserve fund for maintenance, repairs and replacement of those elements of common property that must be replaced on a periodic basis and are payable in regular installments rather than by special assessment.

i. All PUD common property which is regarded as part of the value of the unit in a PUD for purposes of the appraisal upon which the mortgage loan is predicated (such as parking, recreation and service areas) are fully installed, complete and in operation for use by PUD unit owners. PUD unit owners have a right to enjoyment of the PUD common property and such property is owned in fee or in an acceptable leasehold estate by the PUD homeowners association, corporation or trust. The PUD common property was conveyed to the PUD homeowners association, corporation or trust unencumbered, except for any easements granted for public utilities or for other public purposes consistent with the intended use of such property by the PUD.

j. The PUD has been created and is existing in full compliance with requirements of the jurisdiction in which the PUD is located and all other applicable laws.

k. Fifty-one percent (51%) of the units in the PUD have been sold to bona fide purchasers who have closed or who are legally obligated to close. Multiple purchasers of units in a PUD by one individual are to be counted as one sale when counting the number of sales within a PUD to determine if this sales requirement has been met. In analysis of this requirement in a phasing or add-on PUD project, in which sections or phases are established by the PUD constituent documents and under a common homeowners association, a section or phase may be combined with other completed, sold and occupied sections or phases.

A section/phase is one which is of sufficient size to contain an adequate number of units to support any common property or recreational facilities which are included in the sale price or appraised value of the individual unit, and in a PUD, the section/phase is generally established by the PUD constituent documents.

l. In a new or newly converted PUD project, at least eighty percent (80%) of the units sold in the PUD are sold to individuals for use as their primary year-round residences. In an existing PUD, at least eighty percent (80%) of the units in the PUD are occupied by unit owners as their primary year-round residences.

m. If the PUD is on a leasehold estate, the PUD unit lease is a lease of fee, and the provisions of the PUD unit lease comply with the requirements as [follows:] found in BD 227 C. Section 21 m, (1) through (4) (m).

[(1) The lease (including all amendments thereto) must be recorded.

(2) The leasehold must be in full force and effect and must not be subject to any encumbrances or liens and must contain no terms requiring or permitting subordination to liens or encumbrances without mortgagee's consent.

(3) The original term or exercised renewal of the lease, together with any renewals enforceable by the mortgagee, must not terminate earlier than ten (10) years after the maturity date of the mortgage, or in the case of a mortgage loan with a "balloon" payment at maturity, not earlier than ten (10) years after the maturity date that the mortgage would have had, if the regu-

**KEY:** New rules and material proposed to be added to an existing rule are printed in boldface. Material proposed to be deleted from an existing rule is printed in [single brackets]. Underlining indicates additions to proposed rules, while [[double brackets]] indicate matter stricken from proposed rules. Existing material is printed in standard type face.

lar amortization had continued until the mortgage loan was paid in full.

(4) The lease must contain provisions which:

(a) permit mortgaging of the leasehold estate;

(b) permit assignments without lesser's consent;

(c) provide for release of an assigning lessee;

(d) permit leasehold mortgagee to be an insured under hazard insurance policies;

(e) provide for payment of hazard insurance proceeds to leasehold mortgagee or insurance trustee;

(f) provide for written notice of default by lessor to leasehold mortgagee as a condition of validity of such notice of default;

(g) provide for right of leasehold mortgagee to cure default for account of lessee within time permitted to lessee for such cure plus reasonable additional time;

(h) provide for new lease of same priority to be given to leasehold mortgagee if lease terminates because of default not curable by leasehold mortgagee, or in the alternative, for no termination for noncurable default as long as no default in rent exists;

(i) provide for payment to leasehold mortgagee (or trustee for restoration in the case of partial awards) of condemnation award to which lessee is entitled, which award must not be less than the total award minus the value of the land considered as unimproved;

(j) provide that in case of partial taking, lessee will rebuild and restore the improvements on the mortgaged premises unless leasehold mortgagee consents to distribution of proceeds in lieu thereof. (Application of such proceeds shall be made first toward reduction of the leasehold mortgage debt.)

(k) provide for leasehold mortgagee's right to acquire lease in its own name or in the name of the nominee upon foreclosure or assignment in lieu of foreclosure;

(l) provide for leasehold mortgagee's right to exercise renewal options; and

(m) contain no provisions for termination in the event of damage or destruction so long as leasehold mortgage is in existence.]

If any PUD common property is in a leasehold estate, the lease of the PUD common property is a lease of the fee and the provisions of the lease must comply with the provisions of BD 227 C. Section 21 m. (1) through (4) (m).

n. Any agreement for professional management of the PUD project, or any other contract providing for services by the developer, sponsor or builder, must provide for termination by either party without cause or payment of a termination fee on ninety (90) days or less written notice and a maximum contract term of three years.

23. Internal consistency of documents. For each mortgage loan the mortgage, title insurance policy or substitute evidence of title survey, lease, mortgage insurance policy, hazard insurance policies, and all other documents that pertain to the mortgage or mortgage premises must have a description which is consistent with that in the other documents.

APPROVED AS TO FORM AND LEGALITY

NOV. 13 1978 19___

WARREN SPANNAUS, ATTORNEY GENERAL

BY James E. Hidelaker

SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
NOV 13 1978
Joan Anderson Growe
Secretary of State
10:40 A.M.

ADMIN 1000 (Rev. 1/78)

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL - Commerce

# Office Memorandum

TO : Lee Sheehy
Special Assistant
Attorney General
G-25 Administration Building

DATE: October 25, 1978

FROM : Jackie Taylor
Special Assistant
Attorney General

PHONE: 9412

SUBJECT: Proposed Repeal of Rules of the Banking Division Governing Home Loans Made Pursuant to the Conventional Home Loan Assistance and Protection Act.

Pursuant to Minn. Stat. § 15.0412 subd. 4 (Supp. 1977), I am forwarding to the Attorney General the official record in the above matter for review under Atty. Gen. Rules No. 302, 303 and 305.

JPT:pl
Enclosures

RECEIVED
OCT 25 1978
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

STATEMENT OF COMPLIANCE WITH
MANUAL OF RULEMAKING PROCEDURES

I, Special Assistant Attorney General Jacqueline P. Taylor, do hereby declare that I have examined the proposed rules and all related documents and that based on them and my personal familiarity with the applicable procedures, the manual of rule making procedures has been followed.

Dated: October 24, 1978.

Jacqueline P. Taylor

JACQUELINE P. TAYLOR
Special Assistant Attorney General

RECEIVED
AUG 8 1978
OFFICE OF HEARING
EXAMINERS

STATE OF MINNESOTA
DEPARTMENT OF COMMERCE
BANKING DIVISION

In the Matter of the Proposed Repeal of Rules of the Banking Division Governing Home Loans Made Pursuant to the Conventional Home Loan Assistance and Protection Act.

ORDER ADOPTING RULES

The above-entitled matter came on for hearing before Banking Commissioner of the State of Minnesota on the 20th day of September, 1977, at 9:30 a.m. in the large hearing room of Fifth Floor, Metro Square Building, St. Paul, Minnesota, after proper notice required by Minn. Stat. § 15.0412 (19) was served upon all persons, associations, and other interested groups registered with the Secretary of State for that purpose.

After affording interested persons an opportunity to present written and oral data, statements and arguments, having heard all of the testimony, having considered all of the evidence adduced and upon the records, files and proceedings herein, and applicable statutory standards or criteria, and having confirmed the ne[illegible] the above-captioned repeal of rules and the reasonableness [illegible]ing thereon,

NOW, THEREFORE, IT IS ORDERED that these rules, identified as Minn. Rules BD 226 and 227, are repealed this 3rd day of August, 1978, pursuant to the authority vested in me by Minn. Stat. § 15.0412 and are approved by me pursuant to Minn. Stat. § 47.20, Subd. 3.

Dated: August 3, 1978.

STATE OF MINNESOTA
DEPARTMENT OF COMMERCE
BANKING DIVISION

ROBERT A. MAMPEL
COMMISSIONER OF BANKS

STATE OF MINNESOTA
DEPARTMENT OF COMMERCE
BANKING DIVISION

In the Matter of the Proposed Repeal of Rules of the Banking Division Governing Home Loans Made Pursuant to the Conventional Home Loan Assistance and Protection Act

FINDINGS OF FACT

The above-entitled matter came on for hearing before Hearing Examiner Peter C. Erickson of the State Office of Hearing Examiners at 9:30 a.m. on Tuesday, September 20, 1977, in the Metro Square Building, St. Paul, Minnesota.

William Howard, Special Assistant Attorney General, Fifth Floor, Metro Square Building, appeared as counsel for the Banking Division. James Miller, Consumer Credit Supervisor, testified on behalf of the Division in support of the proposed rules. No one testified or submitted written comments in opposition to the proposed rules.

Hearing Examiner Erickson prepared the Report of the Hearing Examiner (hereinafter "Report"), dated October 17, 1977, pursuant to Minn. Stat. § 15.052, Subd. 3, and Minn. Rules HE 106.

Based upon the proceedings and records herein, the Commissioner makes the following:

FINDINGS OF FACT

1. He adopts Findings 1 through 7 of the Report, which Findings relate to procedural requirements, statutory authority, and the need for the repeal of the rules governing home loans made pursuant to the Conventional Home Loan Assistance and Protection Act.

CONCLUSIONS

1. Due, timely and adequate legal notice of the hearing was properly served and filed by the Banking Division of the Department of Commerce. All other substantive and procedural requirements of statute or rule have been complied with.

2. The Banking Division has documented its statutory authority to repeal Minn. Rules BD 226 and 227, and the need for and reasonableness of the proposed repeal have been demonstrated by an affirmative presentation of facts.

Dated: August 3, 1978.

ROBERT A. MAMPEL
Commissioner of Banks
Department of Commerce
State of Minnesota

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE DEPARTMENT OF COMMERCE - BANKING DIVISION

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| In the Matter of the Proposed Repeal of Rules of the Banking Division Governing Home Loans Made Pursuant to the Conventional Home Loan Assistance and Protection Act. | REPORT OF THE CHIEF HEARING EXAMINER |

WHEREAS, a hearing was held on September 20, 1977, before Peter C. Erickson, a Hearing Examiner of the State Office of Hearing Examiners, on the above-entitled matter in compliance with Minn. Stat. § 15.0412, subd. 4; and

WHEREAS, the Report of Hearing Examiner made pursuant to Minn. Stat. § 15.052, subd. 3, was issued to the Banking Division on October 17, 1977; and

WHEREAS, the Banking Division has now determined to repeal the rules pursuant to Minn. Stat. § 15.0412, subd. 4; and

WHEREAS, the Banking Division has submitted the hearing record to the Chief Hearing Examiner for review pursuant to Minn. Stat. § 15.052, subd. 4, and Rule HE 107; and

WHEREAS, the Chief Hearing Examiner finds that the final rules proposed to be repealed are identical to those proposed [illegible] repealed at the public hearing and that the Banking Divi- [illegible] all requirements of Minn. Stat. § 15.0412, subd. 4.

NOW, [illegible]ORE, upon receipt of this Report, the Banking Division has the responsibility of submitting the complete hearing record and the rules as repealed by the Banking Division to the Attorney General and to publish in the State Register, all pursuant to Minn. Stat. § 15.0412, subd. 4.

Dated: August 10th, 1978.

Duane R. Harves

DUANE R. HARVES
Chief Hearing Examiner

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE DEPARTMENT OF COMMERCE - BANKING DIVISION

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| In the Matter of the Proposed Repeal of Rules of the Banking Division Governing Home Loans Made Pursuant to the Conventional Home Loan Assistance and Protection Act. | ) ) ) ) ) | REPORT OF HEARING EXAMINER |

The above-entitled matter came on for hearing before Hearing Examiner Peter C. Erickson of the State Office of Hearing Examiners at 9:30 a.m. on Tuesday, September 20, 1977, in the Metro Square Building, Saint Paul, Minnesota.

William Howard, Special Assistant Attorney General, Fifth Floor, Metro Square Building, appeared as counsel for the [illegible] Division. James Miller, Consumer Credit Supervisor, testified on behalf of the Division in support of the proposed rules. No one testified or submitted written comments in opposition to the proposed rules.

Pursuant to Minn. Stat. § 15.0412, subd. 4, this Report shall be available for review to all affected individuals upon request for at least five days.

The Banking Division of the Department of Commerce shall, if it proposes to adopt the rules as originally proposed or [illegible] submit the complete hearing record, including its [illegible]nd Order, to the Chief Hearing Examiner no earlier than five days subsequent to the receipt of this Report. This submission shall also clearly indicate any changes made to the rules as originally proposed, preferably in the format that will be submitted to the State Register for publication. The Chief Hearing Examiner shall complete his review and submit his report to the Division on the issues of substantial changes in the rule and compliance with Minn. Stat. § 15.0412 within ten calendar days. Thereafter, the Banking Division shall be responsible for filing the rules with the Attorney General.

