

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
LEGAL REQUIREMENTS FOR INITIAL CLOSING

Section 202/Section 811

Project Name: _____
Project Number: _____
Name of Owner: _____
Name of Sponsor: _____

The HUD Attorney will obtain three copies of all of the following documents unless otherwise indicated below. These will be Originals (Or), Executed (E), Certified (C) or Conformed (Cn) as indicated after each document below. N/F means no form. Photocopies of fully executed documents may be submitted for conformed copies.

INITIAL CLOSING

- (1) Capital Advance Agreement (HUD 90167-CA) (HUD will have copies of this)
- (2) Firm Commitment for Capital Advance Financing (using form HUD-92432-CA until revised) including reissued, revised or amended firm commitment (8/92) 3Cn
- (3) Certificate of Incorporation (HUD-91232A) (4/92) C, 2Cn
- (4) Bylaws C, 2Cn
- (5) Incumbency Certificate (N/F) Or, 2Cn
- (6) Certificate of Existence (must be within 30 days of closing) (N/F) Or, 2Cn
- (7) Regulatory Agreement (HUD)-92466-CA)(4/92) Or, 3Cn
- (8) Corporate Resolution (authorizing mortgage transaction) C, 2Cn
- (9) Lease (if mortgage is on leasehold) C, 2Cn
- (10) Land-Disposition Contract and Deed (if project is in Urban Renewal Area) E, 2Cn
- (11) Title Policy (1992 ALTA loan policy with 8.1 Endorsement) Or, 2Cn
- (12) Evidence of Zoning Compliance 3Cn
- (13) Building Permits 3Cn

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|---|-------------------------------|
| (14) Surveyor's Report (HUD-92457-M) | Or, 2Cn |
| (15) Survey | 3Cn |
| (16) Mortgage, Deed of Trust or Security Deed (HUD-90165-CA) | Or, 3Cn |
| (17) Mortgage Note (HUD-93432-CA) (4/92) | Or, 3Cn |
| (18) a. Construction Contract, Lump Sum (HUD 92442-CA) (3/94) and Contractor's Requisition (HUD 92448) | E, 2Cn E, 2Cn |
| OR | |
| b. Construction Contract, Cost Plus (HUD 92442A-CA) (3/94) and Contractor's Requisition (HUD 92488) | E, 2Cn E, 2Cn |
| AND (if applicable) | |
| c. Construction Contract Incentive Payment (HUD 92443-CA)(3/94) | E, 2Cn |
| (19) Contractor's and Mortgagor's Cost Breakdown (HUD 2328) (HUD will provide) | 3C |
| (20) Assurance of Completion: | |
| a. Performance Bond (Dual-Obligee) (FHA 2452) and Payment Bond (HUD 92452A) (5/89) and Surety Company's Telegram or Facsimile | Or, 2Cn Or, 2Cn Or, 2Cn |
| OR | |
| b. Performance/Payment Bond (Dual Obligee) (HUD-92542-CA) (4/92), or and Surety Company's Telegram or Facsimile | Or, 2Cn Or, 2Cn |
| OR | |
| c. Completion Assurance Agreement (HUD 92450-CA) (8/92) | Or, 2Cn |
| (21) Owner-Architect Agreement (AIA Document B108); HUD Amendment (HUD 90169-CA); and Architect's Certification | E, 2Cn |
| (22) Assurance of Completion of Off-Site Facilities: | E, 2Cn |
| a. Escrow Agreement for Off-Site Facilities (HUD 90170-CA) (8/92), | Or, 2Cn |
| OR | |
| b. Off-Site Bond (HUD 90177-CA) (4/92) | Or, 2Cn |
| (23) Assurance of Utility Services (water, sewer, electricity, gas, heat) | E, 2Cn |
| (24) Owner's I.R.S. Tax-Exemption Ruling | 3Cn |
| (25) Owner's Certificate (HUD 92433-CA) (4/92) | Or, 2Cn |
| (26) Owner's Attorney's Closing Opinion (new long form developed by HUD Office of General Counsel is required including Owner's Certification) | Or, 2Cn |

