



MEMO

To: NYS HOME Local Program Administrators (LPAs)
From: Ann Petersen, Director, NYS HOME Local Program
Subject: Guidance on when to execute and record the note and mortgage lien or restrictive covenant to secure the HOME investment
Date: July 22, 2016

When HOME Local Program funds are used to assist low and moderate-income homebuyers and homeowners to purchase and/or repair housing, Federal and State regulations require a note and mortgage or restrictive covenant to be signed by the HOME beneficiary to secure the HOME investment. The signed note and mortgage or restrictive covenant must be publicly filed and recorded.

At the start of the contract, LPAs choose if they will use the Housing Trust Fund Corporation (HTFC) provided note and mortgage or restrictive covenant template. LPAs must choose prior to the start of the contract and the choice must be program wide. LPAs will typically use the HTFC note and mortgage and CHDO's performing housing development projects will typically use the restrictive covenant.

The order and timing for signing and publicly recording these documents are as follows:

1. For owner occupied housing rehabilitation programs, the note and mortgage is signed by the homeowner after all costs have been determined and before the start of housing rehabilitation. LPA's should only include project costs in the amount of the lien. The signed lien document is to be held in the LPA file until the rehabilitation is complete. Once the homeowner, LPA and contractor signs off that all work meets program property standards and has been completed to satisfaction, the note and mortgage or restrictive covenant is publicly filed and recorded. If there is a change in the amount of assistance, a new note and mortgage or restrictive covenant must be signed for the proper amount. LPAs should destroy the first signed document and will publicly file and record the newly signed document.

2. For home buyer activities, the note and mortgage for the down payment assistance is signed and publicly filed and recorded at the real estate closing/transfer of title when the HOME assisted buyer purchases the home.
3. If funds for housing rehabilitation are included with the homebuyer's down payment assistance, the note and mortgage for the housing rehabilitation will be a second, separate lien from the down payment assistance. This lien will follow the same format for signing and public recording as for owner occupied housing rehabilitation listed above.
4. The HTFC prefers only one note and mortgage to be signed and recorded, requiring a single satisfaction at the end of the period of affordability, however in the instance of purchase assistance with funds for housing rehabilitation, 2 liens will be required.

When determining the amount of assistance to include in the dollar amount of the lien, LPAs must only include the direct amount of subsidy (typically project costs) expended on the unit.

[Please refer to HOME Memo "Clarification on what to include in the lien amount" e-mailed 4/28/16 to LPAs.]

Why does the HTFC want the note and mortgage or restrictive covenant signed before the start of HOME assistance?

The HOME beneficiary's signature on the document prior to the start of work protects the LPA and the HTFC in the event of non-eligibility. For example, in the case of the death of a homeowner prior to completion of housing rehabilitation: the housing rehabilitation was not able to be completed and the low income homeowner is no longer the beneficiary, making the unit ineligible for HOME assistance and all HOME funds expended on the unit must be re-paid. Publicly filing the signed note and mortgage will require the Estate of the deceased homeowner to repay the funds.

LPAs are required to certify that HOME beneficiaries have signed the note and mortgage or restrictive covenant when filling out the IDIS Set-up Form to set up the unit in IDIS.

The LPA must keep a copy of the signed note and mortgage or restrictive covenant in their client file, before the original gets sent for public filing and recording.

If LPA's have questions, please contact your NYS HOME Local Program Manager.