

Nursing Home--Eligible Mortgagor[FOIA Exemption 6: Personal Identifiers/Project Names Withheld]

Legal Opinion: GHM-0096

Index: 3.100, 3.145, 3.200, 3.295

Subject: Nursing Home--Eligible Mortgagor

[FOIA Exemption 6: Personal Identifiers/Project Names Withheld]

December 15, 1993

Eli D. Greenberg
Wolf Haldenstein Adler Freeman & Herz
270 Madison Avenue
New York, NY 10016

Re: Nursing Home, New York, New York

Dear Mr. Greenberg:

This responds to your letter, dated November 30, 1993, to Frances MacFarlane of my staff concerning Nursing Home. As you are aware, Donald F. Libretta of Krooth & Altman previously wrote to this office in connection with this project. Mr. Libretta asked whether a not-for-profit corporation, validly formed under New York law by the merger of two corporate entities (i.e., Nursing Home and Nursing Home), each involved in the ownership of a nursing home adjacent to the other, can be an eligible section 232 mortgagor. This office wrote to Mr. Libretta on October 6, 1993 and stated that, subject to certain conditions, the corporation surviving the merger can qualify as an eligible mortgagor under section 232 of the National Housing Act ("NHA"). One of the conditions set forth in our October 6, 1993 letter was that the merger must be completed in advance of applying for the section 232 mortgage insurance. On November 30, 1993 you requested a reconsideration of this condition.

We have consulted with the Office of Housing and can inform you that the merger of Nursing Home into Nursing Home is not required in advance of applying for section 232 mortgage insurance. In this regard we note that paragraph 3(m) of Form HUD-92432, Commitment for Insurance of Advances under, among others, section 232 of the NHA, provides that two copies of the instrument under which the mortgagor entity is created must be submitted to the Department in draft form at least 15 days prior to the anticipated date for initial insurance endorsement of the mortgage note and in final form at the time of the initial closing.

Please note that since this response modifies our original October 6, 1993 letter on this matter, we shall also send a copy of this letter to Mr. Libretta. Should you have any questions with regard to this matter, please contact Ms. MacFarlane, of my staff, at (202) 708-4107.

Very sincerely yours,

David R. Cooper
Assistant General Counsel
Multifamily Mortgage Division

cc: Donald F. Libretta