



MEMORANDUM

TO: REF Attorneys & Paralegals

DATE: 7/30/86

FROM: Nancy Kramer & Mary Sabatini DiStephan *MSD*

RE: Mortgage Increases After Presentation of Black Book

We should review with great care amendments in which the sponsor tries to increase the mortgage indebtedness (by raising the principal of a mortgage or by adding a second one). Such an amendment raises a number of problems and should be accepted only if you conclude that it is not a major, unilateral change that serves to materially alter contracts already entered into. The factors to consider include:

1. Did the plan disclose that the mortgage might be refinanced? If it did disclose that the outstanding mortgage would soon expire and what the parameters of refinancing were, including "caps" on principal, interest rate and debt service, there is probably no reason not to accept an amendment in conformity with that disclosure.

2. How many purchasers are there? If none, there is probably no problem since no one is harmed. Any purchasers must, of course, be offered a 15-day right of rescission, but since rescission does not make them fully whole, this may not be enough.

3. Are tenants or purchasers given any simultaneous benefits? These might include: lower inside or outside purchase prices; increased reserve fund; commitment to make additional renovations; extension of an existing or giving an additional exclusive purchase period; sponsor financing; etc.

If benefits are given, was this done as part of negotiations with the tenants? If so, did the negotiator for the tenants represent all tenant purchasers or are those tenants divided?

4. How substantial is the mortgage increase? Which terms are affected?

5. Is there any indication that sponsor may have intended to make a bait and switch offer?

The factors may vary enormously, and the decision whether to allow such a mortgage increase must be made on a case to case basis. In most cases the change should not be allowed. If you have a close issue, please discuss it with one of us.

NK/ds