

OMHAR RESOURCE DESK BROADCAST EMAIL ARCHIVE

Sent: Thursday, August 14, 2003 8:11 PM

Subject: Rehabilitation Escrow Administration Tracking ("REAT")

Attachment: REAT POLICY AND PROCED 8.14.03.doc

The purpose of this memorandum is to advise you of a new initiative in which OMHAR will be performing additional oversight of the rehabilitation escrow progress.

The Memorandum is addressed to and impacts the following individuals: All OMHAR Staff, All OMHAR Participating Administrative Entities, Rehab Escrow Administrators and All Multifamily Program Center Directors.

(See attached file: REAT POLICY AND PROCED 8.14.03.doc)

Questions on this policy should be directed to Dao Vuong, REAT Manager (dao_vuong@hud.gov) or Richard Daugherty (Richard_P._Daugherty@hud.gov), Portfolio Director, New York Production Office.

**OMHAR Resource Desk
Work Product for Internal Use of OMHAR and PAEs Only**



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U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF MULTIFAMILY HOUSING ASSISTANCE RESTRUCTURING

Date: August 14, 2003

TO: OMHAR Staff
All OMHAR Participating Administrative Entities
Rehab Escrow Administrators
All Multifamily Program Center Directors

From: S. Paige Warren, Deputy Director for Production, OMHAR

Subject: Rehabilitation Escrow Administration Tracking ("REAT")

The purpose of this memorandum is to advise you of a new initiative in which OMHAR will be performing additional oversight of the rehabilitation escrow progress.

Background

Physical preservation of our affordable housing stock is one of the three elementary goals of the Mark to Market program. The Rehabilitation Escrow ("Rehab Escrow" or "Escrow") is a tool intended to ensure completion of the installation, repair or replacement of significant non-working physical elements of a restructured project, by causing the set-aside of funds and appointment of an Administrator to oversee the work and manage the allocated funds. The Rehab Escrow is governed by a Rehabilitation Escrow Deposit Agreement ("REDA"), which should specifically identify the work to be done, the extent of funding for the purpose, and the timeframe for completion. The REDA is executed by the owner, by OMHAR, The Participating Administrative Entity ("PAE") and by the Escrow Administrator, and the REDA generally requires all work to be completed during the twelve (12) calendar month period following the closing of the restructured transaction. OMHAR had initially expected that the Rehab process had adequate built-in oversight and that work would proceed to completion without its further involvement.

Recent experience has demonstrated that the Escrows are not always reaching completion. Rehab Escrows often include repairs and replacements deemed to have significant impact on the quality of tenants' lives, thus the failure to complete these repairs in a timely manner causes a decline, or fails to improve, living standards at the affected properties. Furthermore, failure to complete the Rehab work may impact future valuation assumptions, operating expenses, and the overall physical and financial viability of a property, calling into question the reliability of OMHAR's repayment estimates for the restructuring mortgages and long-term savings calculations. Therefore, OMHAR will provide improved monitoring and oversight of the Rehab Escrows to achieve the following goals:

Rehabilitation Escrow Administration Tracking (“REAT”)

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- ? Timely completion of all required work under each REDA.
- ? Early detection of, and devotion of priority attention to, slow or no-work situations.
- ? Improvement of communication between Multifamily Offices, Property Owners, Escrow Administrators and OMHAR, to assist with early detection and correction of slow or no-work situations.
- ? Enforcement of REDA; or pursuit of other available remedies in cases where the owner/manager fails or refuses to complete the specified repairs/replacements.

REAT Manager

Dao Vuong, of OMHAR’s New York Production Office (NYPO), will manage the REAT program. A team of NYPO and Financial Advisor (“FA”) staff will be utilized for this effort under the supervision of the REAT Manager. Ms. Vuong’s contact information is provided below.

Monitoring Work Progress

Effective August 18, 2003, OMHAR will track each closed transaction that employs a REDA, charting the progress of scheduled repairs and escrow disbursements through periodic contact with the Escrow Administrators. Particular scrutiny (“Priority” status) will be given to Rehab Escrows that exceed either \$100,000 total, or \$5,000 per unit (and initially any Rehab Escrow that exceeds 365 days from closing date). Moreover, an OMHAR or Multifamily office may request Priority status on a smaller Rehab Escrow by contacting the REAT Manager, Dao Vuong. OMHAR may revise the Priority criteria as need and experience dictates.

