

Assignment of Mortgage to Unapproved Mortgagee

Legal Opinion: GHM-0016

Index: 3.400

Subject: Assignment of Mortgage to Unapproved Mortgagee

December 17, 1991

Justine E. Wilcox, Esq.  
Kelley, Drye & Warren  
2300 M Street, N.W.  
Washington, D.C. 20037

Dear Ms. Wilcox:

This letter is in response to your letters of December 12 and 13, 1991, requesting that we provide written confirmation that the Department of Housing and Urban Development ("HUD") will honor its obligations under the contract of insurance regarding Lakeside Apartments, Project No. 052-44113-LDP.

In your letters you state that the loan for Lakeside Apartments was originally made by a HUD-approved mortgagee. The loan was used by the original mortgagee as collateral for an equipment lease. The mortgage note was endorsed to the equipment lessor, an unapproved mortgagee, and the mortgagee and the equipment lessor executed an Assignment and Security Agreement which was never filed in the land records. After the terms of the equipment lease were satisfied the mortgage note was endorsed back to the original mortgagee, and the deed of trust and collateral documents were returned to the original mortgagee.

Pursuant to 24 CFR 207.261(g) the contract of insurance "may, at the option of the Commissioner and under such conditions as he may prescribe," be terminated in the event of a transfer, pledge or assignment of an insured mortgage, or of a partial or participating interest therein, to a mortgagee that has not been approved by HUD for participation in the multifamily mortgage insurance programs. Thus, the Commissioner has the option of terminating the contract of insurance with respect to the mortgage at issue since the mortgage was assigned to an unapproved mortgagee, the equipment lessor.

However, there appears to have been no material harm to HUD or any other party as a result of the mortgage being held by an unapproved mortgagee. As the mortgage note has been endorsed back to the original mortgagee and the mortgage and collateral documents returned, the Commissioner has decided that HUD will not exercise the option under section 207.261(g) to terminate the contract of insurance if your client agrees to indemnify HUD for any costs and damages that might be incurred by HUD as the result of actions or inaction of the unapproved mortgagee. In addition, HUD will require evidence that the equipment lessor has endorsed

all rights and interest back to the original mortgagee.

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Please submit to this office a letter of indemnification and evidence concerning the reassignment of the loan to the HUD-approved mortgagee. We will notify you promptly as to the sufficiency of the documents.

The foregoing election not to exercise the option to terminate the contract of insurance does not act as a waiver of such right with respect to any future violation of the contract of insurance.

Very sincerely yours,

Harold A. Levy, Chief Attorney  
Loan Management and Property  
Disposition Section