

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

Our File # 580

3/13 Pat Schaffer advised to send copy of authorizing resolution
3/14 Authorizing Resolution recd.

Permanent Rule X

Temporary Rule

Joannie 84

RULES REVIEW CHECKLIST

DATE RULES RECEIVED 3/11 DUE DATE 3/31

Resubmitted and Received

a. Returned to Agency w/o Filing w/Secretary of State
b. Approved Date Sent Back to Agency

- -

1. Rules as Adopted ✓ attached to #15 - "resolution" adopting
2. Rules as Proposed ✓ attached to notice of hearing
3. Certificate of Board's Authorizing Resolution, where applicable
4. Order for Hearing ✓
5. Notice of Hearing ✓
   Sufficiency ✓
6. Secretary of State's List ✓ (one copy only)
7. Certificate of Acquisition of Secretary of State's List ✓
8. Secretary of State's Certification of Delivery of Secretary of State's List to Agency ✓
9. Affidavit of Mailing ✓ does not affirm proposed rules are attached to notice
   At least 30 days prior to hearing ✓
10. Publication in State Register ✓ see HE report page 2 — no copy submitted
    At least 30 days prior to hearing ✓
11. Statement of Need and Evidence ✓
12. Hearing Examiner's Report ✓
13. Agency's Findings of Fact incorporated in "resolution" adopting
14. Certificate of Board's Resolution Adopting Rules, where applicable ✓
15. Order Adopting ? see "resolution" adopting
16. Report of Chief Hearing Examiner ✓
17. Order Approving Incorporation by Reference, where applicable N/A
18. Certificate of Compliance with Rulemaking Procedures ✓
19. Copy of Notice of Intent to Solicit Outside Opinion, where applicable N/A
20. Petition by Public, where applicable N/A

ADMIN 1000 (Rev. 1/78)
SF-00006-01

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO : George Reilly
Special Attorney

DATE: March 28, 1980

FROM : JERRY ANDERSON JSA
Special Assistant
Attorney General

PHONE: 296-1288

SUBJECT: Rules as Approved - **Minnesota Housing Finance / Accessibility Improvement Assistance Program**

Enclosed herewith are the rules you have submitted for approval. These rules have been approved by this office and filed with the Secretary of State. Note that they have NOT been filed with the State Register; this must be done promptly by your agency.

Upon receipt and before transmittal to your agency, however, it is important that you recheck these rules as to:

1. Affixation of the stamps of the Attorney General and Secretary of State to the last page of the rules;

2. Coverage by these stamps of all rules submitted; and

3. Inclusion of all pages of the rules in the approved set.

Directly following the approved rules is a complete set of required documents and transcript which must be retained with the rules by you or your agency.

If you have any questions in this regard, please contact me.

JA/bw
Enclosure

cc: Susan Robertson
Duane Harves

Rule as Adopted AG working copy.

STATE OF MINNESOTA

MINNESOTA HOUSING FINANCE AGENCY

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES OF THE HOUSING FINANCE AGENCY RELATING TO RULES GOVERNING THE ACCESSIBILITY IMPROVEMENT ASSISTANCE PROGRAM	Resolution No. MHFA 80-3 RESOLUTION ADOPTING REPORT OF HEARING EXAMINER AND RULES

WHEREAS, pursuant to Board Resolution No. MHFA 79-42 of September 27, 1979, the Executive Director was authorized to call a public hearing on the above-entitled proposed rules which were presented to the Board on that date; and

WHEREAS, at said public hearing the Agency suggested amendments to the proposed rules, a copy of which amendments is attached hereto as Exhibit A; and

WHEREAS, the above-entitled matter having come on for hearing before Natalie Gaull, Hearing Examiner of the State of Minnesota on November 28, 1979, at 9:30 a.m. at 500 Rice Street, St. Paul, Minnesota after proper notice required by Minn. Stat. §15.0412 was served upon all persons, associations, and other interested groups registered with the Secretary of State for that purpose; and

WHEREAS, on January 2, 1980, after consideration of the proposed rules, suggested Agency amendments, and the evidence presented in writing and at the public hearing, the Hearing Examiner issued a report approving the rules and amendments as proposed by the Agency at the hearing;

NOW, THEREFORE, having afforded interested persons an opportunity to present written and oral data, statements, and arguments, having considered all of the testimony and evidence contained in the records, files, and proceedings herein, and applicable statutory standards and criteria, and having confirmed the need for the above-captioned rules,

IT IS HEREBY RESOLVED BY THE MINNESOTA HOUSING FINANCE AGENCY:

1. that the findings of fact, conclusions, and recommendations of the Hearing Examiner dated January 2, 1980 be and hereby are adopted; and

2. that the rules attached hereto as Exhibit B and incorporated herein by this reference as if fully set forth herein be and hereby are adopted; and

3. that the Executive Director of the Minnesota Housing Finance Agency, be and he hereby is authorized and directed to present these rules

as adopted to the Chief Hearing Examiner and to the Attorney General for review and approval pursuant to Minn. Stat. §15.0412; to arrange at the appropriate time for the publication of these rules in the State Register; and to perform all other acts necessary in connection with the promulgation of said rules.

Adopted by the Minnesota Housing Finance Agency this 24th day of January, 19 80.

By Demetrius G. Jelatis
Chairman

Attest: _____
Secretary

Exhibit A

MINNESOTA HOUSING FINANCE AGENCY

PROPOSED AMENDMENTS TO RULES GOVERNING
THE ACCESSIBILITY IMPROVEMENT ASSISTANCE PROGRAM

Correction to 12 MCAR § 3.073 A (page 5).

C. As used in this chapter "Percent Indebted" means the percent of monthly gross income that a person or family is obliged to pay each month towards all fixed non-business debt which the recipient in good faith has incurred the obligation to pay over a period of more than three months for goods and/or services already provided. Personal debt includes mortgage or contract for deed payments related to the purchase of residential property, but does not include debts incurred solely for the recipient's business or farm operations. The Agency shall not include in the calculation of percent indebtedness any debt which the recipient cannot demonstrate has been incurred in good faith. The recipient shall have the burden of demonstrating that any debt incurred within six months of the date of application for Accessibility Improvement assistance has been incurred in good faith. A finding that a recipient has incurred a debt in order to defraud the Agency will be grounds for exclusion from all Agency-financed assistance.

Exhibit A

Correction to 12MCAR 3.073 (page 6)

Table -- PERCENTAGE AVAILABLE ACCESSIBILITY GRANT ASSISTANCE

(Income stated in thousands of dollars)

Income	$0-5	5-6	6-7	7-8	8-9	9-10	10-11	11-12	12-13	13-14	14-15	15-16
Percent Indebted												
35						69%	65%	64%	61%	60%	57%	57%
30						37%	30%	28%	22%	20%	14%	13%
25	100%			74%	70%	5%						
20	GRANT		76%	48%	40%							
15		80%	52%	22%	10%							
10		60%	28%						NO GRANT			
5		40%	4%									
0		20%										

Exhibit B

MINNESOTA HOUSING FINANCE AGENCY

Proposed Rules Governing the Accessibility Improvement Assistance Program

12 MCAR § 3.002 Definitions

O. "Persons and Families of Low and Moderate Income" means:

4. with respect to Home Improvement Loans and Accessibility Improvement Assistance pursuant to Chapters Six and Seven-A of these Rules, those persons and families whose Adjusted Income does not exceed $16,000.

12 MCAR § 3.052 Eligible Improvements

Improvements made with Home Improvement Loan proceeds shall satisfy the following requirements:

A. Improvements may be made in order:

1. to comply with applicable state, county, and municipal health, housing, building, fire prevention, and housing maintenance codes, or other public standards applicable to housing, or

2. to make the property more desirable to live in, or

3. to increase the market value of the property, or

4. to make the property more habitable, or

5. to make the property more accessible to a Handicapped Person as provided in Chapter Seven-A.

12 MCAR § 3.063 Amount of grant

The amount of the rehabilitation grant shall not exceed the lesser of

A. $5,000, ~~or in the case of an Accessibility Improvement Grant, $7,500,~~ or

B. the actual cost of the work performed, or

C. that portion of the cost of rehabilitation which the Agency determines cannot otherwise be paid by such person or family without spending an unreasonable portion of the income of such person or family thereon.

