

Closing Encounters of the Best Kind

Moderator: Tina Laurie, Housing & Healthcare Finance, LLC

Panelist: Blair L. Schiff, Pepper Hamilton, LLP

Panelist: Kathleen E. Burtschi, Vorys, Sater, Seymour and Pease, LLP

Panelist: Bev Berquam, Jones Lang LaSalle Multifamily, LLC

HUD/ORCF: Jason P. Roth, Closing Team Workload Manager, ORCF

232 Healthcare Portal

The screenshot shows a web browser window displaying the 232 Healthcare Portal. The browser's address bar shows the URL <https://www.staging232health.com/Home/Landing>. The page header includes the U.S. Department of Housing and Urban Development logo and the text "232 Healthcare Portal". On the right side of the header, it displays "Version 3.0.0.0", "Log out", "Welcome LAM Prudential", and "Lender Account Manager". A navigation menu below the header contains links for Home, Tasks(3), Group Tasks, Financial Analysis, Asset Management, Production, Administration, and Contact Us. A dropdown menu is open under "Production", listing: FHA# Request, Initiate IRR Request, Application Process, Construction Application Process, Closing Process, Amendments, and Production Lender PAM Report. The main content area features a light blue banner with the following text: "Home > Landing", "Office of Residential Care Facilities", "Healthcare Mortgage Insurance Program Health", "Contact an Employee", "Loan Servicing and Asset Management of 232", and "Section 232 Forms and Documents". Below the banner is a carousel of images showing various residential care facilities. The central image is titled "The Lodge at Natchez Trace, located in Nashville, Tennessee Welcomes New Residents". Other images in the carousel include "White House single-story Nashville, Tennessee" and "Elizabeth Seton Pediatric Center". The browser's taskbar at the bottom shows the time as 7:29 AM on 10/12/2018 and the zoom level as 125%.

Portal Refresher

- Key Benefits:
 - Revolutionize Underwriting & Closing process
 - Direct Electronic submissions – saves time & money
 - Improves efficiency of reviews
 - Facilitate coordination between Lender teams and ORCF
 - Transparency of review process – Lender can see immediate identification of the Underwriter, Technical Reviewers, Closers, OGC
 - Access for Contract UW's and Contract Closers



Closing Submission

Home > Production > Closing Request (Non-Construction Draft Closing)

Non-Construction Draft Closing

FHA Number *

Project Number

Property Name

Property Address

Street Address *

City *

State *

Zip code *

Is the property address listed correctly? Yes No

Requester's Name

Date of Lenders's Submission

Project Loan Type *

Rearrange FILES Copy FILES Attachment

Folder View	Add/Remove Folders	File Name	File Size(KB)	File Uploaded Date	Remove Attachment	Upload Files	New File Name
Section 17: Closing_A						<input type="button" value="Upload"/>	

Lender Comments

I acknowledge that I reviewed the request for processing, and that I have reviewed it for completeness, accuracy and eligibility, in accordance to the Healthcare Mortgage Insurance.

7:37 AM 10/12/2018



Request for Additional Information (RAI)

https://www.staging232health.com/ProductionApplication/GetApplicationFormDetail?model=HUDHealthcarePortal.Model.OPAViewModel

Home - ORCF Healthcare Deve... HUD Healthcare Portal

File Edit View Favorites Tools Help

ORCF Healthcare Develop... Time & Attendance HUD @ Work HUD Healthcare Portal Home - ORCF Healthcare ... CommunicationsCnr Projects - Underwriter Legal Warnings (2) Office of Residential Care ... Operational Risk Manage...

Production Application - Request Additional Information (Completed)

FHA Number 022-22111
Project Number 800244397
Property Name Susans sandcastle

Property Address

Street Address 123 fake
City markhamville
State AK
Zip code 11111

Is the property address listed correctly? **Yes** **No**

Requester's Name LAM Prudential
Date of Lender's Submission 09/20/2018 10:10 AM
Project Loan Type Purchase/Refinance 223(f)

Documentation Grid								
Folder View	Action	Name	Role	Comment	File History	Expected File Name	Attached File	File Size(KB)
<input type="radio"/> Request Additional Submit	Request Additional Submit	LAM Prudential	LAM					
<input type="radio"/> Request Additional Submit	Request Additional Submit	LAM Prudential	LAM					
<input type="radio"/> Request Additional Submit	Request Additional Submit	LAM Prudential	LAM					

View 1 - 3 of 3

125% 7:45 AM 10/12/2018

Production Module Users

- Lender Representatives
- ORCF UW's and Technical Reviewers
- Contract UW's
- ORCF Closers
- Contract Closers
- Lender Counsel
- HUD OGC
- Provides a tracking mechanism and central repository for all comments on the project that can be viewed by all.



