

## CONDITION OF PROPERTY

## §§ 203.375–203.376 [Reserved]

**§ 203.377 Inspection and preservation of properties.**

The mortgagee, upon learning that a property subject to a mortgage insured under this part is vacant or abandoned, shall be responsible for the inspection of such property at least monthly, if the loan thereon is in default. When a mortgage is in default and a payment thereon is not received within 45 days of the due date, and efforts to reach the mortgagor by telephone within that period have been unsuccessful, the mortgagee shall be responsible for a visual inspection of the security property to determine whether the property is vacant. The mortgagee shall take reasonable action to protect and preserve such security property when it is determined or should have been determined to be vacant or abandoned until its conveyance to the Secretary, if such action does not constitute an illegal trespass. "Reasonable action" includes the commencement of foreclosure within the time required by § 203.355(b) of this part.

[57 FR 47972, Oct. 20, 1992]

**§ 203.378 Property condition.**

(a) *Condition at time of transfer.* When the property is transferred, or a mortgage is assigned to the Commissioner, the property shall be undamaged by fire, earthquake, flood, or tornado, except as set forth in this subpart.

(b) *Damage to property by waste.* The mortgagee shall not be liable for damage to the property by waste committed by the mortgagor, its heirs, successors or assigns in connection with mortgage insurance claims paid on or after July 2, 1968.

(c) *Mortgagee responsibility.* The mortgagee shall be responsible for:

(1) Damage by fire, flood, earthquake, hurricane, or tornado;

(2) Damage to or destruction of security properties on which the loans are in default and which properties are vacant or abandoned, when such damage or destruction is due to the mortgagee's failure to take reasonable action to inspect, protect and preserve such properties as required by § 203.377 of

this part, as to all mortgages insured on or after January 1, 1977; and

(3) As to all mortgages insured under firm commitments issued on or after November 19, 1992, or under direct endorsement processing where the credit worksheet was signed by the mortgagee's underwriter on or after November 19, 1992, any damage of whatsoever nature that the property has sustained while in the possession of the mortgagee if the property is conveyed to the Secretary without notice to and approval by the Secretary as required by § 203.379 of this part.

(d) *Limitation.* The mortgagee's responsibility for property damage shall not exceed the amount of its insurance claim as to a particular property.

[36 FR 34508, Dec. 22, 1971. Redesignated and amended at 41 FR 49735, Nov. 10, 1976; 57 FR 47973, Oct. 20, 1992; 58 FR 32057, June 8, 1993; 61 FR 36265, July 9, 1996; 61 FR 36453, July 10, 1996]

**§ 203.379 Adjustment for damage or neglect.**

(a) If the property has been damaged by fire, flood, earthquake, hurricane, or tornado, or, for mortgages insured on or after January 1, 1977, the property has suffered damage because of the mortgagee's failure to take action as required by § 203.377, the damage must be repaired before conveyance of the property or assignment of the mortgage to the Secretary, except under the following conditions:

(1) If the prior approval of the Secretary is obtained, there will be deducted from the insurance benefits the Secretary's estimate of the cost of repairing the damage or any insurance recovery received by the mortgagee, whichever is greater.

(2) If the property has been damaged by fire and was not covered by fire insurance at the time of the damage, or the amount of insurance coverage was inadequate to repair fully the damage, only the amount of insurance recovery received by the mortgagee, if any, will be deducted from the insurance benefits, provided the mortgagee certifies, at the time that a claim is filed for insurance benefits, that:

(i) At the time the mortgage was insured, the property was covered by fire insurance in an amount at least equal