

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

In Re: MARTIN LAKESIDE APARTMENTS, LTD.

APPLICATION NOS. 2011-233C
 2013-015C

FHFC CASE NO.: 2014-067VW

**PETITION FOR WAIVER FROM FLORIDA
ADMINISTRATIVE CODE RULE 67-48.004**

MARTIN LAKESIDE APARTMENTS, LTD. (“Martin Lakeside”) (“Petitioner”), by and through its undersigned attorney, hereby petitions the Florida Housing Finance Corporation (“Florida Housing”) for a waiver from Rule 67-48.004, Florida Administrative Code (“FAC”). This Petition is filed pursuant to Section 120.542, Florida Statutes and Chapter 28-104, Florida Administrative Code.

THE PETITIONER

1. The address, telephone and facsimile number of Petitioner is:

Martin Lakeside Apartments, Ltd.
c/o Atlantic Housing Partners
200 East Canton Avenue, Suite 102
Winter Park, FL 32789
407-741-8500 (telephone)
(407) 643-2551 (facsimile)

2. The address, telephone and facsimile number of Petitioner’s attorney is:

Kerey Carpenter
AHG Group, LLC
700 West Morse Blvd., Suite 220
Winter Park, FL 32789
407-691-5605 (direct line)
407-371-6126 (facsimile)

3. Petitioner successfully applied for financing from the Housing Credits Program in the 2011 Universal Application Cycle that Florida Housing administers pursuant to Chapter 67-48, Florida Administrative Code. Martin Lakeside's Application Numbers are: 2011-233C and 2013-015C (forward allocation number assigned by Florida Housing) (the "Application"). Martin Lakeside applied for Housing Credits to finance a portion of the costs to rehabilitate 25 units and construct 11 new units in a 36-unit multifamily rental apartment community located in Martin County, Florida, to be known as the Lakeside Apartments (the "Development"). A subsequent Rule Waiver was granted on November 1, 2013 changing the total number of units in the Development from 36 to 32 (FHFC Case No. 2013-031VW), with 23 of those units being rental assistance units.

THE RULES FROM WHICH A WAIVER IS SOUGHT

4. Petitioner requests a waiver from the portion of Rule 67-48.004 that adopts and incorporates by reference Part III.A.3.a of the Universal Application Package or UA 1016 (Rev. 2-11). The relevant portions of the Rule are as follows:

67-48.004 Application and Selection Procedures for Developments.

- (1) When submitting an Application, Applicants must utilize the Universal Application in effect at the Application Deadline.
 - (a) The Universal Application Package or UA1016 (Rev. 2-11) is adopted and incorporated herein by reference and consists of the forms and instructions available, without charge, on the Corporation's Website under the 2011 Universal Application link labeled Instructions and Application or from <http://www.org/Gateway/reference.asp?No=Ref-00703>, which shall be completed and submitted to the Corporation in accordance with this rule chapter in order to apply for the HOME and HC Program(s).

Universal Application Package, Instructions, Part III.A.3.a:

During credit underwriting, regardless of the number of rental assistance units used for the RA Level classification, all funded Applications will be held to the number of rental assistance units stated in the applicable letter provided by the Applicant based on Part III.A.3.a of the Application. This requirement will apply throughout the entire Compliance Period, subject to Congressional appropriation and continuation of the rental assistance program.

STATUTES IMPLEMENTED BY THE RULE

5. The Rule implements, among other sections of the Florida Housing Finance Corporation Act¹, the statute that created the Housing Credits Program. Section 420.5093, Florida Statutes. The Act designates Florida Housing as the State of Florida's housing credit agency within the meaning of Section 42(h)(7)(A) of the Internal Revenue Code of 1986. As the designated agency, Florida Housing is responsible for and is authorized to establish procedures for the allocation and distribution of low-income housing tax credits ("Allocation Procedures"). Section 420.5099(1) and (2), Florida Statutes. Accordingly, the Rule implements, among other sections of the Act, the statutory authorization for Florida Housing's establishment of Allocation Procedures for the Housing Credit Program.

