

By: West

S.B. No. 999

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the establishment of reserve accounts to fund necessary
3 repairs for certain multifamily rental housing developments
4 assisted by the Texas Department of Housing and Community Affairs;
5 providing an administrative penalty.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

7 SECTION 1. Subchapter H, Chapter 2306, Government Code, is
8 amended by adding Section 2306.186 to read as follows:

9 Sec. 2306.186. MANDATORY DEPOSITS TO FUND NECESSARY
10 REPAIRS. (a) In this section:

11 (1) "Cost-of-living adjustment" means the
12 cost-of-living adjustment determined for the applicable year under
13 Section 1(f)(3), Internal Revenue Code of 1986, as amended, by
14 substituting "calendar year 2004" for "calendar year 1992" in
15 Subsection (f)(3)(B) of that section.

16 (2) "Bank trustee" means a bank authorized to do
17 business in this state, with the power to act as trustee.

18 (3) "Department assistance" means any state or federal
19 assistance administered by or through the department, including
20 low-income housing tax credits.

21 (4) "First lien lender" means a lender whose lien has
22 first priority.

23 (5) "Reserve account" means an individual account:

24 (A) created to fund any necessary repairs for a

1 multifamily rental housing development; and

2 (B) maintained by a first lien lender or bank
3 trustee.

4 (b) If the department is the first lien lender with respect
5 to the development, each owner who receives department assistance
6 for a multifamily rental housing development that contains 25 or
7 more rental units shall deposit annually into a reserve account:

8 (1) for the year 2004:

9 (A) \$250 per unit per year for units one to five
10 years old; and

11 (B) \$300 per unit per year for units six or more
12 years old; and

13 (2) for each year following the year 2004, the amounts
14 per unit per year as described by Subdivision (1), plus a
15 cost-of-living adjustment.

16 (c) A land use restriction agreement or restrictive
17 covenant between the owner and the department must require the
18 owner to begin making annual deposits to the reserve account on the
19 date that occupancy of the multifamily rental housing development
20 stabilizes or the date that permanent financing for the development
21 is completely in place, whichever occurs later, and shall continue
22 making deposits until the earliest of the following dates:

23 (1) the date of any involuntary change in ownership of
24 the development;

25 (2) the date on which the owner suffers a total
26 casualty loss with respect to the development or the date on which
27 the development becomes functionally obsolete, if the development

1 cannot be or is not restored;

2 (3) the date on which the development is demolished;

3 (4) the date on which the development ceases to be used
4 as multifamily rental property; or

5 (5) the end of the affordability period specified by
6 the land use restriction agreement or restrictive covenant.

7 (d) With respect to multifamily rental developments, if the
8 establishment of a reserve fund for repairs has not been required by
9 the first lien lender, the development owner shall set aside the
10 repair reserve amount as a reserve for capital improvements. The
11 reserve must be established for each unit in the development,
12 regardless of the amount of rent charged for the unit.

13 (e) Beginning with the 11th year after the awarding of any
14 financial assistance for the development by the department, the
15 owner of a multifamily rental housing development shall contract
16 for a third-party physical needs assessment at appropriate
17 intervals that are consistent with lender requirements with respect
18 to the development. If the first lien lender does not require a
19 third-party physical needs assessment or if the department is the
20 first lien lender, the owner shall contract with a third party to
21 conduct a physical needs assessment at least once during each
22 five-year period beginning with the 11th year after the awarding of
23 any financial assistance for the development by the department.
24 The owner of the development shall submit to the department copies
25 of the most recent third-party physical needs assessment conducted
26 on the development, any response by the owner to the assessment, any
27 repairs made in response to the assessment, and information on any

1 necessary changes to the required reserve based on the assessment.

2 (f) The department may complete necessary repairs if the
3 owner fails to complete the repairs as required by Subsection (e).
4 Payment for those repairs must be made directly by the owner of the
5 development or through a reserve account established for the
6 development under this section.

7 (g) If notified of the development owner's failure to comply
8 with a local health, safety, or building code, the department may
9 complete any repairs necessary to correct a violation of that code,
10 as identified in the applicable violation report, and may pay for
11 those repairs through a reserve account established for the
12 development under this section.

