

Pet Ownership in Non-Insured Section 236 Project

Legal Opinion: GHM-0027

Index: 3.320

Subject: Pet Ownership in Non-Insured Section 236 Project

March 11, 1992

Ms. Elizabeth V. Morrison
10 Centre Street, Apt. 2A
Cambridge, Massachusetts 02139

Dear Ms. Morrison:

This is in response to your letter dated January 29, 1992 requesting an opinion concerning whether you are entitled, as a senior citizen, to keep a pet in your apartment. You indicated in your letter that you are a tenant in 929 House, a Section 236, non-insured state agency financed project. The project is a family complex with approximately 20 senior citizens living in the project buildings. You noted that when you moved into the project two years ago, you had a small cat. You took the cat with you because you understood that senior citizens were allowed to have a pet if they were subsidized under the Section 236 program or had a Section 8 certificate. Last summer you stated that the Regional Property Manager of the project started to harass you, threatening you with eviction if you did not remove the cat. Subsequently, you placed the cat with your daughter for two and a half months. The cat became ill due to a change in his living situation. Your daughter now has to move and you are being harassed again and threatened with eviction if you do not remove the cat again.

The Department's regulations concerning pet ownership in housing for the elderly or handicapped is set forth in Title 24 of the Code of Federal Regulations, Part 243. Part 243 implements Section 227 of the Housing and Urban-Rural Recovery Act of 1983 (HURRA). Section 227 of HURRA provides that no owner or manager of federally assisted rental housing for the elderly or handicapped may as a condition of tenancy or otherwise, prohibit or prevent tenants of such housing from owning or keeping common household pets in their units, or restrict or discriminate against persons in connection with admission to, or continued occupancy of, such housing because they own common household pets. Section 243.3(c)(2) defines "project for the elderly or handicapped" to mean:

a specific rental or cooperative multifamily property that, unless currently owned by HUD, is subject to a first mortgage, and . . . was designated for occupancy by the elderly or handicapped families when the funds for the project were reserved, or when the commitment to insure the mortgage was issued or, if not then so designated, that is designated for such occupancy in an effective amendment to the regulatory agreement covering the project, made pursuant

to the project owner's request, and (ii) that is assisted

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(with or without HUD mortgage insurance) under Section 221(d)(3) BMIR of the National Housing Act or 24 CFR Part 236

The pet regulations are interpreted as permitting elderly or handicapped tenants to own pets only in multifamily housing projects designed for the elderly or handicapped that are assisted under Sections 221(d)(3)BMIR, 236 of the National Housing Act and certain other HUD assisted programs. The pet regulations do not apply to HUD-insured multifamily projects which are not designed specifically for the elderly or handicapped even though they may be assisted under Sections 221(d)(3) BMIR or 236 or other HUD-assisted programs. See 51 Fed. Reg. 43274 (1986). A project which is "designed specifically for the elderly or handicapped" is one in which the majority of the units were, at the time the funds for the project mortgage were reserved or at the time the commitment for mortgage insurance was issued to the project mortgagor, constructed specifically for occupancy by elderly or handicapped tenants. See 24 CFR Section 243.3(c)(2).

We have been advised by our Boston Regional Office that 929 House is a non-insured Section 236 project which is designed for occupancy by families. The majority of the units in 929 House are not designed specifically for occupancy by elderly or handicapped tenants. Consequently, the Department's pet regulations do not apply to pet ownership in 929 House.

Pet ownership in HUD assisted projects which are not covered by the pet regulations is governed by the terms of the lease executed by the tenants. Tenants living in family projects assisted under Sections 221(d)(3) BMIR or 236 are required to execute a lease on a form prescribed by HUD (HUD Model Lease). Paragraph 13d of the HUD Model Lease provides in pertinent part that " t he Tenant agrees not to . . . have pets or animals of any kind in the unit without the prior written permission of the Landlord"

In view of the foregoing, we recommend that you review the provisions of your lease to ascertain the project owner's policy on pet ownership in 929 House. If the provisions of your lease read similarly or identically to Paragraph 13d quoted above, pet ownership in 929 House is not permissible unless the project owner consents to such ownership. Since 929 House is not a project designed specifically for the elderly or handicapped, pet ownership in that project will be governed by the terms of your lease.

Sincerely yours,

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David R. Cooper
Assistant General Counsel
Multifamily Mortgage Division