

Historic Conservation Right and Subordination Agreement

Legal Opinion: GHM-0095

Index: 3.280

Subject: Historic Conservation Right and Subordination Agreement

December 8, 1993

MEMORANDUM FOR: Helen M. Dunlap, Deputy Assistant Secretary
for Multifamily Housing Programs, HM

FROM: John J. Daly, Associate General Counsel,
Office of Insured Housing and Finance, GH

SUBJECT: Belden Stratford Historic Conservation Right

The HUD requirements necessary for the approval of a historic conservation right and subordination agreement for Belden Stratford Apartments, a coinsured Section 223(f) project located in Chicago, Illinois, were delineated in a letter (attached) dated December 7, 1992 from Albert B. Sullivan, then Acting Director of the Office of Multifamily Housing Management, to Robert L. Moore, President of Washington Capital Associates. This letter reflected the recommendations for modifications to the documents that had been set out in a memorandum of August 17, 1992 from David R. Cooper, Assistant General Counsel, Multifamily Mortgage Division, to Ina B. Singer, Director, Coinsurance Management Division.

The attorneys representing the owner/mortgagor of Belden Stratford have redrafted the proposed conservation right and subordination agreement and have resubmitted them to HUD for approval. My Office has reviewed the redrafted documents and has found the conservation right to be legally acceptable. In addition, the subordination agreement has been redrafted to be made consistent with the conservation right in that the subordination agreement makes clear that the lien provisions of the conservation right are subordinated to the HUD coinsured first mortgage.

While we have no legal objections in connection with the above, we wish to advise you of some non-legal considerations. Paragraph 10 of the conservation right requires the grantor (and through paragraph 19 any successors in interest) to maintain insurance with a Best "A" rated insurance company that provides for the full replacement value against fire and extended coverage for other perils. In addition, the grantor must maintain comprehensive general liability insurance that also provides coverage for the obligations of the grantor that are set out in paragraph 13 of the conservation right. Currently this project has a coinsured mortgage and HUD will not become an owner if the project mortgage is later foreclosed upon. However, if the project mortgage is at some later date converted to full

insurance, as a result of a lender default under its agreement with GNMA or through some alternate mechanism, HUD could, following foreclosure, become the owner of the project and be subject to the requirement that the owner must maintain fire, extended and general liability insurance. We are aware that it is program policy for HUD to self-insure when it becomes the owner of a foreclosed project. Therefore, the Office of Multifamily Housing will need to make a business decision as to whether or not it wants to require the revision of the conservation right to permit HUD to self-insure in the event that the Department should become the owner of the property.

You are under no legal obligation to agree to the easement. There is, however, no legal impediment to your approval of the easement. Such approval is strictly a matter for your program determination.