



4900 Woodway Drive, Suite 650

Houston, TX 77056

Phone: 713-871-0005

Fax: 713-871-1358

**Thomas E. Black, Jr., P. C.\***

**Calvin C. Mann, Jr., P. C.**

**Gregory S. Graham, P. C.**

**David F. Dulock**

**Diane M. Gleason**

**Benjamin R. Idziak \*\***

**Shawn P. Black \*\***

**Thomas L. Kapioltas**

**Margaret A. Noles**

**Robert J. Brewer**

\* Also Licensed in Iowa, New York,  
Washington and West Virginia

\*\* Also Licensed in New York

October 2, 2008

**To:** Clients and Friends

**From:** David F. Dulock

**Subject:** FHA Provides Underwriting Guidance on Converting Existing Homes to Rentals - Mortgage Letter 2008-25

On September 19, 2008, FHA issued Mortgagee Letter 2008-25 to provide underwriting guidance on FHA insured transactions where a principal residence is being vacated in favor of another principal residence. Due to FHA's concern that some homebuyers in these transactions may attempt to provide misleading information regarding the rental income of the principal residence being vacated to qualify for the FHA mortgage on the new principal residence, FHA is instituting underwriting guidance designed to assure that the homebuyer can make payments on the full debt service of both mortgages.

Mortgagee Letter 2008-25 applies solely to a principal residence being vacated in favor of another principal residence. Mortgagee Letter 2008-25 does not apply to existing rental properties disclosed on the loan application and confirmed by tax returns (Schedule E of form IRS 1040) or to a principal residence being vacated secured by a mortgage insured by FHA. Please note that in this latter instance, eligibility for a second FHA insured mortgage can only occur under the exemptions described in [handbook HUD-4155.1 REV-5, paragraph 1-2](#).

Beginning with case number assignments on or after September 19, 2008 and until further notice, the underwriting analysis may not consider any rental income from the principal residence being vacated except under circumstances described in Mortgagee Letter 2008-25. Please refer to the copy of Mortgagee Letter 2008-25 attached to this memorandum for a complete description of these limited circumstances under which rental income may be considered.

This Memorandum is provided for the general information of the clients and friends of our firm only and is not intended as specific legal advice. You should not place reliance on this general information alone but should consult legal counsel regarding the application of the information discussed in this Memorandum to your specific case or circumstances.

*(Mortgagee Letter 2008-25 attached)*

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

ASSISTANT SECRETARY FOR HOUSING-  
FEDERAL HOUSING COMMISSIONER

**September 19, 2008**

**MORTGAGEE LETTER 2008-25**

**TO: ALL APPROVED MORTGAGEES**

**SUBJECT: Converting Existing Homes to Rentals—Underwriting Instructions**

Through this Mortgagee Letter, the Federal Housing Administration (FHA) takes steps to immediately respond to an unscrupulous practice arising in the housing mortgage market that poses a risk to FHA, FHA-approved lenders, and consequently to FHA's ability to help new homeowners.

Recently, FHA and others in the mortgage industry have observed an increasing number of homeowners who have chosen to vacate their existing principal residence and purchase a new residence. This has been occurring as some homeowners, given the rising price of fuel, are relocating to homes nearer their employment, or are taking advantage of other home buying opportunities arising in the marketplace.

Due to FHA's concern that some homebuyers in these transactions may attempt to provide misleading information regarding the rental income of the property being vacated to qualify for the new mortgage, FHA is instituting underwriting guidance designed to assure that the homebuyer can make payments on the full debt service of both mortgages. Consequently, beginning with case number assignments on or after the date of this Mortgagee Letter and until further notice, the underwriting analysis may *not* consider any rental income from the property being vacated except under circumstances described in this Mortgagee Letter. The exclusion of rental income from property being vacated is being instituted on a temporary basis while FHA further analyzes this situation to determine whether permanent measures may need to be taken. This will assure that a homeowner either has sufficient income to make both mortgage payments without any rental income or has an equity position not likely to result in defaulting on the mortgage on the property being vacated. In either case, this guidance is directed to preventing the practice known as "buy and bail" where the homebuyer purchases, for example, a more affordable dwelling with the intention to cease making payments on the previous mortgage. Although the property being vacated will not have a mortgage insured by FHA, surrounding properties may and, thus, FHA may be indirectly negatively affected should that property result in a foreclosure.

Exceptions:

Rental income on the property being vacated, reduced by the appropriate vacancy factor as determined by the jurisdictional FHA Homeownership Center (see

<http://www.hud.gov/offices/hsg/sfh/ref/sfh2-21u.cfm>), may be considered in the underwriting analysis under the following circumstances:

- **Relocations**: The homebuyer is relocating with a new employer, or being transferred by the current employer to an area not within reasonable and locally recognized commuting distance. A properly executed lease agreement (i.e., a lease signed by the homebuyer and the lessee) of at least one year's duration after the loan is closed is required. FHA recommends that underwriters also obtain evidence of the security deposit and/or evidence the first month's rent was paid to the homeowner.
- **Sufficient Equity in Vacated Property**: The homebuyer has a loan-to-value ratio of 75 percent or less, as determined by either a current (no more than six months old) residential appraisal or by comparing the unpaid principal balance to the original sales price of the property. The appraisal, in addition to using forms Fannie Mae1004/Freddie Mac 70, may be an exterior-only appraisal using form Fannie Mae/Freddie Mac 2055, and for condominium units, form Fannie Mae1075/Freddie Mac 466.

The guidance in this Mortgagee Letter applies solely to a principal residence being vacated in favor of another principal residence. This Mortgagee Letter is not applicable to existing rental properties disclosed on the loan application and confirmed by tax returns (Schedule E of form IRS 1040).

It is important to note that if the property being vacated had a mortgage insured by FHA, eligibility for a second FHA insured mortgage can only occur under the exemptions described in [handbook HUD-4155.1 REV-5, paragraph 1-2](#).

If you have any questions regarding this Mortgagee Letter, call 1-800-CALLFHA.

Sincerely,

Brian D. Montgomery  
Assistant Secretary for Housing-  
Federal Housing Commissioner