825-RICR-30-00-3

TITLE 825 - HOUSING AND MORTGAGE FINANCE CORPORATION

CHAPTER 30 - RULES RELATIVE TO MULTIFAMILY LOAN PROGRAMS

SUBCHAPTER 00 - N/A

PART 3 - Proposed Prepayments or Transfers

3.1 DEFINITIONS

A. "Board of Commissioners" means the Board of Commissioners of the Corporation.

B. "Corporation" means the Rhode Island Housing and Mortgage Finance Corporation, a public corporation organized and existing under the laws of the State of Rhode Island.

C. "Executive Director" means the Executive Director of the Corporation.

D. "Housing development" means a multi-family housing project which has been financed in whole or in part by the Corporation and which is subject to a mortgage lien in favor of the Corporation.

E. "Housing development improvement plan" means a plan submitted to the Corporation by the Owner and/or the Proposed Transferee to improve a Housing Development.

F. "HUD" means the Department of Housing and Urban Development of the United States of America.

G. "Mortgage loan" means the loan issued by the Corporation to finance the Housing Development in whole or in part.

H. "Owner" means the owner of a Housing Development, or a lessee of all or substantially all of a Housing Development.

I. "Preliminary approval letter" means a letter sent by the Corporation to an Owner stating that the Board of Commissioners has preliminarily approved a Transfer or Prepayment.

J. "Prepayment" means a payment of the entire outstanding principal balance of the Mortgage Loan made at any time during the term of the Mortgage Loan prior to the date on which such principal would be due and payable thereunder; provided

that a prepayment of principal of a Mortgage Loan made pursuant to the Corporation's Preservation Program established under the regulations governing Preservation of Section 8-Assisted Developments (as set forth in Part 2 of this Subchapter) shall not constitute a Prepayment hereunder.

K. "Principal" means, with respect to an Owner or Proposed Transferee:

1. if a Partnership, any individual or corporate general partner or any limited partner which has an ownership interest of twenty-five percent (25%) or greater,

2. if a corporation, any officer, director or shareholder owning ten percent (10%) or more of the voting stock issued and outstanding and

3. if a trust, any trustee thereof or a beneficiary with a twenty-five percent (25%) or greater interest therein.

L. "Proposed transferee" means an individual, general partnership, limited partnership, corporation, trust or other entity seeking to either acquire, purchase or lease all or substantially all of a Housing Development or acquire or purchase a Substantial Interest in an Owner.

M. "Substantial interest" means:

1. if the Owner is a general partnership or a limited partnership, a general partnership interest or a twenty-five percent (25%) or greater limited partnership interest individually or in the aggregate;

2. if the Owner is a corporation or if the Owner is a general or limited partnership which has a corporation as its general partner, a ten percent (10%) or greater interest in the corporation's issued and outstanding voting stock; or

3. if the Owner is a Trust, a twenty-five percent (25%) or greater beneficial interest therein.

N. "Transfer" means a transfer to which these regulations apply as set forth in § 3.2(A) of this Part.

3.2 SCOPE OF REGULATIONS

A. Transfers to which these regulations apply.

1. A Transfer is deemed to take place, and these regulations apply, upon the occurrence of any of the following events:

a. A sale, conveyance, assignment or transfer of:

(1) A Housing Development;

(2) The right to receive rents or profits from a Housing Development; or

(3) A Substantial Interest in an Owner.

b. A change in the legal form of an Owner; or

c. The death or withdrawal of a general partner of an Owner.

B. Prepayments to which these regulations apply. Prepayment of the entire outstanding balance of the Mortgage Loan, whether or not made in connection with a sale, conveyance, assignment or other transfer of the Housing Development.

C. Exception. The occurrence of an event specified in §§ 3.2(A)(1)(a) through (c) of this Part, within one year following the date of closing of the Mortgage Loan shall not constitute a Transfer if such event was expressly disclosed in the application for the Mortgage Loan and was expressly consented to in writing by the Corporation.

