

# RRHA Update

OCTOBER 2011



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## FROM THE PRESIDENT’S DESK

In the aftermath of a forest fire in California, firefighters were surprised to find a man in a tree fully outfitted in a wet suit, scuba tank, face mask and flippers. The autopsy revealed that he died not from the fire, but from massive internal injuries. The investigators were no doubt befuddled in their search to determine how a scuba diver wound up in the middle of a forest fire.



The authorities later concluded that, on the day of the fire, the scuba diver was off the coast close to the forest fire. At the same time, the firefighters were using the same water source for helicopter dip buckets to douse the fire. One minute the diver was in the Pacific and then he was swimming in a fire dip bucket only to be dropped in the middle of a forest fire.

Apparently he extinguished exactly 6’ of forest fire. Case solved.

The tale of the unfortunate diver parallels my experience in the affordable housing industry. I take the time to let folks know that the affordable housing industry has been good to me and I have had my fair share of development successes. I am fortunate to have been swimming with the current for a long time and that is something to express gratitude for.

However, I have the feeling that I have been scooped up in the helicopter fire bucket and my 6’1” frame is about to be dropped in the middle of the forest fire. Of course, the forest fire is the budget process that is shaping up in Washington D.C. and attempts by the President and Congress to cut the deficit on one hand, and reduce unemployment on the other hand.

Our Association members have built a housing infrastructure in rural Texas that ought to be preserved. Our preservation efforts will be imperiled if deep cuts are made to rural housing programs: Section 514/515, rental assistance, HOME funds, LIHTC, Section 538 guarantee program. Furthermore, there is a move afoot to move the USDA Rural Development housing program to HUD. Our Association does not believe that this is a good idea because HUD’s comfort zone is urban and suburban areas, not rural America.

Ginger McGuire has stepped in to help in formulating talking points for the Texas congressional delegation and our members have joined in the effort. In my personal discussions with a number of Republican congressional members, I have had to walk a delicate tightrope to show that our RD programs are not Democratic “entitlements” or “welfare” that need cutting in the name of fiscal responsibility. Rural housing is a bipartisan issue that benefits Republicans and Democrats.

Royce Ann has provided a sample letter that you can send to your congressman and can provide talking points if you schedule a visit. Take the time to express your views.

We may be swimming in the helicopter dip bucket. However, unlike the unfortunate diver, we are not swimming alone and have the capacity to put out much more than a mere 6’ of forest fire by acting together to carry the rural housing flag.

— Murray A. Calhoun

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FACEBOOK FIRING – THE STRANGE WORLD OF THE NLRB



The National Labor Relations Board (NLRB), the agency that recently filed an unfair labor practice complaint against Boeing Co. for deciding to build 787 Dreamliners in South Carolina (a non-unionized plant), has also been prosecuting complaints against employers who take action against employees for negative Facebook posts.

At issue in NLRB’s “Facebook Firing” cases is whether terminating employees for making disparaging online postings and having policies against such posts, violates the National Labor Relations Act (NLRA).

The NLRA guarantees union and non-union employees the right to “engage in ... concerted activities for the purpose of ... mutual aid or protection” among other things. This includes the right to complain about the terms or conditions of employment.

Earlier this year, the NLRB settled a complaint it filed against an employer, an ambulance company who fired an employee after she wrote on her Facebook page that her supervisor was a “scumbag” and a “17” – the company’s code for a psychiatric patient. Other employees had posted comments supportive of the employee. The case settled after the employer agreed to revise its policies to ensure it did not restrict employees from discussing wages, hours and working conditions with co-workers and others while not at work.

The NLRB has taken a dramatic turn against employers’ interests in the past couple of years. The Board continues to expand all employees’ rights to engage in “concerted activity” even when the activity does not appear to be related to terms or conditions of employment. On-line comments which are clearly disparaging and disrespectful to the employer, its product and management can now be considered protected activity under this latest ruling. This means if an employer takes disciplinary action against an employee for making such disparaging remarks, the employer can be subject to an unfair labor practice charge.

Before taking an adverse action against an employee for any comments concerning their employment – negative or otherwise made in social media or just in general, management would be wise to carefully consider it’s options.

If possible, an employee should be disciplined and/or discharged for reasons unrelated to their speech activities.

