

Prepayment of Mortgages Insured Under 221(d)(4) of NHA

Legal Opinion: GHM-0029

Index: 3.346

Subject: Prepayment of Mortgages Insured Under 221(d)(4) of NHA

April 2, 1992

Mr. Daniel J. Schneider
General Partner
MCP-Randle Hill Associates, L.P.
Madison Capital Properties, Inc.
7712 Little River Turnpike, Suite 206
Annandale, VA 22003

Dear Mr. Schneider:

This is in response to your letter of March 18, 1992 regarding your intent to prepay the insured mortgage on Randle Hill Apartments in Washington, D.C. (Project No. 000-35006).

The mortgage on Randle Hill Apartments (the "Project") was originally insured under Section 221(d)(4) of the National Housing Act ("NHA"). Section 221.524(a) of Title 24 of the Code of Federal Regulations governs prepayments of mortgages insured under Section 221 of the NHA and states in relevant part, that:

A mortgage indebtedness may be prepaid in full and the Commissioner's controls terminated without the prior consent of the Commissioner.... where the mortgage is insured under section 221(d)(4) of the Act.

The Deed of Trust Note for the Project states that:

Privilege is reserved to pay the debt in whole....on the first day of any month prior to maturity upon at least thirty (30) days' prior written notice to the holder.

While recent legislation has been passed which restricts the rights of certain owners to prepay their mortgages and terminate their mortgage insurance contracts, this legislation, the Emergency Low Income Housing Preservation Act ("ELIHPA"), and its successor, the Low Income Housing Preservation and Resident Homeownership Act ("LIHPRHA") apply only to projects which are insured and/or assisted under Section 221(d)(3) or Section 236 of the NHA. Projects which are insured under Section 221(d)(4) of the NHA do not, therefore, fall within the definition of eligible low income housing under either ELIHPA or LIHPRHA. Hence, such projects are not subject to the prepayment prohibitions set forth in those Acts.

Because the mortgage on the Project is insured under Section 221(d)(4) of the NHA, the owner of the Project, MCP-Randle Hill Associates, L.P., may, pursuant to Section

221.524(a) of the regulations, prepay the mortgage in full without the consent of HUD. In accordance with the Deed of Trust

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Note, the owner must, prior to prepayment, provide thirty days written notice to the mortgagee and comply with all other applicable prepayment provisions contained in the Note.

For specific information regarding the financial aspects of the prepayment of this mortgage, you may contact Deborah Courtright, Chief of the Multifamily Notes Servicing Branch, at 202-708-4035. If you have any further questions regarding this matter, please contact Susan M. Sturman of my staff at 202-708-3667.

Very sincerely yours,

/s/ David R. Cooper

John J. Daly
Associate General Counsel
Insured Housing and Finance