3.3 APPROVAL CRITERIA

A. Review Standards.

1. The Application for a Transfer will be evaluated on the basis of the following standards:

a. The Proposed Transferee and its Principals shall provide evidence satisfactory to the Corporation with respect to the requisite experience, ability, moral character and financial resources of the Proposed Transferee and its Principals.

b. Neither the Proposed Transferee nor any Principal of the Proposed Transferee shall have been convicted of a felony.

c. Neither the Proposed Transferee nor any Principal of the Proposed Transferee shall have been suspended, debarred or otherwise restricted by any department or agency of the federal government or of a state government from doing business with such department or agency at any time within the five-year period preceding the date of the Application for Approval of Transfer.

d. The physical condition of the Housing Development must be acceptable to the Corporation. The Owner and Proposed Transferee shall establish that all physical improvements, repairs and maintenance which are necessary for approval of the Housing Development Improvement Plan have been completed in accordance with the Corporation's requirements. The Corporation may require that a Capital Needs Assessment in form and substance satisfactory to the Corporation be completed at the Owner's expense by a qualified assessor approved by the Corporation.

e. The financial condition of the Housing Development must be acceptable to the Corporation. All mortgage arrearages, operating deficits or reserve delinquencies shall be brought up to date, and the parties shall demonstrate to the Corporation's satisfaction that rents will be maintained at a level appropriate to the tenant population which the Housing Development is intended to serve, such that no material escalation of rents shall result from the transfer.

f. The Corporation must be fully satisfied with the property management of the Housing Development or the proposed management agent where a change in management is proposed.

2. The Application for a Prepayment will be evaluated on the basis of the following standards:

a. The physical condition of the Housing Development must be acceptable to the Corporation. The Owner shall establish that all physical improvements, repairs and maintenance which are necessary for approval of the Housing Development Improvement Plan have been completed in accordance with the Corporation's requirements. The Corporation may require that a Capital Needs Assessment in form and substance satisfactory to the Corporation be completed at the Owner's expense by a qualified assessor approved by the Corporation.

b. The financial condition of the Housing Development must be acceptable to the Corporation. All mortgage arrearages, operating deficits o reserve delinquencies shall be brought up to date, and the parties shall demonstrate to the Corporation's satisfaction that rents will be maintained at a level appropriate to the tenant population which the Housing Development is intended to serve, such that no material escalation of rents shall result from the Prepayment; and

c. The Corporation must be fully satisfied with the property management of the Housing Development or the proposed management agent where a change in management is proposed.

B. Change of Proposed Transferee for Transfer of Assets.

1. The Owner shall promptly notify the corporation in writing of a change in a Proposed Transferee identified in an Application for Transfer of Assets. A change in the Proposed Transferee shall include but shall not be limited to, the following events:

a. A sale, conveyance, assignment or transfer of a Substantial Interest in a Proposed Transferee;

b. A change in the legal form of a Proposed Transferee; or

c. The death or withdrawal of a general partner of a Proposed Transferee.

2. The Owner shall submit a new Application and supporting documentation upon a change of the Proposed Transferee. Any change in a Proposed Transferee shall require the payment of an additional Processing Fee and Transfer Fee, as herein defined, and shall require a complete review of the new Application and supporting documentation.

3.4 PROCEDURES FOR APPROVAL

A. Generally. The approval process involves three phases. In Phase 1, the Owner and the Proposed Transferee shall submit to the Corporation a summary of the Proposed Transfer or Prepayment and may request a meeting to discuss the Transfer or Prepayment procedure. In Phase 2, the Owner and the Proposed Transferee shall submit to the Corporation an Application for Approval of the Transfer or Prepayment, including all appropriate documentation, together with the Processing Fee, Transfer Fee or Prepayment Fee all of which are defined in this Part. In Phase 3, after the Corporation has preliminarily approved the Transfer or Prepayment, the Owner and the Proposed Transferee have 30 working days to close the transaction including executing, delivering and recording documents, submitting final documents and certain other materials to the Corporation, and providing evidence that all conditions to the Transfer or Prepayment imposed by the Corporation have been satisfied. No proposed Transfer shall be approved by the Corporation unless agreed to in writing by all holders of liens on the Housing Development senior to that lien granted the Corporation on the Housing Development as security for the Mortgage Loan.