Based upon all the records and proceedings herein, the Examiner makes the following:

FINDINGS OF FACT

1. On July 19, 1977, the Division filed the following documents with the Chief Hearing Examiner:

(a) A copy of the proposed rules;
(b) A proposed Order for Hearing;
(c) A proposed Notice of Hearing; and
(d) A Statement of the estimated length and number of people attending the hearing.

2. On August 8, 1977, a Notice of Hearing and a copy of the proposed rules were published at 2 State Register 177.

3. On August 5, 1977, the Division mailed the Notice of Hearing to all persons and associations who had registered their names with the Secretary of State for the purpose of receiving such notice.

4. On August 24, 1977, the Division filed the following documents:

(a) The Order for Hearing;
(b) The Notice of Hearing as mailed;
(c) The Affidavit of Receipt of the Secretary of State's list;
(d) The Affidavit of Mailing;
(e) The Secretary of State's Certificate and list;
(f) The Statement of Need;
(g) The Statement of Evidence, including the names of witnesses to be called; and
(h) The names of Division personnel who will represent the agency.

The documents were available for inspection at the Office of Hearing Examiners from the date of filing to the date of the hearing.

5. The record remained open through September 27, 1977, for the receipt of written comments and statements.

6. Statutory authority to repeal Minn. Rules BD 226 and 227 is contained in Minn. Laws 1977, ch. 350, § 1, subd. 3.

7. The Banking Division of the Minnesota Department of Commerce proposes to repeal Minnesota Rules BD 226 and 227 in their entirety. These rules were adopted on October 13, 1976, to implement certain provisions of the Conventional Home Loan Assistance and Protection Act (the "Act"), Minn. Laws 1976, ch. 300.

Before amendment, Section 2, subdivision 3 of the Act provided as follows:

> Subd. 3. Pursuant to such regulations as the commissioner of banks finds to be necessary and proper, if any, banks, savings banks, mutual savings banks, building and loan associations, and savings and loan associations organized under the laws of this state or the United States, trust companies, trust companies acting as fiduciaries, and other banking institutions subject to the supervision of the commissioner of banks, and mortgagees or lenders approved or certified by the federal national mortgage association or the federal home loan mortgage corporation are authorized to make such conventional loans and purchases or obligations representing conventional loans as would be eligible for purchase by the federal national mortgage association or the federal home loan mortgage corporation as authorized by and defined by the Emergency Home Finance Act of 1970, as amended, but without regard to any limitations placed upon the maximum principal amount of an eligible conventional loan by said act.

Minn. Rules BD 226 and 227 were promulgated to clarify which financial institutions were authorized to make loans pursuant to this subdivision without certification from the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation. The rules were also promulgated to clarify the loan purchase eligibility requirements of the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation which the subdivision made specifically applicable to loans made pursuant to it.

The need to repeal these rules arises because of the fact that the Act was amended during the 1977 Minnesota legislative session. Minn. Laws 1977, ch. 350, amended section 2, subdivision 3 of the Act to provide as follows:

> Subd. 3. ~~Pursuant to such regulations as the commissioner of banks finds to be necessary and proper, if any, banks, savings banks, mutual savings banks, building and loan associations, and savings and loan associations organized under the laws of this state or the United States, trust companies, trust companies acting as fiduciaries, and other banking institutions subject to the supervision of the commissioner of banks, and mortgagees or lenders approved or certified by the federal national mortgage association or the federal home loan mortgage corporation~~ Notwithstanding the provisions of section 334.01, lenders are authorized to make such conventional loans and purchases of obligations representing conventional loans ~~as would be eligible for purchase by the federal national mortgage association or the federal home loan mortgage corporation as authorized by and defined by the Emergency Home Finance Act of 1970, as~~

~~amended, but without regard to any limitations placed upon the maximum principal amount of an eligible conventional loan by said act~~ pursuant to such rules as the commissioner of banks finds to be necessary and proper, if any, at an interest rate not in excess of the maximum lawful interest rate prescribed in subdivision 4 of this section.

Because Minn. Rules BD 226 and 227 implement statutory provisions which have now been repealed, it is also necessary to now repeal these rules. Their provisions setting forth lender and loan requirements no longer apply to conventional loans made pursuant to the Conventional Home Loan Assistance and Protection Act as amended by Minn. Laws 1977, ch. 350.

Based upon the foregoing Findings of Fact, the Examiner makes the following:

CONCLUSIONS

1. Due, timely and adequate legal notice of the hearing was properly served and filed by the Banking Division of the Department of Commerce. All other substantive and procedural requirements of statute or rule have been complied with.

2. Pursuant to Minn. Stat. § 15.052, subd. 3 (1976), it is the duty of the Hearing Examiner to: ". . .(4) make a report on each proposed agency action. . .taking notice of the degree to which the agency has (i) documented its statutory authority to take the proposed action, (ii) fulfilled all relevant, substantive and procedural requirements of law or rule, and (iii) demonstrated the need for and reasonableness of its proposed action with an affirmative presentation of facts."

3. The Examiner concludes that the Banking Division has documented its statutory authority to repeal Minn. Rules BD 226 and 227, and the need for and reasonableness of the proposed repeal have been demonstrated by an affirmative presentation of facts.

Based upon the foregoing Conclusions, the Examiner makes the following:

RECOMMENDATION

That the Banking Division of the Department of Commerce repeal Minn. Rules BD 226 and 227 as proposed.

Dated: October 17, 1977.

Peter C. Erickson

PETER C. ERICKSON
Hearing Examiner

STATE OF MINNESOTA)
(ss.
COUNTY OF RAMSEY )

BKG-78-001-PE

AFFIDAVIT OF SERVICE

SUSAN WOJCIK, being first duly sworn, deposes and says that on the 17th day of October 1977, at the City of St. Paul, County of Ramsey, State of Minnesota, she served the attached Report of the Hearing Examiner

unstamped, by placing in the designated tray to be collected by messenger for delivery to the central mailing station as required by Minn. Stat., § 16.54 (1974), a true and correct copy thereof on all persons at the addresses shown on the attached mailing list.

Susan Wojcik

Subscribed and sworn to before me
this 17th day of October, 1977.

Sandra A. Haven

SANDRA A. HAVEN
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
My Comm. Expires July 29, 1983

STATE OF MINNESOTA
DEPARTMENT OF COMMERCE
ST. PAUL, MINNESOTA 55101

TEL. NO. (612) 296-2297

October 24, 1978

Mr. Douglas A. Peterson
2335 Orchard Lane
White Bear Lake, Minnesota 55110

Re: Proposed Repeal of Rules of the Banking Division
Governing Home Loans Made Pursuant to the Conventional
Home Loan Assistance and Protection Act.

Dear Mr. Peterson:

Consider this notice of the submission of the above-captioned matter to the Attorney General.

The Order adopting the repeal of Minn. Rules BD 226 and 227 was signed August 3, 1978.

Sincerely yours,

Robert A. Mampel
Commissioner of Banks
By: James G. Miller
Supervisor of Credit Unions and Savings Associations

RAM:JGM:jh

RECEIVED
AUG 24 1977
OFFICE OF HEARING EXAMINERS

STATE OF MINNESOTA
DEPARTMENT OF COMMERCE
ST. PAUL, MINNESOTA 55101

RECEIVED
AUG 24 1977
OFFICE OF HEARING EXAMINERS

August 24, 1977

Mr. Peter C. Erickson
Hearing Examiner
Room 300
1745 University Avenue
St. Paul, Minnesota 55104

RE: Repeal of Rules Governing Home Loans made pursuant to the Conventional Home Loan Assistance and Protection Act
BKG-78-001-PE

Dear Mr. Erickson:

Pursuant to HE 103, please find attached hereto and filed with you for the above referenced matter copies of the following documents:

(a) The Order for Hearing.
(b) The Notice of Hearing as mailed.
(c) The Affidavit of Receipt of the Secretary of State's list.
(d) The Affidavit of Mailing.
(e) The Statement of Need.
(f) Materials received following a notice (copy of a letter requesting a copy of the rules).
(g) Names of agency personnel who will represent the agency.
(h) Statement of Evidence.

Also attached is a Certificate from the Secretary of State's Office.

Sincerely,

ROBERT A MAMPEL
Commissioner of Banks

RAM:sl
Enc.

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OFFICE OF HEARING
EXAMINERS

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STATE OF MINNESOTA
DEPARTMENT OF COMMERCE

IN THE MATTER OF THE PROPOSED REPEAL
OF RULES OF THE BANKING DIVISION
GOVERNING HOME LOANS MADE PURSUANT
TO THE CONVENTIONAL HOME LOAN
ASSISTANCE AND PROTECTION ACT

NOTICE OF HEARING

NOTICE IS HEREBY GIVEN that a public hearing in the above-entitled matter will be held in the Hearing Room of the Department of Commerce, Fifth Floor, Metro Square Building, Metro Square Building, 7th and Robert Streets, St. Paul, Minnesota, on Tuesday, September 20, 1977, commencing at 9:30 a.m. and continuing until all persons have had an opportunity to be heard.

All interested or affected persons will have an opportunity to participate. Statements may be made orally and written materials may be submitted at the hearing. In addition, written materials may be submitted by mail to Hearing Examiner Peter Erickson, Room 300, 1745 University Avenue, St. Paul, Minnesota 55104, telephone: (612) 296-8118, either before the hearing, or within (5) five working days following the close of the hearing or for a longer period not to exceed 20 days if ordered by the Hearing Examiner.

Minnesota Rules BD 226 and 227 which the Banking Division proposes to repeal relate to the following matters:

1. The financial institutions which were authorized to make loans pursuant to section 2, subdivision 3 of the Conventional Home Loan Assistance and Protection Act, Minn. Stat. §47.20, subd. 3 (1976), prior to its amendment by Minn. Laws 1977, ch. 350, and

2. The loans which meet eligibility requirements for purchase by the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, and which could thus be made under authority of section 2, subdivision 3 of the Conventional Home Loan Assistance and Protection Act, Minn. Stat. §47.20, subd. 3 (1976), prior to its amendment by Minn. Laws 1977, ch. 350.

Minnesota Rules BD 226 and 227 were published in Volume 1, State Register, pages 933-952 and are incorporated by reference herein. In addition, copies of the rules are now available and one free copy may be obtained by writing to the State Banking Division, Fifth Floor, Metro Square Building, 7th and Robert Streets, St. Paul, Minnesota 55101. Additional copies will be available at the door on the date of the hearing. The Banking Division's authority to repeal BD 226 and 227 is contained in Minn. Laws 1977, ch. 350, §1, subd. 3. A "statement of need" explaining why the agency feels BD 226 and 227 should be repealed and a "statement of evidence" outlining the testimony they will be introducing will be filed with the Hearing Examiners Office at least 25 days prior to the hearing and will be available there for public inspection.

Please be advised that Minnesota Statutes, Chapter 10A, requires each lobbyist to register with the Ethical Practices Board within five days after he commences lobbying. Lobbying includes attempting to influence rule making by communicating or urging others to communicate with public officials. A lobbyist is generally any individual who spends more than $250 per year for lobbying or any individual who is engaged for pay or authorized to spend money by another individual or association and who spends more than $250 per year or five hours per month at lobbying. The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, St. Paul, Minnesota 55155, phone (612) 296-5615.

Dated:
July 20, 1977.

STATE OF MINNESOTA
BANKING DIVISION

ROBERT A. MAMPEL
Commissioner of Banks

STATE OF MINNESOTA
DEPARTMENT OF COMMERCE

IN THE MATTER OF THE PROPOSED REPEAL
OF RULES OF THE BANKING DIVISION
GOVERNING HOME LOANS MADE PURSUANT
TO THE CONVENTIONAL HOME LOAN
ASSISTANCE AND PROTECTION ACT

ORDER FOR HEARING

To effectively implement Minn. Laws 1977, ch. 350, which amends the Conventional Home Loan Assistance and Protection Act, Minn. Stat. §47.20, the Minnesota Commissioner of Banks deems it necessary to consider repealing Minnesota Rules BD 226 and 227 pursuant to the authority vested in me by Minn. Laws 1977, ch. 350, §1, subd. 3.

NOW, THEREFORE, IT IS ORDERED this July 25, 1977, that a public hearing concerning the repeal of the rules captioned above be held in the Hearing Room of the Department of Commerce, Fifth Floor, Metro Square Building, 7th and Robert Streets, St. Paul, Minnesota, on Tuesday, September 20, 1977, commencing at 9:30 a.m. and continuing until all representatives of associations or other interested groups or persons have had an opportunity to be heard.

IT IS FURTHER ORDERED, that notice of said hearing be given to all representatives of associations or other interested groups or

persons who have registered their names with the Secretary of State for that purpose and all persons who are presently members of the Minnesota Legislature.

IT IS FURTHER ORDERED, that notice of said hearing be published in the State Register.

STATE OF MINNESOTA
BANKING DIVISION

ROBERT A. MAMPEL
Commissioner of Banks

AFFIDAVIT

Gary A. Siebenaler, being duly sworn on oath deposes and says:

1) That he is an employee of the Banking Division of the State of Minnesota.