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## SPOTLIGHT ... NEW BOARD MEMBER

### GINGER McGUIRE

RRHA of Texas proudly welcomes Ginger McGuire as the newest member of the Board of Directors. Ginger was elected by the general membership at our annual convention recently held in Irving. Ms. McGuire has held positions in the public, private, for profit and not for profit housing sectors for the past 38 years. She worked in public policy in Washington DC with the House of Representatives Banking Committee, the National Association of Homebuilders, and a private law firm as a Government Relations Consultant. Ginger returned to Texas in 1991 to serve as the Deputy Executive Director for the Texas Department of Housing and Community Affairs and has since worked with The General Land Office, the Enterprise Foundation and The Siegel Group. She is currently Senior Vice President for Lancaster Pollard, a 538 FHA and Fannie Mae lender.



Ginger has served on numerous Boards of Directors and Advisory Committees. She is a graduate of George Mason University in Fairfax, Virginia and attended graduate school at George Washington University. She has 9 grandchildren and a Scotty dog.

## RRHA OF TEXAS UPCOMING EVENTS

### NOVEMBER 3, 2011

Committee Meetings  
The Westin New Orleans Canal Place  
New Orleans, Louisiana  
1:30 p.m.

### NOVEMBER 4, 2011

Board of Directors Meeting  
The Westin New Orleans Canal Place  
New Orleans, Louisiana  
9:00 a.m.

RRHA of Texas **UPDATE** is a quarterly publication devoted to a variety of topics of interest to our members. The views and analyses presented herein do not necessarily represent the policies or the endorsement of the Rural Rental Housing Association of Texas, Inc. Articles containing legal analyses or opinions are intended only as a discussion and overview of the topics presented. Such articles are not intended to be a comprehensive legal analysis of every aspect of the topics discussed. Due to the general nature of the discussions provided, this information may not apply in each and every fact situation and should not be acted upon without specific legal advice based on the facts in a particular case.

If you have an idea or article for our publication, please forward it to Royce Ann Wiggins at RRHA of Texas, 417-C West Central, Temple, Texas 76501, or via e-mail at [office@rrhatx.com](mailto:office@rrhatx.com).

## MULTIFAMILY MAY FALL VICTIM TO CONGRESSIONAL TAX REFORM EFFORTS

By Jerry Ascierto, Housing Finance News

As Congress looks at overhauling the nation's tax code, the multifamily industry may become a collateral victim. The bipartisan "super committee," formally called the Joint Select Committee on Deficit Reduction, is charged with finding \$1.2 trillion in deficit cuts by Thanksgiving. And several tax programs and provisions that multifamily owners and developers have enjoyed for years may be on the chopping block.

The low-income housing tax credit (LIHTC) arena is the most obvious segment of the industry that could be directly affected by the super committee's recommendations and subsequent tax reform efforts. But industry trade groups like the National Multi Housing Council (NMHC) are keeping a close watch on at least three other areas critical to multifamily owners and developers—partnership taxation, carried interest, and the business interest deduction—that could also be compromised.

### LIHTC

The LIHTC program is probably the most successful public/private enterprise in the history of our nation's housing finance system, helping to create more than 2.4 million units since its introduction in 1986. But the program represents one of the government's larger tax expenditures, making it a target in any deficit-reduction talks. Earlier this year, Sen. Tom Coburn (R-Okla.) called for eliminating the program, saying it would save at least \$57 billion over the next decade. But that effort was an outlier—the program also enjoys broad bipartisan support in Washington, D.C. So it's not as though the program will suddenly disappear—but it certainly may be trimmed back.

*continued on page 15*

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## MISLEADING LETTER OF RECOMMENDATION CAN BE COSTLY

Dr. Berry, an anesthesiologist, had a drug problem. Dr. Berry was terminated by Louisiana Anesthesia Associates when he failed to answer a page while on duty. When Dr. Berry sought subsequent employment, Louisiana Anesthesia Associates, provided the following recommendation letter:

***This is a letter of recommendation for Dr. Lee Berry. I have worked with him here at Lakeview Regional Medical Center for four years. He is an excellent anesthesiologist. He is capable in all fields of anesthesia including OB, peds, C.V. and all regional blocks. I recommend him highly.***

The letter failed to disclose Dr. Berry's drug use or the fact that he had been terminated. Later, Dr. Berry sought privileges at a hospital. The hospital reviewed and relied upon the letter of recommendation in granting Dr. Berry privileges. Approximately one year later, Dr. Berry, while under the influence, failed to properly administer anesthesia. Because Dr. Berry failed to properly administer anesthesia, the patient was left in a permanent vegetative state.

A lawsuit was filed against the hospital because of the negligence of Dr. Berry. The case was settled for approximately \$7.5 million. The hospital then sought to recover the money it paid to settle the case by suing Louisiana Anesthesia Associates and the doctor who wrote the letter of recommendation. The hospital claimed that it reviewed and relied upon the letter of recommendation and claimed that the letter was an intentional or negligent misrepresentation because it did not disclose the fact that Dr. Berry had been terminated or that he had a drug problem.

