



Retreat at Church Ranch, Westminster, CO

**Section 232/223(f) Refinanced HUD-Insured
Mortgage**



Issue Date: September 10, 2013

Audit Report Number: 2013-DE-1003

TO: Tim Gruenes
Director, Office of Healthcare Programs, Asset Management and Lender
Relations Division, HI

//signed//

FROM: Ronald J. Hosking
Regional Inspector General for Audit, 8AGA

SUBJECT: The Retreat at Church Ranch, Westminster, CO Did Not Submit the Management
Agent Certification to HUD for Approval and Did Not Maintain Complete and
Accurate Books of Account

Attached is the U.S. Department of Housing and Urban Development (HUD), Office of Inspector General's (OIG) final results of our review of the Retreat at Church Ranch's refinanced HUD-insured mortgage.

HUD Handbook 2000.06, REV-4, sets specific timeframes for management decisions on recommended corrective actions. For each recommendation without a management decision, please respond and provide status reports in accordance with the HUD Handbook. Please furnish us copies of any correspondence or directives issued because of the audit.

The Inspector General Act, Title 5 United States Code, section 8L, requires that OIG post its publicly available reports on the OIG Web site. Accordingly, this report will be posted at <http://www.hudoig.gov>.

If you have any questions or comments about this report, please do not hesitate to call me at 913-551-5872.



September 10, 2013

The Retreat at Church Ranch, Westminster, CO Did Not Submit the Management Agent Certification to HUD for Approval and Did Not Maintain Complete and Accurate Books of Account

Highlights

Audit Report 2013-DE-1003

What We Audited and Why

We audited the Retreat at Church Ranch to determine whether the owner submitted a management agent certification to HUD for proper approval and to determine whether the books of account were complete and accurate. We conducted this audit mainly because of a referral from the U. S. Department of Housing and Urban Development's (HUD) Departmental Enforcement Center, requesting a financial review of the transactions within the project's operating account.

What We Recommend

We recommend that the HUD require the Retreat to complete and submit the required certification to HUD for approval, repay any management agent fees determined to be improperly disbursed, and establish and implement comprehensive financial policies and procedures including the proper maintenance of its books of account.

What We Found

The owner did not submit the management agent certification to HUD for proper approval. He disregarded HUD guidelines and HUD's requests for the approved certification. As a result, the owner improperly paid more than \$119,000 of management fees.

The project did not have accurate or complete books of account. There were no written financial management policies and the owner had full control over the final books of account. As a result, the project management and HUD lacked required information on the financial status of the project.

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BACKGROUND AND OBJECTIVE

The Retreat at Church Ranch was the business name for a 47-unit assisted care project in Westminster, CO. The owner formed Signature - The Retreat LLC, a Colorado limited liability company, in 1998 to own and operate the project. The owner contracted with an independent management agent to administer the daily operations of the project. He refinanced the project's mortgage in 2007 with an U. S. Department of Housing and Urban Development (HUD) insured mortgage.

The mortgage was refinanced under Section 232/223(f) of the National Housing Act for purchase or refinance of an Assisted Living Facility in September 2007. Section 232 provided mortgage insurance for care facilities including assisted living facilities which applies to the Retreat. HUD did not subsidize any of the units in the project. A regulatory agreement was signed by HUD and the owner on September 26, 2007. The owner agreed to use project funds for the mortgage and expenses necessary to properly maintain and operate the project and to maintain the books of account in accordance with HUD requirements.

Our objective was to determine whether the owner submitted a management agent certification to HUD for proper approval and to determine whether the books of account were complete and accurate.

RESULTS OF AUDIT

Finding 1: The Owner Did Not Obtain HUD's Approval for Its Management Agent

The owner did not submit the management agent certification to HUD for proper approval. This condition occurred because the owner disregarded HUD guidelines and HUD's requests for the approved certification. As a result, the owner improperly paid more than \$119,000 of management fees.

The Management Agent Was Not Properly Approved

The owner did not submit the management agent certificate to HUD for proper approval. HUD required that the owner submit Form HUD-9839-B, titled "Project Owner's/Management Agent's Certification for Multifamily Housing Projects for Identity-of-Interest or Independent Management Agents," for approval. The owner had his own management contract that he signed each year with the management agent, but this contract did not meet HUD requirements.