B. Phase 1. To initiate a Transfer or Prepayment, the Owner and the Proposed Transferee shall submit to the Executive Director three (3) copies of the information required below and may request in writing a meeting with the Corporation to discuss the proposed transaction:

1. The name of the Proposed Transferee together with the names and residence addresses of all Principals of the Proposed Transferee and a brief description of their experience in multi-family housing projects;

2. An outline of the structure of the proposed Transfer or Prepayment; and

3. An inspection and cost analysis report prepared and certified to by an appropriately licensed architect or engineer appropriately licensed architect or engineer satisfactory to the Corporation, describing the present physical condition of the Housing Development and all needed repairs.

C. Phase 2. The Owner and the Proposed Transferee shall, within 30 working days after the initial meeting with the Corporation, submit to the Executive Director in triplicate an Application for Approval of Transfer or Prepayment. The Application shall be in such form as the Corporation may from time to time prescribe but shall at a minimum contain the following information or shall be accompanied by additional documentation setting forth the following information:

1. For Transfers:

   a. The name, address and telephone number of the Proposed Transferee and its Principals;

   b. The most recent federal income tax return(s) of the Proposed Transferee and its Principals and, if the Proposed Transferee is a partnership or corporation, its most recent audited financial statement(s) or, if the Proposed Transferee is an individual, a personal financial statement setting forth all assets and liabilities;

   c. Copies of all agreements and contracts which have been entered into or copies of draft agreements to be entered into by the Owner and the Proposed Transferee in connection with the Transfer. The agreement between the Owner and the Proposed Transferee setting forth the terms and conditions of the Transfer shall provide that "The transfer is subject to approval by Rhode Island Housing and Mortgage Finance Corporation";

   d. Copies of the organizational documents of the Proposed Transferee (i.e., if a limited partnership, the Partnership Agreement

and Certificate of Limited Partnership; if a corporation, the Articles of Incorporation and by-laws; and if a foreign corporation or foreign limited partnership, the Certificate of Authority in addition to the Partnership Agreement and Certificate of Limited Partnership or Articles of Incorporation and by-laws as appropriate);

e. A thorough fully documented explanation of all financial matters relating to the Transfer, including, without limitation, schedules setting forth the consideration to be paid, contributions to be made and fees of any kind. Where partnership interests are being sold in connection with the Transfer the schedules shall include, without limitation, the expected amount and timing of the payments by the Proposed Transferee and the ultimate disposition and recipients of such funds;

f. The Housing Development Improvement Plan, including estimated costs, timetables for implementation and information on sources of funds;

g. An appraisal of the Housing Development certified by an independent appraiser satisfactory to the Corporation (the "Appraisal"). The Appraisal must be the same as is used by the Owner and by the Proposed Transferee for all other purposes in connection with the Housing Development, and must be satisfactory to the Corporation in all respects. The cost of the Appraisal shall be borne by the Owner or the Proposed Transferee;

h. A Form HUD-2530 executed by the Proposed Transferee and each Principal of the Proposed Transferee;

i. Evidence of corporate or partnership authority, as appropriate, of the Owner or Mortgage Loan Applicant, the Proposed Transferee, and the officers or agents acting on their behalf to enter into the Transfer;

j. The name and a description of the management agent after the Transfer;

k. A non-refundable processing fee (the "Processing Fee") in the amount of One Thousand Five Hundred Dollars ($1,500.00) plus a transfer fee (the "Transfer Fee") equal to one percent (1%) of the higher of the original replacement cost of the Housing Development as determined at the time of initial closing of the Mortgage Loan, and its current appraised value set forth in the Appraisal; provided,

however, that if the Transfer is due to the death of a general partner of the Owner, the Corporation shall only require payment of the Processing Fee. The Transfer Fee (but not the Processing Fee) shall be refunded to the Owner within 20 working days after the expiration of the Review Period as that term is defined in this Part or any extension thereof in the event the Application is denied by the Corporation. The Transfer Fee shall otherwise be non-refundable. The Processing Fee and the Transfer Fee shall be payable to the Corporation in cash or be certified or bank check. Neither the Processing Fee nor the Transfer Fee shall be paid from Housing Development funds. Notwithstanding any other provision herein contained:

(1) the Corporation may, at its option, agree to waive a portion of the Processing Fee and/or Transfer Fee in the event that the Proposed Transferee executes an agreement in form and substance satisfactory to the Corporation providing that units of the Housing Development shall be maintained as housing affordable to and occupied by low income individuals and families for a period in excess of the Restriction Period defined in § 3.4(C)(1)(n) of this Part, and

