

MISSOURI HOUSING DEVELOPMENT COMMISSION

The Management Agent Handbook (2004-1)

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MISSOURI HOUSING DEVELOPMENT COMMISSION

The Management Agent Handbook (2004-1)

CHAPTER ONE

INTRODUCTION

1.1 GENERAL

- a. Management agents that operate multifamily projects with MHDC loans play a key role in helping MHDC provide quality affordable housing. A principal focus of this handbook is the development of an effective partnership among owners, their management agents residents and MHDC staff. Throughout this handbook, the term "partnership" specifically refers to the roles of property owners, management agents, residents, and MHDC in working together to meet this objective.
- b. This handbook provides guidance regarding most aspects of MHDC's relationship and interaction with owners and management agents. It also includes guidance regarding the involvement of residents in key decisions concerning their projects.

1.2 PURPOSE OF THIS HANDBOOK

- a. This handbook describes the procedures that MHDC staff needs to follow in working with and monitoring management agents. The handbook is also designed to serve as a reference for owners and their management agents.
- b. While this handbook provides basic guidance regarding owner/agent responsibilities and MHDC procedures, it is designed to be used in conjunction with:

MHDC Handbook 2004-2 (Occupancy)
Low Income Housing Tax Credit Compliance Manual
HOME Compliance Manual
FDIC Compliance Manual
HUD Handbooks (various)

1.3 MHDC GOALS

- a. MHDC has established the following goals to guide the administration of MHDC's housing programs:
 - (1) Assuring affordable, decent, safe, and sanitary housing for those the housing was constructed to serve. MHDC is charged with the

responsibility to help provide and preserve an adequate supply of affordable housing.

(2) Minimizing financial losses.

(3) Maximizing collections of all funds due MHDC, with particular emphasis on the collection of delinquent debt.

(4) Enforcing applicable statutes and regulations.

b. MHDC staff will work with, and monitor, management agents and owners of MHDC properties to achieve these goals and to assure that all applicable MHDC regulations and program requirements are met.

1.4 COOPERATION

a. A successful partnership among management agents, owners, residents, and MHDC staff is vital to providing an adequate supply of well-maintained, financially solvent, affordable housing on a nondiscriminatory basis.

b. MHDC also will look to management agents to take steps to build and maintain a working partnership with MHDC. In addition to this commitment to its partners, MHDC must also protect its interest as a lender.

1.5 OWNER/MANAGEMENT AGENT RELATIONSHIP

a. While MHDC will work with management agents and monitor their performance, the property owner is ultimately responsible for a project's compliance with MHDC regulations and requirements. MHDC expects that owners will oversee the performance of their management agents and take steps to correct deficiencies that occur.

1.6 MHDC/MANAGEMENT AGENT RELATIONSHIP

a. MHDC will work with agents to provide quality affordable housing. Activities of MHDC include providing assistance to help agents meet their responsibilities, monitoring agent activities for compliance with laws, regulations, and working with associations of housing management agents to resolve conflicts and develop mutually agreeable solutions to problems that arise.

b. In the spirit of partnership, MHDC will exercise care to prevent undue intervention in the affairs of the management agent when taking steps to protect its interests and ensure that agents meet their obligations.

1.7 RESIDENTS' RELATIONSHIP WITH OWNERS, MANAGEMENT AGENTS, AND MHDC

a. Residents can be invaluable allies for owners/agents and should be given the opportunity to voice their views and concerns in key decisions regarding the project. Toward this end, MHDC encourages owners/ agents to go beyond the minimum requirements for resident involvement and take the following steps:

- (1) work to enhance communication between residents and both on-site and senior management;
- (2) facilitate resident access to management;
- (3) ensure that proper consideration is given to resident input; and
- (4) emphasize the importance of promptly resolving problems affecting residents.

1.8 RESOLVING CONFLICTS AND MANAGEMENT ISSUES

- a. This handbook provides guidance regarding a range of management activities and duties. Nonetheless, MHDC recognizes that issues will arise which are not addressed in the following chapters. When agents encounter issues affecting their ability to manage their properties effectively, MHDC encourages them to work through local professional associations of management agents to identify practices that will provide proposed solutions to these issues.
- b. MHDC will work with agents through their professional associations to find mutually acceptable solutions whenever possible. Once agents and their industry groups have identified a potential response to a problem area, they should review the proposed practice with MHDC. Resolution of management concerns pertaining to civil rights compliance or enforcement issues will involve MHDC staff. MHDC will assess whether the proposed practices protect MHDC's interests and are consistent with the agency's basic regulatory requirements. Management practices that satisfy these two conditions may be approved for use by management agents. MHDC may place conditions on the use of proposed practices if necessary to protect MHDC's interests.

1.9 WAIVER OF HANDBOOK DIRECTIVES BY MHDC

- a. Appropriate Uses of Waivers
 - (1) The procedures presented in this handbook are designed to ensure that statutory, regulatory, and contractual obligations imposed on owners of MHDC housing are fulfilled.

(2) If MHDC determines that an alternative system or procedure allows them to perform their duties more effectively or helps to overcome problems experienced by owners or agents, MHDC may waive directives specified in this handbook ONLY if they are not formally required by statute or regulation.

MISSOURI HOUSING DEVELOPMENT COMMISSION

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CHAPTER TWO

APPROVAL OF MANAGEMENT AGENTS

2.1 INTRODUCTION

This chapter discusses the approval procedures for the selection of management agents. Under different circumstances, Missouri Housing Development Commission (MHDC), Rural Development (RD), or US Department of Housing and Urban Development (HUD) may be responsible for approving the management agent. The first section of this chapter describes three management agent types and lists the conditions under which one has approval authority. The second section discusses the procedures for management agent approval under MHDC authority.

SECTION 1: BACKGROUND

2.2 AGENT SELECTION AND APPROVAL AUTHORITY

The project owner is responsible for seeking out and selecting a management agent, but the selection is subject to the approval of the authorizing agency. This authorizing agency may be MHDC, or it may be RD or HUD, depending upon the project type and the mortgage insurance coverage. See Figure 2-1.

Figure 2-1
Approval Authority by Project Type

APPROVING AUTHORITY	PROJECT TYPE
MHDC	Multifamily housing projects where MHDC financed the project through the Fund Balance or HOME programs. This also includes Risk-Sharing insured loans in which MHDC must submit to HUD a Previous Participation Certification (Form HUD-2530) for the proposed management agent as described in paragraph 2-9c.
RD	Multifamily housing financed by RD in which RD holds the first lending position.

HUD

All multifamily projects insured or financed directly by HUD. This does not apply to Risk-Sharing insured projects.

2.3 TYPES OF MANAGEMENT AGENTS

Figure 2-2

Three Types of Management Agents

1. Owner/Manager
2. Identity of Interest Management Agent
3. Independent Fee Agent

(In this handbook, the term "management agent" applies to all three forms of management agents unless a specific distinction is made because of policy or procedural differences.)

- a. **Owner/Manager.** In this relationship, the owner and the management agent are the same business entity. This is also referred to as self-management. A project is not self-managed if some or all of the same individuals are involved in both the ownership entity and the management agent but the organizations are legally different business entities.

For example, if the owner is a limited partnership, and the general partner of the ownership entity serves as the management agent, the management agent is not an owner/manager because the management agent and the mortgagor are different business entities. Instead, the management agent is an identity-of-interest management agent (see paragraph 2.3b).

- b. **Identity-of-interest (IOI) management agent.** An IOI relationship exists when an individual or entity that provides management services to the project has a relationship with the project owner that is such that selection of the management agent and determination of the management fee will not be determined through an arms-length transaction.

(1) An identity-of-interest relationship exists when:

- (a) The owner entity or a general partner of the owner entity, or
- (b) Any officer or director of the owner entity, or
- (c) Any person who directly or indirectly controls 10 percent or more of the voting rights, or owns 10 percent or more of the owner entity

is also

- (d) An owner, general partner, officer, or director of the management agent company or its subcontractor, or
 - (e) A person who directly or indirectly controls 10 percent or more of the voting rights, or owns 10 percent or more of the management company or its subcontractor.
- (2) "Person," as used above, refers to any individual, partnership, corporation, or other business entity. Any ownership, control, or interest held or possessed by a person's spouse, parent, child, grandchild, or sibling or other relation by blood or marriage is attributed to that person for this determination.
 - (3) "Subcontractor," as used above, refers to any individual or company that contracts with the management agent to provide management services to the project.
- c. Independent fee management agent. A management company or individual that has no identity-of-interest relationship with the owner (see paragraph 2.3b) and no financial interest or involvement in the project, other than earning a fee for providing management services.

2.4 PRINCIPLES OF THE REVIEW PROCESS

- a. Approval will not be unreasonably withheld. A management agent's contract is with the project owner. MHDC will not unreasonably withhold approval of the proposed agent for a project.
- b. MHDC reviews protect the public interest. MHDC reviews management agent performance, experience, and capabilities to protect the public and its own interests.
- c. Past Performance and Current Expertise are Considered. MHDC's Asset Management staff must consider both the agent's past performance and the probability of future compliance.
 - (1) MHDC will not issue disapprovals based on past performance without considering corrective actions taken by the agent to address previous poor performance.
 - (2) If there are management problems or open audit findings at projects the agent currently manages, MHDC will consider the following in deciding whether to approve or disapprove an agent:

(a) whether the agent caused or exacerbated the problem(s);

and

(b) whether the agent has taken, or is taking, all reasonable steps to correct the problem(s) and address MHDC's concern(s).

- d. Experience. Although the MHDC Asset Management staff may disapprove the agent if the proposed agent clearly lacks the skills or experience to manage the project, they may not refuse to approve an agent merely because the agent has not previously managed the type of project being proposed (e.g., has managed only Elderly or only Family units). Instead, MHDC Asset Management staff must assess the agent's strengths in management systems and procedures that will be essential to management of the new type of project.
- e. Monitoring. MHDC will use the documents submitted during the approval process as the basis for monitoring the agent's performance and compliance with all conditions agreed to during the approval process. MHDC will require owners to replace agents that do not adequately perform their management responsibilities.

2.5 STANDARDS FOR MANAGEMENT AGENT APPROVAL

The owner agent is entrusting a management agent with the day-to-day operation of the project. Therefore, the owner and MHDC must be assured that the project will be managed in a prudent, efficient, and cost-effective manner, in accordance with applicable laws and MHDC rules, contracts, and procedures. MHDC requires that the management agent:

- (1) Is eligible and in good standing with MHDC (see paragraph 2.10);
- (2) Demonstrate effective management experience and acceptable operating procedures (see paragraph 2.10);
- (3) Carry adequate fidelity bond coverage (see paragraph 2.11);
- (4) Be in compliance with civil rights laws, regulations and requirements.