The owner was aware of the certification since he submitted a copy with the mortgage application in 2007. However, he did not submit a copy to HUD for approval. On the copy in the application, the owner selected a 1 year renewal. He did not submit a copy to HUD any of the following years. The owner stated that he had never submitted a certification for approval to HUD.

The certification included a requirement that the owner disburse management fees from project income only after he submitted this certification to HUD and HUD approved the agent to manage the project.

The Owner Disregarded HUD Requirements

The owner disregarded HUD guidelines and HUD's requests for the approved certification. HUD officials issued various correspondence that included requests for a copy of the approved certification. The owner's response to HUD's April 6, 2012, request was that he was unable to find a certification between the Retreat and the management agent effective on or about December 7, 2007.

Management Agent Fees Were Improperly Disbursed

Without a properly approved certification, the owner improperly disbursed \$119,218 of management fees during our audit period of January 2011 through October 2012.

Recommendations

We recommend that the Director of HUD's Office of Healthcare Programs, Asset Management and Lender Relations Division

- 1A. Require the owner to complete and submit a current version of the required certification to HUD for approval. If the owner does not submit the required certification for HUD approval, consider seeking administrative sanctions.
- 1B. Determine whether any portion of the \$119,218 of improperly disbursed management agent fees are ineligible. For any portion determined to be ineligible, require the owner to repay the fees from non-project funds.

Finding 2: The Project Did Not Have Accurate or Complete Books of Account

The project did not have accurate or complete books of account. This occurred because there were no written financial management policies and the owner had full control over the final books of account. As a result, the project management and HUD lacked required information on the financial status of the project.

The Owner Prepared Inaccurate and Incomplete Books of Account

The owner prepared inaccurate and incomplete books of account which did not comply with the regulatory agreement. The project used QuickBooks for its accounting system. The management agent and staff members made entries into QuickBooks for funds collected and disbursed at the project. The owner made entries for funds he disbursed at his residence and often did not use the correct accounting codes. He also made changes to entries made by the management agent team.

The Certified Public Accountant (CPA) contracted to conduct the annual financial audit for 2011 was given read-only access to the Retreat's QuickBooks during the audit. He identified enough changes to the entries made by the owner that the CPA was not willing to provide an opinion on the financial statements. He discussed the changes with the owner, who then changed the entries back to the original content. This action also put the owner in noncompliance with the regulatory agreement which required him to maintain books and records at all times in reasonable condition for proper audit and to submit a complete annual financial report certified by a CPA within 60 days of the end of the fiscal year.

There Were No Written Financial Policies and Inadequate Controls

There were no written financial management policies and the owner had full control over the final books of account. The owner did not establish written financial management policies. The management agent team had informal procedures for the financial functions they performed. The owner did not follow those procedures and made changes to the accounting entries made by the management agent team. He had final control over the books of account and made entries that were inaccurate or incomplete. He also maintained control over some disbursements including the mortgage payments.

HUD Did Not Know the Actual Financial Status of the Project

The books of account were inaccurate because of no established policies and inadequate controls. Therefore, the project management and HUD lacked required information on the actual financial status of the project. Additionally, the owner was consistently slow making the mortgage payments so the mortgage was in rolling default since March 2008.

Recommendations

We recommend that the Director of HUD's Office of Healthcare Programs, Asset Management and Lender Relations Division,

- 2A. Require the owner to establish and implement comprehensive financial policies and procedures including the proper maintenance of the books of account.
- 2B. Provide the necessary technical assistance and confirm that the procedures have been implemented.

SCOPE AND METHODOLOGY

We performed our onsite audit work at the project at 10190 Wadsworth Boulevard, Westminster, CO, between November and December 2012. The audit generally covered the period January 1, 2011, through October 31, 2012.

To accomplish our objective, we interviewed pertinent Retreat and HUD staff and reviewed

- Applicable Federal regulations, HUD requirements, and the regulatory agreement;
- The Retreat's available policies and procedures relating to management of the project;
- The mortgage company's underwriting file for the Retreat's HUD-insured mortgage;
- The Retreat's disbursements and receipts records and books of account and available supporting documents;
- The Retreat's bank account records; and
- HUD's monitoring reviews and the Retreat's responses to the findings and other pertinent correspondence.

