



Florida Apartment Association

IMPACT

Vol. 13, Number 1



Meet Your Legislators!

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Annual Legislative Day!*

The Official Publication of the
Florida Apartment Association

IMPACT

Volume 15, Number 1

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Editor
Bobby Davis
Advertising Director
Kim O'Dell

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Florida Apartment Association
1133 W. Morse Blvd., Suite 201
Winter Park, FL 32789-3788
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PRESIDENT'S MESSAGE

by Steve Buck, ZOM Management

Well, it's just two months into the new year and we're off to a great start already, thanks to the dreaded Y2K bug proving to be one huge non-event. Now that we know our computers still work, the elevators go up and down, and the entry gates work (sometimes), we can all turn our attention and energies to more positive endeavors.

I look forward to serving as President of FAA this year. I continue to be impressed with the energy and commitment I've seen from the FAA officers and our fine staff at Crow-Segal Management. Marc Rosenwasser, FAA's president in 1999, did an outstanding job leading the association, and I want to thank him on behalf of our members and associates. The high compliment for a manager is that he or she makes a difficult job seem easy, and the continued success and improvement of FAA under Marc's leadership testifies to his managerial abilities. I also want to mention the work of Marjorie Stealey, our Executive Vice President from Crow-Segal, as a major reason for our success. She has capably handled all of the behind-the-scenes work in running the organization.

The Florida Apartment Association is charged with two responsibilities in its mission statement: Education and Legislation. Both are vital to our ability to perform our jobs at the highest level to fulfill our goals of providing safe, affordable housing to our residents. Most of our members are more familiar with the education side of our efforts. The Annual Education Conference and Trade Show has grown to be one of the strongest such events in the country. The meetings have improved every year, with membership responding to more interesting educational programs by attending in greater numbers, and with exhibitors recognizing the value in their investment by taking more booths and sponsorships each year. I am certain that the 2000 Conference, led by Conference Committee co-chairs Gary Cherry of Cherry Investments and Judy Cornyn of For Rent Magazine, will exceed the high marks and attendance records achieved in 1999. We have a new venue this year, the beautiful Wyndham Resort and Spa in Fort Lauderdale. The event, scheduled for August 23-25, is a must for apartment professionals in Florida, and I strongly encourage you to attend.

On the legislative front, 1999 was a successful year by any measure. For the first time in recent memory, we were not confronted by the annual attack of "repair and deduct" legislation. Early meetings with Florida Legal Services seemed to have satisfied them that the legislation is not as critical to their constituents as they previously thought, and we hope to get through the 2000 Legislative Session without fighting this issue again. Most of our legislative efforts last year concerned the issue of mandatory access for telecommunications companies seeking entry to multi-tenant buildings. This is rather an arcane topic to discuss in detail, but the bottom line is that we success-



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fully defeated these efforts last year. Our lobbyist, Jodi Chase of Broad & Cassel, has been instrumental in framing our arguments to legislators and aggressively supporting our position on this and other matters. Expect to see more telecommunications legislation to arise this year, however.

This year, we have decided to seek more aggressively legislation that will benefit our members. One area of particular interest is the treatment of security deposit interest. Currently, the only beneficiaries of non-interest-bearing accounts are banks. The FAA wants to make the interest on security deposits a matter to be decided by negotiations between the apartment owner and resident. I'll have an update on this by the next issue.

The seventh annual FAA Legislative Conference in Tallahassee will take place on March 29-30. The first day features a briefing by our lobbyist on the key legislative issues and our position on them. That night, FAA will sponsor a cocktail party in the Governor's Club for legislators and our members to talk in a comfortable environment. On the second day, we will visit the legislators in their offices. Please contact your local association executives for details and for scheduling appointments. Don't let your inexperience in this area deprive you of a unique opportunity to learn how the system works and how you can make it work for you.

I think 2000 will be a challenging year in the apartment business in Florida. We are seeing historically high levels of construction in many key markets, levels that appear to exceed demand, and you all know what that means. I encourage everyone to get involved, to attend more classes, and improve their skills to prepare for what promises to be a more difficult environment in 2000. I look forward to meeting many of you this year, and welcome your thoughts and concerns.



Market Report

Recent research by national real estate investment brokerage Marcus & Millichap indicates Central Florida faces that dreaded scourge: overbuilding. "Speculative construction...is beginning to outpace absorption for the first time in several years," the report says. It predicts that by the end of 2000, the greater Orlando area will have at least 3000 more apartment units available than renters to inhabit them, with the gap not closing until "some time in 2001." Because of low unemployment, steady job growth, and relatively high wages, builders feel optimistic in their building projections.

The report also notes that because there is a strong move-up market among workers, older communities are suffering most, while the abundant newer properties are maintaining high occupancy. Many renters are willing to pay higher rents for better quality apartments.

Apartment Moves Jacksonville

Booth Properties has entered the Jacksonville market, managing **Oak Hill Apts.** Wanda Hensley is the manager.

Archstone Communities trust sold the 320-unit **Cameron of Timberlin Apts.** to a private investor for \$20.6 million, or \$64,375 per unit.

Vestcor has completed construction on **Kendall Court Apts.**, a \$16.4 million, 360-unit community that is the first major apartment community on the city's Northside in a decade.

New York City-based **Sentinel Real Estate Corp.** bought the 336-unit **Cameron at Deerwood Apts.** (built in 1996) from **Archstone Communities** for \$20.7 million, or \$61,607 per unit. Occupancy is approximately 95%.

