

Use of Cooperative Unit as Writer's Studio

Legal Opinion: GHM-0043

Index: 3.300, 3.110, 3.340

Subject: Use of Cooperative Unit as Writer's Studio

July 9, 1992

Ms. Betty John
Shannon & Luchs
3816 International Drive
Silver Spring, MD 20906

Dear Ms. John:

This responds to your letter, dated October 3, 1992, addressed to Nathalie Augustin of my staff. We apologize for the delay in our response. In your letter, you described the project in question as a cooperative insured under Section 213 of the National Housing Act. You also discussed the difficulty encountered by many residents of this cooperative project in their attempts to sell their units. In light of these difficulties, you stated that it seemed "unwarranted" that a well-qualified purchaser should be denied the opportunity to purchase a unit in the cooperative project because of the purchaser's proposed use for the unit. In a telephone conversation with Ms. Augustin, you stated that the purchaser wanted to use the unit as a writer's studio and not as a dwelling. You enclosed a letter from the purchaser to the President of the Board of Directors of the cooperative project, Leslie Hurt, in which the purchaser states that she plans to work in the unit during the day but will only spend the night from "time to time." In this letter, the purchaser also mentions that she has another apartment which is not large enough to house the materials for her work. Presumably, she uses that apartment as her dwelling. You also enclosed a letter from Mr. Hurt to the purchaser in which he denies approval of the purchase citing HUD instructions as the basis for his denial.

We have reviewed Handbook 4550.1, Basic Cooperative Housing Handbook, and have confirmed that Mr. Hurt's decision to prohibit the purchaser from purchasing the unit for use as a writer's studio is in fact based upon HUD instructions. Appendix 1-7 of Handbook 4550.1 sets forth the Model Form of Occupancy Agreement which, according to paragraph 3-10 of the same handbook, is required to be signed by all purchasers. Article 5 of the Model Form is captioned, "Premises To Be Used For Residential Purposes Only," and states: "The Member shall occupy the dwelling unit covered by this agreement as a private dwelling unit for himself and/or his immediate family and for no other purpose...." This provision is very specific in its prohibition against using units for purposes other than as dwellings.

By her own admission, the purchaser clearly intends to use

the unit as a place to work and not for residential purposes as a dwelling as she only plans to sleep there from "time to time" and, presumably, most of the time she will sleep in her other apartment. Therefore, Mr. Hurt was correct in denying the purchase of a cooperative unit for use as a writer's studio. Although we are sympathetic to your concerns about the difficulties faced by individuals who wish to sell their cooperative units, we must, nevertheless, ensure compliance with administrative instructions.

Sincerely,

Mel Belin
Chief Attorney
Loan Origination and
Eligibility Section