

Application for Transfer of Physical Assets (TPA)

U.S. Department of Housing
and Urban Development
Office of Housing
Federal Housing Commissioner

OMB Approval No. 2502-0275
(Exp. 10/31/2006)

Public reporting burden for this collection of information is estimated to average 92 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number.

This information is completed and submitted to HUD by prospective purchasers of properties with mortgages either HUD-insured or HUD-held prior to conveying the title. This form cites all the supportive documentation which must be submitted to HUD for approval. The information is used to closely monitor the operation of the properties encumbered by mortgages which HUD insures or holds. The authority for this function can be found in the National Housing Act and in the Regulatory Agreements between the Secretary of HUD and the mortgagor of each HUD related project. This information is required to obtain benefits.

General Information

Use these instructions for overview and checklist purposes. HUD Handbook 4350.1, Chapter 13, provides complete instructions. If there appears to be a conflict between what is written here and the Handbook, the Handbook governs.

HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties (18 U.S.C. Sections 1001, 1010, 1012; 31 U.S.C. Sections 3729, 3802).

Use this form for transfers of properties encumbered by mortgages insured by HUD and for mortgages owned by the Secretary of HUD. It must be executed by the purchaser, the seller, and normally by the mortgagee. It must be presented to the mortgagee for execution. If the mortgagee refuses, the reason must be given to HUD in writing. Copies of correspondence to or from the mortgagee must be attached. If the mortgage has not been finally endorsed for insurance, the application will not be accepted without the mortgagee's execution. **If the proposal to transfer involves the creation of a lien against the property, the mortgagee must consent to the transfer.**

Avoid introducing amendments or deviating from the instructions unless absolutely necessary to make the transaction effective. Nonconforming documents and deficient information will delay the process.

When an Attorney's Opinion is required, do not use an attorney that has an identity of interest with either the purchaser or seller.

The final paragraph of this application must be signed by the mortgagee in every instance where the transfer will result in the creation of a lien against the project.

HUD imposes a TPA fee of \$0.50 per \$1,000 of the original face amount of the mortgage to cover the cost of legal, administrative, and fiscal actions. Send the fee with the application.

Some transactions generally do not require a fee:

- (1) Substitution of individual general partners of a partnership/mortgagor; or
- (2) Assignment of 100 percent of the beneficial interest in a passive land trust that holds title to the project, if the assignment does not result in a change in the control of the project.

Some transactions involving multiple transfers may be subject to more than one TPA fee, such as transactions involving two transfers of title by deed. The HUD Field Office manager (after consulting with Field Counsel) will make the determination.

If the Field Office manager determines that a transaction or series of transactions have been structured to avoid paying the TPA fee, the application will be rejected. New application(s) will not be accepted until the required fee(s) have been paid.

Preliminary Approval Process

The Field Office immediately gives the applicant a written acknowledgment of receipt and begins a completeness review. The Field Office shall determine if the application should be returned or if the missing pieces should be requested and processing delayed.

The Field Office then reviews other HUD reports to determine acceptability of transfer.

If the instruments are in order, the Field Office gives a written preliminary approval. If some changes are necessary, a conditioned approval will be given which authorizes execution of documents not requiring changes.

Preliminary Approval:

Binds the mortgagor-seller and purchaser to take any steps necessary to reconvey the property to the mortgagor-seller if the terms of the preliminary approval are not met within 45 working days, unless the Field Office gives a written extension.

Binds the mortgagor-seller and purchaser to meet all other conditions of the preliminary approval to include correcting any unsatisfactory matter revealed in the review of items received for final approval.

Requires that all Final Approval documentation must be recorded and submitted to the Field Office within this 45 working day period

Twenty-Two Classes of Required Documents are expected to accompany the application:

1. **TPA Application.** HUD- 92266 (This form)
2. **Purchaser's Letter.** "Purchaser" is defined to include all individuals purchasing as individuals or as principals in a joint venture, all general partners in a purchasing partnership, or a corporation.

The letter:

must be signed by an authorized principal of the purchasing entity; must describe in detail all financial consideration flowing to the project and the mortgagor/seller as a result of the transfer; must detail all funds allocated to project operations as well as those funds designated for use in correcting the physical needs of the project;

must state that if the project is HUD-insured the project mortgage is current or will be brought current as a result of the transfer approval;

must state (if the mortgage is held by HUD) that the mortgage is either current or it must describe a plan for bringing the mortgage current. All workout plans must comply with HUD workout policies in effect at the time the TPA application is submitted for Preliminary Approval.