2.6 MANAGEMENT AGENT ASSUMPTION OF RESPONSIBILITY

Generally, the management agent may assume management responsibility only after:

- a. MHDC Asset Management staff has issued a letter approving the agent proposed by the owner; and

- b. The owner and agent have executed and submitted the appropriate Management Certification form (Form MHDC-2004-A); and
- c. The owner and agent have executed a Management Agreement, as necessary (see paragraph 2.14).

2.7 MANAGEMENT IN EMERGENCY SITUATIONS

An owner or agent may assume management of a project without prior MHDC Asset Management staff approval only in an emergency (e.g., an agent has abandoned a project or MHDC has required the owner to terminate a management agreement). MHDC approval must be sought immediately once the new agent has been identified (as described in Figure 2-3).

2.8 SUBSEQUENT AGREEMENTS WITH MANAGEMENT AGENTS

Once MHDC has approved a management agent for a particular project, the owner and agent do not have to seek MHDC approval for subsequent agreements as long as the agent remains at the project and fees/conditions do not change.

SECTION 2: PROCEDURES FOR MHDC APPROVAL OF MANAGEMENT AGENTS

Figure 2-3

Key Steps in Management Agent Approval Process

The project owner selects proposed management entity.

The owner submits required documentation to MHDC.

MHDC reviews the project owner's submission to assess proposed agents:

- eligibility
- past performance
- management capacity and experience
- fidelity bond coverage
- credit history and financial capacity

MHDC issues a decision letter.

The owner executes an acceptable Management Agreement with the agent. MHDC is not a signatory to this agreement.

2.9 MANAGEMENT ENTITY APPROVAL SUBMISSION REQUIREMENTS

To request approval of the management entity, the owner must submit the following information to MHDC at least 30 days before the date the owner wishes the new agent to assume responsibility. In the case of emergency replacements of management agents (see paragraph 2.7) the owner/agent must submit the information needed for MHDC to review and approve the new management agent as soon as the new agent is identified.

MHDC Asset Management staff will use the criteria listed below to document their review of management agents. The review documentation must provide evidence that MHDC Asset Management staff has reasonably considered all information pertinent to its decision.

- a. Management Agent Experience Summary – Form FIN 105 provides MHDC with a comprehensive list of all affordable housing developments managed by the Management Agent.
- b. Credit Summary – Form FIN 116 provides MHDC with the information needed to verify the financial stability of the Management Agent.
- c. Previous Participation Certification – Form 2530 documents HUD’s centralized review of the past/present performance of those principals applying for participation in HUD’s multifamily programs. It certifies whether the principals are currently eligible to participate in the management of HUD-insured, financed or assisted multifamily projects
- d. Management Entity Profile - Form MHDC 2004-B provides MHDC with information on the management entity's organization and procedures, including treatment of identity-of-interest relationships. It also shows the types of projects the agent has managed and what skills or professional certificates the agent's staff has acquired. It does not provide information on how the agent has operated individual projects.
 - (1) If the management entity has already submitted a profile in the format of the MHDC 2004-B and the profile is still accurate, the owner/agent should state in the cover letter requesting approval of the management entity that an accurate and up-to-date profile is on file and attached for reference. The cover letter should also include the date that this document was submitted. A new submission is not required.
 - (2) If a previously-submitted profile is not current, or if the management entity has never submitted a profile that conforms to the MHDC 2004-B format, the owner or agent must submit a new profile of the management entity.

(3) An updated profile must be submitted whenever there are changes in the management entity's organization or operations.

e. Management Certification. Using Form MHDC 2004-A, the owner and management agent together certify that they will comply with MHDC requirements and contract obligations, execute an acceptable management agent agreement, and that no payments have been made to the owner in return for awarding the management contract to the agent and such payments will not be made in the future (projects not managed by the owner).

f. Management Plan – The management agent must clearly define how they intend to operate the development with an emphasis on ways to ensure the financial, physical, and relational success of the development. Plans should include the following steps as they relate to initial lease-up or “pre-stabilization” (if applicable) and on-going compliance “post-stabilization”.

(1) Proposed staffing to be charged against the Project Operating Account. (See paragraph 6.37 for a discussion of which positions can be charged against the operating account.)

(a) Job titles and approximate salary, including hourly rate;

(b) A statement of each position's duties, if not obvious by title and whether the position is full or part-time;

(c) If the employee will be working for more than one project, a statement of how that person's time and salary will be allocated.

Note: Salaries of management agent staff not assigned to the project must be paid from the management fee. Only full-time, front-line staff may be paid from the project account.

(2) Office Hours

(a) Office hours must be posted in a location that is convenient to the public. The office must be open during these posted hours. In the event of unforeseen circumstances, amended office hours must be posted on-site with a return time and date clearly indicated.

(b) Office hours must be included in after hours phone messages and community website or bulletin board postings.

(c) In the event of vacancies, office hours must be amended to allow for convenient access by the general public (i.e. an elderly development may consider earlier hours while a family development should maintain hours that are convenient for after business hours

inquiries).

(3) Marketing

(a) Pre-Stabilization

(i) Include a breakdown of advertising expenses (FIN 117)

(ii) Include a description of the type of advertising to be used. (This description should include more detail than the Affirmative Fair Housing Marketing Plan (AFHMP) which is designed to facilitate ongoing marketing as the project reaches stabilization.)

(iii) Indicate the frequency of advertising and the purpose for any noted increases or decreases.

(b) Post-Stabilization

(i) Attach a copy of the Affirmative Fair Housing Marketing Plan (executed by the authorizing agency).

(ii) Describe any additional advertising to be used during a time of increased vacancy levels that may not be included on the AFHMP.

(4) Resident Selection Policy

(a) Resident Selection Policy must be posted in an area that is convenient for viewing by those that inquire about available housing.

(b) Policy must give preference to low and moderate income families who have certifications of eligibility as displaced persons.

(c) Policy must not violate any local, state, or federal discrimination laws.

(d) Updates to the Policy must be submitted to MHDC for review prior to implementation.

(5) Waiting List Procedures

Applications must be processed in the order in which they were received. A tracking mechanism must be established to promote fair and equitable treatment of each applicant. Variations of this policy may be as follows:

- (a) Victims of natural disaster must be given priority whenever reasonable;
- (b) Applicants in need of an accessible unit (24 CFR 40.2(b)(1)) must be given priority for units designed to meet their needs;
 - (i) In the event an ineligible resident occupies a set/aside accessible unit, the resident must be moved to another unit at the first available opportunity, allowing the eligible applicant to reside in a unit designed to meet their needs.
- (c) A review/restructure of the waiting list must be performed bi-annually (at minimum).
 - (i) Applicants that no longer wish to remain on the list must be notified in writing that their name is being removed from the waiting list.
 - a. Applicants that have been pre-screened and found to be ineligible for housing must be notified in writing that their name is being removed from the waiting list.

(6) Resident – Management Relations

See Chapter One (1) paragraph 1.7 and 1.8

(7) Security Deposit and Rent Collection Procedures

- (a) Describe when and how residents are notified of late rent;
- (b) Describe when and how lease terminations (evictions) based on non-payment of rent are initiated;
- (c) List the name of the operating and security deposit accounts along with the name and location of the financial institution holding the accounts;
- (d) Describe the staff that is responsible for depositing funds into the accounts and the frequency of deposits;
- (e) Describe the staff that is responsible for reconciling the accounts and the frequency of reconciliation;

(f) Describe the staff that is responsible for disbursements from the accounts;

(g) List the names and titles of those that are signees on the accounts.

(8) Enforcement of Leases

(a) Describe when and how residents are notified of lease violations;

(b) Describe when and how lease terminations (evictions) are initiated;

(c) Describe the name and title of staff that is authorized to initiate lease termination.

(9) Record Retention

(a) Describe the number of years files are kept on-site or in off-site storage;

(b) Describe the plan established to back up documents in the event of a disaster.

(10) Training

(a) Describe the training provider;

(b) Attach a copy of the course curriculum;

(c) Attach all current training certifications of staff directly related to the development.

(11) Vacant Units

(a) Describe how and when a vacancy make-ready is initiated;

(b) Describe the name and title of staff that is responsible for performing the move-in or move-out inspection with the applicant/resident

(12) Maintenance

(a) Describe the Preventative Maintenance Program;

(b) Describe how work orders are processed;

(c) Describe the procedure for purchasing and stocking maintenance supplies;

(d) Describe the procedures for seeking out subcontractors in the event maintenance staff is unable to perform a maintenance need.

(13) Social Services

(a) Attach a list of social service providers in the area with their addresses. (i.e. food pantry, Social Security office, senior services, etc.);

(b) Describe any related party providers and the services that they provide (i.e. nonprofit partner providing services specific to the residents of the development).

The MHDC Asset Management staff may require owners to submit additional information to clarify materials already submitted.

Figure 2-4 lists the types of additional information that may be needed to assess the acceptability of a proposed agent.

Figure 2-4

Information MHDC Might Need to Assess
the Acceptability of a Proposed Management Agent

- Letters of reference
- Description of previous noncompliance resolution

Situation	Type of Information
1. MHDC has had no experience with the agent or is unsure of the agent's ability to manage the project.	To aid in future performance monitoring, new agents need to include a copy of the agent's procedures manuals.
2. Project has significant physical, financial, or social problems.	Statement of project's problems and their causes List of actions to be taken to eliminate those causes and correct the problems (e.g., repairs, rent increase, change in operating procedures) Schedules for implementing the

above actions

List of projects with similar problems or needs that the agent has previously or is currently managing

3. Open Audit Reports

Information on audits in progress related to the project, the management agent, or individual principals. The nature of any findings and whether the findings are open or closed.

MHDC Asset Management staff should review these reports to determine whether the proposed agent was managing the project when the audit took place, and whether the deficiencies cited in the audit were within the agent's authority to correct.

4. Owner/manager proposes to contract out certain management functions

List of functions to be contracted out, as well as a description of the contractual relationship and the contractor's qualifications and experience in those functions

5. Project is different from any other project(s) the agent is currently managing in Missouri

List of similar projects in other states

6. Management Agent or any of its principals have been suspended or debarred

Description of issues and resolution

7. Management agent or any of its principals have been disqualified from participation in any state or federal housing programs

Description of issues and resolution

8. Corrective Action Plans

Performance evaluations for the proposed agent and developments which the agent has managed or is currently managing.

