TRKING HOUSING (TIII BRCK TO THE FUTURE

2016 National Housing Symposium



November 4, 2016

Welcome and Opening Remarks

Christopher D. Bell, *Ballard Spahr* Teri M. Guarnaccia, *Ballard Spahr*



Heard on the Hill

Moderator: Amy M. Glassman, Ballard Spahr



Heard on the Hill

- Moderator
 - Amy M. Glassman, Ballard Spahr
- Panelists
 - Chris Estes, National Housing Conference
 - Bernard B. Fulton III, U.S. Department of Housing and Urban Development
 - Tiffany Smith, United States Senate Committee on Finance
 - Nick Wyatt, United States Senate Committee on Finance

RADical Developments: The Latest in Rental Assistance Demonstration Projects

Moderator: Amy M. McClain, Ballard Spahr



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- Panelists
 - Sinclair Cooper, Hunt Companies
 - Sarah Garland, PNC Bank
 - William A. Lavy, U.S. Department of Housing and Urban Development
 - Paul J. Weissman, Hunt Mortgage Group

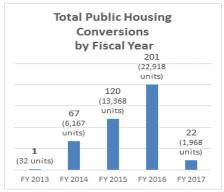
Where we are and where we're going

The State of RAD

- 185,000 unit cap is fully subscribed
- +15,000 unit waiting list
- Conversions = 44,453 units with
- Construction investments = \$3.2 Billion.
- RAD Interim Evaluation report finds "proof of concept"

Closed Projects: Per Unit Level of Investment By Project





President's Request

- Eliminate the cap on the public housing units that can convert **at no cost**
- Allow Section 202 Project Rental Assistance Contracts (PRACs) to convert under 2nd Component at no cost
- \$50 million for incremental subsidy for public housing and Section 202 PRAC conversions for properties with significant capital needs
- Authorize a tenant's right to continued occupancy under the 2nd component

Align ownership and control requirements in tax credit partnerships and in the event of foreclosure, bankruptcy, or default with baseline standard

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Current Fair Housing Problems in Housing Management

Moderator: Michael W. Skojec, Ballard Spahr



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 - Jan Goslee, Housing Authority of Baltimore City
 - Rebecca Peace, Pennsylvania Housing Finance Agency

Disparate Impact

• A policy or practice neutral on its face but having a significant negative effect on protected groups

HUD Disparate Impact Rule

- 24 C.F.R. § 100.500 (2013)
 - Practice has discriminatory impact where results in disparate impact or increases or reinforces segregated housing patterns.
 - Rule sets up three prong burden shifting for DI claims.

Texas Dept. of Hous. and Comm. Affairs v. Inclusive Communities Project (2015)

- Supreme Court recognizes Disparate Impact theory claims
- Court "safeguards" against "abusive disparate impact claims"
 - Robust causality statistical disparity not enough
 - Not discriminatory unless creates "artificial, arbitrary and unnecessary barriers"

Courts applying Supreme Court "safeguards" and dismissing cases

- City of LA v. Wells Fargo predatory lending.
- Burbank Ten. Assn. v. Kargman Section 8 renewal.
- Ellis v. City of Minneapolis Code enforcement

Low Income Housing Tax Credit Cases

- Remand of *Texas v. ICP*
 - Trial court dismissed because ICP did not make prima facie case
 - Plaintiffs failed to "point to a specific facially neutral policy"
 - Plaintiffs failed prove "a causal link"
 - Plaintiffs failed to demonstrate that "other factors" are not responsible
 - ICP filed an appeal in September 2016

Low Income Housing Tax Credit Cases

- ICP v. U.S. Dept. of Treasury and Office of the Comptroller of Currency
 - Seeking to compel federal agencies to issue AFFH regulations
 - DOJ: Section 42 "does not contemplate or require Treasury's involvement in project siting"

How Are QAP's Being Affected?

- States have been looking at impact of competitive points/priorities for years
- Balancing preservation and new construction
- Balancing points for Qualified Census Tracts
- Reviews of "concerted community revitalization plans"
- Factors such as local veto/approval requirements

Residency Preferences and Zoning Issues

- Winfield v. New York City
- San Francisco Neighborhood Preferences
- Long Island Housing Services Inc. v. Nassau County Industrial Development Agency

Housing for Disabled

Olmstead v. L.C. (1999)

- Supreme Court decision interpreting Title II of ADA
- Holding requires states to eliminate unnecessary segregation and provide services in the most integrated setting
- Focus is on overall housing service systems over individual projects
- DOJ enforcement has led to settlement agreements requiring more community based housing

Insurance Industry Challenges

- Property Casualty Insurers v. HUD and new HUD reconsideration of public comments (Oct. 5, 2016)
- American Insur. Assn. v. HUD applying Supreme Court "safeguards" to HUD DI rule

While Courts Develop DI parameters, HUD Uses DI to Expand Potential Liability

- HUD Guidance on Criminal Background Screening (April 2016)
 - Applies to all housing providers under FHA
 - Addresses the analysis that HUD would use to determine if a criminal history screening policy has a discriminatory effect

Guidance on Criminal Screening

- Step 1: Does the criminal history screening policy have a discriminatory effect?
- Step 2: Is the screening policy necessary to "achieve a substantial, legitimate, nondiscriminatory interest of the [housing] provider?"

