



HEALTHCARE MORTGAGEE ADVISORY COUNCIL

Financing Seniors Housing for America

Legal/Closing Panel

Race to the Finish Line

MEET THE PANEL



Samantha Schneck Carlton Fields

- **Samantha Schneck**, is a shareholder of Carlton Fields, where she counsels national lending clients and negotiates multimillion-dollar, multilayered structured financing deals. She has experience in structures involving the refinancing, new construction, and substantial rehabilitation of various facilities, as well as financing structures involving multifacility portfolios, operator-lessees, master leases, subordinate financing, low-income housing tax credits, accounts receivable, condominium structures, ground leases, bond defeasance, restrictive covenants, trusts, depositor bank control agreements, and mortgage insurance claims.
- Samantha represents lenders across the US that provide financing to FHA insurance programs, including 232, 221(d)(4), 223(a)(7) and 223(f).
- In addition to FHA/HUD transactions, she also handles Fannie Mae and Freddie Mac transactions.

HEALTHCARE MORTGAGEE ADVISORY COUNCIL

Financing Seniors Housing for America

Nikki Hoffpauir Krooth & Altman

- Having been with Krooth & Altman for over 20 years, Ms. Hoffpauir focuses her practice on the representation of mortgage lenders. Her practice involves construction, acquisition, refinancing, and permanent financing loans utilizing multiple types of financing structures, with a particular expertise in healthcare financing under the HUD Sections 232 and Section 242 loan programs. She has also acted as lender's counsel on Fannie Mae seniors housing transactions and USDA Community Facilities guaranteed loans. She also has worked directly with HUD and Capitol Hill on administrative and policy issues.
- She also acts as General Counsel for The Andrew Keegan Theatre Company, a local Washington DC semi-professional theatre company where she advised on the acquisition of their theatre, construction loan documentation, and zoning issues, as well as general corporate and nonprofit matters, all on a pro bono basis. She also serves on the Board of Directors of the Animal Welfare League of Arlington.
- Prior to joining Krooth & Altman, Ms. Hoffpauir was a tax consultant in the National Tax Department of Ernst & Young LLP working primarily with retail and consumer product corporations in interactions with the Internal Revenue Service and with the Treasury Department. Ms. Hoffpauir also developed substantial experience with tax-exempt bond financings and the maintenance of tax-exempt status for 501(c)(3) organizations.



HEALTHCARE MORTGAGEE ADVISORY COUNCIL

Financing Seniors Housing for America

Jason P. Roth ORCF

- **Jason Roth**, is currently a Workload Manager and leads ORCF's Closing Team. He has worked at HUD for over 30 years and has a wealth of experience in both Underwriting and Closing FHA insured loans. Jason's current tenure at HUD dates back to 2000, when he worked in the Baltimore Field Office before joining ORCF in 2011.
- Jason received an MBA from Johns Hopkins University (1983) and a B.A. from University of Maryland (1979) in Urban Planning and Architecture.
- Jason has been married to his wife, Barbara, for 43 years and together they have two grown children. He enjoys playing on a volleyball league with his son, is a member of the LMG road bike club in Baltimore, MD, and is an avid Pickleball player.