- (27) Evidence of Owner's Deposit (minimum capital investment) and ability to provide moveable furnishings and equipment not covered in capital advance Or, 2 Cn
- (28) Owner's assurance of funds to cover costs over and above capital advance, (if applicable) Or, 2 Cn
- (29) FHEO Certification in Connection with the Development and Operation of Project (Obtain form from Multifamily Housing Hub) Or, 2Cn
- (30) Blanket Fidelity Bond (N/F) Or, 2Cn
- (31) Part I of Agreement to Enter into Project Rental Assistance Contract (HUD-90172A-CA), if not previously executed (Or, 2Cn)
- (32) Part II of Agreement to Enter into Project Rental Assistance Contract (HUD-90172B-CA), if not previously executed (Or, 2Cn)
- (33) Use Agreement (HUD-90163-CA) (4/92) Or, 3Cn
- (34) Agreement and Certification (HUD 93566-CA) (4/92) Or, 2Cn
- (35) Collateral Agreements, if any Or, 2Cn
- (36) Attendance List (HUD will provide)
- Additional Closing Requirements (State or Local Requirements):
- (37) Security Agreement and UCC-1 Financing Statements Or, 2Cn
- (38) Certificates of Insurance as required by form HUD-90164-CA Or, 2Cn

Legal Requirements For Initial Closing Section 202/Section 811
Notice H-96-102 (HUD), Attachment F
New York State Addendum

Initial Closing Document Number:

- (1) Capital Advance Agreement, amended pursuant to Section 22 of the Lien Law of the State of New York. **Document must be filed.** (HUD-Housing will provide)
- (2) Firm Commitment (HUD-Housing will provide).
- (3) Certificate of Incorporation, Form HUD-92432-CA also applies to forms organizational documents, such as Articles of Organization.
- (4) Bylaws, must be Certified by corporate secretary and include an Authentication of Adoption.
- (5) Incumbency Certificate, should contain commencement and expiration dates of officers.
- (6) Certificate of Existence, in New York State, provide a Certificate of Subsistence dated within thirty (30) days of closing.
- (7) Regulatory Agreement, if elevator exists, agreement must include an Elevator Maintenance Contract Rider. **This document must be recorded.**
- (8) Corporate Resolution, must be certified by the Secretary, dated the day of closing, and contain the following language: The resolution dated has not been revoked, amended, modified or changed.
- (10) Land-Disposition Contract and Deed additionally, in the City of New York a HPD letter regarding reversion is required.
- (11) Title Policy, ALTA 9 Endorsement is also required.
- (12) Evidence of Zoning, must include (1) Letter from Municipality and in addition may included either (2) Letter from Architect/Engineer, or (3) Opinion of Zoning Counsel.
- (13) All building permits must be issued by legally recognized entity.
- (14) Surveyor's Report, must be dated within thirty (30) days of closing.
- (15) Survey, must be dated within ninety (90) days of closing and comply with ALTA/ACSM minimum standards and contain Table A Optional Specifications as described in form HUD-92457.
- (16) Mortgage, use local form promulgated by Office of Regional Counsel for New York. **This document must be recorded.**
- (18) Construction Contract, include a rider deleting the A201-1997 form arbitration clause.

Legal Requirements For Initial Closing Section 202/Section 811
Notice H-96-102 (HUD), Attachment F
New York State Addendum

- (20) Assurance of Completion, evidence must show that: (1) Surety Company is listed on the Treasury list, (2) has an ability to provide amount of coverage, and (3) executed a Power of Attorney for the surety representative attending the closing.
- (21) Standard Form of Agreement between Owner and Architect for Housing Services (AIA Document B108) (2009 edition) including:
 - a. HUD Amendment (form HUD 90169-CA),
 - b. Amendment to AIA Document B181 (from Appendix 2, HUD Handbook 4460.1), and
 - c. Design Architect's Certification (set out in Attachment C, Notice H96-102-HUD)
- (26) Owner's Attorney's Opinion, must include additional language regarding Article 9 as adopted in New York State. Note that the proper form is the 1997 attorney's opinion found at 62 Fed. Reg. 8749, 8760-64 (Feb. 26, 1997).
- (33) Use Agreement. **This document must be recorded.**
- (37) Security Agreement and Financing Statements must include the following attachments: (1) Schedule A (general collateral description) (including accounts receivable), (2) Schedule B (specific property list) (which must be approved by HUD Housing Office), and Exhibit A (legal description of premises). **Financing Statements must be filed.**

ADDITIONAL CLOSING DOCUMENTS, IF ANY

ALL ADDITIONAL CONDITIONS REFERENCED IN THE FIRM COMMITMENT.

Note: for Survey/Surveyor's Report- the certification language noted on the attached Survey Instructions (HUD-92457A-M) must be stated verbatim, with no deviation in the wording. Please make sure that your Surveyor receives a copy of the survey instructions prior to the preparation of the final survey.

For the Current Incumbency Certificate for Owner and/or Sponsor

For new members listed on the Incumbency Certificate for either the Owner or Sponsor a Previous Participation, HUD Form 2530 must be provided. The authorized user for your organization must create the baseline information in APPS in order for HUD to process the 2530.

