



U.S. Department of Housing and Urban Development
Pacific/Hawaii
California State Office
450 Golden Gate Avenue
San Francisco, California 94102-3448

June 23, 1997

S. Lynn Martinez
Legal Services of Northern California
Solano County Office
1810 Capitol Street
Vallejo, California 94590

Subject: Project Name: Rockwell Manor
Project Address: 693 E. Tabor Ave., Fairfield, CA
Project Number: 121-35698-PM-L8

Dear Ms. Martinez:

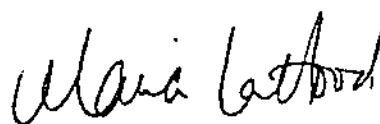
This letter is in response to your April 16, 1997, letter to Ms. Erma Harris in the Office of Housing, and your June 2, 1997, letter to the Office of Counsel on behalf of your client, [REDACTED], who receives Section 8 assistance for a 3-bedroom unit at Rockwell Manor. You have requested a legal opinion regarding whether a Guardianship Authorization is sufficient to establish Ms. [REDACTED] granddaughter as a family member of her household and as her dependent.

The first issue is whether a Guardianship Authorization is sufficient to establish Ms. [REDACTED] granddaughter as a family member of her household in order to determine unit size. For determining how many bedrooms a family may have at move-in, paragraph 2-18b of Handbook 4350.3 CHG-24 states in part that owners must count "all full-time members of the household" and "all children anticipated to reside in a unit." Child family members who already reside in the unit would fall under the former category, rather than the latter, which only applies to those children anticipated to reside in the unit. It is our understanding that since December 1995, Ms. [REDACTED] has had physical custody and control of her granddaughter, [REDACTED] [REDACTED]. Assuming that [REDACTED] resides in Ms. [REDACTED]'s unit, the Guardianship Authorization, which among other things authorizes [REDACTED] to live with Ms. [REDACTED], is sufficient to establish [REDACTED] as a family member of Ms. [REDACTED]'s household.

The second issue regards whether a Guardianship Authorization is sufficient to establish Ms. [REDACTED]'s granddaughter as her dependent, presumably for the purpose of calculating Ms. [REDACTED]'s Adjusted Income. According to 24 C.F.R. § 813.102, a Dependent is defined as "A member of the Family household (excluding foster children) other than the Family head or spouse, who is under 18 years of age or is a Disabled Person or Handicapped Person, or is a Full-time Student." For calculating adjusted income, paragraph 3-25 of Handbook 4350.3 CHG-27 further defines a dependent as any Family member who is "NOT a head, co-head, spouse, foster child, foster adult, live-in attendant, unborn child, or a child who has not yet joined the Family even if legal custody is currently being pursued" and who is, in relevant part, younger than 18. Since [REDACTED] is younger than 18, she would be considered a dependent according to HUD's requirements as long as she has already joined Ms. [REDACTED]'s household. However, paragraph 3-25 of Handbook 4350.3 CHG-27 also notes that "when more than one family shares joint custody (e.g., 50/50 custody) of a child and they both live in assisted housing, only one family can claim the dependent allowance for that child." According to the Guardianship Authorization, [REDACTED]'s mother, Ms. [REDACTED], has retained legal custody of [REDACTED]. Therefore, if Ms. [REDACTED] also lives in assisted housing, then either she or Ms. [REDACTED] may claim a dependent allowance for [REDACTED], but not both of them.


If you have any questions, please call me at (415) 436-8214, or Erma Harris at (415) 436-8459.

Sincerely yours,



Maria LaHood
Attorney-Advisor

cc: Kathleen Loman
Erma Harris
Barbara Dorworth, Property Manager
DKD Property Management Company



Legal Services of Northern California

Solano County Office

1810 Capitol Street • Vallejo, California 94590

(707) 643-0054 • (800) 270-7252 • Fax: (707) 643-0144

June 2, 1997

Patrick Simonelli
Beverly G. Agee
Office of Counsel
U.S. Department of Housing
and Urban Development
450 Golden Gate Ave.
San Francisco, California 94102-3448

Re: Project Name: Rockwell Manor
Project Address: 693 E. Tabor Ave., Fairfield, CA
Our Client: ~~Grassman (21-19)~~

Dear Mr. Simonelli and Ms. Agee:

Over a month ago, on April 16, 1997, I forwarded a letter and attachments re: my clients' guardianship issue to Ms. Erma Harris. Ms. Harris requested this information because, although she was familiar with this case, she had not been apprised of the "history" regarding my client's tenancy and she had not been provided actual documentation to consider. She advised that she would send this issue to HUD's legal division to obtain an opinion.

To date, we have not received a response from HUD. Rockwell Manor has indicated that it will proceed with its eviction action against our client on or about July 15, 1997. Accordingly, we respectfully request that your office consider this letter as a second request for a legal opinion regarding this matter.