Closings & Beyond

- Some in OGC may be interested in using the Portal – only one closing package will need to be submitted; Closing Checklist is the same for OGC & ORCF;
- Faster Amendment & Extension Amendment processes;
- Post Closing – All executed critical documents will be uploaded to the Portal. CDs will no longer be required to be sent to ORCF or OGC;
- Hard copies no longer required for ORCF– All documents will be automatically saved in the TransAccess system, as the official archives for the Department;
- Non Critical Repair Escrows will be processed thru the Portal by the ORCF Closers.



232 Healthcare Portal Production

- Training was held 9/20/18, 10/11/18 & 11/1/18
- Archived training was posted to:
[https://www.hud.gov/federal_housing_administration/healthcare_facilities/residential_care/232_healthcare_portal/232HCP Training](https://www.hud.gov/federal_housing_administration/healthcare_facilities/residential_care/232_healthcare_portal/232HCP_Training)
- Can check FAQ's for any Portal questions:
- https://www.hud.gov/federal_housing_administration/healthcare_facilities/residential_care/knowledgebase
- Portal Link:
 - <https://www.232hudhealthcare.com>



Best Legal Practices: Application (Title)

Title Report:

- Unreleased Mortgages, Delinquent Taxes or Assessments, Litigation/Judgments-Clear up prior to submission to HUD
- Legal description on title & survey should be verbatim

HUD's Title and Survey Review Checklist:

- Encroachments tend to be the most common deficiency. When coverage is available, HUD wants them covered by the ALTA 28.1-06, 28-06 or affirmative insurance to close.



Best Legal Practices: Application (Survey)

Special Flood Hazard/Floodplain Issues:

- Survey must comply with ALTA Table A, Item 5.

Possible Mitigants:

- Carve out the part of land that is in the floodplain from the HUD financing
- Explain to Borrower the 8-step process that HUD requires for floodplains
- If only an incidental part of the site not near any of the building is in floodway-HUD **may** approve it with a recorded Declaration of Restrictive Covenants



Best Legal Practices: Application (Survey)

- Appraisal and Survey-Site size in acres & square feet must be consistent.
- Zoning info on Survey, Appraisal and Zoning Report must be consistent.
- Parking spaces on Survey (Regular and Handicapped), PCNA, Appraisal must match
- Note in Lender Narrative any adjoining parcels owned by Borrower that are not part of the HUD financing which will be transferred at closing
- Where possible, appurtenant easements should be plotted on the Survey & added to Schedule A of title policy

Best Legal Practices: Application (Survey)

- HUD Survey Instructions (HUD-91111-ORCF-06/2014) are outdated as they reference the 2011 ALTA standards. The 2016 ALTA standards changed the item numbers slightly. Per LEAN Blast of Feb. 29, 2016, surveyors can use the 2016 ALTA/NSPS standards.
- Acceptance by HUD of existing surveys
- Surveyor certification on existing survey has additional Table A, item numbers-Is it acceptable to HUD?

Best Legal Practices: Application

Organizational Documents

- Likelihood of Operator that is not a SPE being acceptable to HUD

Other Docs to Discuss Upfront:

- DACA/DAISA/AR Financing
- Requirements of Unrelated Operator
- Ground lease
- Commercial leases
- Master leases: Legal opinion for Master Tenant-Is it necessary at this stage?
- TX/IN Hospital Districts Special Issues



Best Legal Practices: Application

Management Agreement vs. Consulting Agreement

- Which is which? Definition is different in Production Section of Handbook than the Asset Management Section of Handbook
- Determine role of management company -
 - Name on License? Provider Agreements with CMS? CON?
 - Admissions Agreements?
 - Directs day-to-day functions of the facility?
 - Billings/collections? Accounting? “Back office” services?

