

Refinancing Your Mortgage

By Randall A. Pentiuk 6/03

With the unprecedented and sustained drop in interest rates, a growing number of cooperatives are examining the possibility of refinancing their original mortgages. Many of our clients have found mortgages which cost the same or less than the existing mortgage. This makes it a popular option, since it allows for an infusion of capital that not only retires the old debt but also funds capital improvements to upgrade the property.

The first step in the process is to obtain proposals from various lenders. Most cooperatives are familiar with the National Cooperative Bank, located in Washington, D.C. This lender has the advantage of being well versed with cooperatives, which makes it easier to deal with. The officers of NCB are knowledgeable of the inner workings of cooperatives, and have done these refinancings many times. Moreover, NCB is interested in becoming a major force in share loans, so new members can finance loans to acquire their memberships, a tool that is rather appealing to cooperative boards as an aid to improving the marketability of their properties.

However, we have seen several other lenders who are aggressively pursuing loans to cooperatives. We are compiling a growing list of these lenders and will be happy to furnish this information. Many times, these lenders have offered interest rates that are lower than the NCB proposal. Thus, it pays to shop around.

Once a lender has been identified that offers a reasonable proposal, two steps should be undertaken. One is to determine the monthly payment, since a selling point to the membership is that carrying charges will not be increased because of the new loan. A second task is to share the proposal with the membership.

Under most bylaws, the decision to refinance rests with the cooperative board. HUD has tried to argue with us that the membership must approve the new loan; however, we have successfully challenged this position. HUD has acquiesced to our position, and now simply wants to see that the membership is aware of the refinancing. It wants to see that an informational meeting was held, with proper notice. While we do not believe that HUD can insist on this, we advise our clients to hold an informational meeting to advise the membership as a matter of political expediency and pragmatism.

Once these steps are completed, there are a number of tasks that remain. The lender's commitment letter will set forth a number of requirements. Among them are:

ATLA Survey: This is a rather detailed site plan of the entire property which is prepared by a registered surveyor, usually on staff with an engineering firm. It seeks to identify all of the buildings and other improvements, the boundaries, and any encroachments. This enables the lender to know what its collateral is, and whether there are any concerns with the property.

Environmental Assessment: This is an evaluation of the property, done by a title record review and physical inspection, in order to ascertain any environmental concerns that would affect the marketability of the property should a default in the mortgage occur. It is done by an environmental engineer.

Title Commitment: A search of the land title records by a licensed title insurance company will be required. We have found that there are occasional problems discovered, such as a stray deed that has been recorded in the chain of title by a member or third party that has to be corrected; we also have found that sometimes the original developer has not properly conveyed internal roads to the cooperative. Should there be any such clouds on the title; our services are engaged to clear them up.

Beyond these tasks, there are a number of documents and records that we need to provide the lender, which engages its own attorneys to verify that the cooperative is in good standing, that the loan has been approved by the board through proper procedure, and that the officers signing the documents are authorized to do so. In addition, the original lender must provide a payoff letter that sets forth the current balance. On occasion, HUD has directed the original lender to refrain from doing so. We have managed to override this directive by threatening litigation against HUD.

If the cooperative is organized as a low or moderate income housing facility, HUD will insist upon the cooperative signing a Use Agreement. This will replace the Regulatory Agreement, and require the cooperative to continue to serve the needs of these income groups for the duration of the term of the Regulatory Agreement.

In any event, once the new mortgage has been closed, HUD will provide a release of the Regulatory Agreement. This instrument needs to be recorded in the chain of title with the land title records. Also, the original lender needs to provide a discharge of the mortgage, which is also to be recorded.

There may be a need to amend certain provisions in the cooperative's articles of incorporation, bylaws and occupancy agreement. A separate article explains in detail the types of changes that are either needed or desirable. We have helped many of our cooperative clients through this procedure, which culminates with a membership vote on these changes.

This article is published by Pentiuik, Couvreur & Kobiljak, P.C. Copyright © 2003. All rights reserved. No duplication permitted without the prior written permission of the publisher. FOR MORE INFORMATION CALL: Cyntheia Pentiuik or Meredith Phifer (the editorial staff) at (734) 281-7100. The opinions expressed herein are those of the author and not necessarily those of the firm. Readers are cautioned to consult legal counsel prior to implementation of new ideas obtained herein.