

TPAs and Preservation

Legal Opinion: GHM-0075

Index: 3.346, 3.375

Subject: TPAs and Preservation

March 12, 1993

Oliver Chami, Esq.
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Investment Division
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Dear Mr. Chami:

This is in response to your December 16, 1992 letter to Susan Sturman and myself concerning a possible transfer of physical assets ("TPA") of a project that is currently eligible to file a notice of intent under the Low Income Housing Preservation and Resident Homeownership Act of 1990 ("LIHPRHA").

In your letter, you question whether an owner may effect a transfer of physical assets immediately prior to filing a notice of intent under LIHPRHA or during the LIHPRHA process. The proposed TPA would not comply with the sale requirements of LIHPRHA, but would transfer the property from the current owner to a trust created for the benefit of the current owner's children. You also question whether this transfer can be accomplished through a modified TPA, rather than by conformance with the Department's full TPA requirements.

LIHPRHA establishes a specific framework for transferring project ownership in conjunction with a plan of action to receive incentives. Under LIHPRHA, an owner who has submitted a notice of intent and intends to sell must give preference to priority purchasers who may be interested in buying the project, namely, resident councils and community-based nonprofit organizations. The owner would be required to hold the project open for sale for specified time periods and would not be permitted to accept a bona fide offer to purchase the property from anyone except priority purchasers during that statutory marketing period for priority purchasers. Once that time has expired, the owner may sell the project to any qualified purchaser which is not a "related party," as that term is defined in LIHPRHA. To permit an owner to transfer his ownership interest to his children during the LIHPRHA process, would effectively circumvent the sales procedures established by Congress in enacting LIHPRHA.

An owner who has not yet submitted a notice of intent under LIHPRHA, may transfer his ownership interest in the project by complying with the Department's TPA instructions published in Chapter 13 of HUD Handbook 4350.1, "Multifamily Asset Management and Project Servicing," published September 22, 1992. Because the owner has not begun the LIHPRHA process, the owner need not comply with the LIHPRHA sales procedures. However, the TPA must be approved by HUD before the new owner may submit a notice of intent

under LIHPRHA.

A Modified TPA should only take place when a relatively simple ownership modification is contemplated, such as the admission of a co-general partner for tax planning purposes. From the information provided in your letter it is not possible to answer definitively how an application for transfer to the trust you describe would be considered. However, generally HUD looks at the transfer from the standpoint of ownership control following the transfer. In this regard, even a minority transfer can sometimes trigger a full review requirement. In either case, you should be aware that the HUD "determinative criteria" contained in Handbook 4350.1, Chapter 13, Section 3, must be met or exceeded as a result of the transfer. A complete copy of this Handbook can be obtained from your local HUD field office.

If you have any further questions regarding this matter, please contact Susan M. Sturman at 202-708-3667.

Very sincerely yours,

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