Pinnacle Realty Mgmt. Co. has taken over management of the 194-unit **La Costa Brava Apts.** and **River Bend Apts.**

Bay Area

ZOM has broken ground on **The Madison at SoHo**, a 368-unit community in Tampa.

Fairfield Properties, an apartment developer from Grand Prairie, TX, plans to build 418 more luxury units on 45 acres adjacent to the **Preserve at Temple Terrace**, the company's 300-unit luxury community near Fletcher Ave. and I-75 and the University of South Florida. The company awaits site plan and approval. Multifamily inventory in Hillsborough County has increased by almost 7500 units in the last two years, according to Michael Slater of **Triad Consulting**.

Savannah Realty, Inc. has purchased the 80-unit **Savannah Apts.** in Sarasota from **Dine Realty, Inc.** for \$4.6 million, or \$57,500 per unit. Millford Inanamort of **Arvida Realty Svcs.**

represented the seller and Michael Ogilvie of **Michael Saunders & Co.** represented the buyer.

Chicago-based **Elkor Realty Corp.** bought the 689-unit **The Cove Apts.** in Tampa from **Heitman Equity Group** for \$29.5 million, or \$42,816 per unit. **Marsha Stinson** of **Cushman & Wakefield of Florida** brokered deal. She also represented **Summit Properties** in the sale of two other Tampa properties: the 212-unit **Summit McIntosh Apts.**, sold for \$10.8 million (\$50,943 per unit) and the 274-unit **Heron's Run Apts.**, sold for \$14.9 million (\$54,379 per unit). Both were sold to Baltimore-based investment group **Town & Country Trust**.

GMAC Commercial Mortgage has arranged \$6.175 million in financing for the 350-unit **Sun Point Lake Apts.** in Tampa. **Sunshine Century Corp.** received the permanent acquisition loan at 7.63% amortized over 30 years.

Central Florida

Epoch Properties of Winter Park and **Prudential Real Estate of North America** have signed a joint venture agreement to develop **Park Avenue at MetroWest**, a 743-unit, Class A community on 41 acres. Mark Findura and Chase Patillo handled the transaction for **R.J. Twitty & Co.**, which brokered the deal. Construction will begin in February.

GrayCo, Inc. bought the 288-unit **Parkway Village Apts.** in Kissimmee from **Heitman Realty Advisors** for \$14.38 million, or \$49,924 per unit.

AIMCO bought the 234-unit **Cameron Villas I and II** from **Archstone Communities** for \$11.34 million, or \$48,462 per unit. Cole Whitaker of **The Apartment Group** brokered both transactions.

Nearly 1700 apartment units are under construction at **Waterford Lakes** in east orange County and more are planned. **Waterford East Partners, Ltd.** bought a 20-acre parcel for \$2.8 million in the development for a 400-unit apartment community.

The 248-unit **Colonial Pointe Apts.** in east Orange County were sold by **Colonial Pointe Apts., Ltd.** to **EPD Associates** of Morristown, NJ for \$10.2 million, or \$41,129 per unit. Robert Smith of **Smith Equities** brokered the transaction. EPD Associates plans major renovations and upgrades. **Windsor Mgmt., Inc.** a wholly owned subsidiary of the owner, will manage the property.

Westmont Hospitality Group sold the 354-unit **The Courts at Lakeside Apts.** in Altamonte Springs to a private investor for \$10.2 million, or \$28,814 per unit. Larry Cavallaro of **The Cavallaro Group** and Marnie Connor of **IRG/Commercial** represented the buyer while Bob Miller of CB Richard Ellis represented the seller. The Courts at Lakeside was built in 1981 and 95% occupied at the time of sale.

The **Orlando Neighborhood Improvement Corp.** bought the 128-unit **Hidden Cove Apts.** in Orlando for \$3 million, or \$23,438 per unit, from **Alliance Investment Group**. Mark Smith of **Smith Equities** and Alliance brokered the transaction. ONIC plans to renovate the lakefront property to provide affordable housing.

Peter B. Chorney of Orlando and **Gregory and Luba Chorney** of Spring Hill bought two Deland apartment communities totaling 68 units for \$1.435 million. The Chorneys paid the **Charles J. Kersch Family Trust** \$535,000 (\$22,292 per unit) for the 31-year-old, 24-unit **Wellington Arms Apts.** They also paid

the **Lonnie Willoughby Sr. Trust** of Panama City \$900,000 (\$20455 per unit) for the 25-year-old, 44-unit **Penn Oaks Apts.** Edward Rogner of **Arvida Realty Svcs.** negotiated for the sellers in both deals, while Arvida's Sue Odena represented the buyers.

Fletcher Mgmt. paid Edward and Shirley Hodapp \$2.11 million, or \$22,934 per unit, for the 92-unit **Lafayette Square Apts.** in south Orlando. Robin Webb of **Arvida Realty Svcs.** handles the transaction.

Kalpavrukshamu Corp. a Houston general partnership representing an investment group from India, has purchased the 330-unit **Park Hamilton Apts.** in Orlando for \$10 million, or \$30,303 per unit, and the 444-unit **Seville Place Apts.** in Orlando for \$12.5 million, or \$28,153 per unit. The seller was **Royal River Partners, LP**, and Larry Cavallaro of **The Cavallaro Group** and Marnie Connor of **IRG/Commercial** brokered the deal.

