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MEMORANDUM

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TO: REF Attorneys &amp; Paralegals

DATE: 5/1/86

FROM: Nancy Kramer  
Mary Sabatini DiStephan *MSD*

RE: J-51 and 421-a Benefits

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A number of problems have arisen in plans where sponsors claimed the buildings received or would be eligible to receive New York City tax abatements under either the J-51 (existing buildings) or 421-a (new construction) programs. The problems are of several different types and can be avoided by ensuring that adequate disclosure is included in all offering plans that include promises of J-51 or 421-a benefits.

1. Sponsors apply for benefits but later learn that their application was denied, either because the proper documentation was not submitted or because the sponsor failed to comply with construction requirements.

a. Full disclosure requires that sponsors who are simply applying for the benefits show what the projected budget will be if the application for benefits is not granted by the New York City Department of Housing Preservation (HPD).

b. Also, sponsors applying for benefits must request an opinion letter from HPD, which will give a good indication of their likelihood of prevailing. Such a letter should be requested, and preferably obtained, before a plan is accepted. In any case, an effectiveness amendment should not be accepted without the letter. Application forms are available from Larry Finkelstein, Director of Tax Abatement Programs at HPD (phone #: 566-5833) or his counsel Colleen Myers (566-3872).

2. Sponsors who apply for and receive tax abatement benefits sometimes fail to make available the documentation and other records required by HPD for subsequent audits. Such audits are automatically done for buildings where the exemption requested is for an amount over a million dollars, and are randomly made in other buildings. Usually such audits are made after the benefits have been granted and title has passed to the apartment corporation. The results of these audits can be (and has been) the reduction or loss of benefits which results in a substantial increase in taxes due by the apartment corporation.

a. Therefore, all sponsors who say that tax abatement benefits will or may be available should represent that they will keep all records required by HPD and will make them available to HPD whenever requested to do so. This is important even if J-51 benefits are already in place.

b. Sponsors should also specifically disclose that HPD routinely conducts audits, the result of which can be either the reduction or revocation of benefits if proper documentation is not provided.

c. Sponsors should also indicate, in the projected budget, what the loss of the benefits would mean.

d. Furthermore, sponsors should make two explicit statements. First, that upon closing they will make all J-51 documents available to the apartment corporation for inspection and copying for the life of the benefits. Second, that they will "timely file all applications and timely comply with all procedures required to properly process and maintain the J-51 (421-a) benefits."

HPD will deny J-51 benefits to any sponsor found guilty of harassment. Gary Connor will keep Larry Finkelstein informed of the sponsors who fall into that category.

NK,MSD:ac