NOTE: THE ABOVE DATED HUD FORMS SHOULD BE USED UNLESS A MORE RECENT UPDATED HUD FORM IS AVAILABLE, WHICH MAKES PREVIOUS

Revised 9/6/2013



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, D.C. 20410-8000

OFFICE OF THE ASSISTANT SECRETARY
FOR HOUSING-FEDERAL HOUSING COMMISSIONER

Special Attention of:

Notice H 2011-09

All Multifamily Hub and Program Center Directors
and Development Staff

Issued: June 20, 2011

Expires: June 30, 2012

Cross References: MAP Guide
Handbooks: 4430.1, 4460.1
Mortgagee Letter 2011-21

SUBJECT: Revised Instructions for Preparing American Land Title Association
(ALTA)/American Congress on Surveying and Mapping (ACSM) Land Title
Survey for HUD Multifamily Housing Programs

I. Purpose

This Notice supersedes any previous informal guidance relating to the replacement of HUD Survey Instructions and Report, Form HUD-92457, 2005 Minimum Standard Detail Requirements for American Land Title Association/American Congress on Surveying and Mapping Land Title Survey instructions, with new Forms (attached) HUD-92457A-M, HUD-92457M, HUD Survey Instructions and Report, 2011 Minimum Standard Detail Requirements for ALTA/ACSM Land Title Survey.

The option available through this Notice will be effective immediately.

II. Background

The American Land Title Association (ALTA), the American Congress on Surveying and Mapping (ACSM) and the National Society of Professional Surveyors, (NSPS) worked in conjunction to develop a set of land surveying standards. The new 2011 ALTA/ACSM Minimum Standard Detail Requirements for Land Title Survey was effective February 23, 2011.

In keeping with prior HUD survey policy and form requirements, the new Form HUD-92457A-M, HUD Survey Instructions and Report and Form HUD-92457M, Surveyor's Report provides supplemental HUD surveyor instructions and surveyor certification to the Department.

The Department is in the process of amending the MAP Guide to include the 2011 ALTA/ACSM Standards.

III. HUD Survey Instructions, Form HUD-92457A-M, and Report, Form HUD-92457M

Although the new HUD Survey Instructions, Form HUD-92457A-M, and Report, Form HUD-92457M, will be required submission documents for multifamily housing programs in connection with firm commitments issued on or after September 1, 2011, the new survey forms may be used prior to September 1, 2011, at the Mortgagee's option, if written notice of such use is provided to HUD. Use of the revised Form HUD-92457M is not required for transactions in which firm commitments are issued prior to September 1, 2011, and the use of the 2005 Form HUD-92457, relating to the 2005 ALTA/ASCM Standards remains acceptable for such transactions in which firm commitments are issued prior to September 1, 2011. The new forms are attached to this Housing Notice and may be accessed on HUD's website, www.hudclips.org.

Changes to the HUD Survey Instructions and Report form include:

- 2011 Minimum Standard Detail Requirements for ALTA/ACSM Land Title Surveys jointly established and adopted by the American Land Title Association, American Congress on Surveying and Mapping and the National Society of Professional Surveyors.
- The 2011 Minimum Standard Detail Requirements for ALTA/ACSM Land Title Surveys, Table A, Optional Survey Responsibilities and Specifications, thereof, items 1, 2, 3, 4, 6a, 6b, 7a, 8, 9, 10a, 10b, 11b, 12, 13, 16, 17, 18, 19 and 20a, are the same as the 2005, Table A, Optional Survey Responsibilities and Specifications (flood zone, parking spaces, land area, zoning, etc.) with the following exceptions:
 1. While the required information did not change, minor edits were done to items 3, 8, 9, 12, 13, 16, and 17.
 2. Item 2, now requires the surveyor to notate postal/property address(es) on the survey. Previous item 2 requirement for a vicinity map has been moved to a requirement under Section 6.D.i.
 3. Item 6a, 6b, is a new requirement for current zoning classification and building setback requirements. HUD requires this information on drawings and application exhibits. This information will now be a requirement of the surveyor.
 4. Item 7, has the option for "gross floor area" removed. It was difficult for the surveyor to determine the gross floor area of multi-story buildings without entering the building and measuring the interior which is beyond their scope of work.
 5. Item 10, is a new requirement for the determination and location of division or party walls (typically walls separating units in condos or townhomes) and determination if such walls are plumb. The previous item 10, an option for showing access to a public way has been moved to a mandatory requirement under Section 5.B.iii, Section 5.B.vii and Section 6.C.iv.