2.10 REVIEW OF AGENT PERFORMANCE, EXPERIENCE, AND CAPABILITY

MHDC Asset Management staff must review the qualifications of the proposed agent to assess the agent's ability to manage the project effectively and in compliance with MHDC requirements. MHDC Asset Management staff must consider each of the factors below in reviewing an agent's qualifications.

a. Past and Current Management

(1) MHDC Asset Management staff must review the proposed agent's past experience and current performance with respect to the following performance indicators:

- (a) Controlling operating expenses
- (b) Vacancy rates
- (c) Resident turnover
- (d) Rent collection and accounts receivable
- (e) Physical security
- (f) Physical condition and maintenance
- (g) Resident relations
- (h) Social Service Programs

b. Management Qualifications. The proposed management agent should have at least one person who establishes the agent's policies and supervises project operations with the following qualifications:

- (1) A professional designation in housing management from a national organization that provides such accreditation or
- (2) A minimum of two years experience in directing and overseeing the management of multifamily projects serving a similar resident clientele.

MHDC Asset Management staff may accept a proposed agent without the experience requirements listed in this subparagraph if the agent is satisfactorily managing other MHDC projects.

c. Past Performance with Identity of Interest (IOI) Contractors. If the agent purchases goods or services from IOI companies and has previously managed MHDC projects, MHDC Asset Management staff must assess the agent's past use of such companies and whether this use resulted in costs to the project that exceed the prices paid in arms-length transactions. The review should especially consider:

- (1) Evidence that the agent has compared prices and that the use of any identity-of-interest companies or pass-through arrangements has been more advantageous to the project than purchasing through arms-length transactions would have been.
- (2) Evidence that the management agent followed the contracting and hiring guidelines in Chapter 6 and Paragraph 6.49.

2.11 BONDING REQUIREMENTS FOR AGENTS

MHDC Asset Management staff must also determine whether the agent has adequate bonding. The MHDC Asset Management staff may not waive these minimum fidelity bond requirements. To provide a basic level of protection for the multifamily project assets:

- a. The management agent must certify in the Management Certification that it carries fidelity bond or employee dishonesty coverage for:
 - (1) All principals of the management entity, and
 - (2) All persons who participate directly or indirectly in the management and maintenance of the project and its assets, accounts, and records.
- b. The fidelity bond or coverage must name the MHDC as additional loss payees.
- c. Coverage may be through one or more bonds, and one bond may cover more than one project, including projects whose mortgages are not held by MHDC. The agent's principals, supervisory, and front-line staff may be covered under the same bond.
- d. Each project must be insured for at least the value of two months gross potential income for the project, or \$50,000.00, whichever is greater. If a bond covers more than one project, this minimum must be computed using the project with the highest gross potential income.

EXAMPLE: If an agent seeks to manage three projects with monthly gross income of \$50,000, \$75,000, and \$150,000, the agent may obtain one bond with a value of \$300,000 -- two months' income from the \$150,000 project -- to cover all three projects.

2.12 APPROVAL OF THE PROPOSED MANAGEMENT AGENT

- a. Grounds for Approval. MHDC will approve a proposed management agent when:
 - (1) MHDC Asset Management staff determines that the agent has the capacity to manage the project effectively and in accordance with MHDC requirements; and
 - (2) MHDC Asset Management staff determines that the agent has adequate fidelity bond coverage;
- b. Conditional Approvals. All issues raised during the review that may negatively impact the MHDC Asset Management staff's decision should be discussed with the owner and agent, as necessary and appropriate. If the

MHDC Asset Management staff feels that the agent is acceptable, but concludes that the agent's proposed procedures are weak in particular areas, it may make a conditional approval of the proposed management agent by:

- (1) Sending the owner a letter describing the specific weaknesses identified and discussing these weaknesses with the owner and/or agent as appropriate; and
 - (2) Reaching an agreement with the owner and agent as to how the agent will change its procedures. This agreement should indicate the specific steps the owner/agent will have to take to remedy the identified weaknesses and establish a date by which MHDC will reassess the agent's acceptability. The agreement should be included in the letter approving the management agent.
- c. Scheduling Initial Management Reviews of Less Experienced Agents. When issuing approvals for agents who have not previously managed MHDC projects or who do not have experience with the particular type of project under consideration, MHDC Asset Management staff should schedule a comprehensive management review to be performed within 12 months of the date the agent assumes responsibility for the project, unless otherwise specified by program requirements.

2.13 DISAPPROVAL OF THE PROPOSED MANAGEMENT AGENT

- a. MHDC Asset Management staff must advise the owner that the project may not enter into an agreement, pay, or become obligated to pay management fees to the proposed agent and of the owner's right to appeal this decision.
- b. Owner Response. The owner must:
 - (1) Propose another management agent, or
 - (2) Await resolution of any appeal the agent files and make interim management arrangements acceptable to MHDC.

2.14 MANAGEMENT AGREEMENT REQUIREMENTS

- a. Applicability. Projects with identity-of-interest agents or independent fee agents must execute a Management Agreement. An Agreement is recommended, but not required, for owner-managed projects.
- b. Required contents. The owner and agent may negotiate their own form of agreement provided that it contains language to meet the following requirements:

(1) Scope of service. All management agreements must describe the services the agent is responsible for performing and for which the agent will be paid management fees.

(2) Required clauses. All agreements must provide that:

(a) Management fees will be computed and paid according to MHDC requirements.

(b) MHDC may require the owner to terminate the agreement:

(i) Immediately, in the event a default under the Mortgage, Note, Regulatory Agreement;

(ii) Upon 30 days written notice, for failure to comply with the provisions of the Management Certification or other good cause; or

(iii) When MHDC takes over as Mortgagee In Possession.

NOTE: As a good business practice, the management agreement should always give the owner the ability to terminate the contract for cause, with notice.

(c) If MHDC terminates the agreement, the owner will promptly make arrangements for providing management satisfactory to MHDC.

(d) MHDC's rights and requirements will prevail in the event the management agreement conflicts with them.

(e) The management agent will turn over to the owner all of the project's cash, trust accounts, investments, and records immediately, but in no event more than 30 days after the date the management agreement is terminated.

(3) Prohibited "hold harmless" clause. Management Agreements cannot exempt the agent from all liability for damages and injuries.

(a) A sample prohibited clause would read:

"The owner agrees to hold and save agent harmless from dangers of injuries to persons or property by reason of any cause whatsoever, either in or about the premises or elsewhere, when agent is carrying out the provisions of this agreement, or acting under the express or implied direction of the owner."

(b) To make this clause acceptable:

Add "unless such injuries resulted from the agent's gross negligence or willful misconduct" after "direction of the owner".

(4) Length/term of the Agreement. The length/term of the Agreement is negotiated between the owner and the management agent. MHDC Asset Management staff may impose a maximum term on the Management Agreement if the MHDC Asset Management staff approved the agent on a conditional basis.

(a) The contract may provide for a fixed term or an open-ended term (e.g., automatically renewable or "to remain in effect until cancelled by MHDC, the owner, or the agent").

(b) If the length/term of the Agreement changes, the owner/agent must submit a new Management Certification.

MISSOURI HOUSING DEVELOPMENT COMMISSION

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CHAPTER THREE

ALLOWABLE MANAGEMENT FEES FROM PROJECT FUNDS

3.1 GENERAL

Management agents operating MHDC multifamily properties are paid a management fee for their services. Management fees may be paid only to the person or entity approved by MHDC to manage the project. Management agents must cover the costs of supervising and overseeing project operations out of the fee they receive.

Owners determine the actual amount of fee to be paid to the management agent. As provided for in the project Regulatory Agreement, MHDC determines the amount of fee that may reasonably be paid out of project funds.

NOTE: Unless otherwise specified, the term "management fee" in this chapter refers to the management fee payable out of project funds.

SECTION 1: MANAGEMENT FEES AND REVIEW REQUIREMENTS

3.2 TYPES OF MANAGEMENT FEES

a. Fees derived from project income (residential and miscellaneous) must be quoted and calculated in the following manner:

- (1) Pre-stabilization – a per unit fee or flat fee not to exceed the maximum allowable per unit fee as described in the Management Certification (Form 2004-A) and as reflected in the FIN 117
- (2) Post-stabilization – The Management Certification (Form 2004-A) allows the owner/management agent to choose between a per occupied unit fee or a percentage of the net collected income not to exceed a maximum per unit fee as described in the Management Certification.

3.3 RESIDENTIAL INCOME FEE

MHDC specifies the kinds of income that may be treated as residential income when determining the residential income fee. In general, income received from the rental of housing units may be counted as residential income. Figure 3-1 indicates the types of income that may and may not be included in the residential income base amount used

when calculating this fee.

Figure 3-1
Determining Residential Income

DO COUNT	DO NOT COUNT
1. Apartment rents.	1. Section 8 Special Claims: a) unpaid rents b) vacancy loss c) debt service d) resident damages.
2. Cooperative carrying charges.	
3. Rent Supplement payments.	
4. RAP payments.	2. Excess rents and charges for Section 236 when the unit rent paid is greater than the unit Basic Rent. (This condition applies regardless of whether the excess income is due HUD.)
	3. Section 236 Interest Reduction Payments (IRPs) made to mortgagees on Section 236 projects.

3.4 MISCELLANEOUS INCOME FEE

- a. MHDC will allow management agents to earn fees only on selected types of miscellaneous income. Figure 3-2 lists the types of income that may and may not be counted in the miscellaneous income base amount.

Figure 3-2
Determining Miscellaneous Income

DO COUNT	DO NOT COUNT
1. Laundry income	1. Interest earned on invested security deposits, reserves, or other project funds.
2. Charges collected from residents, such as fees for damages, bad checks, and	2. Refunds from property tax or utility rate appeals.

late payments.

3. Rents collected through a Collection Agency

3. Proceeds from property damage or liability insurance policies.

4. Recovered legal fees and court costs.

5. Replacement reserve and residual receipts reimbursements to the project.

3.5 PROJECTS SUBJECT TO MHDC MANAGEMENT FEE REVIEWS

a. General. Whether a project is subject to a management fee review depends upon several key factors:

1. All projects:

a. Whose agents have not received previous approval from MHDC.

b. In default under a mortgage or other approved payment program.

c. Where MHDC has determined that a review is needed to protect MHDC's interests. This determination should be made if a project exhibits any of the following conditions:

(i). Poor financial position with a need to control expenses.

Evidence that this condition is present includes:

- recent defaults
- delinquent mortgage payments
- marginal or negative cash throw-off (i.e., income less than or only slightly more than operating expenses, debt service, and reserve requirements)
- high vacancy/turnover rates
- excessive accounts receivable/payable.

(ii) Serious noncompliance with MHDC financial requirements, including significantly overdue financial reports.

(iii) Poor physical condition, including significant deferred maintenance.

- (iv) Serious outstanding findings from audits.
- (v) Agent has not made satisfactory progress toward correcting problems found in project reviews.
- (vi) A persistent pattern of poor communication or relationships with residents and/or a persistent pattern of failure to address resident service requests or complaints.