Northwestern Mutual bought the 428-unit **Gates of Harbortown Apts.** in MetroWest from **Windsor Residential** for \$28.91 million, or \$67,554 per unit. Mark Findura of **R.J. Twitty & Co.** handled the transaction.

The Dallas office of **AMI Capital** arranged a \$22 million, first-mortgage construction loan for **The Fountains**, a planned 400-unit, Class A garden apartment at Waterford lakes in east Orange County.

Walker & Co. Construction of Winter Park has broken ground on almost \$44 million worth of new apartment projects:

*The 382-unit, \$17.5 million **Coves of Brighton Bay Apts.** in St. Petersburg, a **Centex Multifamily Development** property;

*The 272-unit, \$13.5 million **Cagan's Crossing Apts.** on U.S. 27 in south Lake County, a **Cagan Management Group** property;

*The 228-unit, \$12.8 million **Manor Row at Park Central Apts.** in Orlando, a **Park Central Community Development Corp.** property.

Collateral Mortgage, Ltd. of Birmingham, AL has closed an \$8.4 million loan to **Carter-Haston Real Estate Svcs.** for the acquisition and renovation of the 236-unit **Versailles at Rosemont Apts.** in Orlando. Funding was arranged through the new **Fannie Mae DUS Rehabilitation Loan Initiative.**

Southeast Florida

The 301-unit **Fairway View Apts.** in Miami was sold by **Fairway View Apts., Ltd.** to an investor group for \$15.58 million, or \$51,761 per unit. Jay Masirman and Michael Stein of **CB Richard Ellis** in Miami acted as exclusive advisors to the seller.

Gables Residential in Boca Raton brokered the sale of a five-property, 1180-unit portfolio in Florida and Pennsylvania from **McKinney-Ringham Corp.** to **TAM Real Estate of Florida.** The Florida properties were the 300-unit **The Falls of Margate** in Margate, the 302-unit **Landings of Inverrary** in Lauderhill, and the 243-unit **The Falls of Venice** in Venice.

Village Oaks Apts. in Miami, a 448-unit, garden-style apartment community, received a \$4.4 million mezzanine loan from the Tampa office of **Cohen Financial.** The loan was provided to restructure an existing partnership and rehabilitate the property.

Archon Group sold the 421-unit **Westview Terrace Apts.** in Miami to bank of America CDC for an undisclosed amount. Rosendo Caveiro and Richard Davis of **CB Richard Ellis** repre-

sented the seller.

GE Capital provided a \$27.5 million fixed-rate loan to **Windsor Apts.** in Hollywood, a 388-unit Class-A community, on behalf of a New York City buyer, **Freehold, LLC.** Howard Taft of **Holliday Fenoglio and Fowler** arranged the deal. The loan was a ten-year term with 30-year amortization and a 1.20x debt-service ration.

The Cornerstone Group purchased from **Engle Homes, Inc.** 20 acres of land to be developed with a 300-unit Class A rental community located in Coconut Creek at Hilton Road and the Florida Turnpike. **Ameriton Properties** purchased from **Mizner Village** 23 acres of land to be developed with a 275-unit Class A rental community in Delray beach located at Atlantic Blvd. and Cumberland Drive. **CB Richard Ellis** arranged both sales.

Southwest Florida

Real estate investment banker **L.J. Melody & Co.** has arranged \$26 million in construction and equity financing for **Parkcrest at Ft. Myers Apts.,** a 360-unit luxury community developed by **CKT Development Co.** of Tampa.



Kristen K. Packard, Vice President of **Vestcor Development Corp.** in Jacksonville, was appointed by Governor Jeb Bush as Chairman of the Affordable Housing Study Commission. The Commission comprises 21 appointees and will develop recommendations for improvements to public policy that will stimulate community development and promote the production, preservation, and maintenance of affordable housing in Florida. It will review, evaluate, and make recommendations concerning housing programs and initiatives created since 1986.

Kristen is responsible for Vestcor's development, legal, financial, and administrative operations, including regional affordable housing development activity. Since 1993, she has been involved with the acquisition and development of more than 3000 affordable multihousing units in Florida.

San Diego, CA-based **Maintenance Warehouse**, a Home Depot company, opened a new distribution center in South Florida at 2701 W. 32nd Ave. in Pembroke Park. The Grand Opening took place on January 21, 2000. With the opening of this and another location in Arizona, Maintenance Warehouse now operates 15 distribution centers nationwide, totalling more than one million sq. ft. of warehouse space.

The company chose South Florida for its new distribution facility because of rapid growth and high demand for maintenance products in Florida. Overnight delivery capabilities will be split with the Tampa facility and continues to be free of charge for most items. Upon request, emergency same-day delivery is available at no charge to most of South Florida.

PRODUCT/SERVICE COUNCIL SPOTLIGHT

Phyllis Lorenzo-Hegele, Sears Contract Sales

The Florida Apartment Association prospers in part because of the dedication of associates such as Phyllis Lorenzo-Hegele. Her work both in official positions and behind the scenes has greatly improved the association's quality of programming and financial status.

Phyllis started at Sears 25 years ago in Burlington, NJ as a part-time helper in the Catalogue Dept. She moved from there to the retail department and ended up managing several departments, including paint, records, and toys. In 1979, she moved to the Contract Sales Division, selling Craftsman tools and other products to industrial clients. A year later, she moved to Miami to do industrial sales, then moved into the appliance department in 1985, where she has been ever since. Phyllis is officially an account manager, a salesperson like any other, but she unofficially serves as a mentor for other salespeople in the company, and helps them with business situations that earn them, not her, a commission.