2) That on the 27th day of July, 1977, he went to the Secretary of State's office for the State of Minnesota and requested a current list of all representatives of associations or other interested groups or persons who had registered their names with the Secretary of State for the purpose of obtaining notices of public hearings relating to the promulgation of rules pursuant to Minn. Stat. Sec. 15.0412.

3) That on the 27th day of July, 1977, in response to the above request, the Secretary of State provided him with such a list, a copy of which is attached hereto and incorporated by reference.

Further affiant sayeth not.

Gary A. Siebenaler

Gary A. Siebenaler

Subscribed and sworn to before me

this 5th day of August, 1977.

Lori Fleming

LORI FLEMING
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
My Comm. Expires Sept. 1, 1982

REGARDING MAILING LIST

The Secretary of State's gummed address label list was used. No xeroxed copy of the list was kept. Since the gummed labels were used, the precise list is no longer in existence.

Also all state legislators in office at that time received Notices. A copy of the mailing list was not retained.

Anderson, Mark State Senate 235 State Capitol

Antitrust Div. Attorney General 160 State Office Bldg.

Boucher, Richard Comm Adm 208 Adm. Bldg.

Christiansen, Fredrik Rm 505 Capitol Square Bldg.

Coleman, Nicholas 208 State Capitol

Consumer Services Dept. Comm 5th Floor Metro Square Bldg.

Develop Disabilities Programs State Plan 101 Capitol Square Bldg.

Dispatch Pioneer Press Press Rm State Capitol

Ethics Comm Rm 410 State Office Bldg.

Giel, David Rm B-28 State Capitol

House Appropriations Comm Rm 109 State Capitol

Human Rights 200 Capitol Square Bldg.

Human Services 414 Lafayette Rd 5th Floor

Knapp, J A Rm 3 Capitol

Leg. Ref. Lib-Z. Dewitt Rm 111 State Capitol

Levey, Jess Met State Univ. Metro Square Bldg. Rm 121

Met. Waste Control Comm 350 Metro Square Bldg.

Metropolitan Council Library 300 Metro Square

Minn Comm for Handicapped Metro Square

Mpls Star Press Room State Capitol

Office of the Governor 130 State Capitol

Schmidt, H W Teachers Retirement 302 Capitol Square Bldg.

Schutz, Linda Rm 328 Capitol Bldg.

Senate Coun. Office Rm 24 State Capitol

Senate Finance Comm. 113 State Capitol

Senate Gov. Op. Comm. Rm 303 State Capitol

Vandervoort, T J Met. Waste 350 Metro Square Bldg.

Whitlock, Marshall, Rm 3, State Capitol

Additional Names for General Mailing List

Meyerle, Kathleen, 345 Ramsey St., St. Paul, 55102

REGARDING MAILING LIST

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STATE OF MINNESOTA
DEPARTMENT OF COMMERCE

IN THE MATTER OF THE PROPOSED REPEAL
OF RULES OF THE BANKING DIVISION
GOVERNING HOME LOANS MADE PURSUANT
TO THE CONVENTIONAL HOME LOAN
ASSISTANCE AND PROTECTION ACT

STATEMENT OF NEED

The Banking Division of the Minnesota Department of Commerce proposes to repeal Minnesota Rules BD 226 and 227 in their entirety. These rules were adopted on October 13, 1976, to implement certain provisions of the Conventional Home Loan Assistance and Protection Act (the "Act"), Minn. Laws 1976, ch. 300. Before [illegible] section 2, subdivision 3 of the Act provided as follows:

> Subd. 3. Pursuant to such regulations as the commissioner of banks finds to be necessary and proper, if any, banks, savings banks, mutual savings banks, building and loan associations, and savings and loan associations organized under the laws of this state or the United States, trust companies, trust companies acting as fiduciaries, and other banking institutions subject to the supervision of the commissioner of banks, and mortgagees or lenders approved or certified by the federal national mortgage association or the federal home loan mortgage corporation are authorized to make such conventional loans and purchases of obligations representing conventional loans as would be eligible for purchase by the federal national mortgage association or the federal home loan mortgage corporation as authorized by and defined by the Emergency Home Finance Act of 1970, as amended, but without regard to any limitations placed upon the maximum principal amount of an eligible conventional loan by said act.

Minn. Rules BD 226 and 227 were promulgated to clarify which financial institutions were authorized to make loans pursuant to this subdivision without certification from the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation. The rules were also promulgated to clarify the loan purchase eligibility requirements of the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation which the subdivision made specifically applicable to loans made pursuant to it.

The need to repeal these rules arises because of the fact that the Act was amended during the 1977 Minnesota legislative session. Minn. Laws 1977, ch. 350 amended section 2, subdvision 3 of the Act to provide as follows:

> Subd. 3. ~~Pursuant to such regulations as the commissioner of banks finds to be necessary and proper, if any, banks, savings banks, mutual savings banks, building and loan associations, and savings and loan associations organized under the laws of this state or the United States, trust companies, trust companies acting as fiduciaries, and other banking institutuions subject to the supervision of the commissioner of banks, and mortgagees or tenders approved or certified by the federal national mortgage association or the federal home loan mortgage corporation~~ Notwithstanding the provisions of section 334.01, lenders are authorized to make ~~such~~ conventional loans and purchases of obligations representing conventional loans ~~as would be eligible for purchase by the federal national mortgage association or the federal home loan mortgage corporation as authorized by and defined by the Emergency Home Finance Act of 1970, as amended, but without regard to any limitations placed upon the maximum principal amount of an eligible conventional loan by said act~~ pursuant to such rules as the commissioner of banks finds to be necessary and proper, if any, at an interest rate not in excess of the maximum lawful interest rate prescribed in subdivision 4 of this section.

Because Minn. Rules BD 226 and 227 implement statutory provisions which have now been repealed, it is also necessary to now repeal these rules. Their provisions setting forth lender and loan requirements no longer apply to conventional loans made pursuant to the Conventional Home Loan Assistance and Protection Act as amended by Minn. Laws 1977, ch. 350.

Dated: AUG. 24, 1977.

ROBERT A. MAMPEL
Commissioner of Banks

STATE OF MINNESOTA
DEPARTMENT OF COMMERCE
ST. PAUL, MINNESOTA 55101

August 18, 1977

Mr. Robert C. Kucera
Insurance Federation of Minnesota
1320 Soo Line Building
Minneapolis, Minnesota 55402

Re: Regulations - BD 226 and 227

Dear Mr. Kucera:

Attached are the regulations, in place, pursuant to the Conventional Home Loan Assistance and Protection Act adopted January 10, 1976, as published in the State Register.

The statement of need and evidence to be presented in this matter is in the hands of counsel for preparation and unavailable at this time.

Sincerely yours,

Robert A. Mampel
Commissioner of Banks
By: James G. Miller
Supervisor of Credit Unions
and Savings Associations
(612) 296-2297

JGM:jh
Attachment

NSURANCE FEDERATION OF MINNESOTA
ORGANIZED IN 1914 FOR THE PRESERVATION OF LEGITIMATE INSURANCE OF EVERY KIND
1320 SOO LINE BUILDING, MINNEAPOLIS, MINNESOTA 55402
TELEPHONE (612) 339-0054

August 8, 1977

AUG 9 9 23 AM '77
BANKING DIV

State Banking Division
Fifth Floor
Metro Square Building
7th and Robert Streets
St. Paul, MN. 55101

Re: Proposed Repeal of Rules of the Banking Division Governing Home Loans Made Pursuant to the Conventional Home Loan Assistance and Protection Act

Gentlemen:

Please send us a copy of Minnesota Rules BD 226 and 227, which you are proposing to repeal in connection with the hearing on this matter scheduled for September 20, 1977.

Please also send us your "statement of need" and "statement of evidence" in connection with the above entitled matter.

Sincerely yours,

Robert C. Kucera

RCK:cw

STATE OF MINNESOTA
DEPARTMENT OF COMMERCE

IN THE MATTER OF THE PROPOSED REPEAL OF RULES OF THE BANKING DIVISION GOVERNING HOME LOANS MADE PURSUANT TO THE CONVENTIONAL HOME LOAN ASSISTANCE AND PROTECTION ACT

STATEMENT OF AGENCY REPRESENTATIVES

At the September 20, 1977 hearing for the proposed repeal of the aforecaptioned rules, the following people will represent the agency:

(1) Mr. J[illegible] Miller will testify.

(2) M[illegible]len Kelly, as a Special Assistant Attorney General assigned to the Banking Division, will be present.

Dated: Aug. 24, 1977.

ROBERT A. MAMPEL
Commissioner of Banks

STATE OF MINNESOTA
DEPARTMENT OF COMMERCE

IN THE MATTER OF THE PROPOSED REPEAL OF RULES OF THE BANKING DIVISION GOVERNING HOME LOANS MADE PURSUANT TO THE CONVENTIONAL HOME LOAN ASSISTANCE AND PROTECTION ACT

STATEMENT OF EVIDENCE

In addition to the "Statement of Need" which is available for inspection or purchase at the Office of Hearing Examiners, Room 300, 1745 University Avenue, St. Paul, Minnesota 55104, and in support thereof, the Banking Division will introduce the following evidence at the hearing in the above-entitled matter:

James Miller, Supervisor of Credit Unions and Savings Associations for the Banking Division, will summarize statutory provisions of the Conventional Home Loan Assistance and Protection Act, Minn. Laws 1976, ch. 300, regarding lender and loan eligibility requirements under the Act. Mr. Miller will then discuss the manner in which Minnesota Rules BD 226 and 227, which are proposed for repeal in this matter, implemented these statutory provisions. Finally, Mr. Miller will show that the enactment of Minn. Laws 1977, ch. 350 has deleted those portions of the Conventional Home Loan Assistance and Protection Act which BD 226 and 227 were intended to implement, and has thus made those rules unnecessary.

The Banking Division intends to call no witnesses other than James Miller to testify at the hearing.

The Banking Division will be citing the following statutes and authorities at the hearing:

Minn. Laws 1976, ch. 300

Minn. Laws 1977, ch. 350

1 Cooper, State Administrative Law, 250-63 (1965)

Dated: Aug. 24, 1977.

ROBERT A MAMPEL
Commissioner of Banks

STATE OF MINNESOTA

COUNTY OF RAMSEY

CERTIFICATE

In the matter of the Proposed Repeal
of Rules of the Banking Division
governing home loans made pursuant
to the Conventional Home Loan
Assistance and Protection Act.

I hereby certify that the attached Sent Letter 1 page constitute the complete list of persons, associations, and other interested g[illegible]s of 2:40 o'clock PM, this 27 day of July, 1977, have requested pursuant to Minn. Stat. Sec. 15.0412, subd. 4, that their names be placed on file with the Secretary of State for the purpose of receiving notice of public hearing on proposed rules on the subject captioned above.

Secretary of State

Joan Anderson Growe

By Kenneth L. Matteson

STATE OF MINNESOTA

COUNTY OF RAMSEY

In the matter of the proposed repeal of rules of the banking division governing Home Loans made pursuant to the Conventional Home Loan Assistance and Protection Act

AFFIDAVIT OF MAILING

Gary Siebenaler, being first duly sworn, deposes and says:

That on the 5 day of August, 77, at the City of St. Paul, County of Ramsey, State of Minnesota, he served the attached Notice of Hearing by depositing in the United States mail at said City of St. Paul, a true and correct copy thereof, properly enveloped, with postage prepaid, to all persons and associations at the addresses listed on the attached Certificates of the Secretary of State as well as to all persons listed on the attached sheet as presently being members of the Minnesota Legislature.

Gary A. Siebenaler

Gary Siebenaler

Subscribed and sworn to before me this 5th day of August, 1977.

Lori Fleming

LORI FLEMING
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
My Comm. Expires Sept. 1, 1982

REGARDING MAILING LIST

The Secretary of State's gummed address label list was used. No xeroxed copy of the list was kept. Since the gummed labels were used, the precise list is no longer in existence.

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ADMIN 1000 (Rev. 1/78)

STATE OF MINNESOTA

DEPARTMENT OF COMMERCE - BANKING

# Office Memorandum

TO : LEE SHEEHY
Special Assistant Attorney General
G-25 Administration Building

DATE: OCTOBER 26, 1978

FROM : JAMES G. MILLER
Supervisor of Credit Unions
& Savings Associations

PHONE: 6-2297

SUBJECT: CONVENTIONAL HOME LOAN ASSISTANCE AND PROTECTION ACT RULES

Attached are four copies of the rule repeal, pursuant to your request.

Thank you.

JGM:pi

Attach.

RECEIVED
JUL 19 1977
OFFICE OF HEARING EXAMINERS

The attached are Minnesota Rules BD 226 and 227 of the Banking Division of the Minnesota Department of Commerce. The Banking Division is proposing to repeal these rules in their entirety.