3.6 OWNER REQUESTS FOR CHANGES IN EXISTING FEES

- a. Owner Submission. To initiate a change in the management fee, the owner and agent must submit a new Management Certification showing the revised management fee(s).
 - (1) the fee can be changed only after MHDC has given written approval of the fee.

3.7 TERM OF MHDC APPROVED MANAGEMENT FEES

- a. Once MHDC has reviewed and approved the management fees for a project, these management fees will not be subject to further review unless:
 - (1) There is a change in management agents; or
 - (2) Owners/agents request a change in the approved management fee (see paragraph 3.7).
 - (3) MHDC has reason to decrease the fee based on a performance review.
- b. Rent increases do not trigger MHDC management fee reviews.

SECTION 2: PROCEDURES FOR PERFORMING MANAGEMENT FEE REVIEWS

3.8 BASIC PROCEDURES FOR PERFORMING MANAGEMENT FEE REVIEWS

Asset Management staff must follow the procedures below when performing management fee reviews:

- a. Determining Whether Management Fees Are Reasonable.
- b. Documenting the Results of the Review. The analysis and results of the review must be documented as required by paragraph 3.11.

- c. Notifying the Owner and Agent. The owner and agent must be notified of the results of the review .

3.9 MANAGEMENT FEE REVIEWS

For affected projects, a review is required whenever an owner proposes a new management agent or requests a change in the fee paid to the existing agent. Asset Management staff determines the reasonableness of the proposed fees.

- a. Prior Approval is Required - owners agents must obtain MHDC approval of the management fee before (1) charging any portion of the fee against the project operating account or (2) otherwise obligating the project to pay a management fee.
 - (1) If the proposed agent has not previously received MHDC approval, the owner and the agent may sign a management agreement that contains a clause specifying that the agreement is conditional upon MHDC approval of the agent. The agent may not be paid from project funds until the owner receives MHDC approval of the agent.
 - (2) If, in an emergency, an agent assumes management of a project without prior MHDC approval of the management fee, the agent may begin collecting the fee and charging these amounts against the project's account. However, the management fee is subject to reduction if Asset Management staff determines the fee amount is excessive. In such cases, Asset Management staff must review the fee immediately upon receipt of the Management Certification.
- b. Time Period for Completion of Review. Asset Management staff should complete management fee reviews within 30 days of receiving the Management Review package.
 - (1) If the owner and agent do not receive written notice of the results of MHDC's management fee review within 35 days, the agent may begin collecting the management fees documented in the Management Certification under review.
 - (2) If the results of a MHDC review completed after this date indicate that the management fees must be reduced, these reductions will take effect on the date that notice of the review results is issued to the owner and agent.

3.10 NOTIFICATIONS TO OWNERS AND AGENTS

- a. Acceptable Fees. If the fee amount to be charged to the project account is acceptable, Asset Management staff must send a letter to both the owner and agent stating that: "MHDC has approved a management fee of ___[specify]

as set forth in the Management Certification dated _____ [enter the date shown in the top right portion of Page 1 of the Management Certification]."

- b. Unacceptable Fees. If the fee amount is not acceptable under the procedures set forth in this chapter, Asset Management staff must send the owner and agent a letter that:

- (1) Explains the reasons MHDC cannot approve the fees shown in the Management Certification.
- (2) Sets forth the fees MHDC could approve.
- (3) Within 30 days of the letter, requires the owner and agent to:
 - (a) reduce the fee(s) to the amount(s) specified in the letter;
- (4) Within 30 days of the initial notification letter or MHDC's decision letter responding to the owner's/agent's appeal:
 - (a) Refund to the project any excessive fees collected.
 - (b) Reduce any management fees payable by the excessive amounts included in them.

3.11 DOCUMENTING MANAGEMENT FEE DECISIONS

Asset Management staff must document their approvals and disapprovals of management fees.

- a. Fees Approved.

If the fees are approved:

- (1) Indicate MHDC's approval on the last page of the Management Certification; and
- (2) Staple a copy of the MHDC approval letter to the Management Certification.

- b. Fees Disapproved.

If fees are disapproved:

- (1) Indicate MHDC's disapproval on the last page of the Management Certification and enter the date of the disapproval letter; and

(2) Staple a copy of the disapproval letter to the Management Certification.

c. Retaining Key Documents.

Management fee documents must be retained in the project file for at least three years. This documentation must include:

(1) Management Certifications;

(2) Decision letters; and

(3) Management fee correspondence with owners/agents.

3.12 ASSESSING REASONABLENESS OF MANAGEMENT FEES

a. The goals of MHDC's review of management fees for reasonableness are to assure that fees approved for projects:

(1) Provide sufficient compensation to attract the quality of management needed to administer the project during the time period covered by the fee.

(2) Do not significantly exceed the amount that MHDC determines independent agents and owners would ordinarily negotiate for comparable services at projects in the same geographic/cost area, except as justified by conditions that require more time and effort on the part of the management agent.

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CHAPTER FOUR: PROGRAM MONITORING

SECTION 1: INTRODUCTION

4.1 GENERAL

This chapter provides basic guidance on monitoring management agent activities to ensure that program requirements and procedures are followed. It specifically focuses on how to apply MHDC's monitoring strategy in reviewing management agent performance. Where specific instructions for carrying out individual monitoring activities are provided in other MHDC Handbooks, these documents are referenced.

4.2 OVERVIEW OF MONITORING ACTIVITIES

- a. Prior to the Compliance Period, owners/management agents will be notified by MHDC of the following types of inspections:
 - (1) Pre-Occupancy. MHDC must inspect all units prior to leasing. A member of the Asset Management and Architectural teams must accompany the owner, contractor, manager, and development architect on an inspection of all units. A final punch list will be created and submitted to the appropriate teams for remediation. Owner/Management is required to communicate with MHDC staff to ensure inspections are scheduled prior to occupancy.
 - (2) Final Inspection. MHDC must inspect the remediation of the Pre-Occupancy punch list. Owner/Management is required to communicate with MHDC staff to ensure the final inspection is scheduled prior to construction completion.
 - (3) Latent Defect Inspection. MHDC must conduct a Latent Defect Inspection within 12 months of substantial completion. This inspection is specific to construction items which have failed or have been found to be defective.
- b. During the Compliance Period, there are three basic types of monitoring activities.
 - (1) Physical Inspections. To assure that properties provide decent, safe,

and sanitary housing, MHDC regularly inspects the physical condition of all MHDC projects.

- (2) Management Reviews. On-site visits are conducted to review the management of MHDC properties. Key management areas, such as occupancy practices and on-site recordkeeping, are examined to ensure that program requirements and procedures are properly followed.
- (3) Financial Reviews. The financial management of MHDC projects is also regularly monitored. MHDC staff review financial statements and other documents to ensure that project funds are handled properly.
- (4) Resident File Reviews. File reviews are conducted to determine that the management agent is complying with the requirements of the Regulatory Agreement.

In addition to these regular monitoring activities, MHDC will check that owners/agents comply with all elements of the Regulatory Agreement governing the property that are not included as part of the above reviews.

Projects that fall below a satisfactory level of performance in any of the three categories listed above risk placement on the Commission Troubled Property Watch List.

- (1) Physical Inspections. Any project that has received a rating that is less than satisfactory.
- (2) Occupancy Review. Any project that has maintained an occupancy level of less than 90% for three (3) consecutive months.
- (3) Financial Review. Any project that is in mortgage default for more than 45 days.

4.3 MONITORING GOALS

Broadly speaking, MHDC's monitoring goal is to ensure the success of its statutory mission to provide affordable, decent, safe, and sanitary housing. Management agents and owners, as MHDC's partners in this effort, each have responsibilities in fulfilling this mission.

More narrowly, MHDC seeks to protect its interest in project mortgages and as the regulator of millions of dollars in physical assets. MHDC has a mandate to oversee the provision of physically and fiscally sound housing, and to protect the integrity of the resources that underwrite its production.

Last, MHDC has an obligation to monitor compliance with housing program requirements as set out in the Regulatory Agreement. Fulfillment of this goal requires MHDC to directly oversee owners' and management agents' activities through periodic management, project, and documentation reviews. Within this review process, MHDC seeks to work objectively and in a professional manner to identify strengths and weaknesses in project management, to communicate findings openly with the owner and management agent, and to find mutually acceptable solutions to management problems.

Monitoring and enforcing program compliance is a responsibility that MHDC takes very seriously. MHDC also recognizes that this responsibility is a component of its overall partnership with owners and management agents in providing affordable housing. In carrying out its monitoring activities, MHDC will simply seek to assure that owners and agents are fulfilling their responsibilities and at the same time will respect the contribution of its partners.

4.4 MHDC'S MONITORING STRATEGY

To guide its monitoring activities, MHDC uses a strategy known as risk management. Under this strategy, MHDC focuses the majority of its monitoring efforts on program participants who pose the greatest risk to MHDC's mission.

4.5 IMPLEMENTING RISK MANAGEMENT

- a. **Monitoring Based on Risk.** Decisions regarding monitoring reviews and resources are made using a risk management process which determines both the participants and areas to be reviewed based on the risk posed to MHDC's objectives. Under this approach, the frequency and intensiveness of monitoring reviews increases as the risk posed by a project or participant increase.
- b. **Monitoring Schedule.** Schedules for monitoring activities will be based on an assessment of the risk posed by projects within a jurisdiction;
- c. **Interrelationship of Monitoring Reviews.** Although each type of review is discussed separately, MHDC staff should conduct each review with an eye toward overall performance.

MHDC staff not only need to complete an individual monitoring activity, but also recognize the implications of a finding in a particular area for other functional areas, as well as for the project overall. The following guidelines apply in all cases:

- (1) **Risk Assessment.** After identifying the goal of their review procedures, MHDC staff should use their knowledge of project conditions to identify and focus their attention on higher-risk items. It is more efficient to

concentrate on areas where problems have been identified, even at the risk of neglecting lower-risk areas, than to spend equal time on all issues and not adequately cover the highest-risk issues.

- (2) Trend Analysis. Individual findings should be viewed in the context of the project as a whole. MHDC staff should try to look "behind" an individual finding to see if its cause lies elsewhere or is having a larger effect. For example, if cash management controls are weak, the problem may lie in the management agent's training policies.

Or, if a project is in poor physical condition, a reviewer should consider whether its Replacement Reserve Account is managed properly.

- (3) Portfolio Analysis. MHDC staff should evaluate a management agent's performance by looking at all projects that the agent manages, not simply at the project currently under review. A pattern of findings at other projects might suggest that a control weakness exists in the project currently under review.