Issue

Is a Guardianship Authorization --- which provides for physical custody and control over a minor child and is signed and notarized by both the parent and the proposed guardian --- sufficient to establish dependent eligibility and to determine unit size?

Background

██████████ has lived in Rockwell Manor since the mid-1980's. She is a disabled senior who suffers from degenerative arthritis, diverticulosis, hiatal hernia and severe anxiety.¹ Between 1989 and 1995, she had guardianship of her granddaughter, ██████████. In 1989, as requested by her landlord, Ms. ██████████, provided Rockwell Manor with a General Power of Attorney for ██████████ to confirm her guardianship of the child. (See Exhibit A attached.) The Power of Attorney was deemed acceptable by Rockwell Manor and ██████████ remained a dependent of Ms. ██████████'s household until she graduated from high school (and moved out) in 1995.

In December 1995, Ms. ██████████ notified Rockwell Manor that she had guardianship of another grandchild, ██████████.² Since that time, Ms. Brown has had physical custody and control of ██████████. As documentation, Ms. ██████████ provided Rockwell Manor with a General Power of Attorney for ██████████ (similar to the form that she provided for ██████████.) (See Exhibit B attached.) When Ms. ██████████ was recertified in December 1996, Rockwell Manor rejected the Power of Attorney for ██████████. (See Exhibit C attached.)

As a result, Ms. ██████████ submitted a Guardianship Authorization signed and notarized by both ██████████'s mother, ██████████, and Ms. ██████████ as proposed guardian. (See Exhibit D attached.) The Guardianship Authorization declares that, although ██████████ retains "legal custody" of ██████████, she is giving physical custody to Ms. ██████████. (Id. at ¶1.) The authorization gives Ms. ██████████ permission to make educational, religious, medical and dental decisions and to apply and obtain, if necessary, any public benefits, social security number or U.S. passport on behalf of ██████████. (Id. at ¶¶2-5.)

In March, 1997, Rockwell Manor rejected the Guardianship Authorization and advised Ms. ██████████ that she must move from her 3 bedroom unit a 2 bedroom unit. In its March 5, 1997 letter, Rockwell Manor stated that the Guardianship Authorization "does not evidence that you are the legal guardian of your granddaughter nor have you provided any proof that you have filed a formal court petition for custody . . . [u]nder these circumstances, your granddaughter may not be counted as a family member." (See Exhibit E attached.) Rockwell Manor also relies on HUD Handbook §4350.3, Section 3-25a stating that Ms. ██████████ "must show legal custody to add ██████████ as a dependent." (See Exhibit C.)

¹ Due to her disabilities, Ms. ██████████ has a live-in attendant living with her.

² ██████████ is 13 years old.

Analysis

Contrary to Rockwell Manor's position, the HUD Handbook 4350.3 does not provide that Ms. Brown must have legal custody to claim Shawnell as a dependent. Section §3-25 only requires that Shawnell is a family member who is not one of the specified persons listed in 3-25a (which she is not) and that she is under 18 years of age. Shawnell meets these requirements.

Furthermore, the Guardianship Authorization clearly provides that ~~Shawnell~~ shall retain legal custody of Shawnell and Ms. Brown shall receive physical custody. (Exhibit D, ¶1.) As evidenced by the Authorization, Ms. Brown consented to this arrangement. (Id.) Accordingly, since there is no dispute about who has custody of Shawnell, Ms. Brown is not required to provide any additional documentation to settle a custody dispute as required by HUD. (See NOTE following §3-25b(1), HUD Handbook 4350.3.) Thus, the Guardianship Authorization provided by Ms. Brown is sufficient to document that Shawnell is a dependent.

In addition, even if Shawnell does not qualify as a dependent, she certainly qualifies as a member of the household in determining unit size since Ms. Brown has custody and control of this child. Again, HUD regulations do not provide that Ms. Brown show a court-ordered guardianship or formal court petition for custody to count her granddaughter as a family member. However, the HUD Handbook does require that Shawnell's residency with Ms. Brown must be considered in determining unit size.

In determining how many bedrooms a family may have in their unit, Rockwell Manor must count all children anticipated to reside in the unit. (Handbook 4350.3, §2-18(b)(2).) Examples include, but are not limited to, children by whom an adult has custody and foster children. (Id.) The Handbook acknowledges that, even if a child resides in the unit (and thus, serves to determine unit size), such children are not necessarily considered dependents. (Id. at 3-25.) Similarly, the income of certain individuals cannot be considered to determine annual income (i.e. live-in attendants, foster children, etc.) even if such persons are considered in determining unit size for the household. (Id. at 3-10(b).) This is consistent with HUD's opinion issued on August 28, 1986 which provided that a PHA could not require "legal guardianship" to determine family eligibility because it did not stand the "test of reasonableness." (See Letter dated August 28, 1986 from Beverly Kendrick, HUD attached as Exhibit F.) Thus, it is clear that even if Shawnell cannot be considered a dependent of Ms. Brown, she must be considered as a person who resides in the unit. Therefore, Shawnell's residency must be considered when determining the unit size for Ms. Brown's household.