# Department of Commerce
# Consumer Credit Division
## Definitions and Eligibility Requirements for Conventional Home Loans

**BD 226 Eligible conventional home loan lenders or mortgagees.** The following persons, organizations, and financial institutions are authorized to make conventional home loans pursuant to the Conventional Home Loan Assistance and Protection Act (the "Act"):

**A.** Banks, savings banks, mutual savings banks, building and loan associations, and savings and loan associations organized under the laws of this state or the United States, trust companies, trust companies acting as fiduciaries and other banking institutions subject to the supervision of the commissioner of banks, and

**B.** Mortgagees or lenders approved or certified by the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation.

**BD 227 Eligibility requirements for conventional loans.**

**A.** Any conventional loan is an eligible loan for purposes of the Act so long as it has been approved or would be eligible for purchase in whole or in part by the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation at the time such conventional loan is closed.

**B.** Any conventional loan that is not otherwise eligible pursuant to paragraphs A or C of Section 227 must meet the following requirements of the Federal National Mortgage Association in order to be an eligible loan for purposes of the Act:

**1.** Unless the context indicates otherwise, the following definitions and rules of construction apply to paragraph B of Section 227:

**a.** Home mortgage means a mortgage which is secured by real property upon which is located a dwelling unit designed for residential use for not more than one family and where the real estate is owned in fee simple or consists of an acceptable leasehold estate.

**b.** Unit mortgage means a mortgage which is secured by real property consisting of a dwelling unit designed for residential use for no more than one family and which is owned in fee simple or consists of an acceptable leasehold estate. A unit mortgage is secured by the dwelling unit itself and an undivided interest in the common areas, or, membership or stock interest in an association having title to the common areas.

**c.** Mortgage means the security instrument, the obligation secured thereby, the title evidence, and all other documents and other papers pertaining to the mortgage loan.

**d.** Purchase price, property means the contract price paid or payable by the purchaser (original mortgagor) after adjustment for any discounts to sales price, rebates or other allowances paid, payable or allowed to the purchaser on account of the sale of the property covered by the mortgage. If there was no sale of the property incident to the inception of the mortgage, the purchase price of the property shall be deemed to be the same as the appraised value.

**e.** Security instrument means an instrument (mortgage, deed of trust, or other) creating and evidencing a first lien on (1) a fee simple estate in the mortgaged premises or (2) a leasehold estate.

**f.** Secured obligation means a valid and enforceable note or bond secured by a conventional mortgage.

**g.** Market value means the highest price estimated in terms of money which a property will bring if exposed for sale in an open market with a reasonable time allowed to find a purchaser, buying with knowledge of all the uses and purposes to which it is adapted and for which it is capable of being used.

**h.** Appraised value means the market value of the property securing the mortgage as estimated by an appraiser.

**i.** Value means the lower of the purchase price or the appraised value.

**j.** Leasehold estate means an estate having a remaining term running or renewable at the option of the lessee, for a period of not less than ten years from and after the maturity of the mortgage loan, or to any earlier date at which the fee simple title will vest in the lessee, which leasehold estate is assignable or transferable if the same is subject to the lien of the mortgage, and the term

**KEY:** New rules and material proposed to be added to an existing rule are printed in **boldface**. Material proposed to be deleted from an existing rule is printed in [single brackets]. Underlining indicates additions to proposed rules, while [[double brackets]] indicate matter stricken from proposed rules. Existing material is printed in standard type face.

of the mortgage must not exceed the term of the set ground rent by more than five years.

k. Condominium means a form of ownership of real property characterized by title (created by statute) to a unit in a project together with an undivided real estate interest in the common elements which are part of said project in accordance with state enabling law. The common elements generally are maintained by, but not owned by, the Owners Association. The common elements typically include among other things, the land, roofs, floors, lobbies and community space and facilities.

l. Planned unit development (PUD) means a real estate development which consists of separately owned lots with contiguous or non-contiguous areas or facilities usually owned by an owners association in which the owners of the lots have a stock or membership interest. Title to the real estate under the dwelling units is held by the individual lot owners and not by the association. The association usually has title to and administers the common areas, and levies monthly charges against lot owners for common area expenses. Membership in the Owners Association cannot be severed from the ownership of an individual unit.

m. De minimis PUD means a PUD in which the common areas are relatively insignificant in terms of their influence upon the enjoyment of the premises and have little or no effect upon the value of the property securing the unit mortgage.

n. Owners association means:

(1) In the case of a condominium, the Owners Association is a non-profit corporation or association as authorized by law, composed of the individual owners of the units in a condominium project, which manages but has no ownership interest in the common areas unless specifically approved by statute,

(2) In the case of a PUD, the Owners Association is a nonprofit corporation or association having management responsibility to the project as a whole and title to the common areas. The shares in such a corporation or membership in such association are transferred with the transfer of title to the individual units.

o. Master deed means the basic document used in the creation of a condominium. It is occasionally referred to as: "Matrix Deed", "Declaration of Horizontal Property Regime", "Enabling Declaration", or "Deed of Constitution". The recorded master deed indicates that the property is submitted to a condominium regime and describes the division of the project into units and common elements.

p. By-laws means the rules, codes or regulations providing for the administration and maintenance of a condominium project or PUD.

q. Unit means:

(1) Condominium unit is a designated space in a condominium project as described by the condominium documents, title to which is in the unit owner, together with an undivided interest in the common areas.

(2) PUD is the individual home, on its own lot, title to which is in the individual lot owner.

r. Development means a multiple unit real estate plan. The term typically includes subdivisions, de minimis PUDs, PUDs and condominiums. A development is the sum total of all individual dwelling units, if applicable, the common areas, rental apartments, offices, commercial, industrial, private, recreational facilities and any other uses of the real estate within the plan.

2. Amortization. Full amortization of the mortgage amount is required over the term of the loan by level installments of principal and interest payable [the first day of] each month.

3. Mortgage term, minimum and maximum. A mortgage must mature within a term generally acceptable to private institutional investors in conventional mortgages, but the original term of a mortgage loan may not exceed thirty (30) years from the date of commencement of amortization of principal. The original term shall not be less than ten (10) years.

4. Mortgage amounts. The original mortgage amount shall not be less than $10,000. The mortgage shall involve an original principal obligation in multiples of $50.

5. Loan to value percentage.

a. To be eligible a mortgage may have a principal balance not exceeding eighty percent (80%) of the value of the security property.

b. Except that the unpaid principal balance may be in excess of eighty percent (80%) of value if the excess is insured by a mortgage insurer for a term that will end, unless the mortgage is then delinquent, when the unpaid principal balance has been reduced to eighty percent (80%) of the original value of the property. The maximum loan-to-value percentage (LTV%) for such mortgage secured by a single-family home, a unit in a de

minimis PUD or a unit in a PUD project may not exceed ninety-five percent (95%). The maximum loan-to-value percentage for a mortgage secured by a unit in a condominium project may not exceed ninety percent (90%).

6. Interest rates. Mortgage interest rates must be stated in the note and mortgage decimally in increments of either one-tenth of one percent (1/10 of 1%), one-eighth of one percent (1/8 of 1%), or one-fourth of one percent (1/4 of 1%), and shall not include any portion of the private mortgage insurance premium, if applicable.

7. Property appraisals. The property must be appraised:

a. After all improvements to the property have been substantially completed for existing construction, except that minor items not affecting livability, whether on or off site, may be incomplete at the time of the appraisal, provided the lender establishes an escrow to guarantee timely completion of such improvements, and

b. from plans and specifications for proposed construction.

8. Location of mortgaged premises. The mortgaged premises must be located in the United States, the District of Columbia, the Commonwealth of Puerto Rico or the Virgin Islands.

[b. Property in outlying rural areas will be eligible provided:

(1) The land value is equal generally to no more than thirty percent (30%) of the total appraised value of the property offered as security; and

(2) the lender determines that adequate sewerage and water facilities and other utilities are available and in service on the premises; and

(3) the property is readily accessible by a federal, state, or county highway or an all weather secondary road; and

(4) the present or immediate anticipated use adjacent real estate does not, in the appraiser's opinion, adversely affect the value or present marketability of the property for residential use.

c. Property will be ineligible if a specific physical or environmental influence seriously endangers the health and safety of prospective occupants. Such conditions may arise from unsafe construction, serious danger of flooding, excessive smoke or chemical fumes, excessive noise endangering health, danger from fire or explosion, or inadequate water and sewerage facilities or other utilities.]

9. Type of property. The mortgage property must consist of one dwelling unit designed for single-family occupancy. The unit may be detached, semi-detached, row, townhouse, part of a condominium, de minimis PUD or a PUD, with the real estate owned in fee simple or under an acceptable leasehold estate.

Mortgages on older dwellings are eligible. The bath(s), kitchen, heating, plumbing, and electrical facilities must be functional. [and of a quality acceptable generally to typical purchasers in the community.

Each dwelling must contain sufficient square footage to be acceptable generally to typical purchasers in the community.]

10. Owner occupancy. Borrower's application must establish that the property securing the mortgage is or will be occupied by the borrower and serve as his principal residence.

11. Lien requirements. The security instrument, any evidence of "open-end" advances, the mortgagor's estate and his title thereto, and the lien of the security instrument (which must be a first and paramount lien on the mortgagor's estate in the real property subject only to liens for taxes and special assessments not in arrears) must be such as to be acceptable to private institutional investors, informed buyers, title insurance companies, and leading attorneys, generally, in the community where the mortgaged premises is situated. The documents submitted must indicate, either in the title evidence, or by copies of tax receipts, closing statements or ledger cards, that current installments of taxes and assessments which, though not in arrears, have attached as prior liens, have been paid or that sufficient deposits therefore are being collected. The note, the related security instrument, and the evidence of insurance from the private mortgage insurer, if any, must be properly executed and when appropriate, properly acknowledged and recorded. Nothing must be contained therein which would, or might, affect the priority of the mortgagee's first lien on the mortgagor's estate or preclude recovery by the mortgagee from the private mortgage insurer, if

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applicable, of the full amount under the policy of mortgage insurance, if it be assumed that the claim was properly to be made under applicable requirements as of the effective date of the related mortgage insurance.

**12. Title evidence required.** The title evidence must be in such substance and form as to assure full title protection to the mortgagee. The title evidence will establish that the title to the mortgaged premises is such as to be acceptable to private institutional investors, informed buyers, title insurance companies, and leading attorneys, generally, in the community where the mortgaged premises is situated, and that the mortgage constitutes a lien of the required priority on a fee simple or leasehold estate in the mortgaged premises. Such title evidence [will] may consist of a mortgage title policy in an amount not less than that of the original principal amount of the mortgage indebtedness.

**13. General title waivers.** The title to the real estate which secures a mortgage must be good and merchantable and free and clear of all liens and encumbrances. Title will be deemed eligible even though it is subject to the following:

**a.** Public utility and other subsurface easements which are in place and are completely covered at the time of closing of the mortgage loan. Such easements must not extend under any buildings on the subject property.

**b.** Easements above the surface of the property for public utilities for distribution purposes (not transmission) along one or more of the property lines, and for drainage along the rear property line, provided the easements [extend not more than twelve (12) feet from the property lines] and the exercise of the rights thereunder do not interfere with any of the buildings or improvements located on the subject property or the use and enjoyment of property not subject to improvement.

**c.** Mutual easement agreements recorded in the public records which establish joint driveways and party walls constructed partly on the subject property and partly on adjoining property, provided the easement agreement allows all future owners, their heirs and assigns forever, unlimited use of these driveways or party walls without restriction.

**d.** Violations of cost, minimum size of dwelling structure or setback restrictions which do not provide a penalty of revision or forfeiture of title or a lien of any kind for liquidated damages. Violations of such restrictions which do not provide for penalties, reversions, or result in a lien of any kind, will be acceptable only if a policy of title insurance expressly insures the mortgagee against loss by reason of such.

**e.** Encroachments on the subject property by improvements on adjoining property where such encroachments do not exceed one (1) foot, do not touch any buildings and do not interfere with the use of any improvements on the subject property.

**f.** Encroachments by garages or improvements, other than those which are attached to or a portion of the main dwelling structure, over easements for public utilities, provided such encroachment does not interfere with the use of the easement or the exercise of the rights of repair and maintenance in connection therewith.

**g.** Encroachments on adjoining property by eaves and overhanging projections attached to improvements on the subject property where such encroachments do not exceed one (1) foot and encroachments on adjoining property by driveways belonging to subject property where such encroachments are not in excess of one (1) foot, provided that there exists a clearance of at least eight (8) feet between the buildings on the subject property and the property line affected by the encroachment.

**h.** Encroachments by hedges or removable fences belonging to the subject or adjoining property.

**i.** Outstanding oil, water or mineral rights which are customarily waived by prudent lending institutions, and will not result in damage to the property or impairment of the use of the property for residential purposes.

**j.** Variations between the length of the subject property lines as shown in the appraisal report and as shown by the record of possession lines, provided such variations do not interfere with the current use of any of the improvements on the subject property and do not involve a deficiency of more than two percent (2%) with respect to the length of the front line or more than five percent (5%) with respect to the length of any other line.

**14. Title company single risk maximums.** The maximum single risk (the risk in connection with any one mortgage) assumed by any one title company may not exceed fifty percent (50%) of the sum of its capital and surplus, and its reserves other than its loss and claim reserves; excess amounts may be covered by reinsurance or co-insurance of other title companies.

