



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, D.C. 20410-0500

OFFICE OF GENERAL COUNSEL

Legal Opinion: CIM-0121
Index: 3.400
Subject: Oakbrook Village Apartments
Project No. 064-35113

August 4, 2000

MEMORANDUM FOR: Gary Zimmerman, Chief, Multifamily
Claims Branch, HQFM

FROM: John J. Daly, Associate General Counsel
Insured Housing, CI

SUBJECT: Oakbrook Village Apartments
Project No. 064-35113

This memorandum responds to your request to Millicent Potts for legal advice about issues which were raised in connection with the request for a supplemental claim for insurance benefits by the former mortgagee, Republic National Bank (RNB), regarding the referenced project. Specifically, you asked for advice about whether Mortgagee Letter 93-12 requires an assigning mortgagee to submit Audited Financial Statements. In addition, you have asked for advice about whether certain legal fees paid by RNB are reimbursable by HUD.

First, you state that RNB disputes your interpretation of the language in Mortgagee Letter 93-12, "Recordkeeping Requirements for Reserve Fund for Replacements Activities and Forms HUD-9250." That mortgagee letter provides, in pertinent part:

Effective with the date of this Mortgagee Letter, mortgagees must retain paper copies of Forms HUD-9250 for only the current calendar year's activities and the three calendar years prior to the current year.

It further provides:

Providing Forms HUD-9250 to HUD When Assigning Defaulted Mortgages: Forms HUD-9250 for the three calendar years prior to the assignment of the mortgage plus those approved in the calendar year of the assignment are to be submitted to HUD when mortgages

are assigned to HUD as part of a Default Election.

We understand that the mortgage secured by this project was assigned to the Department on June 13, 1994, and in connection with the submission of the fiscal documentation, the mortgagee submitted HUD-9250s for years 1991-1993 as required under Mortgagee Letter 93-12. In a January 7, 2000 letter to Mary Martell, Esq., the attorney for RNB, your office informed her that:

[s]ince the issuance of Mortgagee Letter 93-12, the normal practice is when a claim is filed for insurance benefits with the Multifamily Claims Branch (MFCB), a copy of the latest AFS is included in the fiscal package.

In your January 7, 2000 memorandum, you advised us that, in settling claims for insurance benefits, your auditors rely on the Audited Financial Statements (AFS) to establish a beginning balance in the reserve for replacement account. You also indicated that, after you failed to get the AFS from the mortgagee, you used the Regulatory Agreement and Form HUD 9250 (RFR Withdrawal Authorizations) to determine the remaining balance in the reserve for replacement account at the time of default. That calculation resulted in a shortage in the reserve account in the amount of \$524,000. You further indicated that the mortgagee asserts that Mortgagee Letter 93-12 does not state that an Annual Financial Statement should be delivered to HUD part as part of the fiscal submission in connection with a claim for insurance benefits.

We have reviewed the Mortgagee Letter 93-12 and have concluded that the Mortgagee Letter does not require a mortgagee assigning a defaulted mortgage to the Secretary to submit a copy of the latest Audited Financial Statement in addition to submitting three prior years of HUD Form 9250. If this is an additional administrative requirement which your office has required by practice, it should be clearly pointed out in the fiscal instructions to mortgagees assigning defaulted mortgages to the Secretary. We recommend that Mortgagee Letter 93-12 be revised to make it clear that the submission of the latest Audited Financial Statement is required.

In this case, we understand that the mortgagee complied with the requirements of the Mortgagee Letter and submitted copies of each HUD Form 9250 from 1991 to the date of assignment of the mortgage to HUD on June 13, 1994. From our reading of the Mortgagee Letter, we think the mortgagee has satisfied the requirements of Mortgagee Letter 93-12 and was not required to provide the audited financial statement which your office requested.

Second, you state that the mortgagee paid certain legal fees in the bankruptcy proceeding involving Oakbrook Village. You

state that it is unclear which payments were to be reimbursed by HUD. We have reviewed the materials submitted by the mortgagee's attorney, Mary Martell, Esq., on behalf of the mortgagee. In correspondence from Special Assistant U.S. Attorney, Bam Vilorio, dated April 13, 1994 and May 6, 1994 (copies attached), Ms. Vilorio expressly agreed that Crossland (RNB is the successor in interest to Crossland) would be reimbursed by HUD for reasonable costs in connection with the bankruptcy proceeding, Oakbrook Village Associates v. Cisneros, and for the cost of appraisals. We defer to HUD Field Counsel in Texas and Louisiana about whether these billings were reasonable.

Please contact Gregory Bolton at ext. 5245 if you have any questions.

Attachments