3. **Purchaser's Certificate of Previous Participation (HUD form 2530)** must be filed for all general partners and all individuals and/or entities who own an interest in the project of 25 percent or more or who own 10 percent or more of the corporate stock of the corporation purchasing the project.
4. **Purchaser's Resume(s).** If the purchaser has no previous participation with the HUD Field Office where the application for transfer is submitted. Resumes are required for each principal of the purchaser and should be in sufficient detail for HUD to understand the nature of their real estate experience.
5. **Sources and Uses of Fund.** This shows **all** expected sources of funds and **all** expected uses of these funds. A suggested format is in Appendix F. Modification is acceptable as long as details are not omitted or items are not combined. **All purchasers are required to include a sources and application of funds. There are no exceptions.**
6. **Executed but Unrecorded Sale Contract, Option Contract or Land Contract.** Submit the applicable sale document in its entirety.

7. **Executed Seller/Purchaser Affidavi.** The parties must submit with the sale contract a sworn statement to the effect that the sale contract recites all of the consideration moving to the seller or any person identified therewith.
8. **Executed but Unrecorded Regulatory Agreement**
9. **Executed but Unrecorded Modification Agreement or Release and Assumption Agreement**
10. **Unexecuted Secondary Financing Documents.** If the proposed secondary financing involved creates a lien against the project or personality thereof a consent statement from the holder of the first mortgage must be submitted. See Appendix G, Legal Review of Transfer of Physical Assets Proposals.
11. **Unaudited Interim Financial Statement** (prepared according to Handbook 4370.2) from the date of the last audited financial statement to the date of application.
12. **Pro Forma Balance Sheet** (prepared according to Handbook 4370.2) that shows how the project accounts are expected to appear the day after the expected date of closing.
13. **Mortgagee's Statement of Escrow and Reserve Account** an opinion as to the adequacy of the present escrow balances (taxes, property insurance) and present monthly deposits to meet the next anticipated tax and insurance bills.
14. **Management Improvement and Operating (MIO) Plan.** Where the project will have physical, management, or financial needs or changes at the time of the transfer, a MIO plan or another plan acceptable to HUD must be submitted, which describes the timing and extent of planned repairs and financial contribution and the timing for all management or procedural changes.
15. **Proposed but Unrecorded Deed**
16. **Proposed Bill of Sale and Assignment** that describes all personal property conveyed and should be on the form provided by HUD.
17. **Proposed Management Certification and Form HUD-2530.** Where a change of management is contemplated by the transfer, a copy of the proposed new management certification must be included. This certification must be completed in conformity with HUD Handbook 4381.5 Rev-1. If not already on file with the Field Office, a Management Agent Profile must also be submitted. If the proposed agent has not previously managed properties in the jurisdiction where the project is located, a brief summary or resume of the agency and its principals should be included. Also, the new management company must receive previous participation clearance by filing HUD form 2530.
18. **Title Report**
19. **Mortgagor's Oath**
20. **Proposed Rental Schedule (form HUD-92458).** The approval of this rental schedule in conjunction with the TPA is not an approval to raise the rents at the project. All rent increases must be processed under existing procedures.
21. **Executed Organizational Documents of Purchaser.** Unless the purchaser is an individual, full details as to the entity acquiring the project shall be provided. If the purchaser is a corporation, trust, or partnership, two certified copies of the charter, trust, or partnership agreement should be furnished. In any such case the charter or agreement shall show that the corporation, partnership, or trust is authorized to operate the project and to execute and be bound by the Regulatory Agreement. The charter, agreement, or other proper document or minutes of meetings should establish clearly the authority of the persons executing the Regulatory Agreement and other papers for the purchaser.

22. **Attorney's Certification.** The Purchaser's attorney must certify that following HUD's preliminary approval, all documents requiring execution and/or recordation will be executed and, as required, recorded in the form reviewed and approved by HUD. The attorney must use the form entitled Attorney's Certification, (Appendix A-11).

Final Approval Process

If HUD required any changes to the documents submitted during the Preliminary Approval review, the applicant's attorney must certify to HUD that the required changes have been made.

The applicant has 45 working days from the date of preliminary approval to submit all executed and recorded documentation to the Field Office. The preliminary approval shall be the date on the letter. Where the applicant finds that he/she is unable to submit the appropriate documentation within the required time period, he/she should submit a written request for an extension of time to the Field Office. Such extension must explain the reason for the delay.

