



MEMORANDUM

TO: REF ATTORNEYS, PARALEGALS, ENGINEERS
and LAW STUDENTS

DATE: 11/28/88

FROM: MARY SABATINI DISTEPHAN/NANCY KRAMER *MSD*

RE: Disclosure concerning curing violations and
dangerous and hazardous conditions

As you know, the Court of Appeals has just declared invalid our regulation requiring sponsors of occupied rental buildings to promise to cure violations of record and dangerous and hazardous conditions prior to closing or shortly thereafter, in Council for Owner Occupied Housing v. Abrams. This means that sponsors no longer have this obligation except for plans which have already become effective (or in plans which specifically provide that sponsor will cure these conditions regardless of the holding by the Court of Appeals).

Once a plan is declared effective by notice or by amendment, the plan may no longer be changed to negate sponsors' obligation since purchasers have acted in reliance on the disclosure.

1. In plans that have been accepted but not yet declared effective, the sponsor may amend the plan to say that it will no longer be obligated to cure these conditions. The amendment should contain the following disclosure:

- (a) a right of rescission for not less than 15 days from presentation of the amendment;
- (b) a clear statement of any promise to cure (for example, a sponsor may promise to cure all C violations or dangerous and hazardous conditions but not A and B violations);
- (c) in the Special Risks section, a statement that violations may remain after closing, and the ramifications of this fact (passing of legal obligation to cure to the coop or condo, including possibility of imposition of fines; default on any ground lease, mortgage or insurance contract; possibility of loss of tax benefits; and any other effects unique to the building); and

(d) an estimate of the cost of curing and statement of where the funds to cure will come from -- either a budgeted item (shown in Schedule B), an assessment, or a contribution by the sponsor to the reserve fund above what may be required by local law (and may not be used for this purpose).

2. In plans not yet accepted for filing, redlines may be submitted which incorporate all these provisions, except the right of rescission.

3. In plans that have already gone to print but are not yet accepted for filing, unless the plan obligates sponsor to cure all violations and dangerous and hazardous conditions without qualification, sponsor must file a simultaneous first amendment which incorporates the disclosure enumerated above.

If any questions or problems arise, please see Mary.

MSD/NK:kd