6. Item 20a, is a new item that references location of improvements within any offsite easements or servitudes benefiting the property. This new option requirement is necessary to ensure offsite utilities, roads and or other improvements are legal.
- Flood Hazard Involved: Where any portion of the site is subject to flood hazard, the surveyor must clearly indicate the 100 year return frequency flood hazard elevation and flood zone for all projects plus the 500 year return frequency flood hazard elevation and flood zone for Section 811 Supportive Housing for Persons with Disabilities program. This section was modified to eliminate the reference to healthcare facilities and added Section 811 housing program.
 - Surveyor's Certification: This certification was revised to reference the 2011 Minimum Standard Detail Requirements for ALTA/ACSM Land Title Surveys.

The information collection requirements contained in this document have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) and assigned OMB control number 2502-0598. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number.

Any questions regarding this Notice should be directed to Joseph A. Sealey, Director, Technical Support Division at (202) 402-2559. Persons with hearing or speech impairments may access this number via TDD/TTY by calling 1-877-TDD-2HUD (1-877-833-2483).

/s/

Robert C. Ryan
Acting Assistant Secretary for Housing-
Federal Housing Commissioner

Attachment: Form HUD-92457A-M
Form HUD-92457M

HUD Survey Instructions and Report

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

OMB Approval No. 2502-0598
(Exp. 04/30/2014)

Public Reporting Burden for this collection of information is estimated to average 0.5 hour 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. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, DC 20410-3600 and to the Office of Management and Budget, Paperwork Reduction Project (2502-0598), Washington, DC 20503. Do not send this completed form to either of the above addresses.

This survey is to be used in a multifamily housing loan transaction submitted to HUD.

Its uses will include:

- ☐ Land title recordation (all cases).
- ☐ Site grading plan preparation (item 1 below).
- ☐ Plot plan design/redesign (item 2 below).

Special Project Features:

- ☐ Condominium/Air-rights, and/or
- ☐ Other: (Specify)

Standards of Performance: In every instance the survey and map(s) and/or plat(s) must be made in accordance with the requirements for an "ALTA/ACSM Land Title Survey" and in compliance with the:

- 2011 Minimum Standard Detail Requirements for ALTA/ACSM Land Title Surveys, jointly established and adapted by the American Land Title Association and the National Society of Professional Surveyors;
 - Table A, Optional Survey Responsibilities and Specifications, thereof, items 1, 2, 3, 4, 6a, 6b, 7a, 8, 9, 10a, 10b, 11b, 12, 13, 16, 17, 18, 19, and 20a;
 - And the following requirements as applicable:
1. **Site Grading Involved:** Comply with table A, item 5. Contours may not exceed 1-foot vertical intervals, except that 2-foot and 5-foot vertical intervals may be used where the mean site gradient exceeds 5 percent and 10 percent respectively. Where curbs and/or gutters exist, show top of curb and flow line elevations.
 2. **Plot Plan Design/Redesign Involved:** Comply with Table A, Item 6.

3. **Condominium/Air-rights Involved:** The surveyor must provide a survey made in accordance with any Property Jurisdiction requirements or, in the absence of such requirements, professionally recognized standards.
4. **Flood Hazard Involved:** Where any portion of the site is subject to flood hazard, show the 100-year return frequency flood hazard elevation and flood zone for all projects plus the 500 year return frequency flood hazard elevation and flood zone for Section 811 housing program. For existing projects show the site elevation at the building entrances, lowest habitable finished floor, and basement for each primary building, and the vehicular parking area that serves each primary building. Take return frequency flood hazard elevations from the applicable Federal Flood Insurance Rate Map. Where such is not available, take the elevations from available state or local equivalent data, or when not available, work in conjunction with owner's engineer.
5. **Blanket Easement Involved.** Show on the map/plat the location of any facility that is located within or traverses the property under provisions of a blanket easement.

Additional Owner Requirements: The following requirements are not intended to void any other part of this instruction.

Owner's Representative / Contact:

Name & Phone No: _____

Address: _____

Surveyor's Report: A current Surveyor's Report (not more than 120 days old) must be included with the survey map(s)/plat(s) submitted to HUD for: project design review, construction contract document sets, as required during construction, upon project completion; and with the map(s)/plat(s) used at initial and final closing.

Certification: The survey map/plat must bear the following certification:

"I hereby certify to HUD, (*Borrower*), (*Sponsor*), (*Lender*), (*Title Insurance Underwriter*), (*Other*), and to their successors and assigns, that:

"I made an on the ground survey per record description of the land shown hereon located in (*city or town, county, township,*

etc.), on (*date*); and that it and this (these) map(s) was (were) made in accordance with the HUD Survey Instructions and Report, HUD 92457M, and the requirements for an ALTA/ACSM Land Title Survey, as defined in the 2011 Minimum Standard Detail Requirements for ALTA/ACSM Land Title Surveys.