The case went to trial and the jury awarded the hospital over \$8.2 million. This was the amount of economic damages suffered by the hospital - the \$7.5 million settlement and attorney's fees from the first lawsuit.

**LESSON LEARNED:** An employer providing a letter of recommendation must be careful to avoid misrepresentations about the former employee's job performance. This is especially true concerning matters directly affecting the substantive aspects of the former employee's duties. Generally, employers should only provide basic information concerning former employees such as dates of employment, position held and rate of pay.

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## UPDATE—HUD's PBCA CONTRACT

By HUD Contract Administrator, Southwest Housing Compliance Corporation

HUD's rebid of the Texas PBCA (Performance Based Contract Administrator) contract, initially awarded to another entity, has been withdrawn. Southwest Housing Compliance Corporation [SHCC], as the incumbent PBCA, will remain in place as your PBCA for project based section 8 rental housing for the next 6 to 15 months while HUD rebids the contract.

Confused about this? Here is a summary of events.

HUD's award of the PBCA contracts on July 1, 2011 resulted in the filing of a large number of protests nationwide with the Government Accountability Office (GAO). On August 11, 2011 HUD withdrew the contract awards in 42 states, representing the states in which more than one party had submitted a bid, including Texas. HUD announced at the time that it will conduct another rebid of the 42 contracts through a Notice of Funding Availability (NOFA). In the states whose awards were withdrawn, HUD extended the previously existing PBCA contracts by a contract amendment that will remain in place until the new rebid is concluded. The extended contracts, effective October 1, 2011, will continue for between 6 – 15 months, under a reduced scope of work. SHCC, as the incumbent in Texas, remains the PBCA under the amended contract.

**MORE NEWS!** Under the amended contract, SHCC will not conduct Management and Occupancy Reviews (MORs) and FHEO Follow-up, handle REAC follow-up on Exigent Health and Safety (EH&S) deficiencies, or handle Opt-Outs. Accordingly, SHCC cancelled all pending MORs for September 2011 and transmitted a ListServ announcement notifying all of the properties in its portfolio that it will not be conducting MORs until further notice. SHCC will continue to handle Contract Renewals and Rent Adjustments, process Vouchers and Special Claims, and receive Resident and Community Concerns and Inquiries into its Call Center under the amended contract.

We truly regret any inconvenience resulting from this series of events. We will miss our annual visits to your properties and look forward to resuming them under a new contract with HUD once the rebid is finalized. We will work hard in the interim under our reduced scope of work to continue to provide you with excellent customer service in those areas we will be performing. At this time we are waiting for more guidance from HUD Headquarters on how the areas of the contract that we will not perform will be handled. We will share any information we receive by ListServ and by posting information on our website.

Please email us with any questions at [shcc@hacanet.org](mailto:shcc@hacanet.org).

### WELCOME . . . NEW MEMBERS

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## THE DIRTY DOZEN: 12 COMMON UPCS DEFICIENCIES

Submitted by TDHCA Staff

The Texas Department of Housing and Community Affairs' Compliance and Asset Oversight Division conducts hundreds of Uniform Physical Condition Standards (UPCS) inspections every year as part of its compliance responsibilities.

After that many inspections, certain patterns begin to emerge. Below is a list of 12 common findings of UPCS deficiencies. How does your property stack up against this list?

1. **HAZARDS, TRIPPING** — Misaligned or heaving sidewalks; wires across a doorway.
2. **DAMAGED SINKS/SHOWERS** — Any hardware problems; diverters not working, missing drain stoppers, hot and cold water handles missing or not working.
3. **WATER HEATER** — Pressure relief valve discharge tube does not extend to within 18 inches of the floor or not connected to other water drainage.
4. **PLUMBING** — Pipes and/or faucets leaking in kitchen or bath.
5. **KITCHEN** — Refrigerator door gasket seals damaged allowing air leaks; stove burners not working or missing.
6. **SMOKE DETECTORS** — Missing or will not test.
7. **BLOCKED EXIT** — Each room must have two means of egress. Furniture blocking access to the only window in a bedroom room is common; correction must show verification the furniture was moved as notice to the tenant is not sufficient.
8. **FENCES: DAMAGED/FALLING/LEANING** — Fences have missing components, holes, or are leaning or otherwise damaged.
9. **ROOFS** — Missing/damaged components from downspout/gutter; splash blocks missing or damaged, guttering is damaged or missing
10. **WALLS** — Exterior stained/peeling/in need of paint, including exterior trim. Also walls; cracks, gaps, damage, missing pieces.
11. **OVERGROWN VEGETATION** — Bushes and trees touching buildings or blocking walks or fences.
12. **SANITARY SEWER DAMAGED COVERS** — Clean out caps damaged or missing.



