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## CHAPTER ONE

### INTRODUCTION

#### 1.1 GENERAL

- a. Management agents that operate HUD-insured and HUD-assisted multifamily properties play a key role in helping HUD provide quality affordable housing. A principal focus of this handbook is the development of an effective partnership among owners, their management agents, residents and resident associations, and HUD staff to provide quality affordable housing (see Figure 1-1). Throughout this handbook, the term "partnership" specifically refers to the roles of property owners, management agents, residents, and HUD in working together to meet this objective.
- b. This handbook provides guidance regarding most aspects of HUD's relationship and interaction with owners and management agents of HUD-insured and HUD-assisted properties. It also includes guidance regarding the involvement of residents and their representative organizations in key decisions concerning their projects and the importance of supporting resident efforts to organize.
- c. Most of the activities discussed in this handbook are the responsibility of the Office of Multifamily Housing Management. The handbook also describes the role of the Office of Fair Housing and Equal Opportunity (FHEO) in ensuring compliance with civil rights requirements.

#### 1.2 APPLICABILITY

- a. The guidance presented in this handbook applies to management agents of both HUD-insured and HUD-assisted properties. Figure 1-2 lists the different types of HUD properties subject to the provisions of this handbook.
- b. Depending upon the circumstances, HUD, the Administration for Rural Housing and Economic Development Services (ARHEDS), or a state/local agency will be responsible for oversight of management agent activities. In general, state agency-financed projects that are also HUD-insured follow the rules for HUD-insured properties. Agents managing projects that are financed under the ARHEDS Section 515 program generally receive guidance from ARHEDS rather than HUD.

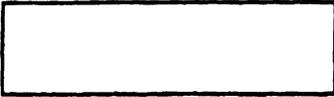
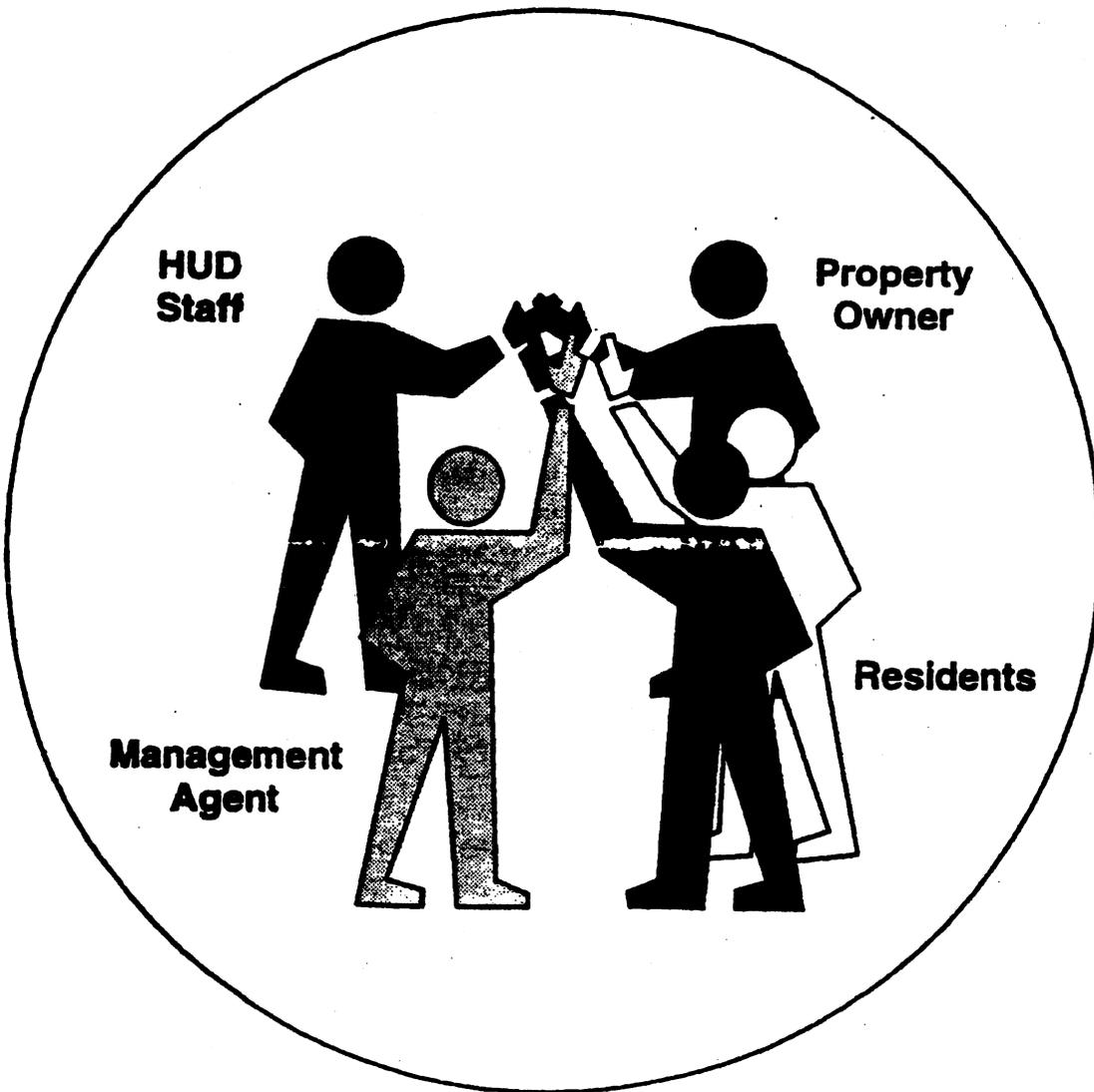