Process Overview

Beginning August 18, 2003, whenever any transaction closes employing a REDA, the OMHAR Production Office will ensure that a paper copy of the REDA, Form 7.5, and Rehab Escrow detail page from the underwriting model is directed to:

Dao Vuong
OMHAR – NYPO
26 Federal Plaza, Suite 32-102
New York, NY 10278
(212) 264-0903 ext 3665
Fax (212) 264-5080
dao_vuong@hud.gov

The REAT team will implement periodic contact with the Escrow Administrators and owners as necessary. The frequency of contact will vary with the size of the Escrow and whether problems surface. In summary, the REAT goals are:

- ? creating dialog between Escrow Administrators and OMHAR
- ? tracking progress of repairs
- ? identifying hurdles and obstacles to completion

- ? determining when problem situations (no work or late work) exist and cause of problems
- ? timely resolution of problem situations

The REAT team will coordinate with the appropriate Multifamily HUB office whenever remedial action or enforcement efforts are deemed necessary. Multifamily staff are responsible for bringing to the attention of the REAT Manager any specific instances of non-compliance, requests for extension of REDAs, tenant complaints or owner difficulties related to Rehab Escrow work they encounter. Likewise, OMHAR will coordinate with the appropriate Multifamily staff to ensure Asset Management personnel are aware of and involved in OMHAR’s efforts to achieve compliance with the REDA. Multifamily recommendations in these cases will be actively solicited and given strong consideration, although final decisions concerning enforcement or extensions of REDAs will rest with the REAT Manager under the oversight of the NY Portfolio Director.

Extensions and Modifications of Rehab Escrow Terms

Experience has shown that Rehabilitations often encounter delays in work completion – due to labor or material issues, weather conditions, or other unforeseen circumstances. Often the Escrow is nearly completed at its expiration; save for repair elements of nominal cost, and a minimal time extension would be sufficient to reach 100% completion. It is also reasonable to expect occasions where more substantial repairs cannot be completed prior to the Rehab Escrow expiration. Occasionally it may even be prudent to modify the repairs scheduled in a REDA. **All requests for modification or extension of REDAs should be in writing and must be submitted to the REAT Manager. All signors of the original REDA must consent to any Amendment prior to seeking OMHAR approval.** Effective immediately, OMHAR consent for modification or extension of REDA’s will be given only by the NY Portfolio Director. The Director of OMHAR must also approve requests for extensions exceeding 6 months in duration or \$ 500,000 in amount.

Nominal extensions, defined as no more than 90 days and involving less than \$ 10,000 in remaining repairs, may receive Administrative Extensions when the merits support approval, and when the Owner, Administrator and Multifamily Office all support the extension request. OMHAR’s approval of the Administrative Extension will be issued via email to all parties, and will not be followed by formal amendment of the REDA.

For other extension requests and all other modifications to the REDA, the requesting party must prepare an Amendment to Rehab Escrow Deposit Agreement to accompany its request, and the request should provide sufficient information for OMHAR to reach a decision: explain why the modification or extension is necessary, include all pertinent details of the work remaining, the remaining escrow balance, and the time required for completion. A copy of the Amendment form will be available for download from OMHAR’s website <http://www.hud.gov/offices/hsg/omhar/mhrrroom.cfm>, or OMHAR’s Resource Desk <http://www.omhar.com/>. The Owner, PAE and Administrator must each execute this document before forwarding the extension request to the REAT Manager for

consideration. The originating OMHAR office and the applicable Multifamily Office will receive copies of any extension or amendment.

Enforcement Activities

In the event that a Rehab Escrow is not completed pursuant to its terms, and extension of the completion time is not a suitable option, OMHAR and Multifamily will be required to take additional measures to assure completion of the repairs. The current REDA version (in use since February 2003) provides that a default may be addressed by any or all of the following remedies:

- ? Declaration of default under the Regulatory Agreement
- ? Declaration of default under the HAP Contract for failure to maintain the property
- ? Acceleration of the Mortgage Restructuring Note (“MRN”) and if necessary, under the Contingent Repayment Note (“CRN”).
- ? Transfer of remaining Rehab Escrow funds to HUD.

Instances in which default remedies must be sought are expected to be isolated and extremely rare. In each case, an individual approach to resolution will be developed and pursued in concert with the respective Multifamily Office.