*TDHCA compliance staff member Daniel Valles inspects plumbing facilities in a rental unit to ensure there are no leaks.*

### RRHA'S 33RD ANNUAL CONVENTION A SUCCESS

"REAL HOUSING | REAL RURAL | REAL TEXAS" the theme for our 33rd Annual Convention and Trade Show in Irving was a huge success. A golf tournament, sporting clays hunt, Cowboys Stadium tour, two days of well participated training sessions, and other networking special events, ended on Thursday night. We will now proceed to make plans for our 2012 convention.

**A SPECIAL "THANK YOU" TO ALL OF OUR ATTENDEES, SPONSORS, EXHIBITORS, SPEAKERS, VOLUNTEERS, AND EVERYONE ELSE THAT HELPED MAKE THIS CONVENTION A SUCCESS.**

## TRIP HAZARDS

By Danna Hoover, Hamilton Valley Management, Inc.

A trip hazard is any sudden incline of more than ½". Whenever a trip hazard is noticed, management should immediately mark the area with a 4" strip of yellow paint. This does not correct the problem, but it does give notice to a pedestrian that an obstruction is present and hopefully reduces the chance that someone will take a fall. When budget and time permits, the trip hazard can be corrected by grinding, capping or replacement. Grinding is cost effective, but depends upon the availability of equipment or service companies. Secondly, the repair will always be noticeable. Removal and replacement of the damaged area is a very good option, especially if the vertical rise is more than 2 inches. Capping is a cost effective solution if the vertical rise is less than two inches. The problem with capping is that if installed improperly, the repair will fail almost immediately. To obtain a good and lasting cap, use the following procedure:

- A. **TOOLS & SUPPLIES:** 1x4 boards for forming, short stakes to hold forms, hammer & nails, skill saw w/masonry blade, concrete trowel, edging tool, wheel barrow or bucket to mix concrete in, shovel or hoe to mix concrete, water, sand/topping concrete mix, latex bonding agent, cheap or old paint brush to apply bonding agent, stiff broom for finishing.
- B. **DETERMINE LENGTH OF RAMP.** The slope should not exceed a rate of 1" of rise per 8" of travel. So, if you have a 2" lip, then the ramp needs to be at least 16" long. **Note:** ramps with a vertical rise of more than 2 inches should have a slope no steeper than 1" in 12".
- C. **CUT A GROOVE ACROSS THE SIDEWALK** where the new concrete merges with the old. The simplest and most accessible tool to use is a circular (skill) saw with a masonry blade.
- D. **ROUGHEN THE SURFACE** of the concrete where the thickness of the new concrete will taper to less than ½". This step is key to creating a good bond between the new concrete and the old.
- E. **INSTALL FORMS** along side of sidewalk and brace with stakes. It is important that the top of the forms exactly match the slope and level that you want for your finished floor.
- F. **WASH THE SURFACE** with a water hose. This helps with adhesion by removing dirt and dust and helps with curing by moistening the concrete.
- G. **MIX SAND/TOPPING MIX TO SPECIFICATIONS**, then add 1 pint of latex bonding adhesive to each bag of concrete mix. If you cannot find a sand topping mix, you can create your own with sand and Portland cement.
- H. **APPLY LATEX BONDING ADHESIVE** to concrete surface that is to be covered.
- I. **POUR THE CONCRETE** - At this point the concrete needs to be worked (to get even coverage and eliminate voids) and floated to the correct level. Since this is a small job, it can be floated by using a straight edge across top of forms to screed the mixture to the correct level. **Caution:** After the first floating, do not do anything else until the sheen is gone from the surface of the concrete. The time this takes will vary, depending on the temperature, wind and humidity.
- J. **TROWEL CONCRETE** to a smooth finish and edge the joints and perimeter. Edging joints give the pour rounded edges that are resistant to cracking. (it will probably be necessary to trowel center area again to remove marks created by edge trowel)
- K. **FINISH THE SURFACE** - Drag stiff broom across (perpendicular to travel) concrete to create a non-slip finish.
- L. **MOISTEN SURFACE** - After the patch has dried for at least an hour, spray the area lightly (mist) with your hose and cover the area with a plastic sheet for the remainder of the day to prevent the concrete from drying to quickly.
- M. **BARRICADE NEW CONCRETE** from pedestrian traffic for 24 hours.