Figure 1-1

# HUD is Seeking To Foster A Partnership Among Key Actors



### 1.3 PURPOSE OF THIS HANDBOOK

- a. This handbook describes the procedures that Loan/Asset Management and other HUD staff need to follow in working with and monitoring management agents of HUD-insured and HUD-assisted properties. The handbook is also designed to serve as a reference for owners and their management agents.

Figure 1-2

#### Applicability by Type of HUD Property

Types of Properties	Programs Affected
1. Insured Multifamily Housing	Section 221(d)(3) Section 221(d)(4) Section 207 & Section 220 Section 231
2. Interest Subsidy Projects	Section 221(d)(3) BMIR Section 236
3. Project-Based Rental Assistance	Section 8 Multifamily Programs (except Mod Rehab) Rent Supplement and RAP
4. Direct Loans for Housing for the Elderly or the Handicapped	Section 202 and Section 202/8 Section 811

- b. While this handbook provides basic guidance regarding owner/agent responsibilities and HUD procedures, it is designed to be used in conjunction with:

- (1) HUD Handbook 4350.1, Multifamily Asset Management and Project Servicing; and
- (2) HUD Handbook 4350.5, Subsidy Contract Administration and Monitoring.

as well as the relevant HUD multifamily housing handbooks listed at the end of this chapter.

#### 1.4 HUD GOALS

- a. The Office of Multifamily Housing has established the following goals to guide the administration HUD's insured and assisted housing programs:
- (1) Assuring decent, safe, and sanitary housing for those the housing was constructed to serve. HUD is charged with the responsibility to help provide and preserve an adequate supply of affordable housing.
  - (2) Minimizing losses in the multifamily insured, direct loan, capital advance, and property disposition programs.
  - (3) Maximizing collections of all funds due HUD, with particular emphasis on the collection of delinquent debt and Section 236 excess income.
  - (4) Enforcing applicable statutes and regulations.
  - (5) Allocating, administering, and monitoring subsidy-based programs in a cost-effective manner.
- b. HUD Loan/Asset Management staff will work with and monitor management agents and owners of HUD-insured and HUD-assisted properties to achieve these goals and assure that all applicable HUD regulations and program requirements are met.
- c. FHEO Area Office staff will monitor compliance with civil rights statutes, regulations, and civil rights-related program requirements and provide technical assistance as needed.

#### 1.5 COOPERATION

- a. A successful partnership among management agents, owners, residents, and HUD staff is vital to providing an adequate supply of well-maintained, financially solvent, affordable housing on a nondiscriminatory basis. HUD recognizes that while the formal relationships between the members of this partnership are contractually controlled, mutual respect for its partners and an appreciation of their interests are essential for reaching its goals.
- b. Through the procedures it establishes and its interaction with the other partners, HUD will seek to foster an effective working relationship among the members of this partnership. HUD also will look to management agents, residents, and their representative organizations to take steps to build and

maintain a working partnership with HUD. In addition to this commitment to its partners, HUD must also protect its interests as a mortgage insurer and its responsibilities to the nation's taxpayers.

