



# MULTIFAMILY LEGAL & CLOSING

17<sup>TH</sup> ANNUAL SMAC CONFERENCE  
CONCURRENT SESSION  
1:15 – 2:15 PM  
WEDNESDAY, APRIL 11, 2018

# Legal & Closing Discussion - Agenda

- HUD Legal Process Overview – Daniel Kaplan
- Bond & LIHTC Timing & Legal Issues – John Rucker, Scott Crutchfield and Daniel Kaplan
- Coordinator Role and Best Practices - Rhonda St. Peters, Roland Battles, Charles Green and Shanekwa Jones
- Q&A with Panelist – Best Practices
- Conclude / Bring it all of this together – Everyone

# Moderator/Panelist - Biographies

## Daniel J. Kaplan, Attorney-Advisor - Region IV (Atlanta Regional Office)

Daniel Kaplan is an Attorney-Advisor in the Atlanta Regional Office of the U.S. Department of Housing and Urban Development, and has been with the Department since 2014. Mr. Kaplan has worked on a wide gamut of complicated FHA transactions, including deals involving LIHTC, Historic & New Market Tax Credits, and complex tax-abatement structures. He has also closed numerous 232 LEAN and 242 Hospital transactions.

Mr. Kaplan received both his B.A. degree and his Juris Doctor (J.D.) from the University of Virginia. He is a member of the State Bar of Maryland.

## John B. Rucker, III, Managing Director - Stifel, Nicolaus & Company, incorporated

Mr. Rucker has been an investment banker since 1977. Mr. Rucker graduated from The University of Mississippi in 1973 and The University of Mississippi School of Law in 1976 and is a member of the Alabama and Mississippi Bar Association. Mr. Rucker was a founding partner of Merchant Capital, L.L.C. In January of 2015, Merchant Capital merged with Stifel, Nicolaus & Company, Incorporated. He manages the firm's affordable housing business and has a very active national practice. Through his leadership Stifel has become the leading affordable housing bond underwriter in the country, ranking number one nationally the last four years in the number of negotiated multi-family bond issues closed in the country.

Mr. Rucker is a regular speaker at various Affordable Housing conferences throughout the country. He has recently served on panels and spoken at conferences including The American Bar Association, Cohn Reznick, AHF Live, Novogradac and numerous State Housing Coalition functions, including Alabama, Georgia, South Carolina and North Carolina. His relationships in the industry include private developers, 501(c) 3 corporations, issuers, tax-credit syndicators and many others who are actively engaged in affordable housing.

# Moderator/Panelist - Biographies

Roland Battles, Closing Coordinator - U. S. Department of Housing and Urban Development, Jacksonville Office of Multifamily Housing (Southeast Region)

Mr. Battles is currently the Closing Coordinator in the Southeast Region at HUD (since 2016). Previously, Mr. Battles has been a Senior Asset Management Specialist with the FDIC (2009 – 2014), a Management Consultant with TIAA-CREF(2006 -2009), a Licensed Real Estate Broker (2003 -2006) and worked for Washington Mutual Bank and Merrill Lynch starting in 2000. Also, Mr. Battles served in the United States Marine Corps, Active duty from 1981 – 1987 and the Reserves from 1987 – 1991.

Rhonda St. Peters, Closing Coordinator - U.S. Department of Housing and Urban Development, Atlanta Office of Multifamily Housing (Southeast Region). Ms. St. Peters retired after a 25-year career with the U.S. Army where she last served as a project manager with the Army Engineers. Directly following retirement from the U.S. Army Ms. St. Peters worked as a residential Realtor before joining HUD in November 2015. She is a graduate of UMASS Amherst and holds a Master's degree in Public Policy Administration from University of Missouri, St. Louis.



# Moderator/Panelist - Biographies

Shanekwa Jones, Vice-President /Closing Manager – Berkeley Point, LLC

Mrs. Jones is a Vice President and Closing Manager with Berkeley Point Capital, LLC in Bethesda, MD. Mrs. Jones has 15+ years of experience in the multifamily mortgage banking industry primarily in FHA-insured, but also Fannie Mae and Freddie Mac loan programs. Her background includes both lending and legal support roles. Prior to joining BPC, Mrs. Jones worked most recently with Walker & Dunlop, managing the FHA Closing, Construction Loan Administration, and Delivery/Settlement of loans. Prior to Walker, she worked with the GSE closing team at Wells Fargo, and managed Mark-to Market closings for RER Financial (PAE on behalf of HUD/OAHP). On the legal support side, as a Paralegal and Project Manager, Mrs. Jones began her career at Krooth & Altman LLP, and later joined Ballard Spahr LLP directly supporting the GSE practice group leaders. Mrs. Jones is a graduate of Howard University.

Scott Crutchfield, Principal - Germer PLLC

Scott C. Crutchfield is a principal in Germer's business section. His practice includes representing lenders and developers in connection with construction financing and refinancing of multi-family apartment projects, assisted living facilities and nursing homes, pursuant to the mortgage insurance programs offered by the U.S. Department of Housing and Urban Development. A native of Beaumont, Texas, Scott obtained his Bachelor's Degree in Economics from the University of Texas in 1989, where he was a member of the Texas Cowboys service organization. Scott obtained his J.D. in 1992 from St. Mary's University School of Law in San Antonio, Texas. Scott began practicing with the law firm of Crutchfield, DeCordova & Chauveaux, P.C. in 1992, and became a shareholder of that firm in 1998. Scott joined GERMER in 2005. Scott is a member of the Real Estate, Probate and Trust Law section of the State Bar of Texas, and is licensed to practice in all courts in the State of Texas, and the United States District Court for the Eastern District of Texas.

