



U.S. DEPARTMENT OF
HOUSING AND URBAN DEVELOPMENT
OFFICE OF INSPECTOR GENERAL

September 30, 2015

MEMORANDUM NO:
2015-DE-1802

Memorandum

TO: Dane M. Narode
Associate General Counsel, Office for Program Enforcement, CACC

FROM: *//signed//*
Ronald J. Hosking
Regional Inspector General for Audit, Denver Region, 8AGA

SUBJECT: Final Civil Action: Owner of HUD-insured Multifamily Property Settled Allegations of Authorizing and Paying Out Project Funds for Unallowable Expenses

This memorandum was revised on November 4, 2015 to change the addressee from Craig T. Clemmensen to Dane M. Narode. The correction does not require further HUD action.

INTRODUCTION

We performed a review of subpoenaed bank records based on our audit of The Retreat at Church Ranch (Office of Inspector General audit report number 2013-DE-1003). The audit disclosed indications that the owner used project funds for ineligible and questionable costs.

BACKGROUND

The former managing member of a Colorado limited liability company, Signature – The Retreat, LLC, is the owner of The Retreat at Church Ranch, a 47-unit assisted-living facility located in Westminster, CO. The owner refinanced the project's mortgage with a U.S. Department of Housing and Urban Development (HUD)-insured mortgage under the National Housing Act. On September 26, 2007, the owner and HUD signed a regulatory agreement, in which the owner agreed to operate the project in accordance with HUD requirements. This agreement prohibits Signature from paying out any funds except for reasonable operating expenses or necessary repairs or from surplus cash without prior written approval from HUD. Under 12 U.S.C. (United

States Code) 1735f-15, HUD is authorized to impose civil money penalties against the owners of multifamily projects insured by HUD, as well as any members of a limited liability company that owns such projects.

RESULTS OF REVIEW

Our review disclosed that the owner allegedly made payments for personal expenses from the project's bank account. On December 11, 2013, we requested that HUD pursue proceedings against the owner.

On March 31, 2015, HUD filed a complaint with its Office of Hearings and Appeals, seeking more than \$12.9 million in civil money penalties against the owner. The complaint alleges that, starting in 2010, the owner authorized and paid out project funds for expenses that were not reasonable operating expenses, necessary repairs, or from surplus cash and without HUD's prior written approval.

The owner denies HUD's allegations. However, to avoid the uncertainty of litigation and to arrive at a settlement that was satisfactory to both parties, the parties negotiated in good faith and reached a settlement in which the owner will pay HUD \$500,000.

RECOMMENDATION

We recommend that HUD's Office of General Counsel, Office for Program Enforcement,

- 1A. Ensure that HUD records the \$500,000 settlement due in its accounting records, including the \$11,000 paid at the time of settlement, to recognize funds due as a return of an ineligible cost.