Guidance on Criminal Screening

- Blanket policy of excluding solely based on prior arrests without a conviction cannot satisfy the "substantial, legitimate, nondiscriminatory interest" burden
- Blanket policy of excluding based on having a conviction record cannot satisfy the "substantial, legitimate, nondiscriminatory interest" burden
- "A policy that fails to consider the nature, severity, and recency of the criminal conduct is unlikely to serve a substantial, legitimate, and non-discriminatory interest of the provider"

Criminal Screening Best Practices

- Policy must be clear and in writing
- Policy must state the legitimate interests that pertain to it
- Develop different look back periods for categories of criminal offenses
 - Violent felonies, non-violent felonies, misdemeanors

Example Policy: LTA Criteria for HABC RAD Converted Sites

- 7 year look back for felony convictions due to violent crimes
 -- specified in the criteria
- 3 year look back for other felony convictions
- 18 month look back period for misdemeanors

Other Recent HUD Activity

- HUD Guidance on Enforcement of Local Crime-Free Housing Ordinances (Sept. 13, 2016)
- HUD Final Rule on Quid Pro Quo and Hostile Environment Harassment and Liability (Sept. 14, 2016)

Quid Pro Quo and Hostile Environment Harassment and Liability

- Rule amends HUG regulations to formalize standards for investigating and adjudicating complaints of quid pro quo harassment and hostile environment harassment housing
 - Formalizes definitions of "quid pro quo" and "hostile environment harassment"
- Rule clarifies standards of liability
 - Direct liability and vicarious liability for housing providers
 - Fact based analysis of many factors
- HUD expects housing providers to require regular employee training and make policy updates known

Other Recent HUD Activity

- HUD Guidance on Protections for Persons with Limited English Proficiency (Sept. 15, 2016).
- HUD Final Rule on Equal Access in Accordance with Individual's Gender Identity (Sept. 21, 2016)

- How Public Housing Authorities Affected by Recent HUD Actions?
- Courts Limiting DI and HUD Expands Elsewhere -Affirmatively Furthering Fair Housing (AFFH)

What Does AFFH Require and How Being Implemented?

- Purpose of federal funding is to eliminate barriers, desegregate, expand choices and opportunities
- Agencies must undertake meaningful actions as condition of receiving federal subsidy funding (HOME, National Housing Trust, Public Housing funds)
- 2015 New Rule provides data and framework for thoughtful evaluation and planning
- Agencies must prepare "Assessment of Fair Housing" (replaces old Analysis of Impediments to Fair Housing)
- Data maps, detailed framework for assessment and evaluation, and mandated community participation process
- Focuses on patterns of segregation, racially and ethnically concentrated areas of poverty, disparities in access to opportunity and disproportionate housing needs

What Is Coming Next?

QUESTIONS

Current Fair Housing Problems in Housing Management

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Lunch and Networking sponsored by







Demographic Trends in Multifamily Housing: Past, Present and Future

Moderator: Christopher D. Bell, Ballard Spahr



Demographic Trends in Multifamily Housing: Past, Present and Future

- Moderator
 - Christopher D. Bell, Ballard Spahr
- Panelists
 - Kim Betancourt, Fannie Mae
 - Mark H. Obrinsky, Ph.D., National Multifamily Housing Council
 - Jamie Woodwell, Mortgage Bankers Association

Strategies for Year 15 Issues

Moderator: Molly R. Bryson, Ballard Spahr



Year 15 Issues

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- Panelists
 - Amy Broadwater, RubinBrown
 - Neal T. Drobenare, NHP Foundation
 - Alex Finigan, TCAM
 - Greg Griffin, Enterprise Community Asset Managment











2016 National Housing Symposium November 4, 2016

Presenter:

Gregory L. Griffin, HCCP.

Senior Director, Disposition Management
Enterprise Community Asset Management, Inc.



