



SENIOR COOPERATIVE FOUNDATION

SENIOR COOPERATIVE FOUNDATION BULLETIN

From: Dennis Johnson, Chairman
Terry McKinley, President
Subject: Gramercy Club of Edina newspaper article
Date: October 8, 2008

The October 5 edition of the Minneapolis STAR TRIBUNE included an article about a law suit by the construction lender against the members of Gramercy Club of Edina. According to the article, the bank's claim is that members are liable for payment of the loan on units which remain unsold, since the developer is apparently in default. Gramercy Club of Edina is a full-equity cooperative; members pay 100% of their unit value, and there is no master mortgage loan.

Since publication of the article, we have received numerous e-mails and telephone calls from co-op members and professionals. We have consulted with experienced cooperative attorneys and officials of the U. S. Department of Housing and Urban Development and can provide you with the following:

HUD-Insured Cooperatives: Scott Werdal, Director of Multifamily Operations for the Minneapolis HUD Office, emphasizes that HUD-insured loans are specifically **non-recourse**, meaning members are exempted from any liability for either the insured construction or permanent loan. Members are obligated to make their monthly payments, which include principal and interest on the loan. However, they are not liable to the lender in any way for the debt itself. In fact, Mr. Werdal reminds us that HUD's cooperative housing programs, and authorizing legislation, include several HUD requirements specifically designed to protect the long-term interests of members, including:

- a. Review of legal and organizational documents by HUD's attorneys
- b. Review of the credit and experience of co-op developers and sponsors
- c. Construction inspections and review of all loan funds disbursed
- d. Review/approval of release of any buyers' purchase proceeds and release of developer's profits
- e. Members' exemption from personal liability on the loan
- f. HUD must approve the level of pre-sales prior to construction start
- g. HUD must approve the credit qualifications of the initial members.
- h. Guarantees from the developer for payment of monthly charges on unsold units
- i. Creation of escrows to assure adequate funding of these obligations

- j. 100% Payment and Performance Bonds from the general contractor
- k. Long-term, fixed-rate permanent loan to avoid surprises due to interest rate changes for present and future owners
- l. Annual review of co-op audits, operating budgets, and withdrawals from reserves

Full-Equity Cooperatives, like Gramercy Club of Edina, do not have a master mortgage nor third-party oversight. Seniors buying into these cooperatives must rely on the integrity and expertise of the developer and attorneys in creation of the co-op's legal, organizational, and loan documents and terms.

Along with other experienced co-op attorneys, we have consulted with Joseph Nemo with the St. Paul law firm of Martin and Squires, who has organized and represented over 50 senior housing cooperatives since 1976. They have cautioned that documents for non-HUD cooperatives need to include consumer protections similar to those required by HUD. At a minimum they should include either (1) specific exemption for members from liability for the construction loan, OR (2) full and specific disclosure of any potential liability that may exist, including the possibility of loss of their membership interest.

Finally, and most important, cooperatives are an extraordinary opportunity for older adults wanting to maintain the benefits of affordable homeownership, including retaining control of their home and investment. Since 1976, literally thousands of members have enjoyed these benefits, without any hint of difficulty. They will continue to enjoy their cooperatives for years to come, due in large part to the integrity, experience, and strength of their cooperative developer, and the oversight protections described above.

Unfortunately, we now have a very expensive cooperative which apparently lacks many of these protections, and the problem has made it into the newspaper. We at the Foundation will do everything in our power to continue to convey to the public the benefits and protections of well organized cooperatives, and to attempt to inform cooperative housing developers on these matters so that it doesn't happen again.



Dennis Johnson, Chairman



Terry W. McKinley, President