Finally, it appears that Rockwell Manor's refusal to accept Ms. Brown's guardianship documentation and to recognize Shawnell as a member of her family constitutes discriminatory housing

practices which are a direct violation of the Fair Housing Act. Rockwell Manor is prohibited from discriminating on the basis of familial status. (HUD Handbook 4350.3, §§2-3(a), 2-27) As defined in the Fair Housing Act,

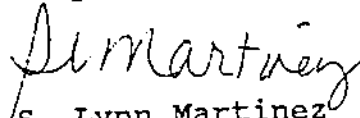
Familial status means one or more individuals (who have not attained the age of 18 years) being domiciled with ---
(a) A parent or another person having legal custody of such individual or individuals; or
(b) The designee of such parent or other person having such custody, with the written permission of such parent or other person." (24 CFR §100.20, emphasis added.)

Accordingly, Rockwell Manor's rejection of Ms. [REDACTED]'s documentation that her granddaughter lives with her (by written consent of the child's mother) is inconsistent with the provisions of the Fair Housing Act.

Conclusion

As a result of all of the above, Ms. [REDACTED] requests a written decision confirming that the Guardianship Authorization she has submitted to Rockwell Manor is sufficient to establish her granddaughter as a dependent and family member of her household. If you have any further questions, please do not hesitate to contact me at (707) 643-0054, ext. 309. Thank you very much.

Very truly yours,


S. Lynn Martinez
Attorney at Law

/slm

cc: [REDACTED]

GUARDIANSHIP AUTHORIZATION

MINOR

Name: _____

Birthdate: _____ Age: _____ Year in School: _____

MOTHER

Name: _____

Street Address: _____

City: _____ State _____ Zip Code: _____

Home Phone: _____ Work Phone: _____

FATHER

Name: _____

Street Address: _____

City: _____ State _____ Zip Code: _____

Home Phone: _____ Work Phone: _____

PROPOSED GUARDIAN

Name: _____

Street Address: _____

City: _____ State _____ Zip Code: _____

Home Phone: _____ Work Phone: _____

Relationship to Minor: _____

In case of emergency, if proposed guardian cannot be reached, please contact: _____

_____ Phone: _____

Authorization & Consent of Parent(s)

1. I affirm that the minor indicated above is my child and that I have legal custody of her/him. I give my full authorization and consent for my child to live with the proposed guardian, or for the proposed guardian to set a place of residence for my child.
2. I give the proposed guardian permission to act in my place and make decisions pertaining to my child's educational and religious activities including but not limited to enrollment, permission to participate in activities and consent for medical treatment at school.
3. I give the proposed guardian permission to authorize medical and dental care for my child, including but not limited to medical examinations, X-rays, tests, anesthetic, surgical operations, hospital care or other treatments that in the proposed guardian's sole opinion are needed or useful for my child. Such medical treatment shall only be provided upon the advice of and supervision by a physician, surgeon or dentist or other medical practitioner licensed to practice in the United States.

4. I give the proposed guardian permission to apply for benefits on my child's behalf including but not limited to Social Security, public assistance, health insurance, and Veterans' Administration benefits.
5. I give the proposed guardian permission to apply and obtain for my child any or all of the following: Social Security number, Social Security card, and U.S. passport.
6. This authorization shall cover the period from _____, 19____ to _____, 19____.
7. During the period when the proposed guardian cares for my child, the costs of my child's upkeep, living expenses, medical and dental expenses shall be paid as follows: _____

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Mother's Signature: _____ Date: _____, 19____

Father's Signature: _____ Date: _____, 19____

Notarization

State of California

County of _____

} ss.

On this this _____ day of _____, 19____, before me, a notary public of the State of California, personally appeared _____ personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to this instrument, and acknowledged that she/he/they executed it.

Notary Public: _____

[Seal]

Consent of Proposed Guardian

I solemnly affirm that I will assume full responsibility for the minor who will live with me during the period designated above. I agree to make necessary decisions and to provide consent for the minor as set forth in the above Authorization & Consent by Parent(s). I also agree to the terms of the costs of the minor's upkeep, living expenses, medical and/or dental expenses set forth in the above Authorization & Consent of Parent(s).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Proposed Guardian's Signature : _____ Date: _____, 19____

Notarization

State of California

County of _____

} ss.

On this this _____ day of _____, 19____, before me, a notary public of the State of California, personally appeared _____ personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to this instrument, and acknowledged that she/he executed it.

Notary Public: _____

[Seal]