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**MISSOURI HOUSING**  
DEVELOPMENT COMMISSION



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# LEGAL DEPARTMENT INVOLVEMENT



The MHDC legal department is involved in **ALL** MHDC transactions.

You should always be communicating with the legal department on your transactions.



# CONSTRUCTION LOAN CLOSING PROCESS



- STEP 1: FIRM SUBMISSION RECEIVED;  
DEVELOPMENT ASSIGNED TO AN MHDC  
ATTORNEY
- STEP 2: ATTORNEY REVIEWS FIRM  
SUBMISSION DUE DILIGENCE
- STEP 3: COMMENTS TO FIRM SUBMISSION  
DUE DILIGENCE CIRCULATED TO  
DEVELOPMENT TEAM WITH CLOSING  
CHECKLIST



# CONSTRUCTION LOAN CLOSING PROCESS (continued)



- STEP 4: ON-GOING DUE DILIGENCE REVIEWED AS SUBMITTED; LOOP MHDC ATTORNEY INTO CONFERENCE CALLS AND E-MAILS IF NOT ALREADY DOING SO.
- STEP 5: FIRM COMMITMENT ISSUED BY MHDC UNDERWRITER.
- STEP 6: MHDC LOAN DOCUMENTS DRAFTED AND CIRCULATED, AND TENTATIVE CLOSING DATE ESTABLISHED



# CONSTRUCTION LOAN CLOSING PROCESS (continued)



- STEP 7: FINALIZATION OF DUE DILIGENCE AND LOAN DOCUMENTS.
- STEP 8: EXECUTION OF LOAN DOCUMENTS AND FUNDING.
  - Note: MHDC requires its loan documents be executed at its Kansas City office.



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# PERMANENT LOAN & TAX CREDIT ONLY CLOSINGS



- Key points on permanent loans and developments receiving only tax credits:
  - MHDC must still be involved in the construction loan closing process.
    - MHDC must review and approve the LPA/OA, Construction Contract, Owner-Architect Agreement, Developer Agreement, etc., prior to the closing of the construction loan.
  - Tax Credit LURA must be executed and recorded ahead of the construction loan documents.



# HANDOUTS



- Workforce Eligibility Affidavit & MOU
- Title Insurance Minimum Requirements (revised 3/11)
- Survey & Surveyor's Report Requirements (revised 3/11) and HUD Form 9-2457
- Required Language for Limited Partnership Agreements, Operating Agreements and Corporate Bylaws (each revised 3/11)
- MHDC Form Legal Opinion (revised 3/1/10)
- Completion Assurance Requirements (revised 3/11) with sample Letter of Credit and Performance/Payment Bond forms
- Closing Checklists (Content of list varies with specific deals)
- MHDC Addendum to Owner-Architect Agreement (revised 3/11)



Slide 7

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ssmith, 3/17/2010

# FOUR PRIMARY CAUSES FOR CLOSING DELAYS



- Failure to get MHDC's legal department involved in the transaction early on and keep it informed throughout the process.
- Failure to submit due diligence in a timely manner (including the LPA/OA).
- Failure to resolve comments to submitted due diligence in a timely manner.
- Failure to provide timely comments to MHDC's loan documents.



# TIPS FOR EXPEDITING CLOSING PROCESS



- As soon as an MHDC attorney is assigned to your closing, begin including him/her on all conference calls and emails.
- Don't wait until your LPA/OA is in what you believe to be final or near final form before providing it to MHDC for review.
- Review MHDC's comments to firm submission items as soon as you receive the closing checklist and start addressing those issues immediately (particularly title and survey issues).



# TIPS FOR EXPEDITING CLOSING PROCESS (continued)



- Don't wait until the last minute to submit closing checklist items (i.e. plan to complete the checklist 5-7 days prior to closing).
- Provide comments to MHDC closing documents within 3 days of receipt, and final comments to all MHDC loan documents at least 3 days prior to the scheduled closing date.



# AFFIDAVIT/MOU



- Pursuant to MHDC's Workforce Eligibility Policy, the Owner and Contractor must each provide an executed Workforce Eligibility Affidavit and copy of its MOU from E-Verify.
  - The MOUs prove the owner and contractor have enrolled in the E-Verify system.
- The Contractor must obtain these two items from all subcontractors.



# TITLE INSURANCE REQUIREMENTS



- Each title policy must comply with all MHDC requirements (see handout).
  - The title insurer must have an acceptable A.M. Best rating and evidence of such rating must be provided.
  - An insured protection letter must be provided if the policy is issued by agent for title company.
  - Copies of all exception documents must be provided with the title commitment at firm submission.
  - Appurtenant easements should be included as part of the insured legal description.