~~If a grant is made both for Accessibility Improvements and for other eligible improvements pursuant to these Rules, then the portion of the grant which is for such eligible improvements shall not exceed $5,000, and the~~

~~total amount of the grant for such other eligible improvements and the Accessibility Improvements shall not exceed $7,500.~~

~~12 MCAR § 3.070 Accessibility Improvement Fund~~

~~With funds appropriated by the Legislature from time to time for that purpose, the Agency may establish an Accessibility Improvement Fund from which Home Improvement Grants may be made to eligible applicants for the purpose of making Accessibility Improvements to dwelling units occupied by Handicapped Persons of low or moderate income, as defined in 12 MCAR § 3.002-0-3. Grants from the Accessibility Improvement Fund shall be made pursuant to the procedures set forth in Chapter 7 of these Rules, provided, however, that the Accessibility Improvement Grant Fund shall not be subject to the reservation and allocation requirements of 12 MCAR § 3.061.~~

Chapter Seven-A Accessibility Improvement Assistance

~~12 MCAR § 3.071 Maximum Grant~~

~~A. No property shall be eligible for a Home Improvement Grant if it has been improved by such a grant within the five-year period next preceding the date on which application for such grant is made, except (i) for rehabilitation necessitated by damage to the property as a result~~

~~of unforeseen events beyond the control of the applicant or the failure of plumbing, heating, or electrical systems, as determined by the Agency in its sole discretion, or (ii) for Accessibility Improvements to aid a Handicapped Person who became handicapped or established residency in the dwelling after the date of approval of the initial Home Improvement Grant.~~

~~B. A dwelling which was occupied by a Handicapped Person and improved prior to September 1, 1977, by Home Improvement Grant Funds shall be eligible for an Accessibility Improvement Grant within the five-year period following receipt of the original Home Improvement Grant, provided that the cumulative total of all grants for Accessibility Improvements for a single dwelling permitted under this subsection shall not exceed $7,500 within such five-year period.~~

12 MCAR § ~~3.072~~ 3.071 Definitions

A. With respect to Accessibility Improvement Assistance pursuant to Chapter Seven-A of these Rules, "Handicapped Person" means a person who has a permanent physical condition which is not correctable and which substantially reduces such person's ability to function in a residential setting. A person with a physical condition which does not require the use of a device to increase mobility shall be deemed a Handicapped Person only upon the written certification of a licensed physician that the physical condition substantially limits such person's ability to function in a residential setting.

B. "Accessibility Improvement" means an interior or exterior improvement or modification to a residential dwelling in Minnesota which is necessary to enable a Handicapped Person to function in a residential setting.

C. As used in this chapter "Percent Indebted" means the percent of monthly gross income that a person or family is obliged to pay each month towards all fixed non-business debt which the recipient in good faith has incurred the obligation to pay over a period of more than three months for goods and/or services already provided. Personal debt includes mortgage or contract for deed payments related to the purchase of residential property, but does not include debts incurred solely for the recipient's business or farm operations. The Agency shall not include in the calculation of percent indebtedness any debt which the recipient cannot demonstrate has been incurred in good faith. The recipient shall have the burden of demonstrating that any debt incurred within six months of the date of application for Accessibility Improvement assistance has been incurred in good faith. A finding that a recipient has incurred a debt in order to defraud the Agency will be grounds for exclusion from all Agency-financed assistance.

12 MCAR § 3.072 Eligibility

The Agency may make funds available for the purpose of making Accessibility Improvements and for technical assistance in the design and construction of such Accessibility Improvements under the followng condi-

tions:

A. To be eligible the recipient of Accessibility Improvement assistance shall be a Person or Family of Low or Moderate Income as defined in 12 MCAR § 3.002-0-4 and shall comply with the ownership and occupancy requirements of 12 MCAR § 3.062.

B. The structure to be improved shall be an existing dwelling located within the State of Minnesota, shall be used primarily for residential purposes, and shall contain no more than two dwelling units, one of them occupied by the recipient.

C. The beneficiary of Accessibility Improvement assistance shall be a Handicapped Person of low or moderate income, as defined in 12 MCAR § 3.002-0-4, who shall occupy or intend to occupy the dwelling unit to be improved as his or her primary residence.

12 MCAR § 3.073

Accessibility Improvement assistance shall be made available in the following manner:

A. Accessibility Improvement assistance shall be in the form of a grant, a Home Improvement Loan pursuant to Chapter Six of these Rules, or a combination of such grant and loan, depending upon the Adjusted Income and proportion of existing indebtedness of

the recipient. The proportion of assistance to be given in grants shall be determined according to the following table:

Table -- PERCENTAGE AVAILABLE ACCESSIBILITY GRANT ASSISTANCE

(Income stated in thousands of dollars)

Income	$0-5	5-6	6-7	7-8	8-9	9-10	10-11	11-12	12-13	13-14	14-15	15-16
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20	GRANT		76%	48%	40%	5%						
15		80%	52%	22%	10%							
10		60%	28%						NO GRANT			
5		40%	4%									
0		20%										

B. When an Accessibility Improvement assistance grant is combined with assistance from other Agency loan or grant programs, the requirements of those programs shall be met, provided however that the structure to be improved need not meet the requirements of 12 MCAR § 3.051-D.

C. In no case shall the grant for Accessibility Improvements

and technical assistance inclusively exceed $10,000 for a single structure nor shall the total assistance for a single structure, including loans and grants from other Agency programs, exceed a total of $15,000.

D. No property shall be eligible for Accessibility Improvement assistance if it has been improved through such assistance within the five year period next preceding the date on which the application for such assistance is made, except in extraordinary circumstances relating to damage to the property as a result of events beyond the control of the recipient.

12 MCAR § 3.074 Data on Accessible Housing

The Agency shall maintain a public list of dwellings improved under the Accessibility Improvement assistance program in order to improve the marketability of such accessible dwellings and assist Handicapped Persons to find housing containing Accessibility Improvements. Recipients of Accessibility Improvement assistance shall inform the Agency as soon as practical of any intent to sell the improved dwelling so that the Agency may make such information available to interested Handicapped Persons.

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
MAR 13 1980
Secretary of State

APPROVED AS TO FORM AND LEGALITY

MAR 26 1980 19____

WARREN SPANNAUS, ATTORNEY GENERAL

BY Jerry S. Anderson

SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
MAR 26 1980
Joan Anderson Growe
Secretary of State
3:30 p.m.

AMOS S. DEINARD
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SIDNEY BARROWS
HAROLD D. FIELD, JR.
ALLEN I. SAEKS
THOMAS D. FEINBERG
MORRIS M. SHERMAN
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PAMELA J. MORET

GEORGE B. LEONARD (1872-1956)
ARTHUR L. H. STREET (1877-1961)
BENEDICT DEINARD (1899 1969)

OF COUNSEL
MELVIN H. SIEGEL
IRENE SCOTT

March 24, 1980

Mr. Jerry Anderson
Office of the Attorney General
Room G-25 Administration Building
50 Sherburne
St. Paul, Minnesota 55155

Re: Minnesota Housing Finance Agency--
Accessibility Improvement Assistance Rules

Dear Jerry:

In accordance with your request, I enclose revised Page 4 of the captioned Rules.

Very truly yours,

LEONARD, STREET AND DEINARD

By George Reilly
George Reilly

Enc.

GR:eh

RECEIVED
MAR 25 1980
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

STATE OF MINNESOTA

MINNESOTA HOUSING FINANCE AGENCY

IN THE MATTER OF THE PROPOSED ADOPTION) OF RULES OF THE HOUSING FINANCE AGENCY) RELATING TO THE RULES GOVERNING THE) ACCESSIBILITY IMPROVEMENT ASSISTANCE) PROGRAM)	CERTIFICATE OF RESOLUTION OF THE MINNESOTA HOUSING FINANCE AGENCY

The undersigned hereby certifies that s/he is the Secretary of the Minnesota Housing Finance Agency, an Agency duly authorized under the laws of the State of Minnesota; that the resolution attached hereto as Exhibit 1 is a true, complete, and correct copy of a resolution adopted at a meeting of the Minnesota Housing Finance Agency duly and properly called and held on the 24th day of January, 1980; that a quorum was present at said meeting; that a majority of those present voted in favor of the adoption of said resolution; that said resolution has not been altered, modified, or annulled and remains in full force and effect.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 24th day of January, 1980.