"To the best of my knowledge, belief and information, except as shown hereon: There are no encroachments either way across property lines; title lines and lines of actual possession are the same; and the premises are [*free of any*] [*subject to a*] 100/500 year return frequency flood hazard, and such [*flood free*] [*flood*] condition is shown on the Federal Flood Insurance Rate Map, Community Panel No. (*if none, so state*)."

TABLE A

OPTIONAL SURVEY RESPONSIBILITIES AND SPECIFICATIONS

NOTE: The items of Table A must be negotiated between the surveyor and client. It may be necessary for the surveyor to qualify or expand upon the description of these items, e.g., in reference to Item 6, there may be a need for an interpretation of a restriction. The surveyor cannot make a certification on the basis of an interpretation or opinion of another party. Items 16, 17 and 18 are only for use on projects for the U.S. Department of Housing and Urban Development (HUD).

If checked, the following optional items are to be included in the ALTA/ACSM LAND TITLE SURVEY, except as otherwise negotiated:

1. ☐ Monuments placed (or a reference monument or witness to the corner) at all major corners of the boundary of the property, unless already marked or referenced by an existing monument or witness to the corner.
2. ☐ Vicinity map showing the property surveyed in reference to nearby highway(s) or major street intersection(s).
3. ☐ Flood zone designation (with proper annotation based on federal Flood Insurance Rate Maps or the state or local equivalent, by scaled map location and graphic plotting only.)
4. ☐ Gross land area (and other areas if specified by the client).
5. ☐ Contours and the datum of the elevations.
6. ☐ List setback, height, and floor space area restrictions disclosed by applicable zoning or building codes (beyond those required under paragraph 5d of these standards). If none, so state. The source of such information must be disclosed. See "Note" above.
7. ☐ (a) Exterior dimensions of all buildings at ground level
 NO → (b) Square footage of:
 ☐ (1) exterior footprint of all buildings at ground level
 ☐ (2) gross floor area of all buildings; or
 ☐ (3) other areas to be defined by the client
 NO → (c) Measured height of all buildings above grade at a defined location. If no defined location is provided, the point of measurement shall be shown.
8. ☐ Substantial, visible improvements (in addition to buildings) such as billboards, signs, parking structures, swimming pools, etc.
9. ☐ Parking areas and, if striped, the striping and the type (e.g. handicapped, motorcycle, regular, etc.) and number of parking spaces.
10. ☐ Indication of access to a public way on land such as curb cuts and driveways, and to and from waters adjoining the surveyed tract, such as boat slips, launches, piers and docks.
11. ☐ Location of utilities (representative examples of which are shown below) existing on or serving the surveyed property as determined by:
 ☐ (a) Observed evidence
 ☐ (b) Observed evidence together with evidence from plans obtained from utility companies or provided by client, and markings by utility companies and other appropriate sources (with reference as to the source of information)
 - railroad tracks and sidings;
 - manholes, catch basins, valve vaults or other surface indications of subterranean uses;
 - wires and cables (including their function, if readily identifiable) crossing the surveyed premises, all poles on or within ten feet of the surveyed premises, and the dimensions of all crossmembers or overhangs affecting the surveyed premises; and
 - utility company installations on the surveyed premises.
12. ☐ Governmental Agency survey-related requirements as specified by the client.

13. _____ Names of adjoining owners of platted lands.
14. _____ The distance to the nearest intersecting street as designated by the client
15. _____ Rectified orthophotography, photogrammetric mapping, laser scanning and other similar products, tools or technologies may be utilized as the basis for the location of certain features (excluding boundaries) where ground measurements are not otherwise necessary to locate those features to an appropriate and acceptable accuracy relative to a nearby boundary. The surveyor shall (a) discuss the ramifications of such methodologies (e.g. the potential accuracy and completeness of the data gathered thereby) with the title company, lender and client prior to the performance of the survey and, (b) place a note on the face of the survey explaining the source, date, relative accuracy and other relevant qualifications of any such data.
16. No _____ Observable evidence of earth moving work, building construction or building additions within recent months.
17. No _____ Any changes in street right of way lines either completed or proposed, and available from the controlling jurisdiction. Observable evidence of recent street or sidewalk construction or repairs.
18. No _____ Observable evidence of site use as a solid waste dump, sump or sanitary landfill.
19. _____