

By: West

S.B. No. 999

A BILL TO BE ENTITLED

AN ACT

relating to the establishment of reserve accounts to fund necessary repairs for multifamily rental housing developments assisted by the Texas Department of Housing and Community Affairs.

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

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

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

(1) "Department assistance" means any state or federal assistance administered by or through the department.

(2) "First lien lender" means a lender whose lien has first priority.

(3) "Reserve account" means an individual account:
(A) created to fund any necessary repairs for a multifamily rental housing development; and
(B) maintained by a first lien lender or state bank trustee.

(4) "State bank trustee" means a state bank with the power to act as trustee.

(b) Each developer who applies for and receives department assistance for a multifamily rental housing development shall deposit annually into a reserve account:

(1) at least \$200 per unit, for a development based

1 primarily on new construction; and

2 (2) at least \$300 per unit, for a development based
3 primarily on rehabilitation.

4 (c) The developer shall begin making annual deposits to the
5 reserve account on the date that occupancy of the multifamily
6 rental housing development stabilizes or the date that permanent
7 financing for the development is completely in place, whichever
8 occurs later, and shall continue making deposits until the earliest
9 of the following dates:

10 (1) the date of any involuntary change in ownership of
11 the development;

12 (2) the date on which the developer suffers a total
13 casualty loss with respect to the development or the date on which
14 the development becomes functionally obsolete, if the development
15 cannot be or is not restored;

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

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

19 (5) the 50th anniversary of the date that the
20 developer is required to make the first annual deposit with respect
21 to the development.

22 (d) To assess the repair needs of the multifamily rental
23 housing development and to evaluate the adequacy of the reserve
24 account for funding those repairs, the developer shall inspect the
25 development at least once during each five-year period after the
26 date the developer is required to make the first annual deposit with
27 respect to the development. The developer shall notify the

1 department of any necessary repairs and of the amount in the reserve
2 account. If the amount in the reserve account is considered by the
3 department to be inadequate to fund the costs of the necessary
4 repairs, the department shall reassess and, if appropriate, revise
5 the deposit amount required of the developer and the level of
6 department assistance provided for the development.

7 (e) The duties of the developer of a multifamily rental
8 housing development under this section cease on the date of a
9 voluntary change in ownership of the development, but the
10 subsequent owner of the development is subject to the deposit,
11 inspection, and notification requirements of Subsections (b), (c),
12 and (d).

13 (f) The first lien lender shall maintain the reserve
14 account. On the satisfaction of its lien, the first lien lender may
15 continue to maintain the reserve account. If the first lien lender
16 does not elect to continue maintaining the reserve account, the
17 department shall appoint a state bank trustee to continue
18 maintenance of the account.

19 (g) The department shall adopt rules that:

20 (1) establish requirements and standards regarding:

21 (A) for first lien lenders and state bank
22 trustees:

23 (i) maintenance of reserve accounts and
24 reasonable costs of that maintenance;

25 (ii) asset management;

26 (iii) transfer of money in reserve accounts

27 to the department to fund necessary repairs; and

1 (iv) oversight of reserve accounts and the
2 provision of financial data and other information to the
3 department; and

4 (B) for developers, inspections of the
5 multifamily rental housing developments and identification of
6 necessary repairs, including requirements and standards regarding
7 construction, rehabilitation, and occupancy that may enable
8 quicker identification of those repairs;

9 (2) identify circumstances in which money in the
10 reserve accounts may:

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

13 (B) fall below mandatory deposit levels without
14 resulting in department action;

15 (3) define the scope of department oversight of
16 reserve accounts and the repair process;

17 (4) provide the consequences of any failure to make a
18 required deposit, including a definition of good cause, if any, for
19 a failure to make a required deposit;

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

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

26 (7) provide for appointment of a state bank trustee as
27 necessary under this section.

1 SECTION 2. (a) The Texas Department of Housing and
2 Community Affairs shall adopt the rules required by Section
3 2306.186, Government Code, as added by this Act, not later than
4 December 1, 2003.

5 (b) The change in law made by Section 2306.186, Government
6 Code, as added by this Act, applies only to multifamily rental
7 housing developments that receive assistance from the Texas
8 Department of Housing and Community Affairs on or after January 1,
9 2004.

10 SECTION 3. This Act takes effect September 1, 2003.