

PHILADELPHIA MULTIFAMILY HOUSING HUB NEWS



Vol. 3 No. 6 Encarnacion Loukatos, Hub Director Thomas Langston, Editor March 2004



Inside this Issue:

- Lead Based PaintPg. 1
- M2M Financial Reporting... ..Pg. 1
- Social Security/EIN #s... ..Pg. 2
- Insurance Costs... ..Pg. 2
- Loss of Housing... ..Pg. 3
- No Pet Policy Ruling... ..Pg. 3
- NJ Housing Committee... ..Pg. 3
- Closings... ..Pg. 4
- Morgantown, WV... ..Pg. 4
- Market Studies... ..Pg. 4

Lead Based Paint Compliance

The Office of Healthy Home Lead Hazard Control (OHHLHC) is working very closely with Asset Management to eliminate all delays in completing the "Big Buy" risk assessments/inspections. Additional contractors were recently hired to schedule and expeditiously complete all risk assessments/inspections. All owners of Pre and Post 60 properties who did not sign up for the "Big Buy," and owners who signed up for the "Big Buy" and whose properties have been inspected, must be in compliance with the Lead Safe Housing Rule (Rule), published September 15, 1999.



Any owners who signed up for the "Big Buy", but whose properties have not been inspected are considered to be in compliance at this time. However, once their properties have been inspected, mitigation requirements must be met for any that test lead positive. Failure to comply with the Rule is a violation of the Regulatory Agreement and the Housing Assistance Payment Contract. HUD Project Managers will be contacting owners whose properties do not comply with the Rule. Owners that fail to respond within a 15 to 30 day timeframe will be notified, by registered mail, that they are in violation of the Rule, Regulatory Agreement, HAP contract, and that their properties are being forwarded to the OHHLHC/OGC, or the Department of Enforcement, for enforcement action.

Mark to Market Financial Reporting & Compliance

In response to questions from owners and accountants of Mark to Market (M2M) restructured properties, OMHAR (Office of Multifamily Restructuring Assistance) prepared a letter, dated Feb. 23, 2004 addressing the most common accounting questions. Some excerpts from the letter are as follows:

- *No Incentive Performance Fee (IPF) can be earned or accrued, or paid to an owner unless the post-M2M property has positive surplus cash for the year.
- *The pre-conditions for earning and paying Capital Recovery Payments (CRP) and Incentive Performance Fees (IPF) are set forth in the Regulatory Agreement Rider.
- *A CRP is not allowed for the partial month in which a M2M closing occurs.
- *Accrued and unpaid CRPs should be listed as obligations on the Surplus Cash Computation.
- *For the year in which the M2M closing occurs, the IPF is calculated based on the Effective Gross Income (EGI) for the period beginning the day after the closing and continuing through year-end. The EGI is based on Gross Potential Rents, minus Vacancy and Bad Debts, plus Other Income.
- *The IPF is calculated on the Surplus Cash Schedule. It should be shown as an expense on the Profit and Loss Statement and as an accrued liability on the balance sheet.
- *The actual payment of the CRP, IPF, and/or payments on the Mortgage Restructuring Note/Contingent Repayment Note must be reflected in the Statement of Changes in Financial Condition for the year in which the payment was made.

The complete letter can be viewed at: www.hud.gov/offices/hsg/omhar/mhrowner.cfm.



Social Security/EIN Number Disclosure

Part G of HUD Form 92458, Rent Schedule, requests a list of all principals comprising the mortgagor entity including name, title, and Social Security Number (or EIN, Employer Identification Number, on each principal). It has been reported that some board members have refused to provide this information. This data collection is authorized by OMB and 24CFR, Part 200, Subpart H (2530 participant disclosure regulations).



If an owner refuses to provide complete information or provides false or fraudulent information, he will be subject to enforcement action to compel compliance. The instructions are clear. The design of the 92458 was to assure current information on ownership (all forms); to prompt field and ownership personnel when a change occurs and to assure updates of HUD 2530 participation disclosures and approvals. By regulation, if the ownership composition changed (see Handbook 4350.1 TPAs and 2530 regulations) without prior disclosure and clearance, the owner and its principals (board members, partners, etc.) are not in compliance with HUD regulations. All new participants (e.g., board members) are required by regulation to apply for participation clearance with their local HUD Program Center before they are authorized to serve. There are no exceptions allowed in 24 CFR Part 200 Subpart H. Disclosure of the entity participants on HUD 92458 is a control mechanism that allows field personnel to check participants' disclosure accuracy and currency.