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To the following companies for their door prize donations at the RRHA Annual Convention & Trade Show

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MKG Consulting	Mid-Coast Property Mgmt.	Pinnacle Homestead Mgmt.
StoveTop FireStop	The Ashcroft Group	Town & Country Mgmt.

# RRHA of Texas Annual Award Winners



**SITE MANAGER OF THE YEAR  
TEXAS RENTAL PROPERTY  
Diana Garza, Hamilton Valley  
Management**



**SITE MANAGER OF THE YEAR  
ELDERLY PROPERTY  
Gary Graham, MAC-RE, LLC**



**SITE MANAGER OF THE YEAR  
FAMILY PROPERTY  
Traci Wall, FDI Property Mgmt. Services**

## Certified Rural Housing Manager Recipients



# Annual Convention & Trade Show—2011



# Annual Convention & Trade Show—2011



# Annual Convention & Trade Show—2011



# Annual Convention & Trade Show—2011



# Annual Convention & Trade Show—2011

**JUST SO THERE IS NO DOUBT ABOUT MISTAKEN IDENTITY.**

*Left to Right:*  
Charles Tidmore,  
Marlon Sullivan,  
Adam Ace [Comedian],  
Murray Calhoun, and  
Rudy Flores



**MULTIFAMILY MAY FALL VICTIM TO CONGRESSIONAL TAX REFORM EFFORTS**, *continued from page 4*

“One of our top priorities as an association is to protect, defend, and maintain the credit,” says Matthew Berger, vice president of tax at the Washington, D.C.–based NMHC. “There is widespread support for it on the Hill, but everything is on the table right now.”

The NMHC is calling for the 9 percent LIHTC program—which expires at the end of 2013—to be made permanent, so that the investor community can plan for the future with more visibility. And the council is also seeking to expand the applicability of the 4 percent credit so that it could be used for acquisitions in addition to new construction and rehabilitation.

**Partnership Taxation**

There’s widespread agreement in Congress that the corporate tax rate has to come down. At 35 percent, the United States has the second-highest corporate tax rate in the world, behind only Japan. And Japan is gearing up to trim its corporate tax rate, so the United States may soon claim the dubious top spot. Yet, the rate shouldn’t come down at the expense of partnerships, the NMHC says. In many ways, partnerships are the lifeblood of the multifamily industry. But if the corporate tax rate is cut, all of that missing revenue will need to be made up somehow, and certain deductions and credits widely used by partnerships, like accelerated depreciation, may go away.

There are also proposals currently being floated in Congress that would tax partnerships with incomes of more than \$50 million under the corporate tax system. But corporations are effectively taxed twice—at the entity level and again at the individual level—while partnerships are only taxed once. “I’d be worried that it could end up being a fairly sizable tax increase for partnerships,” says Berger. “And that means they would then have less money to invest in planned equipment purchases and employment.”

**Carried Interest**

The Obama administration has proposed eliminating capital gains treatment of carried interest, instead taxing it as regular income. The intent is to rein in irresponsible hedge fund managers, but multifamily developers would get caught in the crosshairs—about 45 percent of the partnerships that would be affected by this change are real estate partnerships, estimates the NMHC.

Carried interest is a critical component of real estate partnerships. Basically, carried interest is a share of profits in a partnership—it’s how general partners in an apartment deal are compensated, a sort of incentive to maximize the performance of a fund. General partners will often receive 2 percent of the fund’s value every year, and, more importantly, they’ll receive 20 percent of the gain.

But how that carried interest is taxed makes all the difference. “If you’re taxed under capital gain, you’re taxed at a 15 percent rate, but if you’re taxed as ordinary income, you’d be taxed at a 35 percent rate under current law,” says Berger. “So that would really cut into your rate of return, and the effect is that you’re going to invest less, or in fewer projects.”

**Business Interest Deduction**

Some lawmakers posit that the tax code favors debt over equity, which may have led to our economy becoming over-leveraged in the run-up to the recession. So, there are proposals on Capitol Hill to remove the deduction for business interest as a way of curbing this perceived disparity.

Under current law, businesses can deduct mortgage interest, thereby lowering an organization’s effective tax rate. But if this law is scaled back or eliminated, it could greatly increase the cost of borrowing. “If you start cutting back on how much of that interest can be written off, suddenly the cost of capital essentially goes higher,” says Berger. “And if it costs more to borrow, you’ll probably borrow less, or put up fewer buildings.”

Still, despite all the momentum to trim the deficit, the possibility of a true rewrite of our nation’s tax code in the near term is somewhat remote. Next year is an election year, after all, and Congress remains bitterly divided. “The way that Washington is now, it might be a tall order to do this before the next elections,” says Berger. “But lightning can strike—you never say never.”