Best Legal Practices: Firm Commitment

- Group calls with Borrower, Operator and Lender Teams, Title Representative to go over the legal checklist
- Review firm commitment special conditions, assign responsibility for each document needed for draft closing package
- Don't assume that another party is taking care of an issue
- Be very explicit about deadlines and which items are still open

Best Legal Practices: Firm Commitment

Draft Legal Package:

- Know your HUD attorney-some want redlines to HUD forms, some hard copies, etc.
- Submit HUD Closer package through the portal
- Any changes to HUD documents must be case specific with justification
- Consider running UCC searches earlier than 30 days prior to closing as some prior recorded liens (equipment leases for example) might define the collateral too broadly.



Best Legal Practices: Repairs

Certifications for Critical and Non-Critical Repairs

- Always include the Borrower signed certification of Repairs
- Update the Repair Schedule to show the completed cost for each repair and the total amount of the completed repairs



Best Legal Practices: Repairs

Tips for Photos

- Clear color photos
- Label with corresponding repair #
- Full photo of repair (not a close-up of a portion of the repair)
- Include measurement in photo if specified in the description of the repair

Best Legal Practices: Repairs

GOOD



BAD



Best Legal Practices: Repairs



Not sure what became easier, showering or using the toilet...

Best Legal Practices: Repairs

Tips for Invoices

- Provide clear itemized receipt/proof of payment showing quantity and cost
- If receipt contains proof of many repairs, notate which cost relates to which repair
- Label with corresponding repair #

Best Legal Practices: Closing

“**Approved Use**” means the use of the Project for the operation of the Healthcare Facility as a _____ [*insert type of facility*] with _____ [*beds/units*] [of which not less than _____ [*beds/units*] are [to be] in use]

- Licensed for 110 beds, but underwritten for 105 beds
- “with 110 beds of which not less than 105 beds are [to be] in use”

Best Legal Practices: Closing

Permits and Approvals listed on Exhibit D to the Request for Endorsement

- Not just limited to facility and administrator license
- Language in the certification that Lender must attest to is very broad
- Lender should: collect a certification from the Borrower and Operator, along with a list of all applicable authorizations, qualifications, certificates, (org docs, food service license, drug administration, Medicaid or Medicare, Provider Agreements, zoning, building code, utilities.)
 - Review list for completeness and accuracy
 - Confirm licenses have not expired
 - Perform other due diligence as appropriate

Best Legal Practices: Closing

- Weekly calls – Assign drafting of responses to each HUD comment to the appropriate participant(s)
- For each document in the closing package-identify the person responsible for bringing it to the closing
- Do Not Trust Overnight Courier Services

Documents to be recorded

- Get HUD to execute Regulatory Agreements as early as possible to account for the time needed to get documents recorded, title policies issued, and necessary documents delivered to HUD with other closing documents.
- Recording challenges – In-state vs. out of state notary blocks and acknowledgments
- Review by local office of the title company – document formatting, tax parcel ID, notary blocks for the HUD signatory are particularly problematic

Best Legal Practices: Closing

HUD NOTARY BLOCK ISSUE

ACKNOWLEDGEMENT

DISTRICT OF COLUMBIA

On this _____ day of _____, 2019, before me, a notary public in and for the jurisdiction aforesaid, personally appeared _____, who acknowledged that he is the Authorized Agent of the Secretary of U.S. Department of Housing and Urban Development, acting by and through the **Federal Housing Commissioner**, and Supervisory Account Executive in the Office of Residential Care Facilities, U.S. Department of Housing and Urban Development, and that he, being authorized to do so by virtue of such office, executed the foregoing instrument on behalf of the **Federal Housing Commissioner**, acting for the Secretary of the U.S. Department of Housing and Urban Development.

Best Practices: Horror Stories/How to Survive

- Examples/Stories of near closing deaths and how they were revived.
 - “Oh, you actually wanted me to issue the HUD form opinion?”
 - Grocery Cart Delivery
 - Remember we are all in the same boat rowing in the same direction (hopefully)
 - Title Companies can make or break a closing
- Tips to keep these from happening to you!
 - Communication: The single biggest problem in communication is the illusion that it has taken place. – George Bernard Shaw



Best Legal Practices: We Are CLOSED!



QUESTIONS?

HMAC ANNUAL CONFERENCE
June 13-14, 2019