In particular, some parties have argued that non-profit board members should not be required to disclose; they are unpaid, they are serving as an honorary member, they have no control, etc. HUD disagrees with these arguments. The members of the board of directors of the owning corporation are the responsible parties. They provide the overall policy direction that directs the routine operations of the property. They control the professional agent and direct the agent's operations. Whether the board is comprised of cooperators or citizens who have volunteered to serve, they are responsible, they are principals and they must disclose.

If a board member, stockholder, general partner, or managing member fails to comply, the HUD Project Manager will contact him and discuss HUD's disclosure

requirements. It will be explained that the data is needed to assure that HUD has up-to-date records regarding the ownership and who is responsible for the success of project operations.

Sometimes a request may be made by HUD for an updated HUD 92458. This should be viewed as a simple reaffirmation that the originally approved participants are unchanged.

Insurance Costs for Nursing Homes

The American Health Care Association (AHCA) has conducted an analysis of the cost of general liability and professional liability claims to the long term care industry.

AHCA concluded that national trends in general liability (GL) and professional liability (PL) losses are increasing at an alarming rate. In the 5-year period between 1991 and 1996, costs nearly tripled, from \$290 per bed to \$850 per bed. Since 1996, costs have again tripled to an estimated \$2,880 per bed. These tremendous increases are the result of an explosion in litigation that is increasing the number of claims individual long term operators are incurring each year. Among the categories of claims are personal injury, wrongful death, intentional fraud, breach of contract, deceptive trade practices, and negligent hiring practices. In addition, the average size of each claim is steadily increasing at a pace well ahead of inflation. In many states, the increase in liability costs is largely offsetting annual increases in Medicare reimbursements.

Based on a survey of 26% of the long care operators in the nation, the following statistics were developed:

*The average size of a GL/PL claim has tripled from \$61,500 in 1991, to \$200,000 in 2002.

*Long term care operators incur 14.5 claims per year for every 1,000 occupied skilled nursing beds. This is three times higher than the 1991 frequency of 4.6 per 1,000.

*GL/PL claim costs have absorbed 21% (\$6.38) of the \$30.69 increase in the national average Medicaid reimbursement rate from 1995-2002.

*Almost half of the total claim costs paid for GL/PL claims in the long term industry go directly to attorneys.

*Insurance markets have responded to this claim crisis by severely restricting their issuance of long term insurance, or by drastically raising premiums. Annual commercial premiums have increase 143% between 2001-2002, often with reduced coverage.

Loss of Housing

Between 1999 and 2001, 1.5 million housing units in the U.S. were irrevocably lost. Fires and natural disasters account for some of these losses, but owners voluntarily demolished many other units.



A new study commissioned by HUD's Office of Policy Development and Research (PD&R), "The Destruction of Housing Capital: A Preliminary Exploration into Demolitions and Disasters," explores this phenomenon and seeks to answer three key questions: How much capital is lost annually? What characteristics of these units may predict whether or not they will be lost? and What motivates owners to destroy housing capital?

The reasons for the loss of housing might be disasters such as fires or floods, or demolition resulting from a loss in economic value, physical depreciation and obsolescence, declining demand for residential structures, or higher and better use. By analyzing each national sample of the American Housing Survey separately from 1985, the authors have investigated which variables contribute to the likelihood of a unit being demolished. The factors the authors examined in their analysis fall into three groups: Characteristics- region, metropolitan status, structure type, and structure size; Path of the Unit- tenure, vacancy status, physical condition, and maintenance effort; and Casual Variables- age, value/changes in value, and neighborhood quality.

Units appear to pass through stages on the way to demolition. Ones that were rental or vacant had a higher probability of demolition, as did older units. However, the characteristics variables were most important in explaining demolition. The authors found that demolitions may be more prevalent in non-metropolitan areas, and more likely for single-family detached units.

"The Destruction of Housing Capital: A Preliminary Exploration into Demolitions and Disasters" is available at:

www.huduser.org/datasets/ahs/ahsReports.html#1.

Court Ruling– No Pet Policy

The U.S. District Court for the District of Hawaii issued a ruling in favor of an owner who refused to waive its no-pet policy and allow two tenants to keep their dog as a reasonable accommodation for their disabilities. (*Prindable v. Association of Apartment Owners of 2987 Kalakaua*). Both tenants alleged that they are disabled, however, the court hearing the summary judgment motion concluded that the alleged depression of Mr. Prindable would be a matter for a court or jury to decide.