**15. Condominiums and PUD's.** If the mortgage is secured by a condominium or PUD unit the title evidence must be consistent with Sections 12, 13 and 14.

**16. Insurance requirements.** Property securing each mortgage must be covered by insurance in the kinds and amounts specified in this section. Insurance policies on homes, condominium units and PUD units shall be held in the custody of the mortgagee.

The insurance company, association or organization must be specifically authorized by law or licensed by the jurisdiction to transact business within the state or territory where the property is located, and whose policy contract and forms do not provide that contribution or assessments may be made against the mortgagee or become a lien on the property superior to the lien of the mortgagee.

**17.** Insurance required for home mortgages. Insurance coverage in the following kinds and amounts is required on property covered by a home mortgage at the time the loan is closed:

**a.** Property insurance affording protection against loss or damage from fire and other hazards covered by the standard extended coverage endorsement must be provided in an amount at least sufficient to pay the mortgage balance in the event of a covered loss. Insurance in an amount less than the mortgage balance is permitted only where the appraisal made in connection with the mortgage loan provides separate valuations for the land and improvements and in such instances the insurance must cover the full replacement cost of the improvements.

**b.** Policies containg a deductible clause in the maximum amount of $250, unless a higher amount is required by state statute, applicable to either fire or extended coverage, or both, are acceptable.

**18.** Insurance required for individual condominium mortgages. Insurance coverage substantially in conformity with the following is acceptable:

**a.** A "master" or "blanket" policy of property insurance in an amount equal to full replacement value (100% of current "replacement cost" exclusive of land, foundation, excavation and other items normally excluded from coverage) of the condominium project (including all building service equipment and the like and any fixtures or equipment within the condominium unit which are financed under the mortgage) with an "Agreed Amount Endorsement" or its equivalent, [a "Demolition Endorsement" or its equivalent, and, if necessary, an "Increased Cost of Construction Endorsement" or "Contingent Liability from Operation of Building Laws endorsement" or the equivalent,] if available, or an Inflation Guard Endorsement and such insurance to afford protection against at least the following:

(1) Loss or damage by fire and other hazards covered by the standard extended coverage endorsement, and by sprinkler leakage, debris removal, cost of demolition, vandalism, malicious mischief, windstorm, and water damage; and

(2) in the event the condominium project contains a steam boiler, a broad form policy of repair and replacement boiler and machinery insurance in the amount of at least $50,000 per accident per location; and

(3) such other risks as shall customarily be covered with respect to projects similar in construction, location and use.

**b.** A comprehensive policy of public liability insurance covering all of the common areas and commercial spaces in the condominium project, with a "Severability of Interest Endorsement" or equivalent coverage which would preclude the company from denying the claim of a unit owner because of the negligent acts of the Owners Association or another unit owner, with such limits not less than $1,000,000 covering all claims for personal injury and/or property damage arising out of a single occurrence, such coverage to include protection against water damage liability, liability for non-owned and hired automobile, liability for property of others, and, if applicable: elevator collision, garage-keeper's liability, host liquor liability, and such other risks as shall customarily be covered with respect to projects similar in construction, location and use.

**c.** Any insurance obtained pursuant to Section 18 shall be subject to the following provisions and limitations:

(1) The named insured under any such policies shall be the Owners Association of the condominium project, as a trustee for the owners of the condominium units, or its authorized representative, including any trustee with which such association may enter into any insurance trust agreement, or any successor trustee, each of which shall be hereinelsewhere referred to as the "Insurance Trustee" who shall have exclusive authority to negotiate losses under said policies; and

(2) in no event shall the insurance coverage obtained and maintained pursuant to the requirement of this Section be brought into contribution with insurance purchased by the owners of the condominium units or their mortgagees; and

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(3) such policies shall provide that coverage shall not be prejudiced by:

(a) any act or neglect of the owners of condominium units when such act or neglect is not within the control of the Owners Association or,

(b) by failure of the Owners Association to comply with any warranty or condition with regard to any portion of the premises over which the Owners Association has no control; and

(4) all policies shall provide that coverage may not be cancelled or substantially modified (including cancellation for non-payment of premium) without at least 30 days prior written notice to any and all insureds named thereon, including the mortgagees; and

(5) all such policies shall contain a waiver of subrogation by the insurer as to any and all claims against the association, the owner of any condominium unit and/or their respective agents, employees or tenants, and of any defenses based upon co-insurance or upon invalidity arising from the acts of the insured.

d. All policies of property insurance shall provide that, notwithstanding any provisions thereof which give the carrier the right to elect to restore damage in lieu of making a cash settlement, such option shall not be exercisable without the prior written approval of the association (or any insurance trustee) or when in conflict with the provisions of any insurance trust agreement to which the Association may be a party, or any requirement of law; and

e. The Owners Association of a condominium project shall be required to maintain adequate fidelity coverage to protect against dishonest acts on the part of officers, directors, trustees and employees of such association and all others who handle, or are responsible for handling funds of the association. Such fidelity bonds shall meet the following requirements:

(1) All such fidelity bonds shall name the association as an obligee; and

(2) such fidelity bonds shall be written in an amount equal to at least 150% of the estimated annual operating expenses of the condominium project, including reserves; and

(3) such fidelity bonds shall contain waivers of any defense based upon the exclusion of persons who serve without compensation from any definition of "employee" or similar expression; and

(4) such bonds shall provide that they may not be cancelled or substantially modified (including cancellation for nonpayment of premium) without at least thirty (30) days prior written notice to the mortgagee.

19. Insurance required in PUD's and de minimis PUD's. Insurance coverage substantially in conformity with the following is acceptable:

a. A policy of property insurance meeting the requirements of Section 17 shall be obtained by the mortgagee with respect to each unit mortgage.

b. A policy of property insurance in an amount equal to the full replacement value (100% of current "replacement cost" exclusive of land, foundation, excavation and other items normally excluded from coverage) of the common facilities owned by the Owners Association (including all building service equipment and the like) with an "Agreed Amount Endorsement" or its equivalent, [a "Demolition Endorsement" or its equivalent and, if necessary, an "Increased Cost of Construction Endorsement" or "Contingent Liability from Operation of Building Laws Endorsement" or the equivalent,] if available, or an Inflation Guard Endorsement and such insurance to afford protection against at least the following:

(1) loss or damage by fire and other hazards covered by the standard extended coverage endorsement, and by sprinkler leakage, debris removal, cost of demolition, vandalism, malicious mischief, windstorm, and water damage; and

(2) such other risks as shall customarily be covered with respect to projects similar in construction, location and use.

c. A comprehensive policy of public liability insurance covering all of the common areas and commercial spaces located in the "planned unit development" insuring the Owners Association (and, in the case of an unincorporated Owners Association, the members of such association), with such limits not less than $1,000,000 covering all claims for personal injury and/or property damage arising out of a single occurrence with such coverage to include protection against water damage liability, liability for non-owned and hired automobile, liability for property of others, and, if applicable: garage-keeper's liability, host liquor liability, and such other risks as shall customarily be covered with respect to projects similar in construction, location and use.

d. The Owners Association of a "planned unit development" shall be required to maintain adequate fidelity coverage to protect against dishonest acts on the

part of officers, directors, trustees and employees of such association and all others who handle, or are responsible for handling funds of the association. Such fidelity bonds shall meet the following requirements:

(1) All such fidelity bonds shall name the Owners Association as an obligee; and

(2) such fidelity bonds shall be written in an amount equal to at least 150% of the estimated annual operating expenses of the planned unit development project, including reserves; and

(3) such fidelity bonds shall contain waivers of any defense based upon the exclusion of persons who serve without compensation from any definition of "employee" or similar expression; and

(4) such bonds shall provide that they may not be cancelled or substantially modified (including cancellation for nonpayment of premium) without at least 30 days prior written notice to the mortgagee.

20. Flood insurance.

a. No mortgage will be eligible if secured by a property located in an area which has been identified by the Secretary of Housing and Urban Development as having special flood hazards (by publication in the Federal Register of a Flood Insurance Boundary Map or Insurance Rate Map), for which flood insurance is not available because the community in which such property is located is ineligible for participation in the National Flood Insurance Program except for any mortgage which is closed prior to one year following the publication of the Flood Hazard Boundary Map.

b. Flood insurance in the amount specified in this Section must be provided in connection with any mortgage secured by property which is located in a community for which flood insurance has been made available under the National Flood Insurance Program (NFIP) and which is located in a designated special flood hazard area.

c. Flood insurance required by this Section shall be in the form of the standard policy issued by members of the National Flood Insurers Association or in the form of a policy which meets the criteria set forth in the Guidelines published by the Flood Insurance Administration in the Federal Register on July 17, 1974. The minimum amount of flood insurance required is the lowest of:

(1) the principal balance of the mortgage,

(2) the value of the insurable improvements, or

(3) the maximum amount of flood insurance which was available on the date upon which the mortgage was closed.

d. For condominium unit loans, a "blanket" policy of flood insurance in the name of the Owners Association or a designated trustee must be obtained in accordance with the foregoing requirements. The amount of coverage required for each building within the project is the maximum amount available under the NFIP or the aggregate amount of the unpaid principal balances of the mortgages covering the condominium units contained in the building, whichever is less.

e. Flood insurance requirements for mortgages financing properties located in planned unit developments are the same as those for other home mortgages.

21. Evidence of insurance. All insurance policies shall be held in the custody of the mortgagee. Prior to the closing of a mortgage loan of the first unit mortgage in the condominium project the mortgagee will have obtained for its files a copy of the "master" or "blanket" policy of property insurance and, where applicable, flood insurance, a copy of the comprehensive policy of public liability insurance, and, if required, the boiler and machinery policy. Prior to the closing of the mortgage loan of the first unit mortgage in a planned unit development, policies insuring against similar risks in the common areas will be obtained. In addition, the mortgagee shall obtain from the carrier an appropriate certificate or memorandum of insurance as to each unit in the condominium project which is the subject matter of a mortgage loan from the mortgagee.

22. Mortgage clauses. All policies of property (hazard) insurance in connection with home mortgages, including mortgages financing properties located in a planned unit development, and the "blanket" policy of property insurance in connection with condominiums must contain or have attached thereto a standard

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mortgage clause (without contribution) customarily used in the area in which the property is located. The mortgagee must be named therein as first lienor.

23. Notice of loss. The Owners Association of a condominium project must agree in writing to notify the mortgagee at the mortgagee's address whenever:

a. damage to a family unit covered by a mortgage held by the mortgagee exceeds $1,000, and

b. damage to common areas and related facilities exceeds $10,000.

With respect to planned unit development projects, the Owners Association must agree in writing to notify the mortgagee at the mortgagee's address whenever damage to common areas or related facilities exceeds $10,000.

24. Refinancing. A mortgage which involves refinancing of a short-term loan used to finance the original construction or substantial rehabilitation of a dwelling is acceptable. Refinancing of an existing permanent mortgage is eligible provided:

a. A portion of the mortgage funds will be used to pay for substantial improvements to the security property, including incidental closing costs and outstanding assessments, such as streets, water, sewer; and

b. any existing mortgage(s), or loan(s) related to prior improvements in the security property is liquidated in full; and

c. the mortgage is otherwise eligible.

25. Special assessments. The improvement to the premises, if any, resulting from a special assessment must be included in the appraised value. In such instances, the monthly payments from the borrower must include 1/12th of the estimated annual payment toward such assessments.

26. Payment of prepaid expenses, [settlement costs, loan fees, discounts, rebates and other allowances.]

a. Certain prepaid expenses must be paid by the purchaser of the property. Payment of these expenses by any party other than the purchaser will make the mortgage ineligible. The following expenses must be paid by the purchaser:

(1) Interest charges covering any period subsequent to loan settlement date.

(2) Real estate taxes covering any period subsequent to loan settlement date.

(3) Hazard insurance premiums.

(4) Mortgage insurance renewal premiums.

27. Trade equities. It is acceptable for the property seller to take the borrower's existing property in trade as all or part of the downpayment for the property being purchased.

The amount of the borrower's equity contribution (downpayment) will be considered to be the net amount after deducting the balance of indebtedness and any customary transfer costs, discounts, closing costs, etc. from the lesser of:

a. the appraised value of the property being traded by the borrower, or

b. the trade-in value allowed by agreement between the parties.

C. Any conventional loan that is not otherwise eligible pursuant to paragraphs A or B of Section 227 must meet the following requirements of the Federal Home Loan Mortgage Corporation in order to be an eligible loan for purposes of the Act:

1. Unless the context indicates otherwise, the following definitions and rules of construction apply to paragraph C of Section 227:

a. Condominium unit means a one family dwelling which:

(1) is a part of real property which has been subject to a recorded declaration of condominium (or a master deed or a similar instrument) pursuant to the Minnesota Condominium Act or condominium (horizontal property or unit ownership) act of the jurisdiction in which the property is located; and

(2) the ownership of which includes the ownership in fee (or in an acceptable leasehold estate) of a specified residential unit together with an undivided pro-rata interest in appurtenant real estate and any improvements thereon.

b. First lien means a lien meeting the requirements of any statutes, or regulations issued thereunder by any governmental agency under state or federal law authorized to supervise and examine the operations of the authorized lender relating to "first mortgages", "unencumbered property", "first liens" or words of similar import.

