

Legal Opinion: GCH-0067

Index: 2.375, 2.300, 2.155, 2.296

Subject: Applic. of Sec. 18 to Mutual Help and Turnkey III

July 23, 1992

MEMORANDUM FOR: Dominic A. Nessi, Director
Office of Indian Housing, PI

FROM: Robert S. Kenison, Associate General Counsel, Office of
Assisted Housing and Community Development, GC

SUBJECT: Applicability of Section 18 to the Mutual Help
and Turnkey III Homeownership Programs

On March 11, 1992, we sent you a memorandum concerning the applicability of section 18 of the U.S. Housing Act of 1937 ("Act") to damaged or destroyed units in both the public housing rental program and the Mutual Help Homeownership program. Our opinion stated that Section 18 did not apply to the voluntary or involuntary demolition of Mutual Help homeownership units. In response to our memorandum, you sent an April 3, 1992 memorandum requesting clarification of our opinion. As a result of your request we have had occasion to reconsider the advice that we gave on the inapplicability of section 18 to the Mutual Help Homeownership program and have determined that our earlier opinion was too broad.

The Mutual Help Homeownership program is designed to provide that upon completion of certain obligations the homebuyer will obtain legal title to the unit and will become a homeowner. The conveyance of the homeownership unit to the homebuyer in accordance with the requirements of the homeownership program, does not trigger the applicability of the section 18 demolition and disposition requirements. 24 CFR 905, Subpart M, Disposition and Demolition of Projects, contains the regulatory provisions relating to the demolition and disposition of Indian housing projects. 24 CFR 905.921(b) states that the requirements of the subpart are inapplicable to the " c onveyance of Indian housing for the purpose of providing homeownership opportunities for lower income families under section 21 of the Act, the Turnkey III or Mutual Help Homeownership Opportunity programs, or any other homeownership programs established under section 5(h), 6(c)(4)(D), or title II of the Act."

However, any other action by an IHA to dispose of or demolish an Indian Housing project is subject to the requirements of section 18 and 24 CFR Subpart M. As indicated in our March 11, 1992 opinion, this includes any voluntary demolition of a unit after it has been damaged by fire or other casualty. Where

a unit has been substantially destroyed such that it is clear that the unit is incapable of being repaired, the requirements of section 18 are inapplicable. However, where the damages caused by the external forces are not so severe as to eliminate the possibility of repair, any decision by the IHA to demolish the unit is subject to the requirements of section 18.

With respect to the issues raised in your memorandum of April 3, 1992, once it is determined that section 18 is inapplicable to a given situation, none of the requirements of section 18, including the replacement housing requirements, must be satisfied. On the other hand, once it is determined that section 18 is applicable to a given situation, all of the requirements of section 18, including the replacement housing requirements, must be satisfied by the demolition or disposition. The IHA cannot decide that vacancy rates or other reasons are sufficient to decide not to replace a unit. Of course the IHA is not required to replace the demolished or disposed of unit with another Mutual Help homeownership unit on the same site. The IHA has the full range of replacement housing options set forth at 24 CFR 905.935 for a replacement housing plan.

With respect to other provisions of the regulations or the ACC bearing on the damage or destruction of units, they must be read in conjunction with the requirements of section 18 and the implementing regulations. For instance, 24 CFR 905.452(b)(2) requires that an IHA must consult with an affected homebuyer with respect to the decision to repair or rebuild a damaged or destroyed unit, and that any dispute between the IHA and the homebuyer will be submitted to HUD for final determination. There is nothing in this provision that is inconsistent with the demolition and disposition requirements. This provision requires an IHA to repair or rebuild a unit unless there is good reason for not doing so; it further provides a specific procedure for consultation with the homebuyer on the determination as to whether a damaged or destroyed unit is capable of being repaired. Once that determination is made section 18 is or is not applicable depending upon the ultimate determination. In the event that you find an actual inconsistency between applicable statutory, regulatory, or contractual provisions, we will provide you with any legal advice necessary to resolve the conflicts or inconsistencies.

Finally, you have asked whether the provisions of 24 CFR 905.925 on the relocation of displaced tenants apply in the situation where a unit is destroyed by external forces so as not to be subject to the requirements of section 18. Since the cited relocation provisions are in furtherance of implementation of section 18 requirements, they are not applicable to a situation in which section 18 itself is inapplicable. However, any displaced tenant would be entitled to applicable Federal preferences in any application for assistance to the IHA.

1992 memorandum and has responded to all the questions raised in your April 3, 1992 memorandum. If you have any questions or need additional information please contact Michael Reardon.