Attest: James C. Price

Member

Secretary

ADMIN 1000 (Rev. 1/78)
SF-00006-01

Our File [redacted]580

STATE OF [redacted]NNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO : FILE

DATE: March 24, 1980

FROM : JERRY S. ANDERSON
Special Assistant
Attorney General

PHONE: 296-1288

SUBJECT: HFA Accessibility Improvement Assistance Rules

In reviewing the above-captioned rules, I noticed that § 3.071 Definitions failed to include 3 words, which were changed, in the rule as published in the State Register or in the rule sent with the Notice of Hearing. Thus, what appears is:

> "With respect to Accessibility Improvement Assistance pursuant to Chapter Seven-A of these Rules . . . ,"

rather than:

> "With respect to ~~Home~~ Accessibility Improvement ~~Grants~~ Assistance pursuant to Chapter ~~Six~~ Seven-A or these Rules . . . . "

This error is of a highly technical and nonsubstantive nature and would provide a poor reason for disapproval of these rules, which in all other respects are satisfactory. Because disapproval on this basis would require the agency to start the rulemaking process from the beginning, causing extensive cost in time and money, it is not in the State's best interest to disapprove this rule on a basis that will have no impact on the final outcome of the particular rule. It is my opinion that the Legislature did not intend by its language in § 15.0412 (4) that such an error as is presented here should rise to the level of a fatal defect in the rule or the rulemaking process.

JSA/bw

Rules as Proposed are attached

STATE OF MINNESOTA

MINNESOTA HOUSING FINANCE AGENCY

RECEIVED
NOV 5 1979
OFFICE OF HEARING EXAMINERS

IN THE MATTER OF THE PROPOSED)
ADOPTION OF RULES OF THE)
MINNESOTA HOUSING FINANCE) NOTICE OF HEARING
AGENCY RELATING TO THE)
ACCESSIBILITY IMPROVEMENT)
ASSISTANCE PROGRAM)

NOTICE IS HEREBY GIVEN that a public hearing in the above-entitled matter will be held pursuant to Minn. Stat. § 15.0412, subd. 4, at 500 Rice Street, St. Paul, Minnesota, on November 28, 1979 commencing at 9:30 a.m. and continuing until all persons have had an opportunity to be heard. 1

All interested or affected persons will have an opportunity to participate. 2 Statements may be made orally and written materials may be submitted at the hearing. In addition whether or not an appearance is made at the hearing, written statements or material may be submitted to the Hearing Examiner, Natalie L. Gaull, c/o Office of Hearing Examiners, Room 300, 1745 University Avenue, St. Paul, Minnesota 55104 (296-8114), either before the hearing or within five (5) working days after the close of the hearing. The hearing examiner may extend the time for receipt of comments for a period not to exceed twenty (20) calendar days.

The proposed rules may be modified as a result of the hearing process. Therefore, if you are affected in any manner by the proposed rule, you are urged to participate in the hearing process. If you have any questions about the procedure, call or write the hearing examiner.

The proposed rules, if adopted, would establish guidelines for the Accessibility Improvement Assistance Program as authorized by Minn. Stat. § 462A.05, subd. 15a, as amended by Laws of 1979, Chapter 327, Sec. 3. 4

A copy of the proposed rules is attached hereto and one additional free copy may be obtained by writing to the Minnesota Housing Finance Agency, 333 Sibley, St. Paul, Minnesota 55101. Additional copies will be available at the door at the date of the hearing. 3

Notice is hereby given that twenty-five (25) days prior to the hearing, a Statement of Need and Reasonableness will be available for review at the Agency and at the Office of Hearing Examiners. This Statement of Need and Reasonableness will include the evidence presented by the Agency to justify both the need for and the reasonableness of the proposed rules. Copies of the Statement of Need and Reasonableness may be obtained from the Office of Hearing Examiners at a minimal charge either 5

Continued (Over)

Agency Exhibit No. 3
File No. HFA 80 00 1
Date

before the hearing, or free of charge at the hearing. As the Agency intends to present only a short summary of the Statement of Need and Reasonableness at the hearing, and answer questions raised by interested persons, you are urged to read the Statement of Need and Reasonableness before the hearing.

In addition, please be advised that Minn. Stat. Ch. 10A requires each lobbyist to register with the State Ethical Practices Board within five (5) days after he or she commences lobbying. A lobbyist is defined in Minn. Stat. § 10A.02, subd. 11, as any individual:

a. Engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any month or more than $250, not including his own travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials; or

b. Who spends more than $250, not including his own traveling expenses and membership dues, in any year for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials.

The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, St. Paul, Minnesota 55155, telephone: (612) 296-5615.

Any person may request notification of the date on which the hearing examiner's report will be available, after which date the Agency may not take any final action on the rules for a period of five (5) working days. Any person may request notification of the date on which the hearing record has been submitted (or resubmitted) to the Attorney General by the Agency. If you desire to be so notified, you may so indicate at the hearing. After the hearing, you may request notification by sending a written request to the hearing examiner (in the case of the hearing examiner's report), or to the Agency (in the case of the Agency's submission or resubmission to the Attorney General).

James Salem, Executive Director

DATE: October 11, 1979.

MINNESOTA HOUSING FINANCE AGENCY

Proposed Rules Governing the Accessibility Improvement Assistance Program

12 MCAR § 3.002 Definitions

O. "Persons and Families of Low and Moderate Income" means:

4. with respect to Home Improvement Loans and Accessibility Improvement Assistance pursuant to Chapters Six and Seven-A of these Rules, those persons and families whose Adjusted Income does not exceed $16,000.

12 MCAR § 3.052 Eligible Improvements

Improvements made with Home Improvement Loan proceeds shall satisfy the following requirements:

A. Improvements may be made in order:

1. to comply with applicable state, county, and municipal health, housing, building, fire prevention, and housing maintenance codes, or other public standards applicable to housing, or

2. to make the property more desirable to live in, or

3. to increase the market value of the property, or

4. to make the property more habitable, or

5. to make the property more accessible to a Handicapped Person as provided in Chapter Seven-A.

12 MCAR § 3.063 Amount of grant

The amount of the rehabilitation grant shall not exceed the lesser of

A. $5,000, ~~or in the case of an Accessibility Improvement Grant, $7,500,~~ or

B. the actual cost of the work performed, or

C. that portion of the cost of rehabilitation which the Agency determines cannot otherwise be paid by such person or family without spending an unreasonable portion of the income of such person or family thereon.

~~If a grant is made both for Accessibility Improvements and for otherwise eligible improvements pursuant to these Rules, then the portion of the grant which is for such eligible improvements shall not exceed $5,000, and the total amount of the grant for such other eligible improvements and the Accessibility Improvements shall not exceed $7,500.~~

12 MCAR § 3.070 Accessibility Improvement Fund

~~With funds appropriated by the Legislature from time to time for that purpose, the Agency may establish an Accessibility Improvement Fund from which Home Improvement Grants may be made to eligible applicants for the purpose of making Accessibility Improvements to dwelling units occupied by Handicapped Persons of low or moderate income, as defined in 12 MCAR § 3.002 0 3. Grants from the Accessibility Improvement Fund shall be made pursuant to the procedures set forth in Chapter 7 of these Rules, provided, however, that the Accessibility Improvement Grant Fund shall not be subject to the reservation and allocation requirements of 12 MCAR § 3.061.~~

Chapter Seven-A Accessibility Improvement Assistance

~~12 MCAR § 3.071 Maximum Grant~~

~~A. No property shall be eligible for a Home Improvement Grant if it has been improved by such a grant within the five-year period next preceding the date on which application for such grant is made, except (i) for rehabilitation necessitated by damage to the property as a result of unforeseen events beyond the control of the applicant or the failure of plumbing, heating, or electrical systems, as determined by the Agency in its sole discretion, or (ii) for Accessibility Improvements to aid a Handicapped Person who became handicapped or established residency in the dwelling after the date of approval of the initial Home Improvement Grant.~~

~~B. A dwelling which was occupied by a Handicapped Person and improved prior to September 1, 1977, by Home Improvement Grant Funds shall be eligible for an Accessibility Improvement Grant within the five-year period following receipt of the original Home Improvement Grant, provided that the cumulative total of all grants for Accessibility Improvements for a single dwelling permitted under this subsection shall not exceed $7,500 within such five-year period.~~

12 MCAR § ~~3.072~~ 3.071 Definitions

A. With respect to Accessibility Improvement Assistance pursuant to Chapter Seven-A of these Rules, "Handicapped Person" means a person who has a permanent physical condition which is not correctable and which substantially reduces such person's ability to function in a residential setting. A person with a physical condition which does not require the use of a device to increase mobility shall be deemed a Handicapped

Person only upon the written certification of a licensed physician that the physical condition substantially limits such person's ability to function in a residential setting.