With the company's increased focus on apartment customers, Phyllis got involved in the local apartment association, the former Apartment Association of Greater Miami. She served as Associates' Chairperson, Program Chairperson, and Vice President. Phyllis then made a conscious decision to focus on FAA,

and she has held several positions at the state level, including Associates' Vice President and Co-Chair of the 1999 Education Conference Committee. She also served last year as Chairperson of the Product/Service Council, and was instrumental in more clearly defining the role of the Council in FAA affairs.

"Getting involved with both the local and state apartment associations has been extremely valuable," she said. "It gives me the opportunity to meet high-level decision makers who have really helped our business. Without getting involved in FAA, I would never have met several people who have become very important to me."

She also loves working for Sears Contract Sales because of the quality of the company. "We handle service for Whirlpool and other appliance companies, and are negotiating to handle service for GE. The sign over the door at Sears says 'Complete satisfaction guaranteed or your money back,' and we mean it. It's good to know the company stands behind its products and service."

In her spare time, Phyllis loves to go fishing and boating on her 19' Cobi, *The Job Site* (so named so she can pretend she's working even when she isn't). She's also an avid bowler, biker, reader, and moviegoer.



Apartment Lending En Vogue

According to a fourth-quarter 1999 survey by Boston investment analyst Fantini & Gorga, lender interest is centered on apartment, office, retail, and industrial properties, with lesser interest in hotels and congregate housing. Fantini & Gorga surveyed life insurance companies, conduits, and banks and concluded that apartment lending was strongest across the board, followed by office lending and retail.

According to chairman George Fantini, "there is concern about overbuilding in the retail sector," and many lenders have decided not to lend in the industrial sector because "they believe it has been overbuilt, they don't understand it, and it's not as simple as apartment lending." Fantini also noted that "congregate housing and assisted living is under surveillance by some lenders."

Source: *Real Estate Finance Today*, January 15, 2000

Apartment Myths Dispelled

Although the homeownership rate is at an all-time high, the apartment rental rate has increased even more.

By Gwendolyn Glenn, Real Estate Finance Today

Associations representing multifamily housing complexes have undertaken a campaign to inform the country's planning officials that in order for smart-growth plans to be successful, apartments must be included in the mix.

Problems associated with urban sprawl around the country have led many local officials to press developers to build higher density developments, especially in the urban centers. However, apartment association officials said that to make apartment complexes more appealing to local officials and residents, myths associated with apartment living have to be dispelled.

"Despite this newfound appreciation of the higher residential density, many Americans remain averse to apartments," said Doug Culkin, executive vice president of the National Apartment Association. "This aversion is due in large part to the persistent misperceptions people have of apartments and the people who live in them."

The NAA and the National Multi-Housing Council have jointly produced a report that they are disseminating around the country to give government planning officials and residents more up-to-date and positive information on apartment complex living.

"We think many decision-makers and residents aren't aware of the facts about apartments," said Jack Goodman, chief economist for NMHC. "There are many ways apartments contribute to a healthy community and we want to make sure apartments get their fair share of attention. Clearly, apartments provide the opportunity for the preservation of open spaces, which is a plus. It's easier to get residents in apartments located near public transit; they conserve on infrastructure costs and are basically good fiscal news to local communities."

According to the booklet produced by NMHC and NAA, although the country's homeownership rate is at an all-time high of 66 percent, the apartment rental rate has increased even more, especially among the 35 to 54 age group. The fastest-growing segment of apartment dwellers, according to the report, are those making \$50,000 or more annually.

Officials at the associations said that contrary to myths associated with apartment living, apartment households generate 30 percent to 40 percent fewer vehicle trips than single-family dwellings because people who live in apartments use public transportation more.

A major barrier that apartment developers have had to face is suburban residents who fight against apartments being located in their communities out of fear that their property value will go down. According to the associations' statistics, between 1987 and 1995, homes located within 300 feet of an apartment complex appreciated at about the same rate as those not located near

an apartment community (3.1 percent vs. 3.19 percent). Additionally, apartment association officials said it is a myth that apartment dwellers have more children than single-family residences. They said that in 1999, only 20 percent of apartment households had one or more school-aged children vs. 33 percent of single-family homes.

Apartments have gone through a makeover similar to the manufactured housing industry in that their physical appearances are changing to look more like single-family properties and the amenities offered have increased to rival single-family homes. These days, it is not unusual for an apartment community to offer residents fireplaces, washers and dryers, a private alarm system, Internet access, nature trails, and personal need services such as dry cleaning and grocery shopping.

"The industry isn't what is used to be but the world isn't either. Apartments are better suited for infill development and intown revitalization, which is not something manufactured housing brings to the table," Goodman said. "Multifamily developers are also placing more attention on making apartments feel homey.

"They realize they are competing against single-family homes and low-density housing like townhouses, so they are offering more amenities," he said. "Those who've owned homes in the past are renting now and want the amenities they had. Developers have picked up on this and are responding."

A major obstacle to making apartment communities a significant player in smart-growth plans, according to Goodman, is zoning regulations in communities throughout the country which ban large apartment complexes.

"It's a big problem in that there is a lot of demand for apartments in districts where the zoning doesn't allow it. It sometimes takes years for developers to get through the bureaucratic process of getting a zoning ordinance changed. It's also expensive, so developers often lose interest," Goodman said. "The Northeast is especially difficult in getting zoning approvals. In many suburban areas, the resistance is deliberate; and in cities, the bureaucracy is so cumbersome."

