

Transfer of Physical Assets

Legal Opinion: GHM-0078

Index: 3.375

Subject: Transfer of Physical Assets

March 16, 1993

MEMORANDUM FOR: Ina B. Singer, Director,
Coinsurance Management Division, HMHC

FROM: Mel S. Belin, Chief Attorney,
Loan Origination and Eligibility Section, GHM

SUBJECT: Transfer of Physical Assets to two nominees formed by
and affiliated with Maryland National Mortgage
Corporation--Coinsuring Lender

This is in response to your request that we review a proposed nominee transfer of physical assets conveying 100% of the general and limited partnership interest of the project borrower, Waterbury-Gaithersburg Limited Partnership to two nominees (Maryland A/M Properties I Limited Liability Company and Maryland A/M Properties, Inc.) formed by Maryland National Mortgage Corporation, the coinsuring lender. Payments due under the Section 221(d)(4) coinsured mortgage on Waterbury Apartments became delinquent on September 1, 1992 and pursuant to 24 CFR 251.810, Maryland National Mortgage Corporation has notified HUD of the default and has accelerated the amount due under the loan. In lieu of proceeding with the acquisition of title by either foreclosure or deed in lieu of foreclosure, the coinsuring lender has proposed that HUD approve the transfer of the project to the two nominees. We note that the coinsuring lender has requested permission to waive the application fee for this transaction. We do not believe that this TPA falls within either of the two types of transactions, shown in Section 2.I found on page 13-4 of Handbook 4350.1, that would not require the payment of the application fee.

The TPA transaction, as presently structured, does not contemplate a conveyance of the fee simple title of the real estate to a new nominee entity by means of a deed. Instead, the two nominees will purchase 100% of the partnership interests of the present general and limited partners of Waterbury-Limited Partnership, and the original mortgagor entity will continue in existence. Harold Kumer has informed Ed Ferguson, a member of my staff, that your Office has no objection to a coinsuring lender structuring a TPA in this manner.

If your Office has decided to permit a coinsuring lender to create nominee entities that will subsequently purchase 100% of the partnership interests of the existing partners of a limited partnership, (instead of requiring the nominees to purchase the fee simple title to the real estate, as has been true in all of the previous nominee TPA's reviewed by this Section), then, HUD Handbook 4350.1 Chg. 55, Appendix B requires a TPA "modified

review" as opposed to a TPA "full review." If, however, your Office has not decided to permit coinsuring lenders to structure TPAs in this manner, we recommend that you advise Maryland National Mortgage Corporation of your Office's policy regarding nominee transfers.

The following documents were submitted as part of the Transfer of Physical Assets package:

1. Application of Transfer of Physical Asset
(HUD Form 92266)
2. Notification/Synopsis of Transaction by Purchaser
3. Previous Participation Certificate for Principals
(HUD Form 2530)
4. Statement relative to Resume for Principals without previous participation
5. Rental Schedule
6. Tax Credit Certificate (Housing Notice 90-17)
7. Sources and Uses of Funds Statement
8. Affidavits of Consideration
9. Letter addressing Determinative Criteria
10. Attorneys Opinion that structure of transaction does not terminate the partnership under Maryland law
11. Partnership Interest Transaction Agreement
12. HUD Regulatory Agreement
13. Mortgagee's Statement of Escrow Balance
14. Proposed Management Certification (HUD Form 9939-B) and Management Agent's Previous Participation Certificate
(HUD Form 2530)
15. Mortgagor's Oath not to practice discrimination or use the project for transient housing, etc.
16. Organizational Documents for Maryland A/M Properties I Limited Liability Company
17. Attorney's Certification on Execution and Recordation

Since only a modified review is required, documents 12-17 were not required to be submitted as part of a modified TPA transaction pursuant to Appendix B of Handbook 4350.1 , Ch. 55.

We have reviewed the documents required to be submitted for a modified TPA and find them to be legally acceptable provided the following comments are incorporated into the appropriate documents.

Third Amendment To Certificate of Limited Partnership for Waterbury/Gaithersburg Limited Partnership

1. On page 2, in the fourth sentence of the second paragraph, the correct percentage ownership interest of Dennis A. Laskin in the limited partnership is 98%, not .98%, and the submitted document should be revised accordingly;
2. On page 3, four lines up from the bottom of the page, below the signature line for Dennis A. Laskin, it would be preferable, in order to avoid any possible confusion, and to be consistent with the use of percentages elsewhere in the document, to use the number 0.20%, instead of the number 0.2% when referring to the percentage interest of

the withdrawing general partner.

We would note that your Office should advise the lender that it is Housing's policy that a TPA from the nominee to an independent third party must take place within a specified period of time.

If you have any questions concerning this matter, please contact Edward Ferguson at 708-4107.