We reviewed all available Retreat accounting records and bank documents. The owner did not provide supporting documents for all of the disbursements he made.

We did not rely on computer-processed data for our audit purposes. We traced to or verified the supporting documentation to draw our conclusions.

We conducted the audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

INTERNAL CONTROLS

Internal control is a process adopted by those charged with governance and management, designed to provide reasonable assurance about the achievement of the organization's mission, goals, and objectives with regard to

- Effectiveness and efficiency of operations,
- Reliability of financial reporting, and
- Compliance with applicable laws and regulations.

Internal controls comprise the plans, policies, methods, and procedures used to meet the organization's mission, goals, and objectives. Internal controls include the processes and procedures for planning, organizing, directing, and controlling program operations as well as the systems for measuring, reporting, and monitoring program performance.

Relevant Internal Controls

We determined that the following internal controls were relevant to our audit objective:

- Controls over the management of the project.
- Policies and controls over the financial functions and books of account.

We assessed the relevant controls identified above.

A deficiency in internal control exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, the reasonable opportunity to prevent, detect, or correct (1) impairments to effectiveness or efficiency of operations, (2) misstatements in financial or performance information, or (3) violations of laws and regulations on a timely basis.

Significant Deficiencies

Based on our review, we believe that the following items are significant deficiencies:

- The owner did not obtain HUD approval of the management agent and improperly paid management agent fees.
- The owner did not establish and implement written financial policies and procedures or ensure that the books of account were accurate and complete.

APPENDIXES

Appendix A

SCHEDULE OF QUESTIONED COSTS

<u>Recommendation number</u>	<u>Unsupported 1/</u>
1B	\$119,218

- 1/ Unsupported costs are those costs charged to a HUD-financed or HUD-insured program or activity when we cannot determine eligibility at the time of the audit. Unsupported costs require a decision by HUD program officials. This decision, in addition to obtaining supporting documentation, might involve a legal interpretation or clarification of departmental policies and procedures.

Appendix B

AUDITEE COMMENTS AND OIG'S EVALUATION

Ref to OIG Evaluation

Auditee Comments

Comment 1

The owner e-mailed the following comments on August 29, 2013:

Comment 2

Cindy Avery's management company, Care Support, LLC was approved by HUD in 2007 when the loan was closed by Greystone. Please see attached management certification. However, Cindy did incorrectly pay herself by using other identities such as AL Management and The Retreats, LLC. We have corrected this going forward (see attached 2012 audit report) and all management fees will be paid to the approved management agent – Care Support, LLC. Cindy has been the operator since 2005 and although payments were made to other entities that she owed – all management fees were paid to Cindy who was approved by HUD via Care Support, LLC.

Comment 3

The Auditor for 2011 finally completed the audit and submitted to HUD – please see attached 2011 HUD submission report

Thanks

Jeff Williams

OIG Evaluation of Auditee Comments

- Comment 1** The owner also attached six documents to his comments e-mail: the Management Entity Profile (form HUD-9832) from 2007; the copy of form HUD-9839-B discussed in finding 1; the audited financial statements report for 2011; the electronic submission to HUD report for the 2011 audited financial statements report; the audited financial statements report for 2012; and the owner's Previous Participation Certification (form HUD-2530) from 2007. None of these documents directly impacted information in the audit report.
- Comment 2** The form HUD-9839-B provided by the owner in his e-mail is not approved by HUD, which is the problem identified in finding 1. Therefore, the requirement still applies that management fees cannot be paid until the form is approved by HUD. We included all transactions to the management fee account, regardless of the payee on individual checks. None of the other attached documents show HUD approval of the management agent. Also, the owner indicates the management agent is acting as the operator of the property. If the management agent is also acting as the operator, the owner and the operator should complete the required paper work with HUD to properly record the operator of the property.
- Comment 3** The 2011 audited financial statements report was issued on July 17, 2013 which is over one year and three months past the required submission date. The issuance of the report does not change the reason why the CPA would not certify to the original financial reports discussed in finding 2.