**c.** Flexible payment loan means a note secured by a home mortgage where amortization of principal is not required during an initial period (not to exceed five (5) years) of the mortgage loan term; however, the required payments during such period must be sufficient to pay the interest. Such note must require repayment in monthly installments in accordance with a payment schedule stated in the note and the required payments after the end of the initial period must be sufficient to retire the entire obligation, both interest and principal, within the remainder of the mortgage loan term (such mortgage loan term must not exceed thirty (30) years, including the initial period). The interest rate must not be subject to increase during the initial period, unless pursuant to a subsequently negotiated agreement [(such as an assumption)], and the amount of the first required principal and interest payment after the end of the initial period must be fixed at the beginning of the mortgage loan term, with no required payment after the end of such initial period being greater than the first required principal and interest payment.

**d.** Home mortgage means an instrument creating a valid first lien on real estate (held in fee simple or an acceptable leasehold) upon which there is located either:

**(1)** a structure or structures designed principally for residential use by not more than four families or

**(2)** a one to four family unit in a planned unit development, or

**(3)** a one family unit in a condominium project.

**e.** Mortgaged premises means the land and improvements thereon secured by the first lien of the mortgage.

**f.** Planned unit development (PUD) means a parcel of land which contains property and improvements thereon owned and maintained by a homeowners association, corporation or trust, for the benefit and use of individual PUD units (a one to four family dwelling located in a PUD) within that parcel of land (herein referred to as "common property"), and such association, corporation or trust, requires automatic non-severable membership of each individual unit owner, with mandatory assessments. The common property enhances the enjoyment of the premises and value of the property securing the PUD unit mortgage. (Zoning is not the basis of classification as a PUD.)

A De Minimis PUD unit means a PUD unit located in a PUD, in which the common property has a relative insignificant influence on the enjoyment of the premises, or has little or no effect on the value of the property securing the PUD unit mortgage.

**g.** Value means the lower of:

**(1)** the appraised value of the mortgaged premises at the time the mortgage loan is closed, or

**(2)** the purchased price paid for the mortgaged premises by the borrower.

**2.** Loan to value ratio; minimum loan amounts.

**a.** No mortgage loan amount may exceed ninety-five percent (95%) of value. However, mortgage insurance is required on all mortgage loans that have a loan to value ratio in excess of eighty percent (80%). Coverage is required on the amount in excess of seventy-five percent (75%) of value and must remain in force until the mortgage loan is reduced to eighty percent (80%) of the original value at which time the coverage may be cancelled.

**b.** Mortgage loans secured by a two, three, or four family dwelling must not exceed eighty percent (80%) of value.

**c.** Refinance loans (not including construction/permanent loans) must not exceed eighty percent (80%) of the appraised value at the time such loan is closed.

**d. The principal balance of mortgage loans must not be less than five thousand dollars ($5,000) at the time the loan is closed.**

**3.** Cash down payment. The current appraised value in dollars of the subject lot owned by the borrower upon which the improvement was constructed or the net proceeds of the trade-in of a previous home towards the purchase of the mortgaged premises are considered "cash equity" for the purposes of this section.

**a.** For mortgage loans with a loan-to-value ratio of more than ninety percent (90%), the difference

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between the purchase price of the mortgage premises and the mortgage loan must be paid from the borrower's liquid assets or cash equity.

b. For mortgage loans with a loan-to-value ratio of more than eighty percent (80%), but not in excess of ninety percent (90%), the difference between the purchase price of the mortgaged premises and the mortgage loan must be paid from the borrower's liquid assets or cash equity or its equivalent. The amount paid from the borrower's liquid assets or cash equity must be a minimum of ten percent (10%). No secondary financing is permitted.

c. For mortgage loans with a loan-to-value ratio of eighty percent (80%) or less, no less than ten percent (10%) of the purchase price of the mortgaged premises must be paid from the borrower's liquid assets or cash equity. Secondary financing is permitted.

d. All prepayments for real estate taxes, hazard and mortgage insurance impounds/escrows must be paid from the borrower's liquid assets or cash equity.

e. For refinance loans, borrowers equity must be at least twenty percent (20%) of the appraised value at the time of the mortgage loan closing.

4. Occupancy. To the best of the mortgagee's information and belief, the borrower occupies all or part of the mortgaged premises as a primary residence and the borrower is an individual or individuals.

5. Type of structure.

a. The mortgage premises must consist of a detached or semidetached dwelling, row dwelling, townhouse, a unit within a vertical or horizontal condominium project, or a dwelling unit within a PUD, undamaged by fire, windstorm or other casualty. Construction of the mortgaged premises, including subsurface facilities, must be completed as of the date of the loan closing. In the event the improvements cannot be completed for valid reasons, such as inclement weather, an adequate escrow for the uncompleted items must be established. The principal residence comprising the mortgaged premises must not be a mobile home, a vacation property or a seasonal property. The mortgaged premises must be in conformance with all applicable zoning and use restrictions and local building and housing codes. The mortgaged premises must also enable the mortgage to qualify as a "residential mortgage" as defined in Section 302 of the Emergency Home Finance Act of 1970, and Section 7701(a)(19)(C)(v) of the Internal Revenue Code and rules and regulations promulgated under each such section.

b. A unit in a new or newly converted condominium project or PUD will be deemed seasonal property and the mortgage thereon not eligible unless at least eighty percent (80%) of the units sold in the condominium project or PUD have been sold to individuals for use as their primary year-round residence. In an existing condominium project or PUD, at least eighty percent (80%) of the units must be occupied by unit owners as their primary year-round residence.

6. Amortization. Each mortgage note must provide through regular, monthly payments, for full amortization by maturity. Amortization must commence not later than sixty-two (62) days after the final disbursement of the mortgage proceeds, except that for flexible payment loans amortization of principal is not required during the initial period of the mortgage loan term (such initial period must not exceed five years).

7. Term. The original term of a mortgage must not exceed thirty (30) years. In the case of a construction/permanent loan, the term must start no later than the end of the period allowed for construction. The original term of a home mortgage must not be less than ten (10) years.

8. Rate of interest. The rate of interest specified in the evidence of indebtedness secured by the mortgage instrument must be evenly divisible by eights or tenths of one percent. Mortgage insurance premiums shall not be included in the interest rate.

9. Location of mortgaged premises. The mortgaged premises must be located:

a. within the state of the mortgagee's principal office; or

b. within a radius of one hundred (100) miles of the mortgagee's principal office.

10. Execution, acknowledgement and recordation. Each mortgage must be duly executed, acknowledged, delivered and recorded in all places where the mortgage loan must be recorded to perfect a first lien security interest in the mortgaged premises in favor of the mortgagee.

11. Mortgage valid first lien. Each mortgage must be a valid first lien on the mortgaged premises. The mortgaged premises must be free and clear of all encumbrances and liens prior to the first lien of the mortgage loan and no rights may be outstanding that could give rise to such liens, subject only to liens for real estate taxes and special assessments not yet due and payable, and the prior liens and encumbrances found in BD 227 C, section 16. The mortgage loan must be a legal,

valid and binding obligation of the maker(s) thereof, enforceable in accordance with its terms and conditions, and free from any right of settoff, counterclaim or other claim or defense, and no part of the mortgaged premises may have been released from the mortgage. There must be no encroachments, overlaps, boundary line disputes or other matters which would be disclosed by accurate survey or inspection of the mortgaged premises. The tax lot must be the same as the mortgaged premises.

**12.** Principal amount advanced; no mandatory future advances. The full principal amount of each mortgage loan must be advanced to the borrower at the loan closing or advanced in accordance with the direction of the borrower. The borrower must not have an option under the mortgage loan to borrow, from the mortgagee or any other person, additional funds secured by the mortgage without consent of the mortgagee.

**13.** Compliance with law. All requirements of all federal, state and local laws, rules and regulation applicable to mortgage loans and mortgage loan transactions, including, without limitations, truth-in-lending laws and usury laws, must be complied with, and the mortgage loan must not violate any such laws, rules or regulations.

**14.** No circumstances adversely affecting value of mortgage. No proceeding may be pending for condemnation of all or any part of the mortgaged premises.

**15.** Title insurance requirements; other title evidence.

**a.** Each mortgage loan must be covered by a paid-up mortgage title insurance policy. Such title insurance policy must not be subject to any exception other than those which are permitted as provided in BD 227C.16. However, a title insurance policy is not required if a home mortgage is a "spot loan" and if:

(1) title insurance coverage is not commonly required by private institutional mortgage investors in the area in which the mortgaged premises are located; and

(2) the mortgagee holds a certificate of title; or

(3) such other evidence of title commonly required by such private institutional mortgage investors which evidence is issued by an attorney carrying malpractice insurance, and which evidence of title is not subject to any exceptions other than those referred to in Section 16. However, a title insurance policy is required on mortgages securing condominium or PUD units or mortgages on a leasehold estate.

**b.** Every title insurance policy must protect the mortgagee up to the original principal balance of the mortgage loan.

**16.** Waiver of exceptions. The prior liens and encumbrances listed below are acceptable:

**a.** Any subsurface public utility easement for local residential distribution, such as liens for gas and water, and cable for electric, telephone or CATV utilities, the location of which is ascertainable and fixed, provided that the exercise of the rights thereunder will not interfere with the use of any present or potential future improvements on the mortgaged premises.

**b.** Any surface easement for public utilities for local residential distribution along one or more of the property lines of the mortgaged premises [and extending not more than twelve (12) feet therefrom,] the location of which is ascertainable and fixed, provided that the exercise of the rights thereunder will not interfere with the use of any present or potential future improvements on the mortgaged premises or the use of that part of the mortgaged premises outside of the easement and not occupied by improvements.

**c.** Encroachment on an easement for public utilities by a garage or any other improvement, other than those which are attached to or a portion of the main dwelling structure, provided such encroachment does not interfere with the use of the easement or the exercise of rights of repair and maintenance in connection therewith.

**d.** Agreements or restrictive covenants of record related to costs, use, set-back, minimum-size, building materials, architectural, aesthetic or similar matters (other than single family use restrictions on 2-4 family properties; provided there is no reversion or forfeiture of title in the event of violation thereof, that such agreements or restrictive covenants do not create or provide for a lien of any kind which would be prior to the lien of the home mortgage, that the terms and provisions of such agreements or restrictive covenants are commonly acceptable to private institutional mortgage investors in the area in which the mortgaged premises

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are located and that no violation of any such agreement or restrictive covenant exists.

e. Mutual easement agreement of record which establishes a joint driveway or a party wall constructed either partly on the mortgaged premises and partly on adjoining property, or wholly on the mortgaged premises, or wholly on the adjoining property, provided the easement agreement allows all present and future owners, their heirs and assigns forever, unlimited use of the driveway or party wall without any restriction other than restriction by reason of the mutual easement owner's rights in common and duties as to joint maintenance.

f. Fence misplacements of one foot or less on either side of the property line of the mortgaged premises, provided that neither the misplacement, nor a future correction thereof, will interfere with the use of any improvements of the mortgaged premises or the use of the balance of the mortgaged premises not occupied by improvements.

g. Encroachments on the mortgaged premises by improvements on adjoining property where such encroachments extend one foot or less over the property line of the mortgaged premises, have a total area of fifty (50) square feet or less, do not touch any buildings, and do not interfere with the use of any improvements on the mortgaged premises or the use of the mortgaged premises not occupied by improvements.

h. Encroachments on adjoining property by eaves or other projections attached to improvements on the mortgaged premises or by a driveway appurtenant to the mortgaged premises where such encroachments extend one foot or less beyond the property line of the mortgaged premises, provided that as to a driveway encroachment there exists a clearance of at least eight feet between the buildings on the mortgaged premises and the property line of the mortgaged premises affected by such encroachment.

i. Outstanding oil, gas, water, or mineral rights which are commonly waived by private institutional mortgage investors in the area in which the mortgaged premises are located and will not result in damage to the mortgaged premises or impairment of the use of the mortgaged premises for residential purposes[, provided that such rights only attach below five hundred (500) feet]. That there are no rights of surface entry incident to such oil, gas, water, or mineral rights, and that rights of subadjacent support of the mortgaged premises are provided.

j. Liens for real estate or ad valorem taxes and assessments not yet due and payable.

k. The priority of the lien as to any sum repaid and subsequently readvanced under the terms of the mortgage insured thereby.