Goodman predicted that apartments will soon become more acceptable to local officials and residents as they learn the facts behind apartment living, which is the reason they produced the booklet entitled "Growing Smarter With Apartments," that is being distributed nationally.

"Long term, I see the demographics, economics, and public policy converging to give apartments a growing share of the nation's housing," Goodman predicted.

HUD Proposes Multifamily Inspection Requirements

The rule would require a property inspection and ranking within a year after endorsement of a new loan.

By Michael Murray Reft, Real Estate Finance Today

HUD has sent a proposed rule on physical inspection requirements for multifamily housing to Capitol Hill for congressional review as a follow-up to a final rule in September 1998 that established uniformed physical inspections standards and protocols in FHA-insured multifamily housing.

The proposed rule would established administrative procedures on physical inspections that would notify an owner of HUD's assessments, provide the owner with an opportunity to seek a "technical review" of the assessment, and allow HUD to take action in certain cases in which the housing does not comply with the physical condition standards.

Properties would be ranked from 1 to 3 based on the scored determined by HUD's baseline reviews this year.

The top 20 percent of properties would be inspected every three years. The next 30 percent would have inspections performed every two years and the lowest-ranked properties, the last 50 percent, would have annual inspections.

Properties scoring at 1 or 2 with exigent health and safety deficiencies would need owner certification and evidence that any problems have been resolved. The owner would provide the documentation to the applicable Multifamily Hub Director.

In September 1998, there was concern by lenders that HUD "had been asking the mortgagee community to underwrite its cost of assessing HUD's portfolio," according to Tony Perez, executive vice president and chief of national asset management at WMF/Huntoon, Paige Associates, Ltd, of Edison, N.J.

A compromise has been reached whereby HUD would conduct a baseline review of its properties and then reestablish the grading. Lenders would then be able to gauge the costs of the new inspection protocol based on the scoring.

"That is the conceptual agreement we had on the grading," according to Perez. "We have not seen the results of the scoring on the inventory yet."

HUD could still conduct an inspection on any "covered multifamily housing property at any time HUD has reason to believe that the property has deteriorated significantly" regardless of the scores, according to the proposed rule.

The rule would also require a property inspection and ranking within a year after endorsement of a new loan.

"If this is the protocol today then every new product that I originate I can factor this into my pricing, [however] it is very hard for me to change the pricing on a transaction that I originated or that I acquired 15 or 20 years ago and that is the

fundamental problem," according to Perez. The owner would have 30 days following the issuance of the physical inspection report to request a "technical review."

HUD would "bear the expense of the new inspection score significantly improved over the original one. If no significant improvement occurred, the owner would incur the cost, according to the rule.

"Mechanically, how is [HUD] looking to do that?" Perez asked. "Does the mortgagor write a check before there is a reinspection? When they make the comment that [the owners] are going to pay for it, how is that going to be implemented?"

The rule stated that "HUD will not materially alter the physical inspection requirements in a manner which would materially increase the cost of performing the inspection."

"This protocol is a very good project. The end product is sound, [but] I think HUD has underestimated the cost to the mortgagee community and what the impact will be in future years," according to Perez.

If properties were referred to HUD's Departmental Enforcement Center and Multifamily Hub Program, the owner could provide input into a comprehensive evaluation of the property.

"During this period of evaluation, for insured mortgages, the mortgagee shall continue to carry out its duties and responsibilities with respect to the mortgage," according to the rule.

If the DEC determined that enforcement action was appropriate, written notification would be provided to the owner of the DEC's decision to accept the property for enforcement purposes.

A DEC compliance plan would be given to the owner whereby the owner could submit a counter proposal to the plan. "The DEC may take appropriate enforcement action" if there is no compliance by the owner, according to the draft rule.

"We do not believe that HUD has examined all of the intricacies of making this program work," said Perez, who pointed out that the regulations have just come out and HUD has not finished its baseline assessments of the properties and is still getting qualified inspectors.

"I think this project is at best three to four months minimum before a mortgagee could be positioned to conduct inspections," Perez said. "I do not believe this product is ready for prime time yet."

Financing Affordable Assisted Living with Tax Credits

by Kristin A. Dekuiper, Holland & Knight

Financing assisted-living projects with low-income housing tax credits offers exciting opportunities for cooperation between the health care industry and the affordable housing industry to develop effective solutions to meet the needs of low-income elders. The two industries share a common goal of finding cost-effective ways to permit low-income seniors to age with dignity and to provide the support they need for maximum independence. The low-income housing tax credit (the Tax Credit) provides an attractive source of equity financing for affordable assisted living projects. The intersection of the housing and health care industries in this cooperative effort, however, creates numerous structuring issues, most of which arise from the ambiguous nature of the assisted living concept itself.

Assisted living facilities have both housing and service components. From the perspective of the Tax Credit Program, it is important that assisted living projects be structured and characterized as housing. The service component of these projects, however, can complicate the housing characterization by invoking a regulatory overlay that smacks of health care and necessitates use of health care funding sources such as Medicaid.

Qualification of an Assisted Living Facility as Residential Rental Property for Purposes of the Tax Credit Program.

For purposes of the Tax Credit, in order to be a "qualified low income housing project," a project must be a residential rental

property." A residential rental property for purposes of the Tax Credit program has the same meaning as "residential rental property" for the purposes of the tax-exempt private activity bond rules. Tax-exempt bonds are another source of financing for affordable assisted living projects.