- d. Adapting to Changing Conditions. Monitoring schedules should be flexible to allow for periodic revisions based on changes in monitoring objectives and available resources. For example, the discovery of a series of unanticipated compliance problems during the course of monitoring reviews may require MHDC staff to revise the monitoring schedule to account for the presence of a previously unknown problem.

4.6 WHEN TO PERFORM NON-SCHEDULED REVIEWS

While individual monitoring techniques can follow different schedules, there are situations where one or more reviews are immediately appropriate. MHDC staff should recognize that they can and should use any of the monitoring activities discussed in paragraph 4.2 when the need arises. The following paragraph outlines situations in which each monitoring technique is appropriate.

- a. Physical Inspections. Physical inspections should be performed as soon as possible once the MHDC staff determines that a project is troubled or potentially troubled . Such projects are characterized by:
 - (1) Physical deterioration or specific substandard conditions identified;
 - (2) Evidence of drug use, drug sales, or other criminal activities;
 - (3) Financial stress; and/or
 - (4) A high level of significant resident complaints.

- b. Management Reviews. When physical inspections are required for any of the reasons listed in paragraph (a), a management review should also be performed. MHDC staff may also perform a management review when a physical inspection is not necessary, but there is evidence of:
 - (1) Poor accounting, budgeting, and/or cost controls;
 - (2) Failure to submit required periodic reports in a complete and timely manner;
 - (3) Low rent collection or high accounts receivables;
 - (4) Complaints about or evidence of poor procedures for resident screening and selection;
 - (5) High vacancy rates or turnover;
 - (6) Specific and verifiable evidence of project mismanagement or harassment of residents;
 - (7) Other staffing/supervisory failures; and/or
 - (8) A high level of significant resident complaints.
- c. Financial Reviews. Financial reviews should be performed when the following occurs:
 - (1) Management does not submit fiscal reports in a timely manner
 - (2) Rent collections are below or above expected levels
 - (3) Accounts receivables are excessively high
 - (4) Frequent requests for Reserve for Replacement withdrawals
- d. Resident File Reviews. Resident file reviews are conducted as part of an on-site review to verify that the project manager is complying with MHDC resident screening selection, and other occupancy policies. If remote monitoring suggests occupancy problems at any project that the agent manages, MHDC staff should review a sample of files to assess the extent of the problem and determine appropriate corrective actions.

SECTION 2: PHYSICAL INSPECTIONS

4.7 MHDC'S PHYSICAL INSPECTION PROGRAM

Well-maintained projects are central to MHDC's mission of providing affordable, decent, safe, and sanitary housing. MHDC will not accept deteriorated conditions in housing under its jurisdiction.

- a. Purposes. A comprehensive inspection program:
 - (1) Verifies the quality of housing provided to residents and enables MHDC staff to identify and correct problems in project conditions and maintenance.
 - (2) Helps to safeguard the integrity of the MHDC housing programs.
- b. Annual Inspections. MHDC staff is responsible for ensuring that all multifamily projects are inspected yearly by MHDC with the exception of those projects that have received above average or superior ratings for multiple consecutive years. These projects are inspected every 2 years.
- c. Additional Funding or Funding Changes. Before approving additional MHDC funding or changes to MHDC funding arrangements, a physical inspection must be conducted if the most recent inspection is more than 12 months old.

4.8 INSPECTION STANDARDS

- a. Housing Quality Standards. At a minimum, all units must comply with Section 8 Housing Quality Standards (HQS) and/or local housing codes, whichever are more stringent. However, inspectors should expect management agents to maintain the projects at physical conditions above these minimum maintenance standards.

4.9 PRIORITIES FOR SCHEDULING PHYSICAL INSPECTIONS

- a. MHDC staff should use the priorities described in Figure 6-1 to schedule physical inspections.
- b. Within each priority area, identify and rank projects in the worst condition. These projects should be targeted for physical inspection first, followed by the remaining projects within that category. Sources of information include: management review reports, previous physical inspection reports, and resident complaints.

FIGURE 4-1
PRIORITIES FOR MHDC LOAN INSPECTIONS

- 1. MHDC loans
- 2. Risk-Share loans

3. Participation Loan
4. HUD-insured (FHA) loans

4.10 CONDUCTING THE INSPECTION

- a. Scope of Inspection. Each physical inspection must include:
 - (1) A physical review of the inside and outside of projects' housing units, buildings, grounds, commercial space, and common areas for condition and maintenance.
 - (2) A review of at least 10 percent of the occupied units and all vacant units. MHDC may authorize or require a lesser or greater number of units to be inspected, based on the number of units in the project, to establish a reasonable sample size.
- b. Identifying Deficiencies. For any identified deficiency, MHDC should work with owners/agents to estimate the cost of repairs in order to provide as much useful information as possible to the owner and/or management agent.
 - (1) Asset Management staff should conduct inspections of physically troubled projects with the assistance of a construction analyst (architectural staff) who is capable of determining the cost of the required repairs.
- c. Conducting Close-out Meeting
 - (1) The owner and manager must be notified of findings upon the conclusion of the inspection so they can begin to address the problems.
 - (2) Inspectors should stress that areas of concern identified are not necessarily all-inclusive and that the final report could include additional findings of deficiency based on the analysis of the overall inspection.

4.11 DOCUMENTATION OF THE PHYSICAL INSPECTION AND FINDINGS

- a. Format. The prescribed format for the documentation is the Form MHDC 2004-C, "MHDC Physical, File and Management Review" included in Appendix 4.
- b. Contents. The written report of the physical inspection should document:
 - (1) Detailed deficiency explanations, including locations of the deficiencies and classification such as "poor", "fair", "good", "excellent";
 - (2) A scope of work describing needed repairs.

- (3) Recommended or required actions and time frames; and
- (4) Overall conclusions of the physical condition of the project.
- c. Use of Photographs. Inspectors should include photographs to describe both good and bad conditions. Any photographs used in the report should be cross-referenced to their location in the report.
- d. Report Conclusion. Each report must be signed, dated, and must specify the recommended corrective actions specified by the inspector. The report to the owner may summarize the deficiencies, but MHDC staff must retain detailed descriptions of deficiencies and locations in the project files for follow-up review.
- e. Time for Completion
 - (1) MHDC staff will prepare the report once the field work is complete and will mail the report to the project within 30 days from the date of the inspection.

4.12 CORRECTIVE ACTION PLANS

Once MHDC has notified the owner and management agent of the report's findings, the owner/agent is expected to prepare a corrective action plan to address any deficiencies. MHDC will not approve the corrective action plan unless it provides for the final resolution of all deficiencies.

a. Time Frames for Owner Response

- (1) Owners must respond within thirty (30) days from the date of issuance of the report unless an alternate schedule is agreed upon by MHDC and the owner.
 - (a) Provide a written report on all actions taken since the report was issued to correct the deficiencies noted.
 - (b) Provide a commitment outlining how and when the remaining deficiencies will be corrected and provide a written plan for addressing these deficiencies within a time frame agreed upon by MHDC.
 - (c) Identify the source of funds used or anticipated use to implement corrective actions.
- b. Appeals. The owner may appeal the findings of the management review. However, the owner may not delay submitting the response or correcting valid deficiencies that are not under appeal. Appeals must be submitted in

writing to the address below:

MHDC
Deb Howard
4625 Lindell Blvd.
Suite 300
St. Louis, MO 63108

c. The following guidelines apply to all monitoring activities.

- (1) Follow-up. MHDC staff must ensure that owners are carrying out the required corrective actions. The Asset Management staff will monitor the project for as long as deficiencies are being corrected, and will determine whether the owner is acting in a timely and professional manner in carrying out the corrections.
- (2) Discovery of Additional Deficiencies. If new deficiencies are revealed as a result of routine monitoring or as a result of a subsequent review of operations, Asset Management staff will repeat all steps necessary to assure owner compliance.
- (3) Follow-up System. If a follow-up system is not in place, Asset Management staff shall establish a follow-up and reporting system which monitors the actions taken by the owner to cure existing deficiencies.

d. Required Contents

- (1) Corrective action plans, including those submitted for non-serious deficiencies, must be appropriately formulated and organized so they can be monitored by MHDC.
- (2) The action plan must be well-considered and specific. It must include timetables for deficiency resolution and must identify sources of funds necessary to bring the project to an acceptable condition.
 - (a) If the project's cash flow is not sufficient, the owner should provide a plan covering how he/she proposes to correct the problem or what savings he/she suggests.
 - (b) The owner must make all reasonable efforts to secure additional funding needed to implement corrective actions.
 - (c) The owner is responsible for submitting written bids from qualified contractors when the scope of work dictates the necessity for this skill level or expertise.

4.13 MONITORING CORRECTIVE ACTION

a. Follow-Up Inspections

- (1) Where serious deficiencies were identified during the physical inspection, MHDC staff shall schedule a follow-up inspection to assure satisfactory completion of all corrections the owner indicates are completed.
- (2) All follow-up inspections must be documented either through a memorandum to the file or on a Form MHDC 2004-C. Documents must be clearly marked to show that the inspection is a follow-up.

b. Addressing Noncompliance. Asset Management staff shall notify the owner in the case of noncompliance with the plan.

- (1) The owner must take remedial action immediately upon receipt of notification and must provide an explanation of any noncompliance. In addition, the owner must develop and provide to MHDC proposed revisions to the corrective action plan.
- (2) Asset Management staff will analyze any suggested modifications to determine their feasibility and their effect on the continued viability of the plan.
- (3) If Asset Management staff determines that the owner and/or management agent is not making a good-faith effort to bring the project into acceptable condition, or if the plan, as revised, is no longer feasible, then they may impose sanctions as described in Chapter 5 of this Handbook.

4.14 TECHNICAL DEFAULTS

a. If the Asset Management staff determines that:

- (1) A good-faith effort is not being made to correct deficiencies noted in the management review report;
- (2) A plan is not received; or
- (3) The plan, as revised, is no longer workable. If so, MHDC may pursue a declaration of default, under either the waste provision of the mortgage or under the Regulatory Agreement.

b. If the owner does not remedy noncompliance with the corrective action

plan and the physical condition of the property has fallen to an unsatisfactory level, MHDC must determine whether to declare default under the clauses of the Regulatory Agreement or under the waste provision of the mortgage.