The Prindable court held that it found **no** evidence that the assistance animal in question was trained as a service animal "suited to ameliorate the unique problems of the mentally disabled". In support of its holding, the court relied on several cases including *In re Kenna Homes Cooperative Corporation*. The *Kenna Homes* court held that Kenna Homes' no pet policy, is not discriminatory in violation of the State and Federal law.

HUD does not agree with the *Kenna* ruling because it is inconsistent with federal law. As a result, litigation is being brought by the U.S. in the case of *HUD on behalf of Prince v. Kenna Homes*. The problematic parts of Kenna's policy are: 1. requirement that a disabled resident provide evidence of his/her disability from a physician licensed in the field of the disability and 2. requirement that the animal be trained and certified for the particular disability.

NJ Affordable Housing Committee

The New Jersey Senate Community and Urban Affairs Committee passed a bill on February 9 that would establish a Joint Committee on Affordable Housing to provide oversight over the Fair Housing Act. The committee will study the availability and provisions of affordable housing, as well as the financing and administration of affordable housing programs and land use policies.



It will also make recommendations for legislative action, including amendments to the Fair Housing Act.

Closings

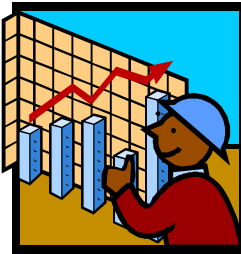
The following closings occurred during the month: Insured-Lafayette Village, Jersey City, NJ, Williamson Towers, Williamson, WV, and Clarksburg Towers, Clarksburg, WV; Section 202/811- Caribe Towers, Phila., PA, Allentown Supported Independent Living, Allentown, PA, Sylvan Hollow Retreat Apts., Mountville, PA, and Vance Housing.



A groundbreaking also took place for the Ann Thomas Assisted Living Facility, Philadelphia, PA.

Market Analysis of Morgantown, WV

A comprehensive analysis of the Morgantown (Monongalia Co.), West Virginia area, was issued by HUD's Office of Policy and Research in October 2003.



The report stated that conditions in the sales and rental market within both the city of Morgantown and the remainder of the county were very tight with strong demand for additional owner and rental housing. During the 2-year forecast period, demand for rental units is estimated at 380, based on the current rates of construction, expected losses, and other market factors.

Some additional facts brought out in the report were:

*The local economy experienced sustained growth throughout the 1990's despite a downturn in the national and state economy.

*Unemployment averaged a low 3% during the 12 months ending September 30, 2003.

*Family income was \$52,200 in 2003, as compared to \$43,628 in 2000.

*Population totaled 81,866- an average increase of 635 persons since 1990.

As of 2000, the inventory increased to 36,695 units- an average increase of 513 units per year. Since 2000, the inventory increased by 460 units, or 1.2%, to 38,300 units. This was due to favorable economic conditions during the previous decade, growth in student enrollment at West Virginia University (WVU), increased hiring of professional faculty at WVU, and service sector employment growth. From January 2000 to Sep-

-tember 2003, building permits were issued for 145 units. The most active areas for new construction include the eastern portion of the county and development sites on the north side of Morgantown.

During the forecast period, more than 300 units of multifamily housing are expected to be constructed outside the city.

61% of the area's housing are owners and 39% are renters. In the city, renter households comprise 58% of all housing. The number of renter households has increased due to conversions of older single-family buildings to rental housing for WVU students, and the replacement of older duplexes with moderate-sized apartment buildings.

Interviews with property managers in the city reported tight conditions with declining vacancy rates since 2000.

Properties with multi-year lease agreements with WVU have occupancy rates of 100%. Older properties in neighborhoods farther from campus have rates of less than 5%. As a result of strong student demand, local developers acquire existing structures, and construct small multifamily properties of typically 15-30 units within 12 months after demolition.

Rental costs vary based on proximity to WVU. Properties, in older rental neighborhoods, in the northern portion of the city rent for the following amounts: EFF- \$300-\$375/mo., 1-BR- \$375-\$425, 2-BR- 450-\$550, and 3-BR- \$600-\$725. Modern units, with off-street parking, rent for an additional \$100-\$200/mo.

Based on expected demolitions, tenure shifts, household growth, current market conditions, and the number of units under construction, demand for an additional 1,020 units during the 2-year forecast is anticipated. Of this total, 640 owner-occupied and 380 renter-occupied units will be needed. The additional supply will contribute to a more balanced market for renter households expected to be formed in the county.

The complete 14-page report is accessible at: www.huduser.org/Publications/PDF/Morgantown.pdf

Market Studies

See www.huduser.org/publications to also read about "market characteristics" of Reading and Lancaster, PA.