Although a project must be "residential rental property" to qualify for the Tax Credit, regulations under the Tax Credit program provide that "the furnishing to tenants of services other than housing (whether or not the services are significant)



does not prevent the units occupied by the tenants from qualifying as residential rental property eligible for credit." If non-housing related services are provided; however, charges for services that are not optional generally must be included in gross rent for purposes of determining whether the rents charged meet the low-income rent restrictions imposed by the Tax

continued on next page

Financing Assisted Living

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Credit program. The Tax Credit regulations provide that “a service is optional if payment for the service is not required as a condition of occupancy. For example, for a qualified low-income building with a common dining facility, the cost of meals is not included in gross rent for purposes of [the Tax Credit Program] if payment for the meals in the facility is not required as a condition of occupancy and a practical alternative exists for tenants to obtain meals other than from the dining facility.”

The Tax Credit regulations also provide that if continual or frequent nursing, medical or psychiatric services are provided, it is presumed that the services are not optional and the building is ineligible for the credit, as is the case with a hospital, nursing home, sanitarium, lifecare facility or intermediate care facility for the mentally and physically handicapped. Accordingly, although it is clear that significant services other than housing may be provided to Tax Credit projects, without disqualifying the facility as a qualified low income housing project, continual or frequent nursing, medical or psychiatric services are prohibited.

Revenue Ruling 98-47

In 1997, the Service issued Private Letter Ruling 974007, which concluded that an assisted-living facility did not qualify as residential rental property for purposes of the tax-exempt bond financing rules. The ruling appeared inconsistent with the authority under the Tax Credit program regarding characterization of an assisted living facility as residential rental property and caused consternation in the assisted-living industry. The ruling addressed whether an assisted living project was a “qualified residential rental project,” in which event the project could have been financed with tax-exempt private activity bonds. Due to unique factual circumstances, the taxpayer preferred to have the bonds characterized as Section 501(c)(3) bonds, which may not be used to finance qualified residential rental projects, but can be used to finance health care facilities. The ruling supported the taxpayer’s position and found that the facility in question was a health care facility, not residential rental housing.

The ruling surprised practitioners because it seemed inconsistent with another 1997 ruling that approved as residential rental housing a facility that included only microwave ovens in units where required for the safety of the elderly residents, without addressing the level of services provided. Moreover, although the ruling addressed bond-financed projects, it also caused concern about its potential applicability to Tax Credit-financed assisted-living projects. Industry groups, such as the National Association of Bond Lawyers, requested that the Internal Revenue Service (the IRS) clarify the ruling and, in particular, to produce guidelines for tax-exempt, bond-financed, assisted-living projects that are consistent with authority already developed under the Tax Credit program.

In Revenue Ruling 98-47, the IRS clarified its position on characterization of assisted living facilities as residential rental

property for purposes of both the tax-exempt bond rules and the Tax Credit program, citing the authority under the Tax Credit program as the appropriate standard for determining whether a facility is residential rental property for purposes of the tax-exempt bond rules as well.

Revenue Ruling 98-47 described a campus (Complex M) containing three buildings offering basis to individual of retirement age or older. Each building offered a different level of services to its residents.

The ruling described the increasing complexity and sophistication of services available as one moved from building to building. The basic services available to the residents in the first building were limited to laundry; housekeeping; regular daily meals in the common dining areas; 24-hour, monitored emergency call service using call button and two-way communication devices located in each room of a unit; planned social activities; and scheduled transportation to various sites in the vicinity including commercial areas, shopping centers, hospitals, and doctor’s office.

Residents of the second building also received typical assisted-living services such as: assistance by medication management technicians in medication management and intake; maintenance of detailed medication records; consultation with a nurse as needed about health concerns and medication plans; assistance by non-medically certified aides each day during waking hours in activities of daily living that include getting in and out of bed and chair, walking, using the toilet, dressing, eating and bathing; and routine checks by staff members to insure the residents’ general well-being. The ruling specifically noted that some residents of the second building had incapacitating infirmities that require continual assistance, but do not require continual or frequent nursing, medical or psychiatric services.

Only in the third building were continual or frequent skilled nursing care, medical or psychiatric services provided.

The guiding principle for determining whether a facility should be defined as residential rental property or a health care facility is whether the nature and degree of services provided make the facility in substance a residence or a health care facility.

Revenue Ruling 98-47 stated that the guiding principle for determining whether a facility should be defined as residential rental property or a health care facility is not how it is labeled, but whether the nature and degree of services provided make the facility in substance a residence or a health care facility. Applying this analysis to the facilities discussed in the ruling, the ruling concluded that the first and second buildings were residential rental property, and that only the third building would not qualify for tax-exempt, private-activity bond financings or Tax Credits because of its medical orientation.

Revenue Ruling 98-47 is consistent with prior authority under the Tax Credit program but has also significantly clarified the IRS’s position on assisted-living Tax Credit projects as well as tax-exempt, bond-financed projects.

Once an assisted-living project has been structured so that it can be characterized as housing under the Tax Credit program, care must be taken to structure the service component to avoid adverse impact on the Tax Credit program's rent restrictions and Tax Credit basis.

Drawing the Line - When Does the Package of Services Become Too Much Like a Health Care Facility?