- (1) Recommendation of Default. If the Manager of Asset Management determines that a declaration of default is appropriate, the Deputy Director/Chief Underwriter has the authority to approve or disapprove the recommendation.
- (2) Notification. If the Deputy Director/Chief Underwriter accepts the Manager of Asset Management's recommendation, the Office of General Counsel must notify the owner of the intended action by certified mail with return receipt requested, and must send a copy of the notification to the management agent.
 - (a) General Counsel must inform owners in the notification that they will be given thirty calendar days to show sufficient cause why the default should not be declared, or otherwise to provide a new or revised corrective action plan, or to carry out the previously approved plan.
 - (b) Extension of Notice. The Manager of Asset Management may extend the time frame for declaration of default for specific cause on a case-by-case basis. The Manager must document such cause for the record.
 - (c) Declaration of Default. If the owner does not satisfactorily show cause or comply with the Manager of Asset Management's requests regarding corrective actions within thirty days or the approved time frame, Loan Servicing shall proceed with a letter to the owner accelerating the principal balance of the mortgage.
 - (i) For declarations of default under the waste provision of the mortgage, the letter shall declare a Covenant Default and accelerate the principal balance of the mortgage.
 - (ii) If the housing condition is below acceptable levels, but the documentation or the problem does not support a declaration of default based on the Regulatory Agreement or the waste provision of the mortgage, MHDC should determine the advisability of initiating immediate litigation against the owner. Civil penalties should also be implemented where appropriate to ensure compliance with the corrective action plan.

(d) Foreclosure and Mortgagee-in-Possession (MIP) Status.

- (i) After the letter to accelerate the loan has been sent to the owner, the General Counsel, upon instruction from the Chief Financial Officer, should take action to obtain either voluntary or involuntary mortgagee-in-possession status.
- (ii) MHDC must begin foreclosure concurrently with the commencement of MIP status. **This is imperative and must occur in all cases.**
- (iii) When MHDC is awarded MIP status, the Manager of Asset Management should authorize the management agent to begin making the needed repairs to restore the project to acceptable living standards as quickly as possible. The repairs should be paid for out of project funds and MHDC fund balances, if possible.

4.15 NON-ROUTINE INSPECTIONS

- a. Inspections for Funding Changes. In addition to regularly-scheduled inspections, Asset Management staff must ensure that a physical inspection has been carried out prior to approving actions that entail funding changes. Asset Management staff may waive this requirement if:
 - (1) A physical inspection has been completed within the past year; or
 - (2) Asset Management staff determine that project operations will be imperiled if approval of the requested assistance is withheld.
- b. Ad-hoc Reviews. If time permits, MHDC staff on official travel should drive by any MHDC projects located nearby their travel route or destination. MHDC staff should observe the physical condition of the project with a quick walk-through or drive-by inspection and assess whether the project requires further inspection.

SECTION 3: MANAGEMENT REVIEWS

4.16 PURPOSE OF MANAGEMENT REVIEWS

- a. Compliance. Management reviews are another integral step for ensuring compliance with MHDC program requirements. Management reviews allow MHDC to determine whether owners and management agents are providing

the services which MHDC requires under its Regulatory Agreements and general and industry standards.

- b. Communication. Effective management of all MHDC multifamily properties requires adequate communication between owners, managers, and residents. Management reviews serve as MHDC's primary means of assessing the communication between owners, management agents, and residents.

4.17 PRE-OCCUPANCY REVIEWS

A comprehensive review conducted prior to leasing the first unit in a building. This review is conducted by Asset Management staff at the development location and includes the following review points:

- a. Pending resident applications and qualifying supportive documentation;
- b. Staff education certificates;
- c. Secure locations for files, keys, confidential information;
- d. Site and building plans;
- e. Reference materials (LURA, Regulatory Agreement)

4.18 SCHEDULING MANAGEMENT REVIEWS

- a. Asset Management staff should ensure that projects which are physically or fiscally troubled receive first priority.
- b. In addition to the normal review plan, Asset Management staff must arrange to review projects at which there are serious management problems or significant resident complaints.
- c. When possible, Asset Management staff should schedule management reviews to coincide with the project physical inspection to minimize the impact on project operations and to use MHDC resources most efficiently.

4.19 STEPS FOR PERFORMING THE MANAGEMENT REVIEW

- a. Preparation. Asset Management staff should review the records, listed below, for each project scheduled for review to determine whether the review is warranted and, if so, its extent. Staff should keep in mind, however, that these records alone may not fully indicate the project's needs and condition.

(1) The priority status assigned to the project.

- (2) Any records of the agent's performance at other projects.
 - (3) Quality, scope, and results of previous MHDC on-site reviews.
 - (4) Financial condition reports, including the Independent Public Accountant's report.
 - (5) Resident comments and complaints.
 - (6) Local police reports, if available.
- b. Documentation
- (1) Format. The review will be documented on form MHDC 2004-C, "MHDC Physical, File and Management Review" (See Appendix 4).
 - (2) Contents.
 - (a) The report will summarize all identified deficiencies, recommended or required corrective actions and time frames, and conclusions. MHDC records shall contain a detailed description of any deficiency.
 - (b) If the report refers to materials that are not physically attached to it (such as annual financial statements) it should clearly identify the location of those materials.
- c. Close-out Meeting. The owner and/or manager should be notified of findings upon the conclusion of the review so they can begin to address the problems. The reviewers should stress at the meeting that the areas of concern identified are not necessarily all-inclusive and that the final report could include additional findings of deficiency based on the analysis of the overall review.

4.20 FAIR HOUSING AND EQUAL OPPORTUNITY CONSIDERATIONS

- a. Referrals to HUD-FHEO. During management reviews, Asset Management staff examines resident records together with the agent's resident screening and selection procedures for compliance with the occupancy requirements established. If concerns about an owner/agent's compliance with Fair Housing requirements arise during such reviews, Asset Management staff should notify HUD-FHEO of these concerns.
- b. FHEO Reviews. HUD-FHEO staff conducts separate compliance reviews based upon Asset Management referrals concerning the following areas.
 - (1) Management and administration;

- (2) Equal employment opportunity and training;
- (3) Outreach and affirmative marketing;
- (4) Occupancy reviews and resident data;
- (5) Maintenance and facility management;
- (6) The provision of services to persons with disabilities; and
- (7) Procurement practices and the use of minority- and women-owned businesses.

4.21 NOTIFICATION OF THE OWNER/MANAGEMENT AGENT

MHDC will notify the owner of the results of the review within 30 days. Asset Management staff must also send a copy of the report to the management agent and/or other contacts identified by the owner.

4.22 REVIEWS OF MANAGEMENT AGENTS' CENTRAL OFFICES

- a. In some cases, agents with more than one property perform certain management functions from a centralized location. General management functions, as well as financial management and selected occupancy functions, are activities these agents often choose to centralize. Asset Management staff must perform management reviews of the agent's central office activities as well as regular on-site reviews of functions carried out at the projects.
- b. Central office management reviews should be performed at least once every 2 years.
- c. Whenever possible, a team of the appropriate MHDC specialists, rather than a single staff person, should perform these reviews. An ideal team would consist of an Asset Manager, a Financial Analyst, and an Occupancy Specialist, if staffing permits. Additional members may be appropriate depending on the size of operation and types of functions handled by the agent's central office.

4.23 OCCUPANCY REPORTING

- a. Monthly physically occupancy rates must be submitted to MHDC by the 5th business day following the end of the reporting month (*example: October 1-31 occupancy rates must be submitted to MHDC by the 5th business day of November*). Any unit that is not occupied on the last day of the reporting month must be reported as vacant.

SECTION 4: FINANCIAL COMPLIANCE

4.24 OVERVIEW

- a. Purpose. Management agents are charged with protecting the financial viability of MHDC multifamily projects. The purpose of financial reviews is to verify that owners and management agents are in compliance with MHDC requirements and guidelines. This section provides an overview of the financial compliance review requirements for Asset Management staff.

Inadequate internal controls and procedures for financial operations can result in:

- o insufficient funds to pay for maintenance and emergency repairs;
- o willful misappropriation of project funds.

To prevent these occurrences, Asset Management staff is responsible for determining that owners and management agents observe MHDC guidelines and maintain an effective set of reporting systems and internal controls.

- b. Applicability. All MHDC multifamily properties are subject to some degree of financial review.

4.25 REVIEWING ANNUAL BUDGETS AND FINANCIAL STATEMENTS

- a. Purpose.
 1. Annual Budget submissions aid in the anticipation of a project's continued financial stability. Budgets should be well thought out with supportive documentation (i.e. bids, premiums, etc.) to support drastic increases/decreases in project expenses.
 - a. Budgets are required to be submitted on-line by November 15 (preceeding the budget year).
 - b. Budgets not received by this date are subject to suspension of all requests for a period of 90 days following receipt of the budget.
 2. Annual Financial Statements show the project's actual financial condition. Asset Management staff shall review the statements to measure the current and near-term financial stability of the project by using financial ratios and other indicators. Asset Management staff should determine whether project assets and liabilities, rates of rent collection, accounts payable, etc., appear reasonable given the project's

size and history. This information may suggest areas where increased oversight is needed.

- a. Financial Statements are required to be submitted 60 days following the end of the project fiscal year.
 - b. Financial statements not received within the required timeframe are subject to suspension of all requests for a period of 90 days following receipt of the statement.
- b. Review requirements. Asset Management staff must verify that annual financial statements are prepared and submitted to MHDC in compliance with the following procedures:
1. Preparation
 - (a) Each annual financial report *should* be based submitted through the on-line database along with an uploaded copy of the certified report for the 2004 fiscal year;
 - (b) Each annual financial report *must* be submitted on-line beginning with the 2005 submission deadline;
 - (c) Each annual report must be based on books and accounts for that project only;
 - (d) The annual financial report must cover the project's entire fiscal period under review;
 - (e) The annual financial report must be prepared on an accrual basis;
 - (f) The annual financial report must be audited by a Certified Public Accountant (CPA) if the development has 24 units or more. A compilation or review by a CPA must be submitted for projects of 13 to 23 units.
 - (2) Submission. Audited financial statements must be submitted annually for each project within 90 days following the end of each fiscal year.

4.26 ASSIGNING MANAGEMENT COSTS

- a. MHDC allows agents to charge certain management costs to the project's operating account. However, other management costs must be paid only out of the management fee. Asset management costs for the project must be paid out of distributions to the owner.

- b. Rather than maintaining separate payroll and separate fringe benefits plans for each property, some agents consolidate payroll and fringe benefit plans in order to reduce costs for the properties. In such a system, all personnel for several properties are listed under a single Federal Employer I.D. Number. The salary and fringe benefits costs are prorated to the various properties in the following ways.
- (1) Salaries and fringe benefits of personnel performing front-line duties are prorated among the properties served in proportion to actual use.
 - (2) The agent may not impose surcharges or administrative fees in addition to actual costs.
 - (3) The properties served may make reimbursement payments to the consolidated employer upon issuance of payroll checks.
 - (4) Discounts, rebates, dividends, commissions, or other recoveries of fringe benefits costs must be prorated among the properties served in proportion to actual use during the period to which the recovery applies.

