

Transfer of Physical Assets

Legal Opinion: GHM-0103

Index: 3.375
Subject: Transfer of Physical Assets

March 30, 1994

MEMORANDUM FOR: Lewis Nixon, Regional Counsel, 5G

ATTENTION: Elisa Yochim, Attorney Advisor

FROM: David R. Cooper, Assistant General Counsel
Multifamily Mortgage Division, GHM

SUBJECT: Project No. 071-35387
Sheridan Plaza Apartments
Chicago, Illinois

This responds to your memorandum dated February 3, 1994 to Donald Franck of this office in which you requested our approval for the imposition of transfer of physical assets (TPA) legal requirements additional to those contained in Chapter 13 of Handbook 4350.1, including the appendices. We also have received a copy of a March 4, 1994 letter from Commonwealth Land Title Insurance Company which addresses the payment of delinquent real estate taxes.

Your office has received a request to review a TPA for Sheridan Plaza, and has received a title policy commitment that reports delinquent real estate taxes. These unpaid taxes were not listed in Commonwealth's title policy given at final endorsement. As you know, our offices have been working for over a year with Commonwealth and its attorney, Matthew Flamm, to have Commonwealth clear up the unpaid taxes. The March 4, 1994 letter from Commonwealth confirms that the taxes remain unpaid and that Commonwealth's counsel is attempting to negotiate with the Cook County State's Attorney's Office regarding a cash offer to settle the taxes.

In light of the Department's difficulty in having Commonwealth settle the tax matter in a manner favorable to HUD, you propose to require a lender's title policy in the amount of the original mortgage balance in lieu of a proposed title binder or letter from the title company as required by Appendix C to Chapter 13. You also wish to require Commonwealth to certify to HUD that there are no indemnifications or personal undertakings between Commonwealth and any other party which will delay resolution of the tax problem. The certification requirement is not addressed in Chapter 13.

While Chapter 13 is intended to address the most common of

TPA circumstances, it is not an all-inclusive document. We realize that circumstances may be present at the time of a TPA review which require the use of procedures not stated in the Appendix but which are tailored to alleviate a specific problem.

In light of the fact that our offices have attempted to resolve the tax delinquency problem with Commonwealth for more than a year and have encountered delays and some resistance to its payment of the taxes, we believe the solutions you have recommended are reasonable under the circumstances and ultimately should ensure the payment of the taxes. Further, the certification may be prudent given the fact that Mr. Mario Egidi of Sheridan Plaza Associates stated to Monica Jordan of this office that the Associates and Commonwealth intend to enter into an agreement whereby the Associates will place approximately \$650,000 in escrow with Commonwealth for the purpose of paying the taxes as well as other project-related items. Ms. Jordan asked Mr. Egidi to have Commonwealth describe the agreement in a letter to Elisa Yochim of your office, which accounts for the March 4 letter from Commonwealth. However, the letter makes no mention of such an agreement between Commonwealth and the Associates, which raises questions regarding the existence of an agreement between the parties. Therefore, we approve the implementation of the two conditions you have recommended.

If you have any questions, please call Monica Jordan on (202) 70-4107.