

RENZ D. JENNINGS  
CHAIRMAN

MARCIA WEEKS  
COMMISSIONER

DALE H. MORGAN  
COMMISSIONER



JAMES MATTHEWS  
EXECUTIVE SECRETARY

ARIZONA CORPORATION COMMISSION

SECURITIES DIVISION  
(602) 542-4242  
(602) 255-2600  
FAX: (602) 255-2617

January 22, 1992

A. Frederick Schaffer, Jr., P.C.  
Lerch, Schaffer, Mack & Henry  
Citibank Tower  
3300 N. Central Avenue, Ste. 2320  
Phoenix, Arizona 85012

RE: Mobil Home Lot Owners Cooperative Association  
A.R.S. § 44-1801(22)

Dear Mr. Schaffer:

This letter is intended to clarify the no action position which the Securities Division took on September 26, 1991 with respect to the above-referenced issuer.

The Division, based upon the facts set forth in your letter of September 19, 1991 and in reliance upon your opinion as counsel, concurred with your opinion that the shares offered by the issuer do not constitute "securities" for purposes of the registration requirements of the Arizona Securities Act (the "Act"). As such, the anti-fraud provisions of the Act would not be applicable.

To the extent that the transaction does not take place as set forth in your letter of September 26, 1991, or a material change in circumstances causes these shares to be deemed "securities" for purposes of the Act, then such anti-fraud provisions would be applicable ab initio.

I hope that this discussion provides the clarification you seek. We have attached a photocopy of your letter of September 26, 1991 and our response of September 26, 1991. By doing this we are able to avoid having to recite or summarize the facts set forth therein.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Dee Ridgell Harris".

DEE RIDDELL HARRIS  
Director of Securities

DRH:MGB:wjw

Attachments

RENZ D. JENNINGS  
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September 26, 1991

A. Frederick Shaffer Jr., P.C.  
Lerch, Schaffer, Mack & Henry  
Citibank Tower  
3300 N. Central Avenue, Ste. 2320  
Phoenix, Arizona 85012

RE: Mobil Home Lot Owners Cooperative Association  
A.R.S. § 44-1801(22)

Dear Mr. Schaffer:

On the basis of the facts set forth in your letter of September 19, and in reliance upon your opinion as counsel, the Securities Division will not recommend enforcement action for violation of the Securities Act of Arizona should the transaction take place as set forth in your letter.

As this position is premised upon the facts set forth in your letter, it should not be relied on for any other set of facts or by any other person. Please also note that this position applies only to the registration requirements of the Act; the anti-fraud provisions of the Act continue to be applicable.

We have attached a photocopy of your letter. By doing this we are able to avoid having to recite or summarize the facts set forth therein.

Very truly yours,

A handwritten signature in cursive script that reads "Dee R. Harris".

DEE RIDDELL HARRIS  
Director of Securities

DRH:MGB:wjw

Attachment

Law Offices

LERCH, SCHAFFER, MACK & HENRY

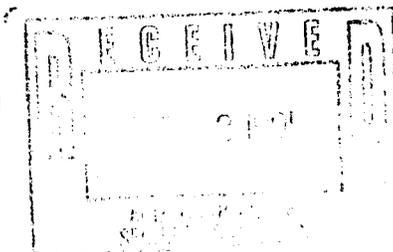
JOHN A. HENRY  
STANFORD E. LERCH\*  
A. FREDERICK SCHAFFER JR.\*  
HAL W. MACK\*  
DEAN W. O'CONNOR  
\* A Professional Corporation

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KENNETH M. RUDISILL JR.\*  
Special Counsel

TELECOPY (602) 264-7767

September 19, 1991



Mr. Dee Harris  
Director, Securities Division  
Arizona Corporation Commission  
1200 West Washington  
Phoenix, Arizona 85007

Re: Mobile Home Lot Owners Cooperative Association

Dear Mr. Harris:

The following is submitted for your consideration in support of our request, on behalf of our client named above, which is in the process of formation, for a no action letter from the Division with respect to a cooperative association offering of its shares of stock ("Shares").

The material facts are as follows.

Mobile Home Lot Owners Cooperative Association ("the Co-op") intends to purchase an existing mobile home park and offer Shares in the Co-op (one Share per lot) to present and prospective tenants. Ownership of a Share will entitle a purchaser to a proprietary lease for his mobile home lot and to vote annually for a board of directors who will conduct the business of the Co-op. As a leasee, a purchaser of a Share will pay as monthly rent, a proportionate share of the Co-op's cash requirement for the operation and maintenance of the mobile home park.

Restrictions on the transfer of Shares will provide that Shares can only be issued in connection with the execution and delivery of a proprietary lease for a mobile home lot to the purchaser and that all Shares must be sold to tenant/shareholders who intend to actually use the mobile home lot as their residence. Such transfers must be approved by the board of directors of the Co-op. These restrictions will render it difficult and economically improbable for

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anyone but a tenant/shareholder to become a subsequent purchaser of the Shares. The Co-op will be formed as a Cooperative Housing Corporation under Section 216 of the Internal Revenue Code. There will be no distribution of profits resulting solely from the efforts of a third party promoter to a tenant/shareholder since there will be no allocation or distribution of profits or, any profit at all to be distributed.