4.27 MANAGEMENT COSTS CHARGED TO THE PROJECT'S OPERATING ACCOUNT

a. Front-line Costs

- (1) Reasonable expenses incurred for front-line management activities may be charged to the project operating account. Front-line activities may include:
 - taking applications;
 - leasing units
 - certifying and recertifying residents
 - maintaining the project
 - legal fees
 - annual audit
 - security
 - training
 - program-specific software

- (2) If front-line management functions for several properties are performed by staff of the agent operating out of a single office, the following conditions apply.
 - (a) The agent must prorate the total associated costs among the projects served in proportion to the actual use of services. Allowable total associated costs include:
 - (i) Salaries and fringe benefits of personnel performing front-line duties; and
 - (ii) Actual office expenses, fees, and contract costs directly attributable to the performance of front-line duties.
 - (b) The agent may not impose surcharges or administrative fees in addition to actual costs.
 - (c) The cost of performing front-line management functions off-site may not exceed the total cost of performing these functions at the property.
 - (3) The salaries of the agent's supervisory personnel may not be charged to project accounts.
- b. Training Costs for Front-Line Staff
- (1) Project funds may be used to obtain project related training for front-line management staff.
 - (2) Asset Management staff may use the following guidelines to assess whether amounts proposed for training are reasonable.
 - (a) At a minimum, the budget amount should be sufficient to allow one staff person from each functional area to attend a minimum of one project related training session per year.
 - (b) Asset Management staff have the authority to approve training budgets that exceed the guidelines above if the owner/agent can clearly document the conditions that necessitate more extensive training for project staff.
- c. Training Costs for Board Members of Resident-Owned/Co-op Housing
(example is Meadow Ridge Townhouses in Blue Springs, Mo.)

- (1) Project funds may be used to provide project related training for the Board of Directors of a housing cooperative.
- (2) Project funds approved by the Board may be used to pay for each board member to attend one project related training session or conference per year.
- (3) The guidelines presented should be used in evaluating whether the amounts proposed for training are reasonable.

4.28 MANAGEMENT COSTS PAID FROM THE MANAGEMENT FEE

- a. Expenses for services that are not front-line activities must be paid out of management fee funds.
- b. Salaries, fringe benefits, office expenses, fees, and contract costs for the following activities must be paid out of management fee funds. These costs may include:
 - (1) Preparing budgets required by the owner or MHDC, exclusive of rent increase requests;
 - (2) Monthly bookkeeping and accounting activities;
 - (3) Recruiting, hiring, and supervising project personnel;
 - (4) Monitoring project operations by visiting the project or analyzing project performance reports;
 - (5) Analyzing and solving project problems;
 - (6) Keeping the owner abreast of project operations;
 - (7) Overseeing investment of project funds;
 - (8) Ensuring that project positions are covered during vacations, sickness, and vacancies;
 - (9) Bookkeeping.

4.29 ASSET MANAGEMENT SERVICES (PROJECT LEVEL)

- a. Asset management functions are those activities associated with managing and protecting the assets of the ownership entity and overseeing the management agent's performance. Asset management activities include:

- (1) Disbursing surplus cash;
 - (2) Periodic owner visits to the project to review the agent's performance;
 - (3) Obtaining or providing tax advice to the ownership entity or its principals and preparing the ownership's tax return.
- b. Asset management costs must not be billed to a project's operating account. These costs may only be paid from funds available for distribution to owners in accordance with the terms of the Regulatory Agreement.

NOTE: On limited distribution projects, any asset management fees paid from project funds must be included as distributions paid in Section C of the Computation of Distributions to Owners and Required Residual Receipts form.

4.30 WORKER'S COMPENSATION DIVIDENDS

- a. Dividends received from Worker's Compensation insurance premiums must be distributed in the following manner.
- (1) If Worker's Compensation insurance for project staff is paid for out of project funds, all dividends are returned to the project.
 - (2) If Worker's Compensation premiums are paid by the agent out of the management fee the dividends are paid to the agent.
- b. In reviewing a project's financial statement, Asset Management staff should identify the source of funds used to pay Worker's Compensation premiums and verify that all dividends are returned to the project when the premiums are paid out of project funds.

4.31 CASH MANAGEMENT

- a. Purpose. Asset Management staff must verify that the management agent secures cash receipts and disbursement checks to prevent unauthorized use of funds.

Generally:

- (1) All receipts must be promptly deposited to a federally insured bank account held in the name of the project. Security deposits should be held separate and apart from other project funds in a segregated account.
- (2) The management agent must furnish, at its own expense, a fidelity bond in an amount equal to gross potential income for two months and the gross

potential security deposits. Blanket coverage must extend to all employees handling cash.

- (3) Receipts and disbursements should be controlled through procedures for reconciliation of cash movements to banking and accounting statements.
- (4) Cash instruments (e.g. blank checks) must be kept secure in a locked drawer or safe with limited access.

4.32 DISTRIBUTION OF SURPLUS CASH / RELEASE OF RESIDUAL RECEIPTS

a. Purpose.

- (1) The use of surplus cash is governed by the Regulatory Agreement. Asset Management staff must verify that owners do not distribute surplus cash before satisfying all obligations to mortgage repayment, deferred maintenance, payment of reasonable project expenses, and replacement reserve accounts.
- (2) Distributions may not be made without prior written approval from MHDC.
- (3) Distributions may not be made when:
 - (a) A project is in default under the mortgage;
 - (b) The owner has agreed to waive payment of distributions;
 - (c) The project is in a non-surplus cash position; or
 - (d) The project is not in “good repair and condition” (a requirement in the Regulatory Agreement) based on a physical inspection;
- (4) Distributions may not be made to nonprofit ownerships. All surplus cash is to be deposited into a Residual Receipts account.

- b. Review Requirements. Asset Management staff must review the Income Statement and Cash Flow Statement to verify that distributions have been made in compliance with the Regulatory Agreement. These guidelines include the timing as well as the amount of the distribution.

4.33 RELEASE OF REPLACEMENT RESERVES

- a. Purpose. Reserve accounts have been established on all projects that have received loan funds from MHDC. These funds are reserved for the

replacement of capitalized items (i.e. roof, HVAC, siding, general minor rehab).

b. Review Requirements.

(1) Requests should be submitted to MHDC quarterly.

(2) Requests for *advanced approval* must be accompanied by a summary of work needed and three (3) comparable bids (*Bids are not required if the request is less than \$1000*). Funds will be released to the chosen vendor upon completion of the work.

(3) Requests for *reimbursement* of the costs must be received by MHDC within 12 months of the invoice date. Reimbursements will not be approved for any invoice that was paid more than 12 months prior to the request.

(4) Requests that meet or exceed \$2500 for an individual vendor will require a lien waiver at the time of payment. Lien waivers will be provided by MHDC along with the check. Lien waivers should be sent to the MHDC-St. Louis office.

(5) Requests that meet or exceed \$2500 per item of repair/replacement will require an inspection of the completed work prior to release of the funds. Management is responsible for contacting the MHDC-St. Louis office to request an inspection.

4.34 MAINTAINING PROJECT FUNDS IN INSURED ACCOUNTS

a. Purpose. Given the size of most project accounts, it is vital that project funds be held in a federally-insured bank. An unreimbursable loss to any of these accounts would unnecessarily burden MHDC.

b. Review Requirements

(1) Asset Management staff must ensure that each project maintains the following bank accounts separately:

Descriptions of each account:

(a) Regular Operating Account;

(b) Replacement Reserve Account held by MHDC;

(c) Security Deposit Account; and

(d) Residual Receipts Account held by MHDC.

- (2) Asset Management staff must review the project's bank account statements and verify that the bank is federally-insured and that each account is established and in use;
- (3) Asset Management staff must verify that the project has opened additional security deposit accounts in different banks, if necessary, to ensure that the balance of each security deposit account does not exceed the insurance limit of \$100,000 per FDIC regulations.

4.35 **MONITORING EXCESS INCOME FROM SECTION 236 PROJECTS
(Where MHDC is the State Regulator for HUD under the Agreement for
Interest Reduction Payments.)**

- a. Purpose. Rents collected in excess of basic rental charges from residents in a Section 236 project must be remitted monthly to MHDC. Excess rents are the amount by which the rent collected on a dwelling unit exceeds the approved basic rent for that unit.
- b. Review Requirements
 - (1) Annual Review. MHDC must confirm that the Independent Public Accountant has confirmed the transfer of excess rents for Section 236 projects with HUD's Excess Rental Income Office.
 - (2) Mid-year Review. If Asset Management staff determines it is necessary to review excess rent transfers mid-year, they should request copies of the project's forms HUD-93104, Monthly Report of Excess Income and Accrued Unpaid Excess Income and HUD-93104A, Schedule for Calculating Excess Income and Report of Excess Income Delinquencies from the management agent, and compare the recorded amounts to the project's Monthly Accounting Reports.
 - (3) Paragraph 7-28 of HUD Handbook 4350.1 provides detailed guidance on the specific actions MHDC staff will take to properly monitor excess income from Section 236 projects.

4.36 **MONITORING EQUITY SKIMMING**

- a. In reviewing a project's financial statements, Asset Management staff must make sure that owners are not receiving unauthorized distributions from the project. To ensure that no unauthorized distributions have been made, also referred to as equity skimming, Asset Management staff should compare the amount of distributions paid during the period covered by the annual statements to the amount of surplus cash available, keeping in mind the

distribution limitations imposed on limited dividend owners. Proper distributions meet the following conditions:

- (1) No distributions are permitted for projects with a nonprofit ownership entity. Surplus cash must be placed in the Residual Receipts account.
- (2) Distributions must be approved by MHDC prior to disbursement.
- (3) Limited dividend owners may pay both the annual distribution earned (i.e. percent permitted by the Regulatory Agreement) plus distributions unpaid from previous years, but only up to the amount of surplus cash available and as solely determined by MHDC.
- (4) Distributions may not be paid in excess of the surplus cash available as of the end of the prior fiscal year.
- (5) Distributions may not be paid when:
 - (a) A project is in default under the mortgage;
 - (b) The owner has agreed to waive payment of distributions;
 - (c) The project is in a non-surplus cash position; or
 - (d) The project is not in "good repair and condition" (a requirement of the Regulatory Agreement) based on a physical inspection.

4.37 CONTRACTING GUIDELINES

- a. When an owner/agent is contracting for goods or services involving project income, an agent is expected to solicit written cost estimates from at least three contractors or suppliers for any contract, ongoing supply or service which is expected to exceed \$1000 for any contract or on-going service agreement which is expected to exceed \$1,000 per year.
- b. For any contract, ongoing supply or service estimated to cost less than \$1000, the agent should solicit written cost estimates in order to assure that the project is obtaining services, supplies and purchases at the lowest possible cost
- c. Documentation of all bids should be retained as a part of the project records for three years following the completion of the work.