13 (h) The appropriate level of funding for a reserve account
14 is determined by department rule according to the physical needs
15 assessment required by Subsection (e). If the amount in a reserve
16 account is considered to be inadequate by the department based on
17 the physical needs assessment, the department shall reassess and,
18 if appropriate, revise the deposit amount required of the owner and
19 the level of department assistance provided for the development.
20 The reserve must be continually maintained as indicated by the
21 condition of the development according to the physical needs
22 assessment of the development.

23 (i) The duties of the owner of a multifamily rental housing
24 development under this section cease on the date of a voluntary
25 change in ownership of the development, but the subsequent owner of
26 the development is subject to the deposit, inspection, and
27 notification requirements of Subsections (b), (c), (d), and (e).

1 (j) The first lien lender shall maintain the reserve
2 account. In the event there is no longer a first lien lender, then
3 Subsections (b) and (d) no longer apply.

4 (k) The department shall adopt rules that:

5 (1) establish requirements and standards regarding:

6 (A) for first lien lenders and bank trustees:

7 (i) maintenance of reserve accounts and
8 reasonable costs of that maintenance;

9 (ii) asset management;

10 (iii) transfer of money in reserve accounts
11 to the department to fund necessary repairs; and

12 (iv) oversight of reserve accounts and the
13 provision of financial data and other information to the
14 department; and

15 (B) for owners, inspections of the multifamily
16 rental housing developments and identification of necessary
17 repairs, including requirements and standards regarding
18 construction, rehabilitation, and occupancy that may enable
19 quicker identification of those repairs;

20 (2) identify circumstances in which money in the
21 reserve accounts may:

22 (A) be used for expenses other than necessary
23 repairs, including property taxes or insurance; and

24 (B) fall below mandatory deposit levels without
25 resulting in department action;

26 (3) define the scope of department oversight of
27 reserve accounts and the repair process;

1 (4) provide the consequences of any failure to make a
2 required deposit, including a definition of good cause, if any, for
3 a failure to make a required deposit;

4 (5) specify or create processes and standards to be
5 used by the department to obtain repairs for developments;

6 (6) define for purposes of Subsection (c) the date on
7 which occupancy of a development is considered to have stabilized
8 and the date on which permanent financing is considered to be
9 completely in place; and

10 (7) provide for appointment of a bank trustee as
11 necessary under this section.

12 (1) The department shall assess an administrative penalty
13 on development owners who fail to contract for the third-party
14 physical needs assessment and make the identified repairs as
15 required by this section. The department may assess the
16 administrative penalty in the same manner as an administrative
17 penalty assessed under Section 2306.6023. The penalty is computed
18 by multiplying \$200 by the number of dwelling units in the
19 development and must be paid to the department. The office of the
20 attorney general shall assist the department in the collection of
21 the penalty and the enforcement of this subsection.

22 SECTION 2. Section 2306.185, Government Code, is amended by
23 amending Subsection (a) and adding Subsection (h) to read as
24 follows:

25 (a) The department shall adopt policies and procedures to
26 ensure that, for a multifamily rental housing development funded
27 through loans, grants, or tax credits under this chapter, the owner

1 of the development:

2 (1) keeps the rents affordable for low income tenants
3 for the longest period that is economically feasible; and

4 (2) provides regular maintenance to keep the
5 development sanitary, decent, and safe and otherwise complies with
6 the requirements of Section 2306.186.

7 (h) The department shall monitor a development owner's
8 compliance with this section.

9 SECTION 3. Subsection (g), Section 2306.185, Government
10 Code, is repealed.

11 SECTION 4. (a) The Texas Department of Housing and
12 Community Affairs shall adopt the rules required by Section
13 2306.186, Government Code, as added by this Act, not later than
14 December 1, 2003.

15 (b) The change in law made by Section 2306.186, Government
16 Code, as added by this Act, applies only to multifamily rental
17 housing developments that receive assistance from the Texas
18 Department of Housing and Community Affairs on or after January 1,
19 2004.

20 SECTION 5. This Act takes effect September 1, 2003.