B. "Accessibility Improvement" means an interior or exterior improvement or modification to a residential dwelling in Minnesota which is necessary to enable a Handicapped Person to function in a residential setting.

C. As used in this chapter "Percent Indebted" means the percent of monthly gross income that a person or family is obliged to pay each month towards all fixed non-business debt which the recipient in good faith has incurred the obligation to pay over a period of more than three months for goods and/or services already provided. Personal debt includes mortgage or contract for deed payments related to the purchase of residential property, but does not include debts incurred solely for the recipient's business or farm operations. The recipient shall have the burden of demonstrating that any debt incurred within six months of the date of application for Accessibility Improvement assistance has been incurred in good faith. The Agency shall not include in the calculation of percent indebtedness any debt which the recipient cannot demonstrate has been incurred in good faith. A finding that a recipient has incurred a debt in order to defraud the Agency will be grounds for exclusion from all Agency-financed assistance.

12 MCAR § 3.072 Eligibility

The Agency may make funds available for the purpose of making Accessibility Improvements and for technical assistance in the design and construction of such Accessibility Improvements under the followng conditions:

A. To be eligible the recipient of Accessibility Improvement assistance shall be a Person or Family of Low or Moderate Income as defined in 12 MCAR § 3.002-0-4 and shall comply with the ownership and occupancy requirements of 12 MCAR § 3.062.

B. The structure to be improved shall be an existing dwelling located within the State of Minnesota, shall be used primarily for residential purposes, and shall contain no more than two dwelling units, one of them occupied by the recipient.

C. The beneficiary of Accessibility Improvement assistance shall be a Handicapped Person of low or moderate income, as defined in 12 MCAR § 3.002-0-4, who shall occupy or intend to occupy the dwelling unit to be improved as his or her primary residence.

12 MCAR § 3.073

Accessibility Improvement assistance shall be made available in the following manner:

A. Accessibility Improvement assistance shall be in the form of a grant, a Home Improvement Loan pursuant to Chapter Six of these Rules, or a combination of such grant and loan, depending upon the Adjusted Income and proportion of existing indebtedness of the recipient. The proportion of assistance to be given in grants shall be determined according to the following table:

Table -- PERCENTAGE AVAILABLE ACCESSIBILITY GRANT ASSISTANCE

(Income stated in thousands of dollars)

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30												
25	100%			74%	70%	51%	30%	28%	22%	20%	14%	13%
20	GRANT	76%	48%	40%	5%							
15		80%	52%	22%	10%							
10		60%	28%						NO GRANT			
5		52%	4%									
0		20%										

B. When an Accessibility Improvement assistance grant is combined with assistance from other Agency loan or grant programs, the requirements of those programs shall be met, provided however that the structure to be improved need not meet the requirements of 12 MCAR § 3.051-D.

C. In no case shall the grant for Accessibility Improvements and technical assistance inclusively exceed $10,000 for a single structure nor shall the total assistance for a single structure, including loans and grants from other Agency programs, exceed a total of $15,000.

D. No property shall be eligible for Accessibility Improvement assistance if it has been improved through such assistance within the five year period next preceding the date on which the application for such assistance is made, except in extraordinary circumstances relating to damage to the property as a result of events beyond the control of the recipient.

12 MCAR § 3.074 Data on Accessible Housing

The Agency shall maintain a public list of dwellings improved under the Accessibility Improvement assistance program in order to improve the marketability of such accessible dwellings and assist Handicapped Persons to find housing containing Accessibility Improvements. Recipients of Accessibility Improvement assistance shall inform the Agency as soon as practical of any intent to sell the improved dwelling so that the Agency may make such information available to interested Handicapped Persons.

AMOS S. DEINARD
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SIDNEY BARROWS
HAROLD D. FIELD, JR.
ALLEN I. SAEKS
THOMAS D. FEINBERG
MORRIS M. SHERMAN
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LAW OFFICES

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ARTHUR L. H. STREET (1877-1961)
BENEDICT DEINARD (1899 1969)

OF COUNSEL
MELVIN H. SIEGEL
IRENE SCOTT

March 21, 1980

Mr. Jerry Anderson
Office of the Attorney General
Room G-25 Administration Building
50 Sherburne
St. Paul, Minnesota 55155

Re: Minnesota Housing Finance Agency--
Accessibility Improvement Assistance Rules

Dear Jerry:

In accordance with your request, I enclose revised Page 3 of the above-captioned Rules, as amended. It may be substituted for its counterpart in your possession.

Very truly yours,

LEONARD, STREET AND DEINARD

By George Reilly
George Reilly

Enc.

GR:eh

RECEIVED
MAR 2
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

AMOS S. DEINARD
SIDNEY LORBER
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MELVIN H. SIEGEL
IRENE SCOTT

March 13, 1980

Ms. Judith Wehrwein
Office of the Attorney General
G-25, Administration Building
50 Sherburne Street
St. Paul, Minnesota 55155

Re: Minnesota Housing Finance Agency
Accessibility Improvement Rules

Dear Ms. Wehrwein:

Enclosed please find the original and one copy of the Resolution Authorizing Public Hearing on Proposed Rules relating to the Accessibility Improvement Assistance Program and a Certificate of that Resolution.

Thank you for your assistance in calling this omission to my attention.

Yours truly,

LEONARD, STREET AND DEINARD

By M. Patricia Schaffer
M. Patricia Schaffer

MPS:vln

Enclosures

RECEIVED
MAR 14 1980
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

MINNESOTA HOUSING FINANCE AGENCY
333 Sibley
St. Paul, Minnesota 55101

RESOLUTION NO. MHFA 79-42

RESOLUTION AUTHORIZING PUBLIC HEARING ON
PROPOSED RULES

BE IT RESOLVED BY THE MINNESOTA HOUSING FINANCE AGENCY:

That James Solem, the Executive Director of the Minnesota Housing Finance Agency, be and he hereby is authorized and directed (1) to call a hearing for the purpose of promulgating rules of the Minnesota Housing Finance Agency, relating to the Accessibility Improvement Assistance Program; (2) to arrange for a hearing examiner to act as presiding officer at said hearing; and (3) to perform all other acts incidental to such hearing including without limitation signing an Order of Hearing and Notice of Hearing.

Adopted by the Minnesota Housing Finance Agency this 27th day of September, 1979.

By Demetrius G. Jelatis
Chairman

Attest: James E. Price

MINNESOTA HOUSING FINANCE AGENCY
333 Sibley
St. Paul, Minnesota 55101

CERTIFICATE OF RESOLUTION
OF
THE MINNESOTA HOUSING FINANCE AGENCY

The undersigned does hereby certify that he is the Secretary of the Minnesota Housing Finance Agency, an Agency duly authorized under the laws of the State of Minnesota; that the following is a true, complete and correct copy of a resolution adopted at a meeting of the Minnesota Housing Finance Agency duly and properly called and held on the 27th day of September, 1979; that a quorum was present at said meeting; that a majority of those present voted in favor of the adoption of said resolution; that said resolution is set forth in the minutes of said meeting; and that said resolution has not been altered, modified or annulled and remains in full force and effect:

"BE IT RESOLVED BY THE MINNESOTA HOUSING FINANCE AGENCY:

That James Solem, the Executive Director of the Minnesota Housing Finance Agency, be and he hereby is authorized and directed (1) to call a hearing for the purpose of promulgating rules of the Minnesota Housing Finance Agency, relating to the Accessibility Improvement Assistance Program; (2) to arrange for a hearing examiner to act as presiding officer at said hearing; and (3) to perform all other acts incidental to such hearing including without limitation signing an Order of Hearing and Notice of Hearing."

IN WITNESS WHEREOF, I have hereunto subscribed my name this 27th day of September, 1979.

Attest: James A. Price
Member

Ann D. Carlson
Secretary

RECEIVED
NOV 5 1979
OFFICE OF HEARING EXAMINERS

In the Matter of the Proposed)
Adoption of Rules of the Minnesota)
Housing Finance Agency relating)
to the Accessibility Improvement)
Assistance Program)

STATEMENT OF NEED
AND
REASONABLENESS

The above-captioned rules contain amendments to the existing rules of the Minnesota Housing Finance Agency relating to the Accessibility Improvement Assistance Program. In general, the need to adopt these rules arises out of a legislative mandate, contained in Minn. Stat. §15.0412 subd. 3 and Minn. Stat. §462A.06 subd. 11, that the Agency adopt rules setting forth the nature and requirements of the procedures relating to Agency programs. In particular, the rules are necessary because the Minnesota legislature in the 1979 session provided authorization and appropriations for an accessibility program, substantially different from that previously authorized, to assist in the financing of improvements to make residential housing more accessible to the handicapped. Minn. Stat. §462A.05 subd. 15A, as amended Laws of Minn. 1979.