6. Florida Housing has authority pursuant to Section 120.542(1), Florida Statutes and Chapter 28-104, F.A.C. to grant waivers to its rule requirements when strict application of such rules would lead to unreasonable, unfair and unintended consequences in particular instances. Waivers shall be granted when the person subject to the rule demonstrates that the application of the rule would (1) create a substantial hardship or violate principals of fairness, and (2) the purpose of the underlying statute has been or will be achieved by other means by the person. Section 120.542(2), Florida Statutes.

¹ The Florida Housing Finance Corporation Act is set forth in Section 420.501 through 420.526, Florida Statutes.

FACTS DEMONSTRATING ENTITLEMENT TO WAIVER

7. For the reasons set forth below, compliance with the provisions of the aforementioned Rule would give rise to substantial hardship to Petitioner and would violate principles of fairness.

8. The provisions of the aforementioned Rule require Petitioner to provide 23 rental assistance units, and this requirement applies throughout the entire Compliance Period. However, as noted in the Credit Underwriting Report, the United States Department of Agriculture (“USDA”) Rural Development (“RD”) notified all tenants that the Rental Assistance at the Lakeside Apartments would be discontinued and that they would be eligible for USDA RD rental vouchers to use at any property location of their choice. The USDA RD discontinued the Rental Assistance program not through any fault of the Petitioner, but instead because the original borrower was not in compliance with the RD program prior to Petitioner purchasing the property for this acquisition and rehabilitation Development.

9. In light of the considerable time that it takes to preserve and rehabilitate multifamily rental housing, Florida Housing’s statutes and rules are designed to allow the flexibility necessary to respond to changed circumstances, particularly those that arise through no fault of the Petitioner, which might necessitate a modification in a proposed project.

10. As explained above, the project changes requested by Petitioner result from the discontinuation of the Rental Assistance program, through no fault of Petitioner.

WAIVER WILL SERVE THE UNDERLYING PURPOSE OF THE STATUTE

11. Florida Housing’s approval of the requested waiver would serve the purpose of the underlying Florida Statute, Section 420.5093, as well as the Housing Credit Program. The

purpose of both the Statute and the program is to facilitate and stimulate the development and/or preservation of multifamily rental housing that is affordable to families of limited means. If the requested waiver is granted, the Housing Credit allocation in question will be used to fund a the preservation of an affordable multifamily rental housing community for which there is a desperate need in the Martin County, Florida.

12. The violation of principles of fairness and imposition of a substantial hardship which would result from strict compliance with the provisions of FAC Rule 67-48.004(14), would be as follows. Unless the waiver is granted, Petitioner would not be able to utilize the Housing Credits for the preservation of Lakeside Apartments, a much needed affordable housing preservation development. The substantial hardship which would result from strict compliance with the foregoing Rule is obvious.

13. By granting a waiver and permitting Petitioner to revise the total number units, Respondent would recognize the economic realities of developing, preserving and constructing affordable rental housing. This recognition would promote participation by owners and developers such as Petitioner in meeting Respondent's purpose by providing affordable housing, through preservation, in an economical and efficient manner.


TYPE OF WAIVER

14. The waiver being sought is permanent in nature.

ACTION REQUESTED

15. Petitioners request a waiver from Rule 67-48.004 to permit a change in the number of rental assistance units from twenty-three (23) to zero (0) due to the discontinuation of the rental assistance program by the USDA RD.

Respectfully submitted this 5th day of May, 2014.


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Florida Bar No. 963781
Attorney for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that an original and one copy of the foregoing Petition for Waiver have been filed with Corporation Clerk of the Florida Housing Finance Corporation, 227 North Bronough Street, Suite 5000, Tallahassee, Florida, 32301; and that a true and correct copy of the foregoing has been furnished to the Joint Administrative Procedures Committee, Room 680 Pepper Building, 111 West Madison Street, Tallahassee, FL 32399-1400.


Kerey Carpenter