For purposes of determining whether a Tax Credit project qualified as residential rental housing, the most important consideration is drawing the line between (i) the case where "continual or frequent nursing, medical, or psychiatric services are provided" and the facility is therefore analogous to a "hospital, nursing home, sanitarium, life care facility or intermediate care facility for the mentally and physically handicapped," in which case it is presumed that the services are not optional and the building is ineligible for the Tax Credit; and (ii) the case where the line can be drawn on the side of a facility that provides much less medically oriented services, which may be designed to assist the frail elderly in activities of daily living, but which do not rise to the level of continuously supervised skilled medical care. For this purpose, whether a facility is regulated by the health department in a particular state is not determinative. States regulate assisted-living facilities in various ways, and some states with an extremely residential/non-medical assisted-living statute may nonetheless delegate supervision of assisted-living facilities to the health department. The focus should be on the nature of the services permitted or required in an assisted living facility, not on the regulatory authority to whom enforcement is delegated.

Both existing Tax Credit authority and Revenue Ruling 98-47 lead to the conclusion that it is preferable to avoid a facility that, either as a result of licensing requirements or as a result of choosing permitted services within the range of licensing requirements, accentuates the availability of immediate and continual medical services and/or provides skilled nursing care on a regular basis. Again, the focus of the analysis should not be on the particular state's regulatory scheme, but on the actual nature of the services provided to an required by residents. It should be noted that in PLR 9814006, a single room occupancy (SRO) facility that offered optional supportive services was not disqualified as residential rental property even though there was a 24-hour staff person on duty and provision for holding and dispensing medication by the facility.

The juxtaposition Between Funding the Assisted-Living Service Component and the Rent Restrictions of the Tax Credit Program

Once an assisted-living project has been structured so that it can be characterized as housing under the Tax Credit program, care must be taken to structure the service component to avoid adverse impact on the Tax Credit program's rent restrictions and Tax Credit basis. As noted above, the general rule is that any services that are not truly optional must be included in a low-income tenant's gross rent in calculating whether the rent restriction tests is satisfied. If a service package is designed to be "optional," the tenant must have a "practical alternative" to services offered through the facility. This means that the tenant must be able to reject services offered by the facility either because he or she does not need them or because they can be secured realistically through other available providers. Thus, in facilities oriented towards frail elders who require assistance with one or more activities of daily living, it is important that the assistance required by residents be of a nature that reasonable can be secured from other community-based providers.

Several states permit the use of Medicaid to fund the service component of assisted-living projects for qualifying tenants. This is often accomplished through a Section 1915(c) "home and community-based services" waiver. Medicaid funding can only be used to fund the service component and may not be used for housing, although for this purpose meal preparation and service (but not the cost of food) may be considered a service rather than part of room and board.

Because Medicaid is a federal program, it could be deemed a federal grant, which would have an adverse impact on Tax Credit basis. Federal-source grants must be excluded from Tax Credit basis if they are made with respect to the building or the operation of the building. Certain federal subsidies (specifically those provided under Section 8 or Section 9 of the United States Housing Act of 1937) are exempt from this rule, but Medicaid is not among them. Because Medicaid funding is programmatically restricted to funding the service component of assisted living, however, it should not be deemed to be made with respect to the building or its operation of the building itself.

LEGISLATIVE UPDATE

by Jodi Chase, Broad & Cassel

Landlord/Tenant Bill Moving Along

With the 2000 Legislative Session only a few weeks away, legislative committees are sifting through the thousands of bills proposed to develop a workable agenda. Industry groups and legislators use this time to present their views and jockey to put themselves in position for passage of legislation they desire. The Florida Apartment Association is one of those hopefuls as we strive to pass a Landlord/Tenant Bill in 2000.

During the week of February 7, changes to the Landlord/Tenant Act contained in SB 696 favored by FAA passed out of the Senate Judiciary Committee. The House Bill will be heard in the House Real Property and Probate Committee during the next week of interim meetings. If it passes out of the House Committee, the bills will be heard on the floors of both the House and Senate early in the Session.

SB 696 make three important changes to the Landlord/Tenant Act. First, it allows security deposits to be placed in interest-bearing accounts, with the interest split equally between landlord and tenant. However, if the landlord and tenant wish to split the interest differently, they may agree to do so in writing separate from the lease.

Second, the bill changes the abandoned property statute. Under current law, if property abandoned in a unit is valued at \$250 or more, the apartment owner is required to retain the property and try to locate the former tenant. The bill would increase the property value to \$500 or more. It also clarifies notice provisions in the lease.

Finally, the bill gives the property manager an additional 15 days to get estimates on the cost of repairs after a tenant vacates a property. This allows you to obtain a realistic repair estimate before notifying the former tenant of the amount withheld from the security deposit.

The Landlord/Tenant bill is being sponsored by Senator John Grant and Representative Gus Bilirakis, both of Tampa. Please call them to thank them for their work done on behalf of this bill. Senator Grant can be contacted at 813-975-6658 and Rep. Bilirakis can be reached at 727-669-1911.

As many of you know, FAA Legislative Days will take place on March 29-30, 2000 in Tallahassee. Members are signing up now to take part. I encourage everyone who can possibly make it to come over and meet with legislators on behalf of the apartment association. We have people who can brief you and join you in your conversations. It's easy to feel that no one person can make a difference, but legislators are very impressed when citizens take time out from their work to speak with them personally, or write a letter. If you live in or near Tallahassee, please come over for a few hours. The Capitol Building swarms with activity and there are dinner and parties in the evening; it's all very exciting. No one can tell a legislator the problems you have with tenants, or explain the benefits of the new bill, better than you can, so you have a priceless opportunity to educate legislators about your issues.

