



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

OFFICE OF HOUSING

DATE: October 18, 2005

MEMORANDUM FOR: Preservation Offices and PAEs

CC: Rehabilitation Escrow Administrators

FROM: Theodore K. Toon, Acting Deputy Assistant Secretary, HY

SUBJECT: Considering Prior Rehab Escrow Performance During Current Underwriting

PURPOSE

This memorandum is intended to remind POs and PAEs to be aware of current and past rehab escrow performance when developing current restructuring plans with the same owner/general partner/principal. A history of poor performance in completing required rehab work might alter how the PO and PAE decide to proceed with a current restructuring plan.

ISSUE

The Rehabilitation Escrow Administration Tracking (REAT) Team is responsible for overseeing completion of repairs that were required in the M2M restructuring, and that were documented in a Rehabilitation Escrow Deposit Agreement (REDA). In the course of carrying out this responsibility, it has come to the REAT Team's attention that certain owners who are/were late on completing repairs were completing new M2M restructurings and agreeing to undertake additional rehab escrow repairs. It appears that prior rehab performance is not a topic that is often reviewed during the underwriting process.

PROCEDURE

If the PAE or PO is aware that an owner entering M2M has other closed M2M restructurings, the PAE should contact their DRS, who can access and review the REAT Database, or contact a Rehab Escrow Specialist, who can research the prior escrow performance. If the owner is currently late or has completed the prior work late, the PAE and PO should take that into account when considering setting up another rehab escrow and should work with Richard Daugherty, the REAT Manager, to reach a joint agreement with the owner. At a minimum, the following steps should be considered:

1. Understand the status of any late rehab escrow account. It may be that default remedies are being pursued or have been implemented, which could impact your ability to close the new restructuring (a 2530 flag may have been placed in APPS or a referral may have been made to the DEC).

2. Discuss a late rehab escrow account with the owner and see if you can extract a commitment to complete the late work now. Contact the assigned Rehab Escrow Specialist (identified in the REAT Database) and keep them involved in any discussions you have with the owner in this regard.
3. Postpone closing the new restructuring until the late rehab escrow work has been completed. This would be handled as an Action Other Than Closing, or AOTC, rather than placing the account on "Hold".
4. Defer payment of the Capital Recovery Payment (CRP) on the new restructuring until any rehab escrow associated with it is completed.
5. Require a larger owner contribution (greater than 20%) in any new rehab escrow account.
6. Obtain an agreement for specific interim completion dates on each line item in a new rehab escrow, rather than requiring all repairs to be completed in 12 months.
7. Require the rehab work associated with the new restructuring to be completed prior to closing.

These are a few of the serious measures that should be considered when restructuring a new asset with an owner who is or was late in completing the rehab work associated with a prior M2M closing. There may well be situations where the failure to complete the rehab work is so egregious that you decide to not go forward with the new restructuring.

We expect rehab work to be completed in a timely manner; refer to the Resource Desk broadcasts of April 28, 2004 and May 3, 2005, for Multifamily and OAHF's joint policy on rehab completion and default procedures. Owners that have ignored their contractual rehab requirements may also find themselves unable to restructure additional assets through the M2M Program.

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