(2) in the event of a sale of the Housing Development no Processing Fee or Transfer Fee shall be due hereunder if the Proposed Transferee has submitted a complete application to the Corporation for financing of the acquisition of the Housing Development and has paid all applicable application, processing and loan submission fees associated therewith;

l. A draft opinion of counsel in form and substance satisfactory to the Corporation establishing that the Proposed Transfer, when completed, will have been legally consummated, that the Proposed Transferee will be legally bound by the terms of the Corporation's loan documents, including the mortgage, regulatory agreement and housing assistance payments contract;

m. A preliminary report on title to the Housing Development satisfactory to the Corporation;

n. An agreement in form and substance satisfactory to the Corporation signed by the Proposed Transferee affirming that the Proposed Transferee shall maintain the Housing Development as housing affordable to and occupied by low and moderate income

individuals and families ("Affordable Housing Preservation") for a period equal to the greater of 25 years from the date of the Housing Assistance Payments Contracts relating to the Housing Development, and the original term of the Mortgage Loan or any extensions thereof (the “Restriction Period”); and

2. For Prepayments:

a. A thorough fully-documented explanation of all financial matters relating to the Prepayment, including, without limitation, schedules setting forth the consideration to be paid, contributions to be made and fees of any kind;

b. The Housing Development Improvements Plan, including estimated costs, timetables for implementation and information on sources of funds;

c. An appraisal of the Housing Development certified by an independent appraiser satisfactory to the Corporation (the "Appraisal"). The Appraisal must be the same as is used by the Owner for all other purposes in connection with the Housing Development, and must be satisfactory to the Corporation in all respects. The cost of the Appraisal shall be borne by the Owner;

d. Evidence of corporate or partnership authority, as appropriate, of the Owner, and the officers or agents acting on the Owner's behalf to effectuate the Prepayment;

e. The name and a description of the management agent after the Prepayment;

f. A non-refundable processing fee (the "Processing Fee") in the amount of One Thousand Five Hundred Dollars ($1,500.00) plus a prepayment fee (the "Prepayment Fee") equal to one percent (1%) of the higher of the original replacement cost of the Housing Development as determined at the time of initial closing of the Mortgage Loan, and its current appraised value set forth in the Appraisal; provided, however, that the Processing Fee and Prepayment Fee shall not exceed any restrictions thereon under the terms of the Mortgage Loan. The Prepayment Fee (but not the Processing Fee) shall be refunded to the Owner within 20 working days after the expiration of the Review Period as that term is defined in this Part or any extension thereof in the event the Application is denied by the Corporation. The Prepayment Fee

shall otherwise be non-refundable. The Processing Fee and the Prepayment Fee shall be payable to the Corporation in cash or be certified or bank check. Neither the Processing Fee nor the Prepayment Fee shall be paid from Housing Development funds. Notwithstanding any other provision herein contained, the Corporation may, at its option, agree to waive a portion of the Processing Fee and/or Prepayment Fee in the event that the Owner executes an agreement in form and substance satisfactory to the Corporation providing that units of the Housing Development shall be maintained as housing affordable to and occupied by low income individuals and families for a period in excess of the Restriction Period;

g. A Prepayment Regulatory Agreement in form and substance satisfactory to the Corporation which in part shall contain an agreement by the Owner that the Affordable Housing Restriction shall be maintained on the Housing Development for at least the balance of the original term of the Mortgage Loan and such other restrictions and provisions as deemed necessary or advisable by the Corporation to insure that no material escalation in rents will occur for the Housing Development during the original term of the Mortgage Loan, and authorizing the Corporation to operate the Housing Development in the event of any violation of the Prepayment Regulatory Agreement until such violation is rectified;

h. A preliminary report on title to the Housing Development satisfactory to the Corporation;

i. A draft opinion of counsel in form and substance satisfactory to the Corporation establishing that the Prepayment, when completed, will have been legally consummated, that the Prepayment has been duly authorized by the Owner and that the Prepayment Regulatory Agreement has been duly authorized, execute and delivered and constitutes the legal, valid and binding obligation of the Owner enforceable against the Owner in accordance with its terms; and

j. An affidavit of Owner in form and substance satisfactory to the Corporation as to the ownership of the Housing Development before and after the proposed Prepayment.

