

CHAPTER 8. ENFORCEMENT OF MORTGAGOR REQUIREMENTS

SECTION 1. DETECTING A VIOLATION

- 8-1. Use all servicing tools available to determine an Owner's compliance with the Regulatory Agreement or other relevant agreements. The servicing tools include physical inspections, occupancy reviews, management reviews, annual audited financial statements, monthly accounting reports, and discussions with on-site management and the Multifamily Information Processing System (MIPS) applications.
- 8-2. If a violation is suspected, notify the Owner and the management agent, if there is one, in writing. The notification should: a) state the specific violation that may have occurred, citing the paragraph of the Regulatory Agreement, other agreement, certification or warranty that may have been violated; b) state that the violation, if established, may subject the Owner to administrative sanctions or to civil money penalties; and c) ask the Owner to respond in writing to the allegation, to admit or deny that a violation has taken place, and to provide a justification for its actions.
- Allow a reasonable amount of time for the Owner to investigate the allegation and to respond.
- 8-3. Thoroughly review all of the Owner's explanations and supporting documentation. If necessary, interview the Owner and/or any other project representatives involved in the allegations and document the interview with a confirming letter.
- 8-4. If there is any doubt as to whether a violation may have taken place, discuss the matter with field counsel, the Office of General Counsel, or Headquarters Desk Officers in the Office of Housing Management.

SECTION 2. WHEN A VIOLATION HAS BEEN ESTABLISHED

- 8-5. If a full consideration of the Owner's response does not show an adequate justification for the alleged violation, write to the Owner explaining why its response is inadequate and declare the Owner in violation of a specific provision of the Regulatory Agreement, other agreement, certification or warranty.

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- 8-6. Notify the Owner in writing that it must correct its violation within a stated, reasonable period of time, and if not corrected within that time frame, face possible administrative sanctions or civil and/or criminal penalties. See Handbook 4370.1, exhibit 2-22 for possible corrective actions HUD Offices may take.
- 8-7. Require the Owner to respond to HUD Office's letter within 10 working days stating the action to be taken and to provide written, certified confirmation that the violation has been corrected.
- 8-8. Except where compliance can be readily verified (e.g., submission of annual financial statement, obtaining new management agent, return of money to project accounts), require the Owner to provide a certification from a third, party acceptable to HUD that the Owner is now in compliance. If corrections have been made to HUD's satisfaction, notify the Owner of this fact as soon as possible after compliance has been established.

SECTION 3. VERIFYING CORRECTIVE ACTIONS

- 8-9. Upon receipt of the Owner's certification that the violation has been corrected, take the steps necessary within a reasonable period of time to verify that the correction has actually been made. HUD should independently verify that the violation has been corrected even if the Owner submits a third party certification of compliance.
- 8-10. If corrections have been made to HUD's satisfaction, notify the Owner of this fact as soon as possible after compliance has been established.

SECTION 4. CIVIL AND CRIMINAL PENALTIES

- 8-11. HUD Offices shall use their authority whenever necessary to enforce program requirements.
- 8-12. HUD Offices may take actions to impose the civil penalties listed below. (See Appendix 8 of Handbook 4370.1 for a summary of the statutes giving HUD such authority.) HUD Offices should submit recommendations for prosecution to obtain civil and criminal penalties to the Regional Counsel.

- a) impose civil money penalties of up to \$25,000 for violation of the Regulatory Agreement or violation of an agreement to use non-project funds to pay for certain specified needs of a project (e.g., payments to the replacement reserve account) as a condition of transfer of physical assets, a flexible subsidy loan, a capital improvement loan, a modification of the mortgage terms or a workout agreement.
- b) recover double the value of the assets and income of the project that the court determines to have been used in violation of the regulatory agreement or any applicable regulation.

NOTE: Civil money penalties cannot be collected for violations that are caused by the Department.

8-12. HUD offices may seek to impose the criminal penalties listed below. (See Appendix 8 of Handbook 4370.1 for a summary of the statutes giving HUD such authority.)

- a) fine an Owner, agent or manager up to \$250,000 or imprison not more than five years for willfully using or authorizing the use of any part of the rents, assets, proceeds, income or other funds derived for the property during a period when the mortgage note is in default or the project is in a non-surplus cash position for any purpose other than to meet actual or necessary expenses. (See 4370.1, par. 2-40b and 4370.2 REV-1, par. 2-10E and 2-11A)
- b) fine not more than \$10,000 or imprison not more than 5 years, or both, for knowingly and willfully falsifying, concealing or making any false, fictitious or fraudulent statements or representations or making or using any false document knowing it to contain any false, fictitious or fraudulent statement.
- c) fine not more than \$5,000 or imprison not more than 2 years or both, for (a) knowingly making or signing false statements or (b) willfully overvaluing any security, asset or income for purposes of obtaining any HUD insured loan or advance of credit or for the purpose of obtaining any extension or renewal of any loan, advance of credit or mortgage or acceptance, release or substitution of any security on such loan.

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- d) fine not more than \$1,000 or imprison not more than one year or both for making any false entry in any book of HUD or making any false report or statement to HIM or for receiving any compensation with intent to defraud HUD.
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