17. Hazard insurance requirements.

a. General. Each mortgage loan must be covered by hazard insurance meeting the requirements set forth in this section and must be in effect the date of the mortgage loan closing.

b. Scope and amount of coverage required for home mortgages other than planned unit development and condominium unit home mortgages. Insurance coverage in the following kinds and amounts is required on the mortgaged premises and this basic coverage must provide:

(1) The scope of coverage shall be equal to or greater than fire and extended coverage and shall be at least equal to that commonly required by private institutional mortgage investors in the area in which the mortgaged premises are located. The policy shall provide, as a minimum, fire and extended coverage insurance on a replacement cost basis in an amount not less than that necessary to comply with any co-insurance percentage stipulated in the policy, but not less than eighty percent (80%) of the insurable value (based upon replacement cost of the mortgaged premises). Except for insurance under the National Flood Insurance Act of 1968, as amended, and for deductibles, as permitted below, the amount of coverage shall be sufficient so that in the event of any damage or loss to the mortgaged premises of a type covered by the insurance, the insurance proceeds shall provide at least the lesser of:

(a) compensation equal to the full amount of damage or loss, or

(b) compensation to the first mortgagee under the mortgage equal to the full amount of the unpaid principal balance of the mortgage loan.

All buildings valued at $1,000 and over must be insured.

If the area is one identified by the Secretary of Housing and Urban Development as an area having special flood hazards, flood insurance shall be maintained in the amount of the outstanding principal balance of the mortgage loan or the maximum limit of coverage available under the National Flood Insurance Act of 1968, as amended, whichever is less.

(2) Policies containing a deductible clause up to $200 applicable to either fire or extended coverage, or

both, are acceptable in states or areas where such provisions are mandatory or commonly acceptable to private institutional mortgage investors. When policies contain a fall of building clause, such clause must be waived.

c. Scope and amount of coverage required for planned unit developments. Insurance coverage in the following kinds and amounts is required on property covered by a PUD unit home mortgage:

(1) All coverages in the kinds and amounts required for home mortgages pursuant to Section 17a are required also for PUD unit home mortgages.

(2) The PUD corporation, homeowners association or trust must have fire and extended coverage insurance for no less than one hundred percent (100%) of replacement cost of insurable PUD common property. Such insurance must name as the insured the PUD corporation, homeowners association or trust for the benefit of the unit owners in a PUD. (No mortgagee clause in favor of PUD unit mortgagees is required on insurance covering common property.)

(3) The PUD corporation, homeowners associations or trust must have fidelity coverage against dishonest acts on the part of directors, managers, trustees, employees or volunteers responsible for handling funds collected and held for the benefit of the unit owners in a PUD if the PUD has more than thirty (30) units. The fidelity bond or insurance must name the PUD corporation, homeowners association or trust as the named insured and shall be written in an amount sufficient to provide protection which is in no event less than one and one-half times the insured's estimated annual operating expenses and reserves. In connection with such coverage, an appropriate endorsement to the policy to cover any persons who serve without compensation shall be added if the policy would not otherwise cover volunteers.

(4) The PUD corporation, homeowners association or trust must have a comprehensive policy of public liability insurance covering all of the PUD common property. Such insurance policy shall contain a "severability of interest" clause or endorsement which shall preclude the insurer from denying the claim of a unit owner in a PUD because of negligent acts of the PUD corporation, homeowners association or trust, or other unit owners. The scope of coverage must include all other coverage in the kinds and amounts commonly required by private institutional mortgage investors for projects similar in construction, location and use. If the project has more than thirty (30) units, coverage shall be for at least $1,000,000 per occurrence for personal injury and/or property damage.

d. Scope and amount of coverage required for home mortgages on individual condominium units. Insurance coverage in the following kinds and amounts is required on property covered by a condominium unit home mortgage:

(1) A multi-peril type policy is required covering the entire condominium project providing as a minimum fire and extended coverage and all other coverage in the kinds and amounts commonly required by private institutional mortgage investors for projects similar in construction, location and use on a replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value (based upon replacement cost). If there is a steam boiler in operation in connection with the mortgaged premises, there must be in force boiler explosion insurance evidenced by the standard form of boiler and machinery insurance policy and providing as a minimum, $50,000 per accident per location. If the condominium project is located in an area identified by the Secretary of Housing and Urban Development as an area having special flood hazards, a "blanket" policy of flood insurance on the condominium project must be maintained in the amount of the aggregate of the outstanding principal balances of the mortgage loans on the condominium units comprising the condominium project or the maximum limit of coverage available under the National Flood Insurance Act of 1968, as amended, whichever is less. The name of the insured under each required policy must be stated in form and substance similar to the following: "Association of Owners of the _____ Condominium for use and benefit of the individual owners" (designated by name, if required.

(2) Each such policy must contain the standard mortgage clause which must be endorsed to provide that any proceeds shall be paid to the Association of Owners of the _____ Condominium for the use and benefit of mortgages as their interest may appear.

(3) The association of owners must have fidelity coverage against dishonest acts on the part of directors, managers, trustees, employees or volunteers responsible for handling funds belonging to or administered by the condominium association of owners if the condominium project has more than thirty (30) units.

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The fidelity bond or insurance must name the condominium association of owners as the named insured and shall be written in an amount sufficient to provide protection which is in no event less than one and one-half times the insured's estimated annual operating expenses and reserves. In connection with such coverage, an appropriate endorsement to the policy to cover any persons who serve without compensation shall be added if the policy would not otherwise cover volunteers.

(4) The association of owners must have a comprehensive policy of public liability insurance covering all of the common elements, commercial spaces and public ways in the condominium project. Such insurance policy shall contain a "severability of interest" endorsement which shall preclude the insurer from denying the claim of a condominium unit owner because of negligent acts of the condominium association of owners or other unit owners. The scope of coverage must include all other coverage in the kinds and amounts required by private institutional mortgage investors for projects similar in construction, location and use. If the project has more than thirty (30) units, coverage shall be for at least $1,000,000 per occurrence, for personal injury and/or property damage.

e. No assessments; other requirements. Policies are unacceptable where:

(1) under the terms of the carrier's charter, bylaws or policy, contributions or assessments may be made against the borrower or the mortgagee; or

(2) by the term of the carrier's charter, bylaws or policy, loss payments are contingent upon action by the carrier's board of directors, policyholders, or members; or

(3) the policy includes any limiting clauses (other than insurance conditions) which could prevent the mortgagee or the borrower from collecting insurance proceeds.

f. Mortgagee clause. All policies of hazard insurance must contain or have attached the standard mortgagee clause commonly accepted by private institutional mortgage investors in the area in which the mortgaged premises are located. The mortgagee clause must provide that the insurance carrier shall notify the first mortgagee (or trustee) named at least ten days in advance of the effective date of any reduction in or cancellation of the policy.

18. Survey requirements. Each mortgage must meet the following survey requirements:

a. An improvement survey, or, as sometimes referred to, a plat of survey, must have been obtained prior to the loan closing. However, if private institutional mortgage investors in the area in which the mortgaged premises are located do not commonly require a plat of survey, a plat of survey will not be required. The plat of survey must be based upon the results of an instrument survey made, dated and certified by a licensed civil engineer or registered surveyor, within one year of the date of the title insurance policy or an attorney's opinion of title obtained in connection with that particular mortgage loan, the certification of which should run to the mortgagee and the title insurance company which is furnishing the title insurance policy, if required by the title insurance company.

b. The survey must show, among other things:

(1) the location by courses and distances of the plot to be covered by the mortgage, the relation of the point of beginning of said plot to the monument from which it is fixed, all easements appurtenant to said plot, any established building line, and the line of the street or streets abutting the plot and the width of said streets;

(2) encroachments and the extent thereof in terms of feet and inches upon said plot or any easement appurtenant thereto;

(3) all structures and improvements on said plot with horizontal lengths of all sides and the relation thereof by distances to all boundary lines of the plot, servient easements, established building lines and street lines. If the plot is described as being on a filed map, the survey must contain a legend relating the plot to the map on which it is shown.

19. Legal description. The legal description of the mortgaged property as set forth in the mortgage and title insurance policy or other evidence of title must be in one of the following basic forms:

a. Metes and bounds. A metes and bounds description should comply with the following standards:

(1) The beginning point should be established by a monument located at the beginning point, or by reference to a nearby monument.

(2) The sides of the mortgaged premises must be described by giving the distances and bearings of each. In lieu of bearings, it is equally acceptable to use the interior angle method, provided that the beginning point is located on a dedicated public street line or a fixed line on other property or the course of the first side can be otherwise properly fixed.

(3) The distances, bearings and angles should

be taken from a recent instrument survey, or recently recertified instrument survey, by a licensed civil engineer or registered surveyor.

(4) Curved courses should be described by data including:

(a) length of arch,

(b) radius of circle for the arc and

(c) chord distance and bearing.

However, if commonly accepted by private institutional mortgage investors in the area in which the mortgaged premises are located, when a survey course is part of a dedicated public street or road line, the course may be described merely by indicating the distance and direction which the course takes along the street line from the end of the previous course.

(5) The legal description should be a single perimeter description of the entire plot. Division into parcels must be avoided unless a special purpose of the specific mortgage loan is served. Division is necessary, however, if the plot is located on two sides of a public way. (It is also customary in many areas to describe an easement appurtenant to a fee parcel by using a separate parcel description.)

b. Lot and block description. A description composed of lots and/or blocks which includes reference to a recorded map or plat on which said lots or blocks are delineated is usually deemed adequate.

However, when all of the lots or blocks in the description do not appear on the same recorded map or plat, the location of the apparently identical sides of lots or blocks in different recorded maps or plats, fixed in both maps or plats by the same monuments (a rare situation), is usually deemed adequate.

c. Additional acceptable descriptions. Although encountered in only a few cases, a description of a parcel bounded on all sides by dedicated streets or alleys can acceptably refer only to the bounding lines of the streets or alleys. A description of registered property is acceptable, if in the form required by the local Torrens Act.

20. Acceptable leasehold. For each home mortgage on a leasehold estate, mortgagee must obtain an unconditional opinion of counsel stating that each leasehold mortgage loan constitutes an interest in the real estate and complies with the requirements of this section. The following leasehold requirements must be fully complied with:

a. Mortgagee must obtain an unconditional opinion of counsel stating that:

(1) the use of leasehold or ground rent estates for residential properties is a customary practice in the area in which the mortgaged premises are located,

(2) residential properties in the area consisting of such leasehold or ground rent estates are readily marketable,

(3) mortgages covering such residential properties are commonly acceptable to private institutional mortgage investors and

(4) the provisions of the leasehold or conveyance reserving ground rents are those commonly acceptable to private institutional mortgage investors in the area in which the mortgaged premises are located.

b. The lease (including all amendments thereto) must be recorded.

c. The leasehold must be in full force and effect and be subject to no prior lien or encumbrance by which the leasehold can be terminated or subjected to any charge or penalty.

d. The remaining term or exercised renewal of the lease together with any renewals enforceable by the mortgage must terminate no earlier than ten (10) years after the maturity date of the mortgage.

e. The lease must be in a standard form commonly acceptable to private institutional mortgage investors in the area in which the mortgaged premises are located for leasehold mortgage purposes and must contain no conditions under which the leasehold may be terminated for lessee's default without the mortgagee having the right to receive from the lessor written notice of, and a reasonable opportunity to cure, such default.

21. Condominium home mortgages, organizational requirements. By virtue of the condominium constituent documents, a written agreement in favor of all mortgagees of units in the project with the homeowner's association of the condominium, state law, or a combination thereof:

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a. A first mortgagee, upon request, will be entitled to written notification from the homeowners association of any default in the performance by the individual unit borrower of any obligation under the condominium constituent documents which is not cured within sixty (60) days.

b. Any first mortgagee who obtains title to the condominium unit pursuant to the remedies provided in the mortgage, or foreclosure of the mortgage, or deed (or assignment) in lieu of foreclosure will be exempt from any "right of first refusal" contained in the condominium constituent documents.

c. Any first mortgagee who obtains title to the condominium unit pursuant to the remedies provided in the mortgage or foreclosure of the mortgage will not be liable for such unit's unpaid dues or charges which accrue prior to the acquisition of title to such unit by the mortgagee.

d. Except where otherwise provided in the Minnesota Condominium Act, unless at least seventy-five percent (75%) of the first mortgagees (based upon one vote for each first mortgage owned), or owners (other than the sponsor, developer or builder) of the individual condominium units have given their prior written approval, the condominium home owners association shall not be entitled to:

(1) By act or omission, seek to abandon or terminate the condominium project;

(2) change the prorata interest or obligations of any condominium unit for the purpose of:

(a) levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards, or

(b) determining the prorata share of ownership of each condominium unit in the common elements;

(3) partition or subdivide any condominium unit;

(4) by act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the common elements. (The granting of easements for public utilities or for other public purposes consistent with the intended use of the common elements by the condominium project shall not be deemed a transfer within the meaning of this clause);

(5) use hazard insurance proceeds for losses to any condominium property (whether to units or to common elements) for other than the repair, replacement or reconstruction of such condominium property, except as provided by statute in case of substantial loss to the units and/or common elements of the condominium project.

