

STATE AGENCIES' MANUAL

APPENDIX N

**FDIC
MULTIFAMILY AFFORDABLE HOUSING
COMPLIANCE REPORT**

RELEASE FROM LAND USE RESTRICTION AGREEMENT

THIS RELEASE FROM LAND USE RESTRICTION AGREEMENT (this "Release") is executed this ___ day of _____, _____ by _____ (the "Agency") with respect to the obligations of _____ (the "Owner") as the owner of a rental housing project commonly known as _____ (the "Property") under a Land Use Restriction Agreement (the "Agreement") dated as of 199_, by and between the Owner or a predecessor in title to the Property and the Resolution Trust Corporation ("RTC") (the "Agreement").

WHEREAS, the Agreement was entered into by the Owner or a predecessor in title and RTC in order to satisfy certain requirements of Section 21 (A)(c) of the Federal Home Loan Bank (12 U.S.C. §1441A(c)), as it existed as of the date of execution of the Agreement, with respect to occupancy of the Property by Lower Income Families or Very Low Income Families (as such terms are defined in the Agreement) and the rents which may be charged to such families; and

WHEREAS, the Agency is the successor to or assignee of RTC with respect to RTC's powers and responsibilities under the Agreement; and

WHEREAS, the Agreement, at Section 1. 1 (), provides for its termination upon the occurrence of certain events therein set forth [, subject to revival in certain instances as therein provided]; and

WHEREAS, the Agency has determined that there has been [foreclosure] [total involuntary loss of the Property for residential housing purposes] [OR STATE OTHER JUSTIFICATION], such event leading to the end of the "Term" of the Agreement, as such term is defined in the Agreement.

NOW, THEREFORE, in consideration of the premises and in pursuit of its responsibilities and authorities pursuant to Section [4.7] of the Agreement, the Agency hereby acknowledges the end of the Term of the Agreement and the release of the Property from the requirements of the Agreement in accordance with the terms thereof.

IN WITNESS THEREOF, the undersigned has hereunto affixed its signature and seal as of the date hereof.

[AGENCY]

By: _____ Title: _____

**FDIC
MULTIFAMILY AFFORDABLE HOUSING
COMPLIANCE REPORT (continued)**

**[INSTRUCTIONS TO STATE HOUSING AGENCIES FOR
EXECUTION OF RELEASES FROM LURA REQUIREMENTS]**

Attached is a suggested form of Release from Land Use Restriction Agreement (the "Release") which is to be used in order to acknowledge the termination of the applicable LURA with respect to a particular (multifamily) property.²⁰ The most commonly used form of LURA provides, at Section 1. 1 (o), for the end of the "Term" of the LURA upon the earliest of:

1. Involuntary loss of the Property caused by seizure, condemnation, foreclosure or deed-in-lieu of foreclosure;
2. Total involuntary loss as a result of fire or other casualty;
3. Obsolescence of the Property, making it unusable for housing, with no financially feasible option of rehabilitation;
4. The later of 40 years from the date of the LURA or 50 years from the date the Property was initially occupied as multifamily housing.

Upon the request of a property owner, the Agency may determine which of the cited circumstances has occurred and execute the Release accordingly. The Release should set forth the particular circumstance giving rise to the end of the Term.

Note that the LURA provides that, in the event of loss of the Property by foreclosure or deed-in-lieu, the low-income occupancy requirements are revived if a party which owned the Property at the time of, or immediately prior to, foreclosure acquires an ownership interest in it at any time thereafter. This provision, which may be of concern to lenders and successor owners as a cloud upon the title, is intended to prevent foreclosures which are carried out solely in order to enable the owner to escape the low-income occupancy requirements while retaining effective use of the Property. The provision should not be applied, and revival of the restriction should not be sought, merely in circumstances in which a party, following a bona fide foreclosure, subsequently reacquires an interest in a Property on a reasonable commercial basis. Your Agency should feel free to share this guidance and interpretation with concerned parties.

²⁰ If a particular Agency finds the proposed form of Release unsuitable for use in its State, for whatever reason, that Agency should use whatever format it finds appropriate. Please advise RTC of any such incompatibility which you believe to exist.