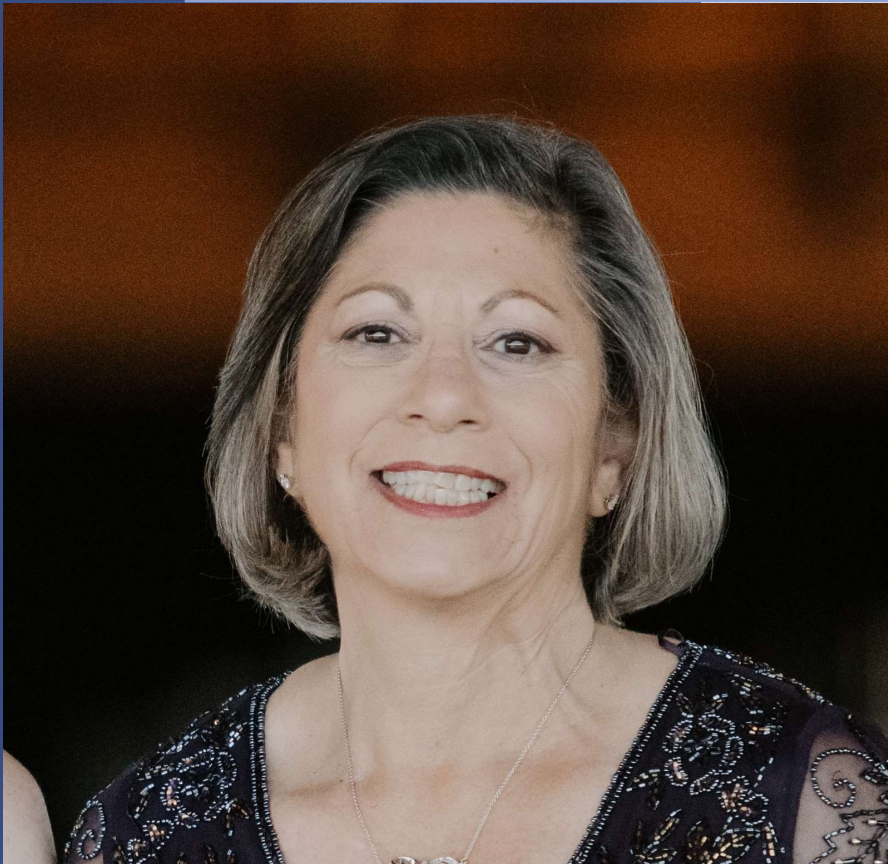


Kelley Mason
Senior Account Executive
HUD/ORCF



- Kelley Mason is a Senior Account Executive with the Department of Housing and Urban Development (HUD), Office of Residential Care Facilities (ORCF). She is an experienced Closer and Title/Survey Reviewer dedicated to great customer service. She is a graduate of the HUD's Management Development Program Fiscal Year 2021 Cohort and has coached others in the program for the last 3 years.
- Ms. Mason recently retired with the rank of Chief Master Sergeant (E-9) from the United States Air Force Reserve after 28 years of service. She is currently enrolled in an Executive Doctorate of Business Administration program at The Pennsylvania State University, Smeal College of Business.

Celia Richey
Account Executive
HUD/ORCF



- Celia Richey is currently an Account Executive with HUD's closing team. She has over 40 years of commercial real estate experience, having originated, underwritten and closed loans across all property types throughout the country. She has been with HUD as both a contractor and closing coordinator since 2019.
- Celia received a JD from the University of Missouri, Kansas City, an MBA with a concentration in finance from Washington University and a BSBA from the University of Missouri with a major in Marketing.
- Celia is the proud mom to two great kids (and their spouses) and the grandmother to 2 adorable grandchildren, with another on the way. She enjoys hiking, walking, and going to the dog park with her Min Pin, Sherman.

**Patricia Celano
Attorney-Advisor
HUD OGC**



- Patricia joined HUD in 2021 as an Attorney-Advisor for Programs in the Newark, New Jersey Field Office. She is the recipient of the Newark Field Office's 2024 Mentor Award and is currently participating as a Fellow in the Partnership for Public Service's Excellence in Government Program.
- Prior to joining HUD, Patricia practiced law in the private sector for twenty-five years, specializing in transactional work including commercial real estate closings, negotiation and enforcement of commercial contracts in Federal and State Courts, and financial restructurings and liquidations in bankruptcy proceedings in New York and New Jersey. She represented a major New Jersey hospital in a \$53M joint venture asset acquisition in a Chapter 11 bankruptcy case through appeal and the New Jersey regulatory approval process.
- Patricia received her undergraduate degree from Rutgers University and her law degree from Seton Hall University School of Law.
- In her free time, Patricia enjoys running and cycling and volunteers with her family through her local Church to assist families struggling with food insecurity. Also, for the past ten years, Patricia has served on the Board of Trustees of her local library.



Legal and Closing Hot Topics

Common Issues

Legal/Closing Issues

- Large Portfolios with Mortgage Reserve

HEALTHCARE MORTGAGEE ADVISORY COUNCIL
Financing Seniors Housing for America

- Issue: Sharing Mortgage Reserve across facilities

- E.g. certain reserve funds collected for a given project may be used for other borrowers of facilities owned by the project sponsors. The policy developed by ORCF contemplates credit support from one FHA insured project to another through the implementation of a Mortgage Reserve Fund.
- Reserve Fund: How would sharing this really work?
- Funds must be project specific.
- Are there any issues with GNMA, other Lenders?
 - Are the investors aware of the comingling of project funds amongst different projects?
 - Can another Lender draw down on the Mortgage Reserve Fund on another project not serviced?
 - Is it a GNMA MBS disclosure violation?
 - E.g. The transfer of monies to another borrower is strictly prohibited as described in the GNMA MBS Guide pursuant to Chapter 16 of the GNMA MBS Guide (section 16-5).
 - E.g. Escrow account funds held on behalf of a given mortgagor must, except as provided in the following paragraph, be used by the Issuer only to pay charges due and payable by that mortgagor. The Issuer may not use escrow funds of one borrower to make payments on behalf of another borrower.

Legal/Closing Issues

- Mortgage Reserve Continued:

HEALTHCARE MORTGAGEE ADVISORY COUNCIL
Financing Seniors Housing for America

- Possible Solutions that Lender's Counsels have discussed.
 - Treat it as a trust for a custodial account and have it held by a trustee. How does mechanics of a custodial account controlled by trustee work? Who handles the draw down request, what is the process?
 - Who is the beneficiary of the Trust?
 - This benefits HUD and would take it out of GNMA context.
 - Is there a better way to draft the agreement to remove concerns?
 - Get GNMA to waive the requirement and treat it as a custodial account.
- ORCF update?