# SURVEY REQUIREMENTS



- Each survey must comply with all MHDC requirements (see handout).
  - All surveys should continue to comport with the 2005 ALTA/ACSM Survey Standards.
  - Submit surveys in hard copy.
  - All final surveys must be originals bearing the surveyor's signature (in blue ink) and professional seal, and must be dated no more than 90 days prior to the date of the MHDC loan closing.



# SURVEY REQUIREMENTS (continued)



- Required survey content of note:
  - All encroachments must be shown, including encroachments onto easements/setbacks.
    - Encroachments generally not allowed and must be removed or insured over.
  - All utilities traversing the property must be within easements, unless entering from a public right-of-way and terminating on the property.
    - Blanket easements for utilities are not allowed and must be narrowed down or insured over.
  - All new easements must be approved by MHDC.



# SURVEY REQUIREMENTS (continued)



- Additional required survey content of note:
  - Legal description must match the pro forma title policy verbatim and must include any appurtenant easements.
  - Multi-lot developments should be captured on a single survey if at all possible.
    - At a minimum, all contiguous parcels should be on a single survey.



# SURVEY REQUIREMENTS (continued)



- Additional required survey content of note:
  - The face of the survey must bear the HUD 9-2457 Certification certified to MHDC. However, it is permissible to have additional certifications.
  - Survey must note the flood zone classification of the surveyed property.
  - Survey must show all party walls.



# SURVEYOR'S REPORT



- Must use the HUD 9-2457 Surveyor's Report.
- Must provide affirmative statements for items 1-10 (i.e. yes/no responses).
- Report and Survey must provide required information independent of one another.
- Final report must be an original bearing the surveyor's signature (in blue ink) and professional seal and dated no more than 30 days prior to the date of the MHDC loan closing.



# LIMITED PARTNERSHIP/ OPERATING AGREEMENT



- MHDC Legal and Underwriting staff thoroughly review each LPA/OA to ensure it accurately represents the transaction as approved by MHDC and all applicable MHDC policies and requirements.
- MHDC reserves the right to make comments on any provisions in the LPA/OA.
- The LPA/OA should be in final executable form at least 3 days prior to closing.



# LPA/OA (continued)



- Specific LPA/OA Equity Requirements:
  - Total equity pay in and credit pricing must match the amounts detailed in MHDC's Firm Commitment.
  - At least ten percent (10%) of the federal LIHTC equity must be paid in at closing and again at 50% completion of the development.
  - Any partner/member receiving 1% or more of the federal LIHTCs must pay for its share of the federal LIHTCs at the same price as the federal investor.
  - Amount and timing of equity contributions must be sufficient to fund all escrows/reserves and pay down all construction loan debt when due.



# LPA/OA (continued)



- Other notable LPA/OA content requirements
  - Required MHDC language (see handouts) must be incorporated in LPA/OA **verbatim** along with the partner/member information schedule.
  - Put options must note that any transfer pursuant to the option requires MHDC consent.
  - Built in transfer rights for investor entities are only allowed to the extent the transfer is to a wholly owned entity of the approved investor.



# OTHER ORGANIZATIONAL DOCUMENT REQUIREMENTS



- Organizational documents must be provided for the owner entity and all underlying entities, including a Certificate of Good Standing for each dated within 30 days of closing.
- Resolutions and Certificates of Good Standing are required for all signatories of MHDC loan documents.



# MORTGAGOR LEGAL OPINION



- A legal opinion letter is required for each MHDC loan.
- Each opinion must comport with MHDC's form opinion letter (see handout).
  - Material alterations to the form letter will generally not be acceptable.
  - Extensive exceptions and qualifications written into the letter will not be allowed.



# COMPLETION ASSURANCE REQUIREMENTS



- All developments receiving construction loans from MHDC must provide completion assurance.
- Can take the form of cash, letter of credit, or performance and payment bond.
  - See handout for full explanation of requirements on letters of credit and performance and payment bonds.
  - Be aware that, just because you have complied with a senior lender's completion assurance requirements (if any), that may or may not satisfy MHDC's requirements – ALWAYS VERIFY, DON'T ASSUME.



# CLOSING/CONVERSION CHECKLISTS



- **ALL** due diligence items shown on checklist must be sent to the closing coordinator
  - Sabrina Smith (construction/permanent loans)
  - Christine Snell (conversions)
- All checklist items must be received and approved prior to closing/conversion
- The checkmarks tell the story
  - Until the item is marked as received and reviewed, and all necessary MHDC departments have checked off on it, it is considered outstanding.
  - Pay attention to the “comments” column for outstanding matters to be resolved.





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**Early submission is encouraged.**

**Please note that the legal staff will review documents as received.**



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# LOAN DOCUMENTS



- MHDC form loan documents will be generated and circulated by the legal department after the Firm Commitment has been issued.
- Loan documents terms shall be fully negotiated at least three (3) days prior to closing.
- Subordinate loan documents must contain MHDC standard subordinate loan document language