3. The Corporation shall inspect the Housing Development within 20 working days after receipt of an Application, and shall complete its review of the Application and supporting documents within 60 working days after receipt (the "Review Period"), provided however, that the Corporation may extend

the Review Period by written notice to the Owner and Proposed Transferee. The Corporation may at any time prior to Preliminary approval request either the Owner or the Proposed Transferee to submit supplementary or explanatory material for clarification of the Application. Staff of the Corporation shall review the Application and shall either deny the Transfer or Prepayment, or submit a recommendation to the Board of Commissioners for approval or the application, which shall preliminarily approve the Transfer or Prepayment, or preliminarily approve the Transfer or Prepayment subject to certain conditions (which conditions may include modifications to the Housing Development Improvement Plan).

D. Phase 3

1. Not more than 30 working days after the date of the Preliminary Approval or within such other period as the Corporation and Owner may agree, the Owner and the Proposed Transferee shall close the Transfer, or the Owner shall complete the Prepayment (as the case may be) at which time final approval shall be given by the Corporation if the following requirements and any additional requirements specified in the Preliminary Approval Letter are satisfied. The final approval shall be given by the Corporation if the following requirements and any additional requirements specified in the Preliminary Approval Letter are satisfied. The Corporation must have received written notice by the Owner of the date, time and place of closing not later than 5 working days prior thereto. At the closing, the Owner and the Proposed Transferee, if any, shall:

    a. Execute, deliver and record, as appropriate, all documents submitted in support of the Application, with such changes as the Corporation may require as set forth in the Preliminary Approval Letter;

    b. Submit to the Corporation an interim financial statement of the Owner which covers the period between the date of the Application and the date of Transfer or Prepayment together with a balance sheet of the Proposed Transferee as of the date of Transfer;

    c. Submit a title policy endorsement to title certificate showing title in the Proposed Transferee subject only to the Corporation's interest in the Housing Development and other exceptions agreed to by the Corporation;

    d. Submit an executed opinion of counsel in form and substance satisfactory to the Corporation establishing that the Transfer or Prepayment has been legally consummated and that the Proposed

Transferee is legally bound by the terms of the Corporation's loan documents including the mortgage, regulatory agreement and housing assistance payments contract, or that the Owner is legally bound by the terms of the Prepayment Regulatory Agreement;

e. Submit evidence to the Corporation that all conditions set forth in the Preliminary Approval Letter have been satisfied;

f. Pay any legal fees of the Corporation incurred in connection with the Transfer or Prepayment (to the extent permitted under the terms of the Mortgage Loan) in excess of One Thousand Five Hundred Dollars ($1,500.00). Payment of the additional legal fees of the Corporation, if any, shall be made in cash or by certified or bank check and shall not be paid from Housing Development funds; and

g. Complete all other actions required to consummate the Transfer or Prepayment.

2. Failure to submit any item, document or payment required by the foregoing section at the closing may result in the revocation of preliminary approval and shall result in the forfeiture of the Transfer Fee or Prepayment Fee. Additionally, the Corporation shall have such other remedies as are available to it at law or in equity.

3.5 INCORPORATION OF CERTAIN PROVISIONS IN DOCUMENTS

A. Deferred purchase payments in the form of a debt owed by the Proposed Transferee in connection with the Transfer (other than that attributable to the Corporation's mortgage loan) shall be permitted only to the extent they are allowable under applicable bond resolutions and related documents and to the extent they do not jeopardize the Corporation's security or conflict with its legal or programmatic interests. All documents relating to deferred purchase payments, such as the Purchase and Sale Agreement, the contract of sale, debt instrument and security instrument, shall incorporate the following or substantially similar provisions:

1. The rights of any creditor under the debt and security instruments shall be subordinate and subject to the rights of the Corporation under its mortgage note, mortgage and security agreement.

2. So long as the Corporation's mortgage is outstanding, any payments due the creditor from development income shall be payable only from

distributions approved by the Corporation in accordance with the regulatory agreement pertaining to the Housing Development.

3. The creditor has no claim and shall not later assert any claim against the mortgaged property, the mortgage proceeds, any reserve or deposit required by the Corporation or HUD, or against the rents or other income from the mortgaged property including any financial assistance provided by the Corporation or HUD.

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