It is the considered judgment of the Agency that the rules as proposed are necessary to delineate program administration, make the changes in existing rules required by the legislative changes, and in general to discharge the legislative mandate noted above. At the public hearing to be held concerning these proposed rules, the Agency will stand on the evidence outlined below to establish the need for and reasonableness of the proposed rules and will be prepared to answer any questions concerning the evidence that may arise.

12 MCAR §3.002

This rule defines "Persons and Families of Low and Moderate Income" for particular Agency programs. Section 3.002-0-4 formerly related only to the Home Improvement Loan Program which provides rehabilitation loans for owner-occupied residences. The change in

Agency Exhibit No. 8
File No. HFA 80 001
Date

the rule will apply the same income limit to the accessibility improvement assistance program. The form of assistance to be provided under the accessibility improvement assistance program will depend on the amount of income of the recipient, with a higher proportion of the assistance being in the form of loans at the higher income levels. At the upper end of the income scale the recipient of accessibility improvement assistance will be receiving what amounts to a home improvement loan of a specialized nature and thus the same income limitation governing the home improvement loan program is applied to the accessibility improvement assistance program as well.

12 MCAR §3.052

This section sets forth the criteria that improvements must meet to be financed with home improvement loan proceeds. The rule is amended to make accessibility to the handicapped one of the applicable criteria. Although it could be argued that an accessibility improvement by its nature makes the property "more habitable" (§3.052(4)), the specialized nature of accessibility improvements is such that clarification was advisable.

12 MCAR §3.063

This rule establishes the maximum amounts that may be provided under the rehabilitation grant program. Under the former legislation governing the rehabilitation grant program, particular sums were available as grants specifically for assessibility improvements. In the 1979 legislative session, the legislature removed the old language of Minn. Stat. §462A.15 and established a whole new section relating specifically to accessibility assistance, increasing the amount of available funding and providing that loans as well as grants should be made for this purpose. The proposed amendments to 12 MCAR §3.063 merely return that section to the form in which it was before

the earlier accessibility program was grafted onto it. All references to accessibility improvement grants have been removed.

12 MCAR §3.070.

This section formerly established an accessibility improvement fund in accordance with the earlier version of Minn. Stat. §462A.15. As noted above, changes in legislation have made this section inapplicable.

Chapter 7A, Accessibility Improvement Assistance.

Rather than place accessibility improvements with the Rehabilitation Grant Program, the current legislation for handicapped accessibility is most clearly administered under a separate program with its own particular requirements. Hence, a separate chapter has been created.

12 MCAR §3.071.

This section was necessitated by the prior legislative grant of specific funds for accessibility grants for handicapped persons as a particular kind of rehabilitation grant. As noted above, this language is no longer necessary. The new section 3.071 provides the definitions which are applicable to Chapter 7A. Definition of both "handicapped person" and "accessibility improvement" were previously contained in the rehabilitation grant program rules (§3.072) and have been renumbered, without substantive change, in the new chapter. Subpart C contains the definition of "percent indebted". This definition has reference to the table contained in 12 MCAR §3.073A which sets forth criteria upon which the Agency determines what proportion of accessibility improvement assistance should be in the form of grant and what proportion in the form of a loan. The two criteria upon which that decision is based are amount of family income and the extent to which the family is in debt. It is a standard underwriting and

credit concept that the amount of debt that a person or family can afford is a function not only of the amount of income coming in each month but also of the percentage of that income which is not in fact available for daily living or current expenses because it is already committed to prior obligations. The income limits are established to take into account the normal needs of a person or family for daily living, including food, shelter, and clothing. The concept of percent indebtedness measures longer term obligations. The definition refers to obligations extending over a period of more than three months for goods or services already provided, and thus is meant to exclude the grocer's bill, for which credit may have been extended for a few weeks, or the department store bill for clothing acquired in the last month or two. The most usual type of debt covered by this definition would be consumer durables such as cars and furniture, and housing subject to a mortgage or contract for deed obligation, all of which extend over a fairly lengthy period of time. The three months cutoff in the rule is an estimation of a reasonable distinction between the current cost of daily living and longer term commitments. The definition also distinguishes debt of a personal nature from that relating to a business. If the recipient is the sole proprietor of a business or runs a farm operation, debt attributable to that business is not counted in the percent indebted figure. Because of the fact that the more debt a family may have incurred the less available income it will have for accessibility improvements at any particular income level, the table permits percentage of assistance in the form of a grant to increase as the "percent indebted" increases. The danger exists, therefore, that a potential recipient might deliberately go into debt in order to receive a higher percentage grant. To minimize this risk, the definition of percent indebtedness includes the rule that the burden should be on the recipient to demonstrate that any debt incurred within six months of the date of the

application for the accessibility improvement assistance was incurred in good faith, rather than for the purpose of manipulating the Agency's programs. In reviewing the application, the Agency, of course, will also have the right to question any particular debt that the recipient wishes to have included within the percent indebted figure, no matter when incurred. Any debt that the Agency has reason to question, and that the recipient cannot demonstrate has been incurred in good faith, no matter when incurred, shall be excluded from the calculation of the percent indebted figure. Only debt incurred within six months of the date of application, however, will be subject to the affirmative requirement that the recipient present a prima facie case of good faith.

If the Agency finds as a factual matter that the recipient has in fact incurred a debt for the purpose of defrauding the Agency, the Agency will have the option of excluding that person from the accessibility improvement program and all other Agency assistance programs. Such provisions are necessary in order to protect the Agency from having its program manipulated in such a way that the Agency in effect finances the additional debt of the recipient.

The concept of "percent indebtedness" is a credit concept which measures the actual ability of the applicant to repay a loan, rather than attempts to judge the more difficult issue of whether such indebtedness is "necessary" to such applicant. Hence, the Agency believes that no attempt should be made to require a showing that the indebtedness was incurred for "essential" or "non-frivolous" purposes.

12 MCAR §3.072

This rule establishes eligibility criteria for the recipient, the structure to be improved, and the beneficiary of the accessibility improvement assistance. Under this rule, funds will be available to pay for the construction of accessibility improvements to aid the handicapped person to function in a residential setting, and also

for technical assistance in the design and construction of such improvements. It is necessary to fund technical assistance because the Agency's experience in prior rehabilitation grant programs established that there was in fact little technical know-how concerning the construction of improvements for the handicapped, and that the danger existed that funding would be wasted in the construction of useless or even dangerous "improvements". Thus, the Agency will encourage the use of technical assistance in order to insure that the funded improvements will actually improve the situation, and also to develop a pool of technical information that will be available to the private sector as well.

Subsection A provides that an eligible recipient of accessibility improvement assistance must be a person or family of low or moderate income as defined in 12 MCAR §3.002-0-4. That is to say, the recipient must have an adjusted gross annual income of no more than $16,000 per year. The recipient must also be the owner of the home being improved and must occupy it as his or her principal residence. 12 MCAR §3.062 referred to in this rule, provides in more detail the type of ownership interest needed. The legislative mandate contained in Minn. Stat. §462A, sub. 15A made clear that accessibility improvement assistance was to be carried out in conjunction with other Agency loan and grant programs. Therefore, to the extent possible, the requirements of the other loan and grant programs with regard to income, ownership, etc., have been included in the accessibility improvement rules. The ownership requirements of 12 MCAR §3.062 are similar to those in the loan program and are necessary to show sufficient ownership interest in the dwelling to make the recipient a reasonable credit risk for loans and to insure that the owner is authorizing and receiving the benefit of the Agency financing.