VILLAGE HOUSE





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Page Number (optional)



VILLAGE HOUSE



- 54 units
- Located in suburbs of Baltimore, MD.
- Serving seniors 62 and over
- 30%, 50% and 60% AMI
- PIS 4/30/2002
- LIHTC compliance period expires 2016
- Extended Use Restrictions expire 2041



STAKEHOLDERS



- General Partner Established Non Profit
- Limited Partner Single Investor Fund
- Syndicator Enterprise
- Lenders:

1st. Federal Home Loan Bank,Susquehanna Bank2nd Maryland DHCD

- State Allocating Agency Maryland DHCD
- Residents











VILLAGE HOUSE NEGOTIATION POINTS

- GP holds the Right of First Refusal to purchase property for debt + exit taxes
- GP offers to assume limited partners interest citing limitation on value:
 - Large DHCD surplus cash loan
 - The project cannot be recapitalized Due to age restriction the project is not eligible for 9% credits and is too small for 4% execution
 - The project cannot be refinanced The first loan currently has a prepayment penalty of \$80,000 (which reduces to \$0 in 2020)
 - Capital Needs \$700,000
 \$200,000 short term (includes roof \$100,000)
 \$500,000 10 yr.



ENTERPRISE GOALS



- Deliver Expected Investor Benefits
- Exit investor in Year 16
- Transfer to Sponsors
- Works with the sponsor to develop its Year15 transition plan
- Preserve affordability
- Minimize displacement of low-income residents
- Preserve project viability











PARTNERSHIP ECONOMICS

Property NOI \$144,731
Cap Rate \$6.8%

Property Value \$2,128,397

Plus

Operating Reserves \$77,037 Replacement Reserves \$109,554

T&I Escrows \$15,794

Cash in Bank <u>\$59,777</u>

\$262,162

Less

AP/Current Accruals \$6,575

Fees Payable \$6,872

Debt <u>\$3,054,437</u>

\$3,067,884

Net Assets \$(677,325)



RIGHT OF FIRST REFUSAL











\$2,956,748

Less Debt	\$2,956,748
Less Taxes	-

Less Unpaid benefits -

Sales Proceeds -

Plus

Cash on Hand	\$59,777
Escrow Deposit	\$15,794
Replacement Reserve	\$109,554
Operating Reserve	\$77,037

Less

Payments of all existing debts/liabilities	\$(13,447)
Established Reserves	\$(109,554)
Net Liquidating Assets for Distributions	\$139,161
Total Distributable Cash to the LP	\$59,563
Total Distributable Cash to the GP	\$79,598



VIEW FROM THE FUND



- Business Purpose: includes long term preservation after fund exit
- Investor benefits delivered
- Fund IRR exceeds target
- Partnership Agreement provides ROFR disposition in Y16
- Assign limited partner interest to GP
- GP assumes all assets and liabilities



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Multifamily Housing Bonds – Looking into the Future

Moderator: P. Andrew Spicknall, Ballard Spahr



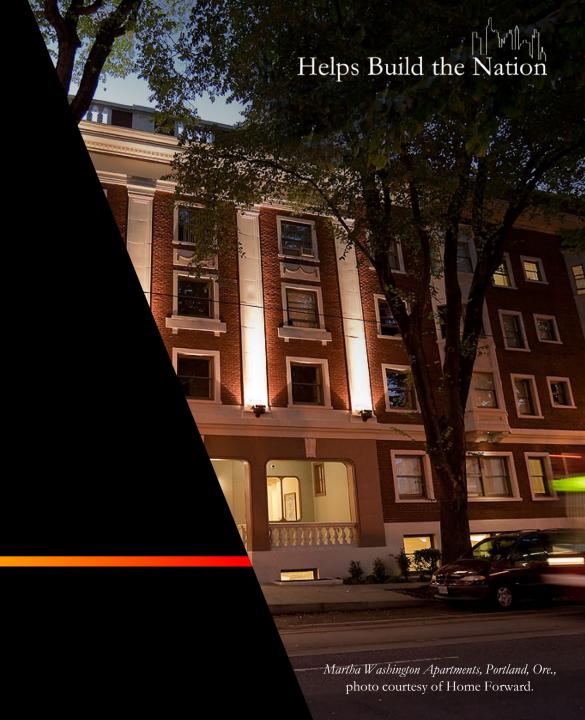
Multifamily Housing Bonds – Looking into the Future

- Moderator
 - P. Andrew Spicknall, Ballard Spahr
- Panelists
 - Frank Baldasare, Walker & Dunlop
 - John M. Ducey, Fannie Mae
 - Robert Schultz, Burlington Capital
 - Shaun Smith, Freddie Mac
 - Cody Wilson, Stifel, Nicolaus & Company

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Closing Remarks

Christopher D. Bell, *Ballard Spahr* Teri M. Guarnaccia, *Ballard Spahr*



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Reception