SECTION 5: PROVISIONS OF REGULATORY AGREEMENTS

4.38 MONITORING REGULATORY AGREEMENTS

MHDC requires Regulatory Agreements for all of its loans. The Agreement specifies owner/management agent responsibilities which the Asset Management staff monitors pursuant to other paragraphs in this chapter. The guidance below covers general issues related to monitoring Regulatory Agreements.

- a. Financial issues. The Asset Management staff will verify that reports and other documents are submitted on required schedules, confirm that these items are complete, and investigate questionable transactions. These reports and documents include:
 - (1) The Annual Financial Statement and Budget submitted through the on-line process.
 - (2) Monthly Accounting Reports (if applicable).
 - (3) Evidence that the owner/management agent is utilizing the Receipts Fund Account and, for nonprofits, the Residual Receipts Fund Account in the required manner.
 - (4) Invoices, and other evidence that distribution and expense payments are proper and authorized.
- c. Occupancy and Resident Selection Issues. The management agent will submit monthly reports on occupancy levels through the on-line process. (See Appendix 7).

In addition, the Asset Management staff should verify that the management agent conducts income recertification annually. If such reviews reveal that the agent may be in violation of civil rights statutes, or is possibly discriminating against families with children or applicants of any age, Asset Management staff should advise HUD's FHEO staff.

- c. On-site Review Issues. The management agent must maintain the property in suitable physical condition and must maintain all records, books, accounts, documents, etc. in suitable condition for on-site review.

Figure 4-2

INDICATORS FOR TROUBLED/POTENTIALLY TROUBLED PROJECTS

A multifamily project may be considered troubled when it requires assistance in order to meet its obligations and/or to provide the quality of housing and services to which its owner committed in the Regulatory Agreement. Potentially troubled projects are those where critical information regarding the operation of the project is not available or where

the project may soon require assistance if action is not taken to address existing or emerging difficulties. Indicators of such a situation includes:

1. High or increasing vacancy rate;
2. A major system that requires replacement, major repair, or repair beyond existing or potential project resources;
3. Persistent physical problems of a serious nature (such as health and safety problems, security problems, deferred maintenance, or lack of janitorial services or routine maintenance);
4. Improper or unauthorized distributions, or unauthorized diversion of project assets;
5. The Management Review or other financial analysis determined that annual or monthly operating expenses exceed income potential and will more than likely continue;
6. Project expenses are abnormally high or low compared to previous years or comparable projects;
7. Project rents are abnormally low or in excess of authorized limits;
8. The owner/sponsor has threatened or has declared bankruptcy;
9. There has been more than one request from the owner(s) to use Reserve for Replacement Account money for the mortgage payment, utilities, insurance, real estate taxes, security, or for routine expenses for which the account was never intended;
10. The Management Review reveals management policies or procedures that jeopardize the project, as indicated by a below satisfactory rating in one or more categories;
11. There are persistent, validated resident complaints of a serious nature, including but not limited to: harassment, leasing irregularities, improper certification, discrimination, or fraud by the project management or owner;
12. The owner/agent has not met the contractual, statutory and/or managerial obligations and has not developed programs to address them;
13. Annual financial statements disclose significant irregularities, such as: qualified auditor's opinions; negative cash throw-offs; line items that are inconsistent with each other, with the prior years, or with similar projects; under-funded Reserves, or escrow accounts; or increasing accounts payable, receivables, or bad debts;

14. Failure to provide required or requested data with respect to fiscal items for significant matters involving the management/operation of the project;
15. Physical inspection indicates serious emergency health and safety hazards for which there is no acceptable plan of correction;
16. Units do not meet fire, safety, and/or building codes and project funds are not available to immediately correct the deficiencies;
17. Serious drug problems prevail in the complex or in the neighborhood;
18. In the case of a non-profit, the Board does not meet the criteria used when it was originally constituted;
19. The owner has threatened to abandon or has abandoned the complex;
20. Commercial space is unrentable, or is being rented at less than market rents, causing a cash drain on the project, or commercial space detracts from project liveability;
21. The mortgage is in default.

MISSOURI HOUSING DEVELOPMENT COMMISSION

The Management Agent Handbook (2004-1)

CHAPTER FIVE:

PROGRAM COMPLIANCE

5.1 GENERAL

While one of MHDC's key objectives is building a constructive working relationship with owner/agents, MHDC staff needs to be prepared to take actions to compel owners to meet their responsibilities if they fail to fulfill their obligations to MHDC. These actions include enacting sanctions against owners/agents who violate the provisions of their agreement/contract with MHDC. Strong actions, such as sanctions, will only be taken when owners/agents do not work with MHDC to correct problems at their projects.

This chapter reviews MHDC's authority to enforce compliance, describes the major types of violations that can occur, discusses the sanctions available to MHDC in the event violations occur, presents the procedures MHDC staff should follow when they believe a violation has occurred, and outlines additional enforcement actions that can be taken in the event of continued noncompliance by owners/agents.

5.2 AUTHORITY

The Management Certification, Form MHDC 2004-A establishes that the management agent agrees to comply with all applicable requirements and advises the agent that MHDC may impose civil penalties in the event the agent commits certain violations.

5.3 COMPLIANCE VIOLATIONS

- a. Compliance violations occur when owners/agents fail to meet their responsibilities set forth in the MHDC regulatory agreement governing the property. The applicable MHDC Handbooks describe these responsibilities in greater detail.
- b. Types of Violations. Compliance violations fall into five major categories.
 - (1) Failure to Adequately Maintain the Physical Condition of the Property.
 - (2) Failure to Follow Proper Management Practices.

- (3) Financial Management Practices Inconsistent with MHDC Requirements.
- (4) Failure to Follow Proper Record-Keeping and Reporting Requirements
- (5) Failure to Observe Fair Housing/Equal Opportunity Requirements

c. Detecting Violations

(1) The monitoring and follow-up activities described in Chapter 6 of this handbook are the primary methods for identifying when violations have occurred. Again, these activities are:

- (a) Physical inspections;
- (b) Management reviews;
- (c) Financial reviews; and
- (d) Resident file reviews.

(2) MHDC staff may also discover violations through less formal sources. These sources include:

- (a) Complaints from project residents;
- (b) Information provided by a state or local government entity;
- (c) Complaints from neighborhood organizations;

If the information provided by these sources indicates that a violation may exist, MHDC staff should take the necessary steps to gather any additional details needed to properly assess whether a violation has occurred.

5.4 TYPES OF SANCTIONS

- a. MHDC may pursue removal of the agent or appropriate civil penalties as sanctions for violations of MHDC Regulatory Agreement requirements. These sanctions are listed below.
- b. Removal of an Agent. MHDC may request that the owner terminate the agent's contract.
 - (1) When an agent is removed, all records and assets are to be turned over to the owner immediately, but in no event more than 30 days after the date of termination.

(2) If the agent is liable under state law for unpaid bills, then the agent may withhold the money required to pay these expenses.

c. Civil Penalties. MHDC may seek to impose civil penalties as appropriate.

5.5 PROCEDURES FOR RESPONDING TO VIOLATIONS

a. Advise Owner/Agent of Possible Violations. If information obtained from monitoring activities or other sources indicates that a violation may have occurred, MHDC must notify the owner/agent in writing.

(1) State the specific violation that may have occurred and cite the paragraph of the Regulatory Agreement, other agreement, contract, certification, or warranty that may have been violated.

(2) Indicate that the violation, if established, may subject the owner/agent to administrative sanctions, and/or civil money penalties.

(3) Request that the owner/agent respond in writing to the allegation. In the response, the owner/agent should admit or deny that the violation has taken place, and provide a justification for the actions in question.

(4) Allow the owner a reasonable amount of time to investigate the allegation and submit a response.

b. Establishing the Presence of a Violation

(1) In determining whether a violation has taken place, MHDC staff should thoroughly review all explanations and supporting documentation submitted by the owner.

(2) If necessary, interview the owner/agent and or any other project representatives associated with the alleged violation to gather additional information. All contact should be documented with a letter confirming that the conversation took place and review the information provided.

(3) If there is any doubt about whether a violation has taken place, MHDC staff should discuss the matter with the Office of General Counsel.

(4) If the owner's/agent's response fails to provide adequate explanation and justification that the circumstances associated with the allegation do not constitute a violation as stated in the notice to the owner, MHDC should make the determination that the owner/agent has committed the alleged violation.

- (5) If the owner's/agent's response provides sufficient evidence that the alleged violation did not occur, MHDC should document in the project file the evidence that led to this determination. MHDC staff should also prepare a letter to the owner/agent indicating that in light of the owner's/agent's response, no further action is being taken at this time.
- c. Issuing a Notice of Violation. If MHDC determines that the violation did occur, MHDC staff must send the owner/agent a letter indicating that the response provided was inadequate and explaining why. The letter must also state that:
- (1) MHDC has declared the owner/agent in violation of the identified provision of the statute, Regulatory Agreement, other agreement, certification, or warranty.
 - (2) The owner/agent must remedy the violation within the specified reasonable period of time.
 - (3) If the violation is not corrected within the required time period, the owner/agent will face possible administrative sanctions, or civil penalties.
 - (4) The owner/agent is required to respond in writing to this notice within 10 working days. The response must state the corrective action the owner will take and agree to provide certified, written confirmation that these actions have been properly executed once the violation has been remedied.
- d. Verifying Corrective Actions
- (1) Upon receiving the owner's/agent's certification that the violation has been corrected, MHDC staff must take any steps necessary to verify within a reasonable period of time that the correction has been made.
NOTE: MHDC staff must independently verify that a violation has been corrected even if the owner/agent submits a third party certification of compliance.
 - (2) If the corrections have been made to MHDC's satisfaction, MHDC staff should notify the owner/agent of this determination once compliance has been verified.
- e. Continued Noncompliance. MHDC will use its authority to impose sanctions whenever necessary to enforce program requirements.
- (1) If a compliance certification is not received within the time period set forth in the violation notice, Asset Management staff should take steps to assess the extent to which the owner/agent has worked to correct the violation.

- (2) After reviewing owner/agent progress in addressing the violation, MHDC staff will consider whether sanctions will be necessary to compel the owner/agent to take the necessary corrective actions.
- (3) MHDC staff should submit recommendations for prosecution to obtain civil penalties to the General Counsel. While administrative sanctions do not require action by the General Counsel, MHDC staff may wish to have counsel review the matter.

5.6 ADDITIONAL ENFORCEMENT ACTIONS

- a. In cases of extended noncompliance, MHDC will consider taking the following enforcement actions.
 - (1) Initiate legal action to place the property in receivership.
 - (2) Take steps to have the property declared in default of the mortgage and initiate foreclosure proceedings.
- b. These actions may be taken without further notice to the owner/agent.