12 MCAR §3.073-B requires that to be eligible for an accessibility improvement the structure to be improved must be already existing, located within Minnesota, used primarily for residential purposes, and contain no more than two dwelling units, one of them occupied by the recipient. The rehabilitation loan program permits loans for structures of up to six units, although, as a practical matter, a person of low and moderate income as defined by these rules, does not normally own a multi-unit dwelling of that size. It is much more typical for a person qualifying under these income limits to own either a single family house or a dwelling containing one additional apartment. By requiring the funds to be limited to two unit dwellings, these rules will conform to the requirements of both the rehabilitation grant and rehabilitation loan programs, and will cover almost all potential recipients of assistance. 12 MCAR §3.072-C establishes the eligibility requirements of a "beneficiary" of accessibility improvement assistance. The "recipient" of accessibility improvement assistance is not necessarily a handicapped person, but only the owner of a dwelling in which a handicapped person resides. Because the handicapped person will not necessarily be related to the owner of the dwelling, this rule requires that the handicapped person, as well as the recipient, be of low and moderate income and furthermore requires that the handicapped person occupy the dwelling unit as his or her primary residence. The intent of the program is to improve the capability of handicapped persons to live more or less independently outside of institutions. While conceivably families with handicapped members could use accessibility improvements to facilitate visiting, clearly, the greatest need is not in that area. Furthermore, as accessibility improvements tend to work substantial changes in the structure to be improved, they are probably not appropriate unless the handicapped person was intending to eventually reside in the building to be improved for a substantial period of time.

12 MCAR §3.073

12 MCAR §3.073-A establishes that accessibility assistance will be made available either in the form of a grant or a loan or a combination of both, depending upon the income and indebtedness of the recipient. Thus, persons whose income does not exceed $5,000 per year would receive a 100% grant for accessibility improvements without regard to their percent indebtedness. Similarly, persons who must pay 35% of their annual adjusted gross income on debt service would be eligible for a complete grant whatever their income (if under $16,000 per year). On the other hand, persons making between $10,000 and $16,000 per year who do not pay more than 20% of their income on debt service would not receive any grant funds at all, but would be eligible for an accessibility improvement loan. In the middle range are those persons who could receive part grant and part loan. For example, a person or family with income in the $7,000 to $8,000 per year range who pay 25% of their income on fixed personal indebtedness would be eligible for a 74% grant and the remainder in the form of a loan. These figures are based upon credit calculations as to what kind of additional debt a family in these various situations could afford, given the need for accessibility improvement assistance. In enacting this legislation, the legislature had before it testimony of persons with handicapped children who needed to make improvements in their homes so that their children could remain with them, but who could not afford to finance such changes through a great deal of additional debt. Many of these persons were already deeply in debt because of the high medical expenses they incurred because of the handicapped child. The effect of the calculations based on the table is to spread the limited grant funds as far as possible through combinations of grants and loans, while taking into account the established fact that many families whose income would otherwise be considered moderate cannot in fact afford to pay for a large loan because of the high indebtedness they have had to incur on account of the handicapped member.

12 MCAR §3.073-B provides that when accessibility assistance is combined with other Agency loan and grant programs, the requirements of that loan or rehabilitation grant program must be fulfilled as well. For example, were an accessibility grant to be combined with a home improvement loan, the recipient would have to be a reasonable credit risk (12 MCAR §3.051-C) and the structure to be improved could not be in violation of applicable zoning ordinances (12 MCAR §3.051-E). Excluded from this general rule is 12 MCAR §3.051-D which requires that for normal home improvement loans, the structure to be improved must be at least 15 years old, or in need of fundamental repair resulting from a natural disaster, or a hazard to health or safety, or relating to energy efficiency. Since the accessibility improvement program serves the needs of a limited segment of population with particular needs, it was not felt necessary to orient the loans towards older homes or to accomplish other legislative goals such as energy efficiency.

An accessibility improvement grant could also be combined in appropriate circumstances with a general rehabilitation grant for non-accessibility related work. Thus, a grant could be made for an accessibility improvement such as a ramp for a person in a wheelchair, and at the same time, a rehabilitation grant could be made to improve the wiring or fix the roof in the same structure. In such a situation, the recipient would have to qualify under the rehabilitation grant program including the strict income and assets limitations of 3.002-0-3.

12 MCAR §3.073-C contains limits on the amount which can be spent for a single structure. Minn. Stat. §462A.05 subd. 15A places a limit of $10,000 ~~on total grants~~ on total accessability grants for one structure, ~~including both rehabilitation and accessibility improvement grants~~, and $15,000 in total assistance if in the form of a loan or combination of loan and grant. The figures in the rule are derived directly from the statute. The procedure in determining what

assistance will actually be available therefore is a multi-step process: First, determine the approximate cost of needed accessibility improvements; second, on the basis of the recipient's income and indebtedness, determine what proportion of that assistance could be in the form of grants and what in the form of loans; and third, scale down the accessibility improvements if necessary, based upon the repayment ability shown by the table. For example, a $15,000 improvement might be desired. A look at the table indicates that a person or family making between $5,000 and $6,000 a year and indebted to the extent of 15% could receive only 80% of that money in grants, and 20% in loans. 80% of $15,000 would be $12,000 which would exceed the grant maximum. The plans would have to be revised such that $10,000 in grants could be made and $2,500 in loans. Similarly, if a recipient was found from past credit history to be unlikely to repay more than $1,000, the amount of the grant would only equal $4,000 and the work would have to be less ambitious.

12 MCAR §3.073-D requires that accessibility improvement assistance may only be received once every five years except in extraordinary circumstances. This requirement parallels the similar requirement in the rehabilitation grant program. Its goal is to maximize the number of recipients of such grants and to encourage the recipient to review his or her entire situation at one time to ensure that all accessibility improvements that will be necessary are made during one construction period.

12 MCAR §3.074

This rule requires the Agency to maintain a list of the dwellings that have been improved pursuant to this program. Minn. Stat. §462A.05 subd. 15A expressly requires the Agency to gather data on available accessible housing financed under the program and make the information available to interested individuals and

groups. The intent of such a list is to assist handicapped persons in finding housing that has already been altered for their needs, and at the same time, to assist in the marketing of housing which has been altered in ways which may not be seen as "improvements" to the general populace. For this reason, recipients of assistance are asked to inform the Agency as soon as possible when they intend to sell the house which has been improved with accessibility assistance so as to give the Agency some time to inform interested handicapped persons that an accessible house will be on the market. No enforcement mechanism is provided for this requirement because it is presumed that it will benefit the house seller as well as potential buyers, and also because the difficulties of enforcement would outweigh the benefits.

The Agency intends to call Mary Tingerthal as an expert witness to be available at the hearing to answer questions on these proposed rules. The Agency relies upon the statutes cited above and on the rules and regulations of Minnesota Housing Finance Agency.

Minnesota Housing Finance Agency

By M. Patricia Schaffer

M. Patricia Schaffer
Attorney for Minnesota Housing
Finance Agency

Dated: Nov. 2, 1979

HFA-80-001-NG

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE MINNESOTA HOUSING FINANCE AGENCY

In the Matter of Proposed Amendment of Rules to 12 MCAR § 3.002, et seq. Relating to the Accessibility Improvement Assistance Program.

REPORT OF THE HEARING EXAMINER

The above-entitled matter came on for hearing before Hearing Examiner Natalie L. Gaull, of the State Office of Hearing Examiners, at 9:30 a.m. on Wednesday, November 28, 1979, at the Minnesota Cable Communications Board Building, 500 Rice Street, Saint Paul, Minnesota.

Appearing for the Minnesota Housing Finance Agency (hereinafter "the Agency") were: M. Patricia Schaffer, Attorney for the Agency; Mary Tingerthal, Manager of the Home Improvement Loan and Grant Programs; and Harry Kiewel, Agency Accessibility Specialist. No members of the public appeared at the hearing, although the Hearing Examiner waited until 9:45 a.m. to allow for the arrival of any latecomers. Before the close of the hearing record, two public comments were received by letter.

Pursuant to Minn. Stat. § 15.0412, subd. 4 (1978), this Report shall be available for review to all affected individuals upon request for at least five days. Thereafter, the Agency shall, if it proposes to adopt the rules as originally proposed or amended, submit a copy of the Order Adopting Rules, a copy of any additional agency findings, a copy of the rules as originally proposed, and a copy of the rules as adopted to the Chief Hearing Examiner for review pursuant to Minn. Stat. § 15.052, subd. 4 (1978). The submission to the Chief Hearing Examiner shall precede review by the Attorney General. The Chief Hearing Examiner shall complete his review and submit his report to the Agency on the issues of substantial changes in the rule and compliance with Minn. Stat. § 15.0412 (1978) within ten calendar days. The Agency will be responsible for filing the rules with the Attorney General and for notifying persons who have indicated that they wish to be notified of such filing.