Lead-Based Paint Enforcement Initiatives

by Amy L. Edwards, Holland & Knight

The U.S. Department of Housing and Urban Development (HUD) and the EPA have instituted a significant, nationwide initiative to enforce the disclosure requirements of the Residential Lead-Based Paint Hazard Reduction Act. of 1992.

On July 15, 1999, Attorney General Janet Reno and HUD Secretary Andrew Cuomo announced "multiple court actions of more than \$1 million," 45 administrative actions in 20 cities, and four settlements requiring owners of "target housing" to spend more than \$1 million in lead-based paint abatement, plus \$259,000 in fines and other damages. In addition, the EPA had announced earlier that it was issuing civil complaints against landlords in Missouri and Kansas with proposed penalties of \$56,200, and that it had instituted four civil lawsuits in Pennsylvania, Texas, and Oklahoma alleging disclosure violations and seeking penalties totaling \$439,725. HUD has also sought injunctive relief against alleged violators of the disclosure requirements.

At a recent seminar in Washington, DC on the disclosure requirements and the lead-based paint enforcement initiative, representatives from HUD and EPA discussed their respective approaches to enforcement of the Act. While HUD representatives stated that their goal was compliance with the Act, their further elaboration's indicated that the agency's approach is geared toward penalty assessment and obtaining inspection and abatement agreements. Despite agency guidance recommending that HUD and EPA give first-time violators Notices of Non-Compliance (NONs) instead of seeking penalties and fines, HUD has neither given NONs nor given property owners and managers an opportunity to cure alleged violations of the Act before bringing enforcement actions.

The EPA, on the other hand, appears more willing to work with sellers, lessors, and agents to achieve compliance. In response to questioning, HUD counsel acknowledged that the agency has not issued any NONs, whereas the EPA has issued approximately 500 of them. Unfortunately, enforcement under the Act, including the likelihood of penalties, depends on whether HUD or EPA is conducting the investigation.

Amy Edwards works in Holland & Knight's Washington, DC office. She can be reached at 888-688-8500.

NOTE: The new lead-based paint requirements, entitled "Requirements for Notification, Evaluation and Reduction of Lead-Based Paint Hazards in Federally-Owned Residential Property and Housing Receiving Federal Assistance," generally becomes effective on September 15, 2000. The National Multi Housing Council and National Apartment Association have prepared the following special points of interest:

* The new regulation supplements the existing federal lead-based paint laws for federally owned and assisted housing by requiring additional evaluation and control measures for lead-based paint hazards.

*The requirements vary, depending on the nature of federal involvement (e.g., whether the housing is being disposed of or assisted by the federal government); the type, amount, and duration of financial assistance; the age of the structure (which is associated with the amount of lead in the paint); and whether the dwelling is rental or owner-occupied.

* Effective November 19, 1999, certain methods of lead-based paint removal that "are known to be dangerous and/or produce very high levels of lead dust," are prohibited on pre-1978 properties which have not been certified free of lead-based paint.

*Beginning September 15, 2000, anyone who performs maintenance activities such as fixing peeling paint or sticking windows and doors which have been painted with lead paint, or cleans up dust which might contain lead from paint or other sources on properties that are federally-owned or assisted, must receive specific training.

*Forms have been developed by HUD which provide a model for information which must be provided to residents regarding inspections, risk assessments, disclosure of lead-based paint or hazards, and hazard reduction activities pursuant to these new HUD requirements. Samples and additional information are available from the NMHC by calling Eileen Lee at 202-974-2326 or emailing her at elee@nmhc.org.

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The companies listed below are current members of FAA's Product/Service Council. The Council gives associate members a voice in FAA affairs. Members of the Product/Service Council will be listed in each issue of *IMPACT* and in the *Resource Guide*. For annual dues of \$100, council members receive all mailings (including *IMPACT*), and representation on the Board of Directors through the Associates Vice President.

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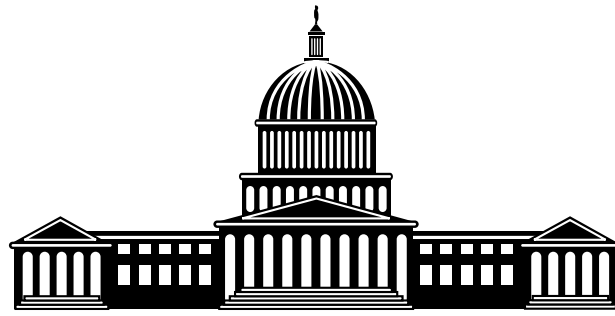
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Schedule of Events

Wednesday, March 29

3:00 PM - 5:00 PM

Issues Briefing

Doubletree Hotel

6:00 PM - 8:00 PM

Reception with Legislators

The Governors Club

202 South Adams

Plantation Room (2nd Floor)

Thursday, March 30

9:00 AM - 4:00 PM

Legislative Office Visits

Capitol Offices

The Conference ends upon completion of your individual office visits. You will make your own appointments with your elected officials. The booklet *Know Your Legislator* will be mailed to you when you register. Please be sure to follow up with a letter to your legislators confirming your March 30 appointments.

Call the Doubletree Hotel directly to make your sleeping room reservation.

The FAA room rate is \$129 single or double occupancy.

Please take a moment to complete the enclosed registration form confirming your participation in the FAA Legislative Conference!