

claims for structural defects occasioned by a common cause shall be subject to the payment of no more than one deductible. In addition, a Plan covering a condominium must provide the condominium association with an additional warranty that allows for claims by homeowners involving the common elements of the building.

(2) A homeowner shall be liable for a deductible only if a builder defaults on warranty performance and the Plan issuer has to make the covered corrections. When the builder performs corrections under the builder's warranty, no deductible that may be included in the Plan is applicable.

(g) In the event of any dispute regarding a homeowner complaint or structural defect claim, Plans must, unless prohibited by applicable law, provide for binding arbitration proceedings arranged through a nationally recognized dispute settlement organization. The sharing of arbitration charges shall be as determined by the Plan. A Plan must contain pre-arbitration conciliation provisions at no cost to the homeowner, and provision for judicial resolution of disputes, but arbitration, which must be available to a homeowner during the entire term of the coverage contract, must be an assured recourse for a dissatisfied homeowner.

(h) Where a State has a home protection act or other statutes or regulations that require its approval of Plans, a Plan issuer must demonstrate such approval to HUD as an additional prerequisite to HUD acceptance.

(i) A Plan issuer must provide homeowners an executed coverage contract clearly describing—

- (1) The identity of the property covered;
- (2) The time at which coverage begins;
- (3) The maximum amount of Plan liability;
- (4) Noncancellability of the coverage contract by the Plan or its insurance backers;
- (5) No-cost transferability of unexpired coverage to successors in title;
- (6) The property coverage provided;
- (7) Any exclusions from coverage;
- (8) Performance standards for resolving homeowner complaints and claims

(if standards for complaint and claim adjustment are promulgated as part of a Plan);

(9) Dispute settlement procedures;

(10) The names, addresses, and telephone numbers of the Plan issuer and its insurance backers; and

(11) When, to whom, under what conditions, and to what address homeowners should submit any construction deficiency complaints or structural defects claims.

(j) Plans will not be required to warrant that a covered property complies with:

(1) Original dwelling plans and specifications;

(2) Applicable building codes; or

(3) Specific terms of a homeowner's contract to purchase a property.

[55 FR 41021, Oct. 5, 1990, as amended at 61 FR 36264, July 9, 1996]

§ 203.205 Plan coverage.

(a) Plan coverage must take effect at closing or settlement following the initial sale of the property to the homeowner.

(b) During the first year of coverage, a Plan must provide for a warranty against defects in workmanship and materials resulting from the failure of the covered property to comply with standards of quality as measured by acceptable trade practices, as well as correct the problems with, or restore the reliable function of, appliances and equipment damaged during installation or improperly installed by the builder. The plan must also cover structural defects as defined in § 203.200.

(c) During the first and second year of coverage, a Plan must provide a warranty against defects in the wiring, piping and ductwork in the electrical, plumbing, heating, cooling, ventilating, and mechanical systems.

(d) Basement slabs in designated areas must be covered by a warranty in the Plan against damage from the first through the fourth year.

(e) From the first through the tenth year, structural defect (as defined in § 203.200), except as provided in paragraph (d) of this section, must be covered by a warranty in the Plan.

(f) A Plan must provide insurance coverage for builder default on any warranty obligation.

§ 203.206

The coverage described in paragraph (b) through (f) of this section is the minimum level of coverage that HUD will find acceptable in a Plan.

§ 203.206 Housing performance standards or criteria.

A Plan may contain housing performance standards or criteria for resolution of homeowner claims or complaints that are fair, reasonable, and consistent with the intent of the Plan, including Plan coverage under § 203.205. If a Plan contains such criteria or standards, they must be acceptable to the Secretary.

§ 203.207 Designated area.

The Secretary may designate any part of the country as a “high risk area” where construction practices allow basement slabs to be placed on expansive or collapsible soil. By virtue of this authority, the Secretary has designated the State of Colorado as a “high risk area.”

§ 203.208 Insurance backing criteria.

An insurance company backing or operating a Plan must be duly licensed or approved (and with the Plan filed and approved where appropriate) to market such insurance coverage by the proper regulatory agency in each State in which the Plan will operate. Any company operating under the Product Liability Risk Retention Act of 1981, as amended, will be regarded as having met licensing, filing, and approval requirements of all States, but must first demonstrate that it—

(1) Meets licensing, filing and approval requirements in its domiciliary State; and

(2) Meets each of the requirements of paragraphs (A) through (H) of section (a)(4) of the Liability Risk Retention Act of 1986 (15 U.S.C. 3901(a)(4) (A) through (H), (Supp. IV 1986).

(Approved by the Office of Management and Budget under control number 2502-0343)

§ 203.209 Payments under a plan.

(a) If a Plan issuer or insurance backer elects to compensate a homeowner for damage suffered by the homeowner’s property that is covered under a Plan in lieu of the Plan issuer’s making repairs such compensation must be

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made jointly to the mortgagee and the homeowner.

(b) If payment is to be made to the mortgagee and homeowner, the Plan issuer first must receive the mortgagee’s assurance in writing that the mortgagee is satisfied, based on a showing by the homeowner, that the homeowner has made a binding commitment to have the necessary repairs made to restore the damaged property. If a homeowner elects not to repair his or her damaged property, then the mortgagee must apply the compensation in reduction of the outstanding indebtedness of the mortgage.

EFFECTIVE DATE

§ 203.249 Effect of amendments.

The regulations in this subpart may be amended by the Secretary at any time and from time to time, in whole or in part, but such amendment will not adversely affect the interests of a mortgagee under the contract of insurance on any mortgage or loan already insured, and will not adversely affect the interest of a mortgagee on any mortgage or loan to be insured for which either the Direct Endorsement or Lender Insurance mortgagee has approved the mortgagor and all terms and conditions of the mortgage or loan, or the Secretary has issued a firm commitment. In addition, such amendment will not adversely affect the eligibility of specific property if such property is covered by a conditional commitment issued by the Secretary, a certificate of reasonable value issued by the Secretary of Veterans Affairs, or an appraisal report approved by a Direct Endorsement or Lender Insurance underwriter.

[62 FR 30226, June 2, 1997]

Subpart B—Contract Rights and Obligations

DEFINITIONS

§ 203.251 Definitions.

As used in this subpart, the following terms shall have the meaning indicated:

(a) *Commissioner* means the Federal Housing Commissioner or his authorized representative.