

Michigan State Housing Development Authority

TO: Developers, Attorneys, and all Other Interested Parties

FROM: Legal Affairs Division

RE: Required Organizational Document Provisions for Authority-Aided Developments

The following requirements or provisions must be included in both the operating agreement and the articles of organization in order for a limited liability company to receive mortgage loan financing from the Michigan State Housing Development Authority and to be found eligible for tax abatement under the State Housing Development Authority Act of 1966. A limited dividend housing association may only be formed under Michigan law; entities formed under the laws of another state are not eligible.

INSTRUCTIONS FOR PREPARING OPERATING AGREEMENTS AND ARTICLES OF ORGANIZATION FOR AUTHORITY-AIDED DEVELOPMENTS

1. **Name.** The term "Limited Dividend Housing Association" shall be included as part of the name of the Company.

2. **Purpose.** The purpose clause of both the operating agreement and the articles of organization shall contain the following:

The Company has been organized exclusively to provide housing facilities for persons of low and moderate income, or for persons whose income does not exceed limits established in Act No. 346 of the Public Acts of 1966 of the State of Michigan, as amended (the "Act"), and *(add the following only if the development will also be allocated tax credits)* Section 42 of the Internal Revenue Code of 1986, as amended, and for social, recreational, commercial, and communal facilities as may be necessary to serve and improve a residential area in which Authority-aided or federally-aided housing is located or is planned to be located, thereby enhancing the viability of the housing.

3. **Return.** For the purpose of limiting the return to be received by the Company, the following sections shall be included in the company operating agreement and articles:

Notwithstanding any other provisions of this Agreement, by acceptance of a beneficial interest in the Company or by executing the document of basic organization, every member of the Company shall be deemed to have agreed that he or she at no time shall receive from the Company, any return in excess of the face value of the investment attributable to his or her respective interest plus cumulative dividend payments at a rate which the Michigan State Housing Development Authority (the "Authority") determines to be reasonable and proper, computed from the initial date on which money was paid or property delivered in consideration for the interest; and that upon the dissolution of the Company, any surplus in excess of those amounts shall be paid to the Authority or to any other regulating governmental body as the Authority directs.

As used in the foregoing paragraph, the terms "surplus" and "return" are defined as follows:

(1) The term "surplus" as used herein shall not be deemed to include any increase in assets of the Company by reason of reduction of a mortgage, by amortization or similar payments, or realized from the sale or disposition of any assets of the Company to the extent such surplus can be attributed to any increase in market value of any real property or tangible personal property accruing during the period the assets were owned and held by the Company.

(2) Any payment to a person having a beneficial interest in the Company shall not be deemed a "return" to such person if the funds with which such payment is made are funds contributed to the Company by persons purchasing a beneficial interest in the Company.

4. **Supervision by Authority.** For the purpose of carrying out the provisions of the Act, the following sections shall be included in the company operating agreement and articles:

Notwithstanding any other provisions of this Agreement, the operations of the Company may be supervised by the Authority or by any other governmental body as the Authority directs, and the Company shall enter into agreements with the Authority or with the governmental body as the Authority from time to time requires. The Agreements shall provide for regulation by the Authority or the governmental body of the planning, development and management of the housing development undertaken by the Company and the disposition of the property and franchises of the Company.

5. **Authority's Right to Appoint Managing Agent.** For the purpose of carrying out the provisions of the Act, the following sections shall be included in the company operating agreement and articles:

Notwithstanding any other provisions of this Agreement, the Authority shall have the power to appoint a managing agent of the Company and its members, who may be an officer, employee, or agent of the Authority, and such managing agent shall have complete power to act as agent and attorney in fact for the Company and its members, in connection with any assets or liability of the Company, to fulfill any obligations the Company may have to the Authority if:

(1) The Company has received a loan or advance as provided in the Act and the Authority determines that the loan or advance is in jeopardy of not being repaid;

(2) The Company has received a loan or advance as provided for in the Act and the Authority determines that the proposed housing development for which the loan or advance was made is in jeopardy of not being constructed;

(3) The Authority determines that some part of the net income or net earnings of the Company, in excess of that permitted by other provisions of the Act, shall inure to the benefit of any private individual, firm, corporation, partnership, trust or association;

(4) The Authority determines that the Company is in violation of the rules promulgated under Section 22 of the Act; or

(5) The Authority determines that the Company is in violation of any agreements entered into with the Authority providing for regulation by the Authority of the planning, development and management of any housing development undertaken by the Company or the disposition of the property and franchises of such Company.

6. **Authority's Reliance on Continuing Effect of Provisions.** In order to ensure continuing compliance with the foregoing, the following section shall be included in the company operating agreement and articles:

Notwithstanding any other provisions of this Agreement, the members of the Company agree that the Authority may rely upon the continuing effect of this Agreement in this form as approved by the Authority and, by the execution of this Agreement, such members agree not to amend, alter or change the provisions of this Agreement without the prior written consent of an Authorized Officer of the Authority.