In the case of a condominium project subject to additions or expansions, in which sections or phases are established by the condominium constituent documents (hereafter referred to as "phasing" or "add-ons"), satisfying the requirements of Section 22d (2) and (4) and Section 21n will be deemed waived to the extent necessary to allow the phasing or add-ons in accordance with the condominium constituent documents.

e. First mortgagees shall have the right to examine the books and records of the condominium homeowners association or the condominium project.

f. Condominium dues or charges shall include an adequate reserve fund for maintenance, repairs and replacement of those common elements that must be replaced on a periodic basis, and shall be payable in regular installments rather than special assessments.

g. All taxes, assessments and charges which may become liens prior to the first mortgage under local law shall relate only to the individual condominium units and not to the condominium project as a whole.

h. No provision of the condominium constituent documents gives a condominium unit owner or any other party, priority over the rights of first mortgagees of condominium units pursuant to their mortgages in the case of a distribution to condominium unit owners of insurance proceeds or condemnation awards for losses to or a taking of condominium units and/or common elements.

i. All amenities (such as parking, recreation and service areas) are a part of the condominium project and are covered by the mortgage at least to the same extent as are the common elements. All such amenities are fully installed, completed and in operation for use by condominium unit owners. If such amenities are not common or special elements under the condominium project, but are part of a PUD of which the condominium project is a part, such an arrangement is acceptable provided that the warranties applicable to PUD units are also satisfied.

j. The condominium project has been created and is existing in full compliance with requirements of the condominium enabling statute of the jurisdiction in which the condominium project is located and all other applicable laws.

k. Fifty-one percent (51%) of the units in the condominium project have been sold to bona fide pur-

chasers who have closed or who are legally obligated to close. Multiple purchases of condominium units by one owner are to be counted as one sale when counting the number of sales within a condominium project to determine if this sales requirement has been met. In a condominium project subject to phasing or add-ons, in which sections or phases are established by the condominium constituent documents and under a common homeowners association, a section or phase may be combined with other completed, sold and occupied sections or phases.

A section/phase is one which is of sufficient size to contain an adequate number of units to support any common elements or recreational facilities which are included in the sale price or appraised value of the individual unit, and in a condominium project, the section/phase is generally established by the condominium constituent documents.

l. In a new or newly converted condominium project, at least eighty percent (80%) of the units sold in the condominium project are sold to individuals for use as their primary year-round residences. In an existing condominium project, at least eighty percent (80%) of the units in the condominium project are occupied by unit owners as their primary year-round residences.

m. If the condominium project is on a leasehold estate, the condominium unit lease is a lease of the fee, and the provisions of the condominium unit lease comply with the following leasehold requirements:

(1) The lease (including all amendments thereto) must be recorded.

(2) The leasehold must be in full force and effect and must not be subject to any encumbrances or liens and must contain no terms requiring or permitting subordination to liens or encumbrances without mortgagee's consent.

(3) The original term or exercised renewal of the lease, together with any renewals enforceable by the mortgagee, must not terminate earlier than ten (10) years after the maturity date of the mortgage.

(4) The lease must contain provisions which:

(a) permit mortgaging of the leasehold estate;

(b) permit assignments without lessor's consent;

(c) provide for releasing of an assigning lessee;

(d) permit leasehold mortgagee to be an insured under hazard insurance policies;

(e) provide for payment of hazard insurance proceeds to leasehold mortgagee or insurance trustee;

(f) provide for written notice of default by lessor to leasehold mortgagee as a condition of validity of such notice of default;

(g) provide for right of leasehold mortgagee to cure default for account of lessee within time permitted to lessee for such cure plus reasonable additional time;

(h) provide for new lease of same priority to be given to leasehold mortgagee if lease terminates because of default not curable by a leasehold mortgagee, or in the alternative, for no termination for noncurable default as long as no default in rent exists;

(i) provide for payment to leasehold mortgagee (or trustee for restoration in the case of partial awards) of condemnation award to which lessee is entitled, which award must not be less than the total award minus the value of the land considered as unimproved;

(j) provide that in case of partial taking, lessee will rebuild and restore the improvements on the mortgaged premises unless leasehold mortgagee consents to distribution of proceeds in lieu thereof. (Application of such proceeds shall be made first towards reduction of the leasehold mortgage debt.)

(k) provide for leasehold mortgagee's right to acquire lease in its own name or in the name of the nominee upon foreclosure or assignment in lieu of foreclosure;

(l) provide for leasehold mortgagee's right to exercise renewal option; and

(m) contain no provisions for termination in the event of damage or destruction so long as leasehold mortgage is in existence.

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In addition, such lease does not contain any provisions providing for an increase(s) in the ground rent (lease payment) earlier than ten (10) years after the maturity date of the note and mortgage.

(n) Any proposal or plan pursuant to which the condominium project is subject to phasing or add-ons complies with the following limitations:

(i) Condominium unit owners shall have a minimum percentage undivided interest in the common elements, and the corresponding maximum interest subject to diminution to no less than such minimum, in each such percentage interest must be stated in the declaration of condominium (or master deed or similar instrument);

(ii) the conditions whereby any change in such percentage of undivided interest in common elements may take place are fully described in the declaration of condominium (or master deed), together with a description of the real property which will become subject to the condominium project if such alternative percentage interest becomes effective; and

(iii) no change in the percentage interest in the common elements may be affected pursuant to such phasing or add-on plan more than seven years after the declaration of condominium (or master deed) becomes effective.

(o) Any agreement for professional management of the condominium project, or any other contract providing for services by the developer, sponsor or builder, must provide for termination by either party without cause or payment of a termination fee on ninety (90) days or less written notice and a maximum contract term of three years.

(p) The condominium homeowners association has agreed to give the mortgagee notice in writing of any loss to, or taking of, the common elements of the condominium project if such loss or taking exceeds $10,000 or damage to a condominium unit covered by a mortgage exceeds $1,000.

22. Planned unit development (PUD) mortgages, organization requirements. By virtue of the PUD constituent documents, a written agreement in favor of all mortgagees of units in the PUD with the PUD association, corporation or trust, state law, or a combination thereof:

a. A first mortgagee, upon request, is entitled to written notification from the homeowners association of any default in the performance by the individual PUD unit borrower of any obligation under the PUD constituent documents which is not cured within sixty (60) days.

b. Any first mortgagee who obtains title to a unit in the PUD pursuant to the remedies provided in the mortgage or foreclosure of the mortgage, or deed (or assignment in lieu of foreclosure), will be exempt from any "right of first refusal" contained in the PUD constituent documents.

c. Any first mortgagee who obtains title to a unit pursuant to the remedies provided in the mortgage, or foreclosure of the mortgage, will not be liable for such unit's unpaid dues or charges which accrue prior to the acquisition of title to such unit by the mortgagee.

d. Unless at least seventy-five percent (75%) of the first mortgagees (based upon one vote for each first mortgage owned), or owners (other than the sponsor, developer or builder) of the individual units in the PUD have given their prior written approval, the PUD home owners association, corporation or trust shall not be entitled to:

(1) by act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the common property owned, directly or indirectly, by such homeowners association, corporation or trust for the benefit of the units in the PUD.

The granting of easements for public utilities or for other public purposes consistent with the intended use of such common property by the PUD shall not be deemed a transfer within the meaning of this clause;

(2) change the method of determining the obligations, assessments, dues or other charges which may be levied against the PUD unit owner;

(3) by act or omission change, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to architectural design or the exterior appearance of units, the exterior maintenance of units, the maintenance of the common property party walks or common fences and driveways, or the upkeep of lawns and plantings in the PUD;

(4) fail to maintain fire and extended coverage on insurable PUD common property on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value (based on current replacement cost);

(5) use hazard insurance proceeds for losses to any PUD common property for other than the repair,

replacement or reconstruction of such common property.

e. First mortgagees shall have the right to examine the books and records of the PUD homeowners association, corporation, trust or any entity which owns the common property of the PUD.

f. First mortgagees of PUD units may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any PUD common property and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for such common property and first mortgagees making such payments shall be owed immediate reimbursement thereof from the PUD homeowners association, corporation or trust. Entitlement to such reimbursement is reflected in an agreement in favor of all first mortgagees of units in a PUD duly executed by the PUD homeowners association, corporation or trust, and an original or certified copy of such agreement is possessed by the mortgagee.

g. No provision of the PUD constituent document gives a PUD unit owner or any other party, priority over any rights of first mortgagees of units in a PUD pursuant to their mortgages in the case of a distribution to PUD unit owners of insurance proceeds or condemnation awards for losses to or a taking of PUD common property.

h. Homeowners association dues or charges shall include an adequate reserve fund for maintenance, repairs and replacement of those elements of common property that must be replaced on a periodic basis and are payable in regular installments rather than by special assessment.

i. All PUD common property which is regarded as part of the value of the unit in a PUD for purposes of the appraisal upon which the mortgage loan is predicated (such as parking, recreation and service areas) are fully installed, complete and in operation for use by PUD unit owners. PUD unit owners have a right to enjoyment of the PUD common property and such property is owned in fee or in an acceptable leasehold estate by the PUD homeowners association, corporation or trust. The PUD common property was conveyed to the PUD homeowners association, corporation or trust unencumbered, except for any easements granted for public utilities or for other public purposes consistent with the intended use of such property by the PUD.

j. The PUD has been created and is existing in full compliance with requirements of the jurisdiction in which the PUD is located and all other applicable laws.

k. Fifty-one percent (51%) of the units in the PUD have been sold to bona fide purchasers who have closed or who are legally obligated to close. Multiple purchasers of units in a PUD by one individual are to be counted as one sale when counting the number of sales within a PUD to determine if this sales requirement has been met. In analysis of this requirement in a phasing or add-on PUD project, in which sections or phases are established by the PUD constituent documents and under a common homeowners association, a section or phase may be combined with other completed, sold and occupied sections or phases.

A section/phase is one which is of sufficient size to contain an adequate number of units to support any common property or recreational facilities which are included in the sale price or appraised value of the individual unit, and in a PUD, the section/phase is generally established by the PUD constituent documents.

l. In a new or newly converted PUD project, at least eighty percent (80%) of the units sold in the PUD are sold to individuals for use as their primary year-round residences. In an existing PUD, at least eighty percent (80%) of the units in the PUD are occupied by unit owners as their primary year-round residences.

m. If the PUD is on a leasehold estate, the PUD unit lease is a lease of fee, and the provisions of the PUD unit lease comply with the requirements as [follows:] found in BD 227 C. Section 21 m, (1) through (4) (m).

[(1) The lease (including all amendments thereto) must be recorded.

(2) The leasehold must be in full force and effect and must not be subject to any encumbrances or liens and must contain no terms requiring or permitting subordination to liens or encumbrances without mortgagee's consent.

(3) The original term or exercised renewal of the lease, together with any renewals enforceable by the mortgagee, must not terminate earlier than ten (10) years after the maturity date of the mortgage, or in the case of a mortgage loan with a "balloon" payment at maturity, not earlier than ten (10) years after the maturity date that the mortgage would have had, if the regu-

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lar amortization had continued until the mortgage loan was paid in full.

(4) The lease must contain provisions which:

(a) permit mortgaging of the leasehold estate;

(b) permit assignments without lesser's consent;

(c) provide for release of an assigning lessee;

(d) permit leasehold mortgagee to be an insured under hazard insurance policies;

(e) provide for payment of hazard insurance proceeds to leasehold mortgagee or insurance trustee;

(f) provide for written notice of default by lessor to leasehold mortgagee as a condition of validity of such notice of default;

(g) provide for right of leasehold mortgagee to cure default for account of lessee within time permitted to lessee for such cure plus reasonable additional time;

(h) provide for new lease of same priority to be given to leasehold mortgagee if lease terminates because of default not curable by leasehold mortgagee, or in the alternative, for no termination for noncurable default as long as no default in rent exists;

(i) provide for payment to leasehold mortgagee (or trustee for restoration in the case of partial awards) of condemnation award to which lessee is entitled, which award must not be less than the total award minus the value of the land considered as unimproved;

(j) provide that in case of partial taking, lessee will rebuild and restore the improvements on the mortgaged premises unless leasehold mortgagee consents to distribution of proceeds in lieu thereof. (Application of such proceeds shall be made first toward reduction of the leasehold mortgage debt.)

(k) provide for leasehold mortgagee's right to acquire lease in its own name or in the name of the nominee upon foreclosure or assignment in lieu of foreclosure;

(l) provide for leasehold mortgagee's right to exercise renewal options; and

(m) contain no provisions for termination in the event of damage or destruction so long as leasehold mortgage is in existence.]

If any PUD common property is in a leasehold estate, the lease of the PUD common property is a lease of the fee and the provisions of the lease must comply with the provisions of BD 227 C. Section 21 m. (1) through (4) (m).

n. Any agreement for professional management of the PUD project, or any other contract providing for services by the developer, sponsor or builder, must provide for termination by either party without cause or payment of a termination fee on ninety (90) days or less written notice and a maximum contract term of three years.

23. Internal consistency of documents. For each mortgage loan the mortgage, title insurance policy or substitute evidence of title survey, lease, mortgage insurance policy, hazard insurance policies, and all other documents that pertain to the mortgage or mortgage premises must have a description which is consistent with that in the other documents.