Based upon all the records and proceedings herein, the Examiner makes the following:

FINDINGS OF FACT

Procedural Requirements

1. On October 1, 1979, the Agency filed the following documents with the Chief Hearing Examiner:

(a) A copy of the proposed rules.
(b) The Order for Hearing proposed to be issued.
(c) The Notice of Hearing proposed to be issued.
(d) A Statement of the number of persons expected to attend the hearing and estimated length of the Agency's presentation.

2. On October 29, 1979, the Agency mailed the Notice of Hearing to all persons and associations who had registered their names with the Secretary of State for the purpose of receiving such notice.

3. On October 29, 1979, a Notice of Hearing and a copy of the proposed rules were published at 4 State Register 704.

4. On November 5, 1979, the Agency filed the following documents:

(a) The Order for Hearing.
(b) The Notice of Hearing as mailed.
(c) The Affidavit of Receipt of the Secretary of State's list.
(d) The Affidavit of Mailing the Notice to all persons on the Secretary of State's list.
(e) The Statement of Need and Reasonableness.

5. On November 28, 1979, the Agency filed the Secretary of State's Certificate with the Examiner.

6. All documents were available for inspection at the Office of Hearing Examiners from the date of filing to the date of hearing.

7. The record remained open through December 6, 1979, for the receipt of written comments and statements.

Amendments to the Rules as Proposed.

8. The Agency indicated that there were two errors in the original proposed rules which should be corrected. First, 12 MCAR § 3.071 C. was corrected by reversing the order of the third and fourth sentences in that part. The correct language reads (beginning at the end of the second sentence):

> . . . recipient's business or farm operations. The Agency shall not include in the calculation of percent indebtedness any debt which the recipient cannot demonstrate has been incurred in good faith. The recipient shall have the burden of demonstrating that any debt incurred within six months of the date of application for Accessibility Improvement assistance has been incurred in good faith. A finding , . . .

The other change is in the "Table--Percentage Available Accessiblity Grant Assistance" in proposed 12 MCAR § 3.073 A., in which certain typographical errors were made in the original copy of proposed rules. The table was correctly printed in the State Register.

Statutory Authority

9. The Agency cites Minn. Stat. § 462A.05, subd. 15(a) as amended by Laws of 1979, Chapter 327, § 3, as authority for the proposed amendments. That statute established the program and provides that the Agency may make grants to persons and families of low and moderate income or assist in paying a loan made pursuant to Minn. Stat. § 426A.05, subd. 14, to improve the accessibility of existing residential housing for handicapped occupants. In addition, the Statement of Need and Reasonableness cites Minn. Stat. § 426A.06, subd. 11, which authorizes the Agency to promulgate rules regarding its grant and loan programs. The Examiner finds that there is statutory authority to adopt the proposed amendments.

Need and Reasonableness

10. The proposed amendment to 12 MCAR § 3.004 0.4. expands the criteria of "persons and families of Low and Moderate Income" currently used for the

Home Improvement Loan Program to also include Accessibility Improvement Assistance. The Examiner finds that this amendment is necessary and reasonable as proposed to define the group of persons eligible for assistance under this program.

11. The proposed amendment to 12 MCAR § 3.052 adds accessibility to the handicapped as one of the applicable criteria for which improvements may be made with Home Improvement Loan proceeds. The Agency states that while this inclusion may be implied under the "more habitable" wording in Section 3.052(4), the amendment makes the inclusion specific in order to avoid any possible confusion. The Examiner finds that this amendment is necessary and reasonable as proposed.

12. The proposed amendment to 12 MCAR § 3.063 deletes the provisions referring to the previous accessibility program. The section as amended now refers generally to the Rehabilitation Grant program. This amendment was necessitated by the 1979 Legislature's action removing the specific provisions relating only to Accessibility Improvement Grants. The Examiner finds that this amendment is necessary and reasonable as proposed.

13. The proposed amendment to 12 MCAR § 3.070 deletes the provision which established the earlier Accessibility Improvement Fund which was superseded by the 1979 action of the Legislature. The Examiner finds that this amendment is necessary and reasonable as proposed.

14. The proposed amendments create a new chapter, "Chapter 7A, Accessibility Improvement Assistance" which deals specifically with the administration of this program. This represents a determination by the Agency that the program is most clearly administered as a separate program. The proposed amendment to 12 MCAR § 3.071 deletes the existing language pertaining to the obsolete accessibility improvement fund and adds the definitions which are applicable to Chapter 7A. The definitions of both "handicapped person" and "accessibility improvement" were previously contained in 12 MCAR § 3.072 and have been renumbered, without substantive change, in the new chapter. 12 MCAR § 3.072 C. contains the definition of "percent indebted" which refers to the table contained in the proposed 12 MCAR § 3.073 A. setting forth the criteria upon which the Agency determines the proportion of grants and loans to be provided to individuals in the accessibility improvement program. The section states that the Agency shall not include in the calculation of percent indebtedness any debt which the recipient cannot demonstrate was incurred in good faith. The Agency feels this provision is warranted in order to minimize the risk that a potential recipient might manipulate the program by deliberately incurring a debt for purposes of receiving a higher percentage grant under the calculation. The section also provides that the recipient must demonstrate that any indebtedness incurred within six months of the date of the accessibility improvement assistance application was incurred in good faith. The Agency stated this affirmative demonstration of good faith is warranted because indebtedness incurred within that six month period is more likely to be the subject of manipulative abuses. The Examiner finds that this amendment is necessary and reasonable as proposed.

15. The proposed 12 MCAR § 3.072 sets forth the conditions of eligibility for funds for making Accessibility Improvements and for technical assistance

in the design and construction thereof. The Agency states that inclusion of funding for technical assistance will encourage its use and thus, make for better improvements as well as helping to develop a pool of technical information which will be available to the private sector. Subsection A provides that the recipients of assistance must be a person or family of low or moderate income as defined in 12 MCAR § 3.002 O.4. and be the owner/occupant of the dwelling as defined in 12 MCAR § 3.062. Subsection B requires the dwelling to be an existing residential structure located in Minnesota and containing no more than two dwelling units, one of which is occupied by the recipient. Subsection C defines the "beneficiary of accessibility improvement assistance" and, thus, distinguishes the beneficiary from the recipient. The recipient of tne accessibility improvement assistance is not necessarily the handicapped person but may be the dwelling owner. The handicapped person must be the beneficiary of the assistance, reside primarily in the dwelling, and be of low or moderate income. The Examiner finds this amendment is necessary and reasonable as proposed.

16. The proposed 12 MCAR § 3.073 provides that accessibility improvement assistance will be made availble in the form of grants, loans, or a combination thereof, depending upon the recipient's income and indebtedness as calculated in the table: "Percentage Available Accessibility Grant Assistance" found in Subsection A. The table provides for a greater proportion of grant to loan funding as income decreases and percent of indebtedness increases. The Agency presentation indicates that it is a standard underwriting and credit concept that the amount of debt a person or family can afford is a function not only of the amount of income, but also of the percentage of that income which is not disposable because it is already committed to prior obligations. Subsection B provides that where accessibility assistance is combined with other Agency loan and grant programs, the requirements of those programs must be met, exclusive of the structural requirements of 12 MCAR § 3.051 D, which pertains to home improvement loans. The Agency states this exclusion is justified inasmuch as the goals of that program are unrelated to those of accessibility improvement assistance. Subsection C states the dollar levels of assistance for accessibility improvements alone, or in combination with other Agency programs as prescribed by statute. Subsection D requires tnat accessibility improvement assistance may be received only once every five years except in extraordinary circumstances, such as damage to the property by events beyond the control of the recipient. The limitation is intended to maximize the number of assistance recipients and to encourage the recipient to plan all necessary accessibility improvements for one construction period. The Examiner finds this amendment is necessary and reasonable as proposed.

17. The proposed 12 MCAR § 3.074 requires the Agency to maintain a public list of the dwellings which have been improved under this program, as required by Minn. Stat. § 462A.05, subd. 15A. This section provides that recipients of assistance inform the Agency as soon as practical of any intent to sell the improved dwelling in order to assist handicapped persons in finding housing which has already been improved for their needs. The Examiner finds this amendment is necessary and reasonable as proposed.

18. A comment was received from Robert Grahm, City Planner, City of Albert Lea, suggesting that the proposed guidelines for accessibility be applied to all grant applicants where appropriate, particularly in relation to "percent indebted". Craig Monen, Attorney with Legal Advocacy for Developmentally Disabled Persons in Minnesota, sent written comment favoring the proposed rules on behalf of two clients, Steve Hansen and Scott Anderson, both of Duluth.