#### **1.6 OWNER/MANAGEMENT AGENT RELATIONSHIP**

- a. While HUD will work with management agents and monitor their performance, the property owner is ultimately responsible for a project's compliance with HUD regulations and requirements. HUD expects that owners will oversee the performance of their management agents and take steps to correct deficiencies that occur.
- b. HUD will not intercede in the relationship between owners and management agents except to review the qualifications of a proposed agent and to assure compliance with applicable HUD regulations, program requirements, and civil rights statutes and regulations. The management fee paid to the management agent is determined solely through negotiations between the owner and the agent. HUD will only approve the management fee payable from project funds.

#### **1.7 HUD/MANAGEMENT AGENT RELATIONSHIP**

- a. HUD will work with agents to provide quality affordable housing. Activities of HUD Area Office staff include providing assistance to help agents meet their responsibilities, monitoring agent activities for compliance with laws, regulations and the provisions of subsidy contracts and regulatory agreements, and working with associations of housing management agents to resolve conflicts and develop mutually agreeable solutions to problems that arise.
- b. In the spirit of partnership, HUD will exercise care to prevent undue intervention in the affairs of the management agent when taking steps to protect its interests and ensure that agents meet their obligations.

#### **1.8 RESIDENTS' RELATIONSHIP WITH OWNERS, MANAGEMENT AGENTS, AND HUD**

Residents and resident associations can be invaluable allies for owners/agents and should be given the opportunity to voice their views and concerns in key decisions regarding the project. Toward this end, HUD encourages owners/agents to go beyond the minimum requirements for resident involvement and take the following steps:

- (1) work to enhance communication between residents and both on-site and senior management;
- (2) facilitate resident access to management;

- (3) ensure that proper consideration is given to resident input; and
- (4) emphasize the importance of promptly resolving problems affecting residents.

## 1.9 RESOLVING CONFLICTS AND MANAGEMENT ISSUES

- a. This handbook provides guidance regarding a range of management activities and duties. Nonetheless, HUD recognizes that issues will arise which are not addressed in the following chapters. When agents encounter issues affecting their ability to manage their properties effectively, HUD encourages them to work through local professional associations of management agents to identify practices that will provide proposed solutions to these issues.
- b. HUD expects that its Area Offices will work with agents through their professional associations to find mutually acceptable solutions whenever possible. Once agents and their industry groups have identified a potential response to a problem area, they should review the proposed practice with the Director of Housing in the Area Office. Resolution of management concerns pertaining to civil rights compliance or enforcement issues will involve FHEO staff. The Director will assess whether the proposed practices protect HUD's interests and are consistent with the agency's basic regulatory requirements, consulting with Headquarters staff as necessary. Management practices that satisfy these two conditions may be approved for use by management agents in that area. The Area Office may place conditions on the use of proposed practices if necessary to protect HUD's interests.

## 1.10 WAIVER OF HANDBOOK DIRECTIVES BY HUD AREA OFFICES

- a. Appropriate Uses of Waivers
  - (1) The procedures presented in this handbook are designed to ensure that statutory, regulatory, and contractual obligations imposed on owners of HUD-insured and assisted housing are fulfilled. While some are specifically required by statute or regulation, others have been established by HUD through experience with court cases and problem resolution to provide the means to meet statutory and regulatory goals and objectives and to confirm compliance with program objectives.
  - (2) HUD Area Offices may find that some of the procedures do not allow them to take local conditions into consideration or that alternative procedures would allow them to perform their duties more effectively.

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- (3) If Area Office staff determine that an alternative system or procedure allows them to perform their duties more effectively or helps to overcome problems experienced by owners or agents, the Director of Housing may waive directives specified in this handbook ONLY if they are not formally required by statute or regulation.
- b. Processing of a Waiver. The Director of Housing must prepare a written waiver and waiver justification that includes:
- (1) the reason for the waiver, including the issues to be addressed or the problem to be solved;
  - (2) the procedure that Area Office staff will follow in place of the directive being waived, including an explanation of how the alternative procedure will ensure that all statutory, regulatory, and contractual obligations will be met and HUD's interests protected;
  - (3) the circumstances to which the waiver applies (e.g., whether the waiver applies to all projects in the Area Office jurisdiction, projects in certain circumstances or meeting certain requirements, or only a specific project); and
  - (4) the circumstances under which the waiver will no longer apply (e.g., time limits or threshold requirements that must be maintained).
- c. Area Office Counsel Review and Determination
- (1) Upon the request of the Director of Housing, the Area Office Counsel must review the proposed waiver to confirm that:
    - (a) the waiver is consistent with statutory and regulatory requirements and that other legally binding requirements of any applicable regulatory agreement or housing assistance contract are met; and
    - (b) HUD's interests are adequately protected.
  - (2) If the Area Office Counsel finds that the waiver does not meet the requirements of paragraph (c)(1) above, the directive may not be waived. The Area Counsel may recommend revisions to the proposed waiver that would enable it to be approved.