This request is based on the law regarding this subject matter as set forth in United Housing Foundation Inc. v. Forman, 421 U.S. 837, Securities and Exchange Commission v. W. J. Howey, Co., 328 U.S. 293 (1946), The Second Circuit in Grenader v. Spitz, 537 F.2nd, SEC Release No. 33-5347, 38 F.R. 1735 (January 18, 1973), (hereinafter "Release"), and in various SEC no action letters including but not limited to Northbridge Park Cooperative Offering, SEC, Division of Corporation Finance, Public Availability Date January 7, 1980, which facts are nearly identical to this case.

The material facts stated above are elaborated below in the light of the law referred to above.

In United Housing Foundation, Inc., v. Forman, supra, the United States Supreme Court considered whether shares of stock sold to prospective tenants in a low-income housing apartment cooperative as a prerequisite to their acquisition of an apartment were "securities" under the meaning of 15 U.S.C. 77b(1) and concluded they were not:

"\*\*\*The touchstone (of a security) is the presence of an investment in a common venture premised on a reasonable expectation of profit to be derived from the entrepreneurial or managerial efforts of others." By profits, the court meant either capital appreciation resulting from the development of the initial investment. "\*\*\*\*Or a participation in earnings resulting from the use of investor funds,\*\*\*. In such cases the investor is 'attracted solely by the prospects of a return on his investment. Howey, supra, at 300. By contrast, when a purchaser is motivated by a desire to use or consume the item purchased-'to occupy the land or to develop it themselves'-as the Howey court put it, ibid--the securities laws do not apply.\*\*\*" 421 U.S. at 852-3.

The court concluded that:

"\*\*\*(i) In short, the inducement to purchase was solely to acquire subsidized low cost living space; it was not to invest for profit.\*\*\*" 421 U.S. at 852-3.

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The tenant/shareholders in this case are in a similar position. The Shares to be purchased are not transferable or assignable to any person other than the Co-op or a prospective tenant/shareholder, and only at a price equal to the original purchase price plus the cost of any lot improvements made by the tenant/shareholder. The transaction is entered into for the primary purpose of acquiring low cost living space and importantly, so that the tenant/shareholders can, by their control of the property through the Co-op, limit or eliminate arbitrary rental increases to which they are presently subject, and to prevent the sale of the property by a private owner with the resulting upheaval for the tenants. There is no profit motive in the purchase of the Shares by the tenant/shareholders nor will it be possible for them to profit on a resale of a Share. The Co-op does not intend to allocate or distribute any profits to tenant/shareholders from its income. It is possible a Co-op may make a profit from the initial sale of the Shares, but any such funds would be reserved to pay the cost of improvements and/or amenities for the mobile home park. Such profits, if they occur, would arise from the sale of Shares resulting in an aggregate dollar amount in excess of the purchase price of the mobile home park.

It seems clear that under the Forman principle the Shares of the Co-op should not be considered securities, and that the offering of the Shares publicly to present and prospective tenant holders need not be registered under the provisions of the Securities Act of 1933, or under Article 6 of the Arizona Securities Act.

Additional support for this position is found in SEC v. W.I. Howey, 328 U.S.293 (1946) which was cited in Forman. Howey stated that the definition of a security is a "contract, transaction or scheme whereby a person invests his or her money in a common enterprise and is led to expect profit solely from the efforts of a third party promoter." A review of the facts as stated above, clearly shows that this transaction falls outside the Howey definition. Further, the SEC Release cited above states that real estate development units will be considered securities only when "offered or sold with emphasis on the economic benefits to the purchaser to be derived from the managerial efforts of the promoter." In our case the emphasis is on long-term tenancy in the mobile home park assured by ownership of the mobile home park by the tenants by way of the Co-op. Any perceived economic benefit by the tenant/shareholders is derived not from the managerial efforts of others but from the efforts of the tenant-shareholders themselves.

In Northbridge Park, supra, the SEC staff stated it would not recommend any enforcement action in an offering of shares in Northbridge Park, a cooperative which intended to purchase an apartment building and offer shares to tenants and prospective tenants as a condition to obtaining a proprietary lease for an apartment. The facts in our case are a very close analogy to the Northbridge

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matter, and we are relying on the same law as well as the Northbridge precedent to support our opinion that the Shares are not "securities" under the 1933 Act Section 2(1) definition and its interpretations and that therefore, the offering of such Shares does not require the registration under Section 5 of the 1933 Act, or under Article 6 of the Arizona Securities Act.

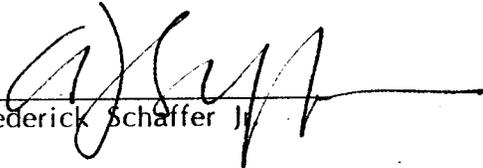
For your additional information regarding the operations of the Co-op, we have enclosed a copy of a "Statement of Intent" as prepared by the promoter of the above described plan. Also enclosed is check number 1272 payable to the State of Arizona in the amount of \$200.00 for the filing fee.

We respectfully request advice that you or your staff will not recommend that the Securities Division of the Arizona Corporation Commission take any action, if an offering of shares in the Co-op is made as described herein, without registration under the provisions of the Securities Act of Arizona.

Very truly yours,

A. FREDERICK SCHAFFER JR., P.C.

By

  
A. Frederick Schaffer Jr.

AFS:pek

Enclosures

cc: Beneficial Development Corporation  
Mobile Home Lot Owners Cooperative Association (in formation)