

COMMONWEALTH HOUSING LEGAL SERVICES

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October 28, 2013

Mr. Max Kent, Director, Plans & Logistics
NewCourtland Elder Services
6970 Germantown Avenue
Philadelphia, PA 19119

Dear Mr. Kent:

We have been requested by NewCourtland Elder Services ("NewCourtland") to render the opinions contained in this letter (the "Opinions") for its use in connection with the submission of an application to PHFA on or before November 8, 2013, requesting a reservation of Low Income Housing Tax Credits for the development of a project to be located at 1900 Allegheny Avenue, Philadelphia, Pennsylvania (the "Project"). The Project will provide 45 apartment units for low income senior citizens with a focus on serving the frail elderly. We represent NewCourtland as the developer and sponsor of this proposed Project and we will represent the limited partnership to be formed to own the Project and the wholly owned affiliate of NewCourtland which will be formed to serve as the general partner of that partnership.

The Facts. This proposed Project is to be built as part of a comprehensive campus approach to serving frail elderly adults. The Project is to be constructed as an addition to a to-be constructed 60 unit apartment building with the same preference for frail elders ("Phase One"). There will be a senior center on the ground floor of the building that will serve residents of Phase One and residents of the proposed Project, as well as elders who reside in the surrounding community. Also included on this campus is a newly built and furnished LIFE - Senior Healthy Center. The LIFE program is a model of care centered on the belief that it is better for older adults, and for their families, if the chronic care needs of elders are provided in the community whenever possible. The LIFE program provides preventive, primary health, acute and long term care services so that qualified (or eligible), older individuals may live in their own homes and communities for as long as possible.

For this Project, NewCourtland would like to establish a tenant occupancy preference for persons eligible for LIFE Center services. NewCourtland has requested our opinion as to whether the Project's use of a preference for those elderly who are also eligible for LIFE services violates Treasury Regulation 26 CFR §1.42-9 which requires that tax credit units be "available to the general public".

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In our capacity as counsel to NewCourtland we have:

- A. Made diligent inquiry of Mr. Max Kent, Director of Plans and Logistics for NewCourtland; and
- B. Considered such questions of law as we believe relevant.

Section 1.42-9 of the Income Tax Regulations provides that if a residential rental unit in a tax credit project is not for use by the general public it is not eligible for the credit. Such a unit is for use by the general public "if the unit is rented in a manner consistent with housing policy governing non-discrimination, as evidenced by rules or regulations of the Department of Housing and Urban Development." The Regulation goes on to direct readers to see HUD-Handbook 4350.3 [subsection(a)]. The Regulation further states that such units cannot be provided only for members of a social organization or be provided by an employer for its employees. "In addition, any residential rental unit that is part of a hospital, nursing home, sanitarium, lifecare facility, trailer park, or intermediate care facility for the mentally and physically handicapped is not for use by the general public [subsection (b)]."

The Fair Housing Act, Title VIII of the Civil Rights Act of 1968, prohibits discrimination in housing or housing related transactions on the basis of race, color, religion, sex, disability, family status or national origin. Those providing housing may select tenants based upon a preference as long as that preference does not have a discriminatory effect. Preferences for individuals with disabilities are permitted (HUD Handbook 4350.3 Chapter 4, Section 6, Subsection C.3.)

In IRS Private Letter Ruling 9814006, the taxpayer constructed a project containing SRO units with certain support services. The targeted resident group was "homeless individuals, particularly for those with an alcohol or chemical dependency." The taxpayer represented that the project was open to all homeless persons but a preference will be given to persons with alcohol or chemical dependency. IRS noted that HUD's Regional Director of Fair Housing and Equal Opportunity determined that since the project was open to all homeless persons, regardless of whether or not they have a disability, the project's preference for persons with alcohol or chemical dependency disabilities was not inconsistent with HUD's housing policy implementing the Fair Housing Act. Consequently, IRS found that the preference did not violate Section 1.42-9(a) of the general use requirements. In this instance the targeted population is not alcohol or chemical dependent, but rather frail elders in need of supportive services to maintain an independent lifestyle.

Finally, on July 30, 2008 President Bush signed into law the Housing and Economic Recovery Act of 2008 (the "Act"). Subsection (g) of Section 3004 of that Act clarified the general public use requirement by adding the following paragraph to subsection (g) of Section 42:

[(9)] CLARIFICATION OF GENERAL PUBLIC USE REQUIREMENT- A project does not fail to meet the general public use requirement solely because of occupancy restrictions or preferences that favor tenants--

(A) with special needs,

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- (B) who are members of a specified group under a Federal program or State program or policy that supports housing for such a specified group,
or
(C) who are involved in artistic or literary activities.

It is our opinion that elderly adults that are frail and eligible for services through the LIFE program are clearly individuals "with special needs." Therefore, if the Project institutes application preferences or occupancy services favoring these frail elderly, the Project will meet the general public use requirement as clarified by the Act.

On the basis of the foregoing, and subject to the qualifications set forth herein, it is our opinion that:

1. As the Project will be open to all income eligible individuals age 62 and above, its preference for those elderly who are frail and eligible for the services of the LIFE program is consistent with Section 42(g) as amended by the Housing and Economic Recovery Act of 2008, the Fair Housing Act and HUD policies implementing that statute. The Project will not violate 1.42-9(a), "the available to the general public" requirements.
2. Based upon the representation of Mr. Max Kent, applicants need not be members of any particular organization and NewCourtland is not creating these units for its employees. The types of services to be available to residents of the Project are not such as would make the project constitute an "intermediate care facility". The project will not violate 1.42-9(b) as not fulfilling the obligation to be available to the general public requirements.

Notwithstanding anything contained herein to the contrary, the opinion expressed above is subject to the following qualification:

(i) Our opinion is rendered as of the date hereof and is based upon the current status of the law of the United States of America and is necessarily limited to the information examined by us as listed above. We assume no obligation to update or supplement this opinion to reflect any facts or circumstances which may come to our attention or any changes in the laws or regulations which may hereafter occur.

This opinion is being issued and delivered solely for the use and benefit of NewCourtland in its submission of an application for Low-Income Low Housing Tax Credits to the Pennsylvania Housing Finance Agency, and this opinion may not be relied upon by any other party except upon the express written consent of the undersigned.

Very truly yours,

Commonwealth Housing Legal Services
COMMONWEALTH HOUSING LEGAL SERVICES