- d. **Notice to Affected Parties.** Written copies of the waiver and the procedures being implemented under the waiver must be provided as follows.
- (1) If the waiver applies to all projects or a group of projects, the Area Office must make copies available to:
    - (a) owners of HUD-insured and HUD-assisted projects covered by the waiver under the jurisdiction of the Area Office;
    - (b) management agents of these same projects; and
    - (c) formally established resident associations representing the residents of these projects.
  - (2) If the waiver applies to only a single project or a small number of projects held by a single owner, the Area Office must send a written copy to the property owner and management agent specifically stating that the waiver only applies to the specific project or group of projects. The waiver does not need to be distributed to other owners and agents. However, it should be provided to legitimate resident associations representing residents of the affected projects upon written request.
- e. **Notice to HUD Headquarters.** Upon issuing a waiver, the Director of Housing must send HUD Headquarters a copy of the written waiver and guidance for Area Office staff, property owners, and agents.

## 1.11 ORGANIZATION OF THIS HANDBOOK

This handbook is organized as follows:

**Chapter 2, Approval of Management Agents** identifies the approving authority for each type of project affected and describes the conditions and procedures for approving management agents.

**Chapter 3, Allowable Management Fees from Project Funds** outlines the different types of management fees and sets forth the procedures for determining the allowable fee amounts to be paid from project funds.

**Chapter 4, Working with Residents** discusses the importance of resident involvement in certain areas of project operations and describes owner/agent responsibilities for communicating with and gathering input from project residents.

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**Chapter 5, Encouraging Training and Employment Opportunities** presents HUD's policy of encouraging owners/agents of HUD-insured and HUD-assisted properties to inform residents and area businesses of employment and training opportunities and to consider hiring them.

**Chapter 6, Program Monitoring** discusses the monitoring procedures Loan/Asset Management staff are expected to follow in monitoring management agent activities to assure that they are in compliance with all applicable HUD requirements.

**Chapter 7, Program Compliance** describes the types of violations that can occur and the actions HUD must take to assure that compliance is restored.

**Chapter 8, Service Coordinators** provides owners/agents the ability to request, and HUD the ability to approve rent increases for both budget-based and AAF rents where the owner could justify the expense of a Service Coordinator.

#### **1.12 OTHER REFERENCES**

In addition to the two handbooks references in paragraph 1.3 (HUD Handbooks 4350.1 and 4350.5), this handbook references guidance and procedures contained in a number of additional HUD documents. Figure 1-3 lists the additional HUD documents used in conjunction with this handbook.

**Figure 1-3****Additional HUD Reference Materials**

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|------------------------------|---|
| ◆ HUD Handbook 4065.1,       | Previous Participation Handbook (Instructions)  |
| ◆ HUD Handbook 4350.3,       | Occupancy Requirements of Subsidized Multifamily Housing Programs   |
| ◆ HUD Handbook 4370.1,       | Reviewing Annual and Monthly Financial Reports  |
| ◆ HUD Handbook 4370.2,       | Financial Accounting Procedures Handbook  |
| ◆ HUD Handbook 4350.2,       | Loan Management Set-Aside Handbook  |
| ◆ HUD Handbook 4355.1,       | Flexible Subsidy Handbook   |
| ◆ HUD Handbook 4350.6,       | Processing Plans of Action Under the Low-Income Housing Preservation and Resident Homeownership Act of 1990 |
| ◆ HUD Handbook 4370.4,       | Basic Accounting Desk Reference for HUD Loan Servicers  |
| ◆ HUD Handbook 4571.1 REV-2, | Section 202 Direct Loan Program for Housing for the Elderly or Handicapped                                  |
| ◆ HUD Handbook 8025.1 REV-2, | Implementation of Affirmative Fair Housing Marketing Requirements for Multifamily Housing                   |