Legal/Closing Issues

- OGC's Electronic Closing Protocols
 - Purpose of the ECP
 - When does the ECP apply?
 - Use of Electronic and Digital Signatures on FHA Loan Documents and other closing exhibits when provided in accordance with the ECP:
 - General rule under the ECP
 - Exceptions: when Electronic and Digital Signatures are not authorized under the ECP
 - HUD Closing Attorneys are not responsible for confirming the authentication of Electronic or Digital Signatures or that such Signatures will be accepted by local jurisdictions on documents submitted for recording.
 - Lender's counsel remains responsible for confirming the requirements of the recording jurisdiction.
- Traditional wet signatures instead of Digital Signatures
- Additional Certification Requirements for loans closed electronically with Electronic Signatures:
 - Electronic Counterpart Signature Clause
 - Borrower's Certificate and Borrower's Counsel's Opinion
 - Certification of No Changes for Post-Endorsement Docket Submissions

Legal/Closing Issues

HEALTHCARE MORTGAGEE ADVISORY COUNCIL

Financing Seniors Housing for America

- **Limited Guaranty/Master Leases**

- Issue: Master Leases have gotten complicated with structures with multiple Lenders.
 - Are they really worth it for the costs it's generating?
 - i.e. attorney fees?
- LGSAs have also gotten very complicated with multiple Lenders.
 - What is the goal of the LGSA?
 - How does having multiple Lenders impact this goal?
 - Reaffirmation forms are awkward (not a HUD form).
 - Does HUD anticipate parties pushing back on the Multiple Lender LGSA Form?
 - If HUD adopts change requests, how does that affect the projects joining downstream v. the prior/older projects which are tied to the same LGSA?
 - What is priority for the other Lenders?
 - How would this work if actually used?
- Guidance for newer Lenders.
 - What do you need to know?

Legal/Closing Issues

- DACAs & DAISAs:
- DACAs and DAISAs-internal agreements of the depository bank
- Incorporation of the Section 232 Handbook requirements into the depository bank's agreements
- Addendum or Rider to the DACA/DAISA with HUD Requirements

Legal/Closing Issues:

- Accounts Receivables:
- Exhibit B of Intercreditor Agreement (Cross Default)
 - ORCF requiring unpublished guidance resulting in AR issues becoming harder to get resolved.
 - Cashflow charts – ORCF asking for global chart for portfolios.
 - After the first few deals, its hard to do on one page.
 - Default rate – Also new requirement that is unpublished.
 - Make sure Bank, Borrower and Lender have agreed to Exhibit B language before it goes to HUD during application. During the application process, ORCF reviews and approves Exhibit B. If it has been vetted, then OCF has very few comments.
 - ICA usually takes multiple iterations – how to avoid.
 - Need to get Lender Legal and A/R Lender to have all substantive terms including 2.7(g) and Exhibit B in “draft final form” as the substantive terms is attached to the Firm Commitment as AR terms memo.
 - Involve the HUD attorney earlier on ICA questions.
- Terms memo doesn't match the final documents.
- Update to ICA is coming out – be sure to send in comments.

HEALTHCARE MORTGAGEE ADVISORY COUNCIL

Financing Seniors Housing for America



LEAN Portal

HEALTHCARE MORTGAGEE ADVISORY COUNCIL

Financing Seniors Housing for America

[This Photo](#) by Unknown Author is licensed under [CC BY-SA](#)

UPDATE TO PORTAL

HEALTHCARE MORTGAGEE ADVISORY COUNCIL

Financing Seniors Housing for America

- ORCF is aware of the many ongoing issues with the HUD 232 Healthcare Portal. We are in the process of working on a new and improved iteration of the portal. The current portal will continue to be used until the newer version is available. Until then, minimal changes to correct the ongoing issues will be able to be implemented.

LEAN Portal Updates/Issues

HEALTHCARE MORTGAGEE ADVISORY COUNCIL

Financing Seniors Housing for America

- Naming conventions still not right
 - Documents still missing such as Assignment of Lease and rents, title exceptions, ICA.
- Need to combine docs for closing but then break them back down for portal.
- ORCF
 - Don't put things in as other and if marked at other put description in box
 - Lender counsel or title to not send hard copies of Regulatory Agreement to ORCF – Portal can now accept the document.
 - Hard copy to OGC?



This Photo by Unknown Author is licensed under [CC BY](#)

OGC and ORCF Thoughts?

- State Closer preferences (especially if portfolio).
- Give more time for signing documents.
- Try to avoid last minute slip pages.
- Let ORCF know about funding/delivery dates... whether Note has to go out the day of closing.
- Involve OGC sooner to save time down the road.
- Know your deal.
- Be Proactive.
- Help solve problems.
- Reach out if you see a mistake or don't understand something.
- Let OGC know ahead of time of any deadlines you need to meet.
- Deadline of deliverables.



Questions?

HEALTHCARE MORTGAGEE ADVISORY COUNCIL
Financing Seniors Housing for America

This Photo by Unknown Author is licensed under [CC BY](#)

Thank you!

MEMBERSHIP@HMAONLINE.NET

HMAONLINE.NET



Financing Seniors Housing for America