Based upon the foregoing Findings of Fact, the Hearing Examiner makes the following:

CONCLUSIONS

1. Due, timely and adequate notice of the hearing was properly served and published by the Agency.

2. The Agency has fulfilled all relevant substantive and procedural requirements of law or rule. Although the documents listed in Paragraph 4 of the Findings were not filed in a timely fashion, there were no requests to examine the documents prior to the hearing and no one was prejudiced by this delay.

3. The Agency has statutory authority to adopt the proposed rule changes.

4. The Agency has made an affirmative presentation of facts that establishes the need for and reasonableness of its proposed changes to 12 MCAR § 3.002, et seq.

Based upon the foregoing, the Hearing Examiner makes the following:

RECOMMENDATION

That the Housing Finance Agency adopt the changes it has proposed to 12 MCAR § 3.002, et seq.

Dated: January 2, 1980.

NATALIE L. GAULL
Hearing Examiner

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SIDNEY BARROWS
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ARTHUR L. H. STREET (1877-1961)
BENEDICT DEINARD (1899 1969)

OF COUNSEL
MELVIN H. SIEGEL
IRENE SCOTT

March 6, 1980

RECEIVED
MAR 11 1980
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

Mr. Lee Sheehy
Special Assistant
Attorney General
State Administration Building
Room G-19K
St. Paul, Minnesota 55155

Re: MHFA - Accessibility Improvement Assistance Rules

Dear Lee:

I am submitting to you for review the documents prepared by the Minnesota Housing Finance Agency for the promulgation of new regulations relating to the Accessibility Improvement Assistance Program. I have enclosed an original and one copy of each document, except the Rules as adopted of which there is an original plus two copies. Two of the copies of the adopted Rules are attached to the Resolution authorizing and ordering the adoption of these Rules. The hearing on these Rules was taped but not transcribed. It is available at my office should you wish to hear it.

If you have any questions, please let me know.

Thank you for your help.

Yours truly,

LEONARD, STREET AND DEINARD

By Pat
M. Patricia Schaffer

MPS:vln

Enclosures

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE MINNESOTA HOUSING FINANCE AGENCY

IN THE MATTER OF PROPOSED)
AMENDMENT OF RULES TO)
12 MCAR § 3.002, et seq.)
RELATING TO THE ACCESSI-)
BILITY IMPROVEMENT ASSIS-)
TANCE PROGRAM.)

ORDER OF THE
CHIEF HEARING EXAMINER

WHEREAS, a hearing was held on November 28, 1979, before Natalie L. Gaull, a Hearing Examiner of the State Office of Hearing Examiners, on the above-entitled matter in compliance with Minn. Stat. § 15.0412, subd. 4; and

WHEREAS, the Report of the Hearing Examiner made pursuant to Minn. Stat. § 15.052, subd. 3, was issued to the Housing Finance Agency on January 2, 1980; and

WHEREAS, the Housing Finance Agency has now determined to adopt rules pursuant to Minn. Stat. § 15.0412, subd. 4; and

WHEREAS, the Housing Finance Agency has submitted said rules to the Chief Hearing Examiner for review pursuant to Minn. Stat. § 15.052, subd. 4, and 9 MCAR § 2.110; and

WHEREAS, the Chief Hearing Examiner finds that the final proposed rules are not substantially different from those proposed at the public hearing and that the Housing Finance Agency has met all requirements of Minn. Stat. § 15.0412, subd. 4.

NOW, THEREFORE, upon receipt of this Order, the Housing Finance Agency has the responsibility of submitting the complete hearing record and the rules as adopted by the Agency to the Attorney General, notifying all persons who requested to be informed that the hearing record has been submitted to the Attorney General, and publishing in the State Register, all pursuant to Minn. Stat. § 15.0412, subd. 4.

Dated this 3rd day
of March, 1980.

Duane R. Harves
DUANE R. HARVES
Chief Hearing Examiner

STATE OF MINNESOTA

COUNTY OF RAMSEY

In the Matter of the Proposed Adoption of Rules of the Minnesota Housing Finance Agency Governing the Accessibility Improvement Assistance Program

AFFIDAVIT OF MAILING

Shelly M. Spicer, being first duly sworn, deposes and says:

That on the 29th day of October, 1979, at the City of St. Paul, County of Ramsey, State of Minnesota, she served the attached Notice of Hearing by depositing in the United States mail at said City of St. Paul, a true and correct copy thereof, properly enveloped, with postage prepaid, to all persons and associations at the addresses listed on the attached Certificate of the Secretary of State.

Shelly M. Spicer

Subscribed and sworn to before me this 29 day of October, 1979

Roseann M. Kohan
Notary Public

ROSEANN M. KOHAN
NOTARY PUBLIC—MINNESOTA
RAMSEY COUNTY
My Commission Expires Nov. 21, 1986.

Agency Exhibit No. 6
File No. HFA 80 001
Date

rec'd 11/5/79

AFFIDAVIT

The undersigned, being first duly sworn, on oath deposes and says:

1. That he is an employee of the Minnesota Housing Finance Agency.

2. That on the 26th day of October, 1979, he went to the office of the Secretary of State of the State of Minnesota and requested a current list of all representatives of associations or other interested groups of persons who had registered their names with the Secretary of State for the purpose of obtaining notices of public hearings relating to the promulgation of rules pursuant to Minnesota Statutes § 15.0412.

3. That on the 26th day of October, 1979, in response to the above request the Secretary of State provided him with such list, a copy of which is attached hereto and incorporated herein by this reference.

Further Affiant sayeth not.

Michael P Kuschke
Mike Kuschke

Subscribed and sworn to before me
this 26th day of October, 1979.

Marcia J. Schoeneman
Notary Public

MARCIA J. SCHOENEMAN
NOTARY PUBLIC—MINNESOTA
HENNEPIN COUNTY
My Commission Expires Jan. 21, 1986.

Agency Ex. 5
Date
File No.
Exhibit No.

11/5/79

STATE OF MINNESOTA

COUNTY OF RAMSEY

In the Matter of the Proposed Adoption of Rules of the Minnesota Housing Finance Agency Governing the Accessibility Improvement Assistance Program

CERTIFICATE

I hereby certify that the attached 2 sheets of 3M labels constitute the complete list of persons, associations and other interested groups who as of 11:10 o'clock, A.M., this 26th day of October, 1979 have requested pursuant to Minnesota Statutes §15.0412, that their names be placed on file with the Secretary of State for the purpose of receiving notice of public hearings on proposed rules on the above-captioned subject.

Joan Anderson Growe
Secretary of State

Joan Anderson Growe

By: Kathy Nelson

rec'd 11/28/79

Agency Exhibit No. 4
File No. HFA 80 001
Date

STATE OF MINNESOTA

MINNESOTA HOUSING FINANCE AGENCY

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES OF THE MINNESOTA HOUSING FINANCE AGENCY RELATING TO THE ACCESSIBILITY IMPROVEMENT ASSISTANCE PROGRAM	)))))))	STATEMENT OF COMPLIANCE WITH MANUAL OF RULE MAKING PROCEDURES

As a Special Attorney, I, George Reilly, do hereby declare that I have examined the rules of the Minnesota Housing Finance Agency and all related documents and that, based on them and on my personal familiarity with the applicable procedures, the Manual of Rule Making Procedures has been followed.

George Reilly
Special Attorney

Dated: March 7, 1980

STATE OF MINNESOTA

MINNESOTA HOUSING FINANCE AGENCY

RECEIVED
NOV 5 1979
OFFICE OF HEARING
EXAMINERS

IN THE MATTER OF THE PROPOSED)
ADOPTION OF RULES OF THE)
MINNESOTA HOUSING FINANCE) ORDER FOR HEARING
AGENCY RELATING TO THE)
ACCESSIBILITY IMPROVEMENT)
ASSISTANCE PROGRAM)

IT IS HEREBY ORDERED that a public hearing on the above-captioned rules be held at 500 Rice Street, St. Paul, Minnesota, on November 28, 1979 commencing at 9:30 a.m. and continuing until all persons have had an opportunity to be heard.

IT IS FURTHER ORDERED that a Notice of Hearing be mailed to all persons or representatives of associations or other interested groups who have registered their names with the Secretary of State for that purpose.

IT IS FURTHER ORDERED that the Notice of Hearing be published in the State Register.

James Solem, Executive Director

DATE: September 27, 1979.

Agency Exhibit No. 2
File No. HFA 80 001
Date