The Applicant must provide the following for final approval:

1. **All Executed Recorded Documents.** One certified (by the recording officer) and one conformed copy of all recorded documents—except the recorded Regulatory Agreement.
2. **All Unrecorded Executed Documents.** Certified true copies by the purchaser, trustee or other responsible person of all unrecorded executed documents used in connection with the transfer.
3. **Original Regulatory Agreement.** Where applicable, the original executed and recorded Regulatory Agreement and one copy.
4. **Audited Interim Financial Statement** from the date of the last audited report to date of transfer.
5. **Purchaser's Balance Sheet-Actual Condition** on date of title transfer to the purchaser, along with certified true copies of any deferred payment notes approved by the Secretary.
6. **Mortgagee's Statement** of all trust and escrow accounts as of date of transfer of title to the purchaser.
7. **Title Policy** or endorsement, as appropriate.
If the mortgagor-seller is to be released from the note obligation, a new title policy or a letter, from the title company issuing the original title policy, showing that after the transfer the insured mortgage will remain a valid lien on the property and that the existing title policy is still in full force and effect.
8. **Attorney's Opinion.** Stating that:
the transaction has been legally consummated and that the purchaser is legally authorized to operate the project and is obligated to abide by the terms of the Regulatory Agreement.
the documents that were executed and/or recorded are the same, in form and content, as those approved by HUD in the preliminary review.
9. **Rental Schedule** and or Budget Worksheet if Applicable (form HUD-92458). Must be dated later than the project transfer date.; must show names of principals for which HUD approved a HUD-2530; may not exceed the current rents most recently approved by the Field Office (if the rents have not been deregulated).

If everything is acceptable, the Field Office sends a letter approving the transfer. As a guide, the Field Office may use the sample letter entitled Final Approval in Appendix A-10.

If recording or other deficiencies are discovered, the Field Office immediately tells the purchaser to correct them and to resubmit.

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Project Number		Date (mm/dd/yyyy)
Project Name	Mortgagor-Seller	
Project Purchaser (Includes Form of Ownership, e.g., Individual, Partnership, Corporation, Trust)		
Mortgagee of Record (Name and address)		Servicing Agent (Name and address)
Mortgage Recorded	State	County
Date (mm/dd/yyyy)	Book	Page

To the Secretary, Department of Housing and Urban Development:

The above-named mortgagor-seller and the project purchaser submit herewith the required fee of \$ _____ and apply to the Department of Housing and Urban Development for permission to transfer the project from the mortgagor to purchaser and, in support of said request represent to the Secretary as follows:

- I. All real and personal property of the mortgagor-seller will be conveyed to the purchaser.
- II. After the transfer, purchaser will own said real and personal property free and clear of all liens, encumbrances or project obligations except the insured mortgage and those expressly approved by you in writing as to form, content, terms, and amount.

In further support of this request, the documents enumerated in the instructions on this form and in HUD Handbook 4350.1 are attached for preliminary approval.

It is understood and agreed that within 45 working days of the issuance of preliminary approval the final approval documents enumerated in the instructions on this form and in HUD Handbook 4350.1 will, with such

changes as you may require and no others, be delivered to you. Unless said documentation is delivered to HUD within the specified time (45 working days) or unless further time for completing the transaction is granted in writing by you, the application for approval of the transfer will be denied and any interest already conveyed in the property shall be reconveyed to the above-named mortgagor.

It is understood and agreed that within 45 working days of the issuance of written authorization to record the documentation previously submitted in connection with this transfer, such documentation will be recorded and the original and copies of the documentation will be returned to you as appropriate. In addition, all of the attachments listed here and in HUD Handbook 4350.1 as required for final approval, some of which have not been submitted previously, must be submitted to you within the same 45-working day period. It is understood that unless appropriate documentation is recorded and returned to you within the prescribed time or unless further time for completing the transaction is granted in writing by you, final approval of the application to transfer the property will be denied and all property transferred will be reconveyed to the mortgagor.

Mortgagee's Statement: If the above transfer is approved by the HUD Secretary, the mortgagee agrees to execute a Release and Assumption Agreement or a Mortgage Modification Agreement incorporating the Regulatory Agreement in the mortgage. It is understood that the mortgagee's consent to this transfer will in no way prejudice its rights under its contract of insurance with HUD. In the event the consent of the mortgagee to the transfer is not evidenced by endorsement of this application, please provide the following information.

Date Consent Requested (mm/dd/yyyy)	Party to Whom Request Directed
Reason for Refusal to Consent	
By (Name/Title)	Mortgagee
Executed this date. (mm/dd/yyyy)	

Mortgagee's Consent to the Creation of a Lien Against the Project

Mortgagee hereby consents to the creation of a lien(s) against the real property known as (project no.) _____, (project name) _____ in connection with this transfer. Mortgagee waives its right to assign the mortgage and claim insurance benefits by the reason of the creation of such lien(s).

Executed this date (mm/dd/yyyy)	Mortgagee
By (Name/Title)	

Mortgagor-Seller	Date (mm/dd/yyyy)	By
Purchaser	Date (mm/dd/yyyy)	By