Charles H. Green, EVP/Managing Director – Highland Commercial Mortgage, LLC

Mr. Green is currently an EVP with Highland Commercial Mortgage, LLC in St. Louis, MO since 2016. Prior to joining Highland, Mr. Green worked in the HUD multifamily industry starting in 2000 with GMAC Commercial Mortgage, Capmark and most recently Berkadia Commercial Mortgage. Mr. Green has worked in several positions throughout his career, including Closing, Construction Portfolio Manager and Compliance (HUD, Fannie Mae and Freddie Mac). Mr. Green holds a Bachelor of Science degree from Northeast Missouri University and an MBA from Southern Illinois University.

# HUD Counsel – Process and Best Practices

## Closing Process

- The HUD Closing Attorney's goal in the process is to serve our Housing client and work towards a smooth closing for all parties pursuant to the guidance in the HUD Multifamily Closing Guide.
- Communication among parties is the most important part of process.
- As the process begins, communicate timing sensitivities that the HUD Closing Attorney should be aware of early in the process and be upfront about potential issues.

# HUD Counsel – Process and Best Practices

## Requirements to Begin Review

- The HUD Closing Attorney is assigned after the Commitment is issued.
- The submission of a complete closing packages triggers Closing Attorney review. The Closing Attorney will provide comments on the package to lender's counsel and will keep Housing fully apprised.
- Note that some items such as status certificates may be provided later to preserve timeliness.

# HUD Counsel – Process and Best Practices

## Timing

- Lender's counsel should communicate to HUD Closing Attorney early on if there are any urgencies for the closing date. For example, LIHTC, bonds, or extension fees.
- Timing concerns interconnect with the logistics of where and when certain documents are signed, as in the case for LEAN 232 closings or FHA RAD closings. Timing concerns are also implicated if documents are to be pre-recorded.
- The HUD Closing Guide provides that HUD's goal is that review shall be completed within 15 days.



# HUD Counsel – Process and Best Practices

## Confirming Date

- Housing is responsible for setting the Closing Date. The HUD Closing Attorney will communicate with Lender's Counsel regarding the date.
- Closing logistics will be discussed with Housing and lender's counsel. For example, does the lender prefer a mail or office closing? Who will be attending? The HUD Closing Attorney will work with Housing on logistics and obtaining HUD signatures.

# Bond & LIHTC Timing & Issues

- How the bond side fits in with the HUD processing and closing schedule?
- At what point does the bond team need to get their side underway?
- Comments on the HUD side participating on the bond calls.
- When are the bonds priced compared to rate locking the HUD loan?
- How are the bond costs of issuance calculated and when are those numbers available?
- Regarding closing the bonds, comparing the HUD closing schedule with the bond closing schedule.
- Any other bond related issues or questions.

# Time Line – LIHTC Closings

**Day 1:** Introductory Due Diligence Conference Call – typically only the Development, LIHTC and Tax-Exempt Bond Group. Likely bi-weekly calls at this stage

**Day 30:** Lender Files Firm Commitment Application – at or near this stage, the HUD-Insured Lender and its Counsel should join the Conference Calls, which should become weekly at this point.

**Day 90:** Firm Commitment is Issued

**Day 94:** Interest Rate is Locked

**Day 97:** Firm Commitment Amendment Request if Filed

**Day 102:** Draft HUD Loan Document Package is Submitted to HUD

**Day 122:** HUD Comments/Deficiencies are Delivered

**Day 123:** Post Preliminary Official Statement

**Day 125:** Response/Replies to HUD Comments/Deficiencies are Returned

**Day 126:** HUD confirms closing date

**Day 127:** Price Bonds

**Day 132:** HUD Closing

**Day 133:** Bond Closing

# HUD Closing Coordinator Role and Best Practices

## Timelines on both sides

- From receipt of Draft Closing Documents to Close
- “Hello Letter” - Highlights of important issues sent in letter
- When to start including closing coordinator in correspondence
- Any information and documents after Firm is issued
- Primary POC

# HUD Closing Coordinator Role and Best Practices

## Importance of complete/correct docs

- Common errors found
  - Un-tabbed draft closing documents
  - Draft closing CD/link not included
  - Out-dated items. I.e. Survey, Surveyor's Report, etc.
- Return Responses reading "pending", "working on", etc. (Does not imply "cleared")
  - Items remain outstanding
  - Not "clear to close"
- Piecemeal of items
  - Send responses back collectively
  - Eliminate multiple e-mails



# HUD Closing Coordinator Role and Best Practices

## Housing responsible for establishing the Closing date

- Penciled in closing date
  - Open items remain
  - Not “clear to close”
- Confirmed closing date
  - Date has been agreed upon by all parties
  - Travel arrangements

# HUD Closing Coordinator Role and Best Practices

- Final Closing CD's
- 2 weeks after closing
- Include recorded docs

# Q&A with Panelist – Best Practices

- HUD Panelist Questions for Lender Panelist:
- 1. Please allow the CC at least 24 hours to respond to any emails/voicemails before escalating to Branch Chief!

## Q&A with Panelist – Best Practices

- Lender Panelist Questions for HUD Panelist:
  - 1. Closing Queue – Can the Closing Coordinator (“CC”) inform the Lender of where the project closing stands in the overall “queue”?
  - 2. Closing Attendance – Does Legal or the CC decide if the closing will be my mail or an actual physical closing?
  - 3. Plans & Specs – Any plans to adopt what LEAN does and have the signatures on a separate page, as an attachment?
  - 4. Initial Draw – Can HUD approve it at least a day before the closing so that the funding/wires and Closing Statement be finalized prior to closing?

# Conclude / Bring It All Together

- Our final closing “closing” thoughts!