

NYS HOME Local Program

Homebuyer Recapture/Resale Provisions

When HOME funds are used to assist a household in the purchase of a unit, restrictions will be placed on the unit to ensure compliance with the HOME resale and recapture requirements described in 24CFR 92.254(a)(5). All Recapture and Resale mechanisms used to secure the affordability of the HOME assisted unit must be recorded in accordance with State recordation laws.

Recapture:

Under most circumstances (except as noted below under Resale), homeownership projects undertaken by a State recipient or sub-recipient will be subject to recapture. The homebuyer assistance will be secured by means of a note and mortgage given to HTFC by the low-income household being assisted. A standard form of the note and mortgage is provided to State Recipients, sub-recipients and CHDOs by HTFC.

The amount of the note and mortgage is the “homebuyer assistance”. It includes:

- Any HOME funds provided to the buyer at time of purchase (down payment, closing cost or housing rehabilitation) to assist with the purchase, whether provided directly by the program administrator or by the developer using funds provided by the program; and
- Any reduction in the purchase price from fair market value to an affordable purchase price or amount required to be contributed by the buyer through buyer funds or other mortgages.

If there is no direct homebuyer assistance and a development subsidy is provided, then the resale method outlined below must be used.

Affordability Period – The period of affordability specified in the note and mortgage will be the minimum period for the project as specified in 24 CFR 92.254(a), sections (4) and (5).

The following table outlines the required minimum affordability periods:

If the homebuyer assistance in the unit is:	The period of affordability is:
Under \$15,000	5 years
\$15,000 to \$40,000	10 years
Over \$40,000	15 years

The affordability period will be determined by the amount of homebuyer assistance.

Amount subject to recapture -- If the housing does not continue to be the principal residence of the assisted household, due to sale, foreclosure, or any other event, the note and mortgage will require repayment of the amount of HOME funds subject to recapture at the time the event occurred. The amount of recapture permitted in the event of a voluntary or involuntary sale is based on a combination of Owner Investment Returned First (as described in 92.254(a)(5)(ii)(A)(4)) and Pro rata reduction (as described in 92.254(a)(5)(ii)(A)(2)).

Recapture is limited to the net proceeds of the sale, which is defined as the sales price minus superior debt and seller paid closing costs and include only the following items to the extent actually incurred: broker's commission, reasonable attorney's fees, and any transfer tax or recording fee payable by the seller pursuant to state statute or local ordinance in connection with the conveyance.

Upon transfer, whether voluntary or involuntary, the net proceeds of the sale will be determined and distributed as follows, to the extent proceeds are available:

1. Owner shall first be reimbursed from the net proceeds of the sale, if any, for the following:
 - The down payment made at the time of the initial purchase of the Property, if any;
 - The principal amortized on superior debt during the affordability period, if any; and
 - The verified cost of capital improvements to the Property, if any.
2. The HUD Program Administrator shall then be repaid the Recapture Obligation to the extent there are sufficient sale proceeds remaining. The Recapture Obligation is the amount of homebuyer assistance, as defined above. It will be reduced on a pro rata basis (by 1/ [number of years of affordability period]) during the affordability period at the end of each complete year of the affordability period. For example, if a 10 year affordability period applies, and the homebuyer sells at the end of Year 4, then the amount of the note is reduced by 40%. If the HTFC incurs any costs in collecting the Recapture Obligation secured by the Note and Mortgage, including but not limited to reasonable attorney's fees, such costs will be added to the Recapture Obligation and will also be secured by this Note and Mortgage. If the remaining net proceeds are insufficient to repay these amounts, the remaining net proceeds will be considered as full satisfaction of the recapture obligation.
3. The remainder of the net proceeds, if any, shall be retained by Owner.

HOME funds that are used as a development subsidy, and are not part of the homebuyer assistance, will not be subject to recapture from the homebuyer.

Recapture will only be made from net proceeds of sale. If there are no net proceeds of sale, then no recapture shall be made.

HTFC requires that all recaptured funds and program income earned by a State recipient, sub-recipient or CHDO to be returned to the HTFC within 30 days of receipt for reallocation in accordance with the method of distribution of funds described elsewhere in this Plan.

HTFC will allow, in compliance with 92.254(a)(5)(ii), the assumption of a recapture obligation by a subsequent eligible, low-income homebuyer, when no additional HOME assistance is provided to the subsequent homebuyer. The subsequent homebuyer will assume and complete the original terms and conditions of the recapture obligation of the original homebuyer.

Resale:

Under most circumstances, the recapture provisions outlined above will be used in HOME homebuyer activities. However, resale restrictions may or must be used under the following circumstances:

- When HOME Program funds are used only as a development subsidy for the construction or renovation of homeownership housing, and no homebuyer assistance is provided, resale restrictions must be used instead of recapture restrictions as described above.
- Resale restrictions may also be used at the request of the LPA when HOME funds are invested in: a larger homeownership development, a condominium or cooperative project; projects where a substantial per-unit investment of subsidy is provided; local markets with predominantly high home sales prices, rapidly appreciating housing costs, or where affordability will not be preserved by unrestricted sales of assisted units. HTFC approval of the conditions warranting the use of a resale restrictions is required.
- Resale restrictions are also used when land trusts own the property. HOME resale restrictions will be enforced through the land trust ground lease mechanism.

Resale restrictions will ensure that housing assisted with HOME funds is made available for resale only to HOME program eligible low-income households that will use the property as their principal residence.

Resale will be enforced by means of a HTFC provided Restrictive Covenant and

Resale Restriction and/or deed restriction that runs with the title to the land, unless the project is located in an area of “presumed affordability” that meets the conditions described in 92.254(a)(5)(i)(B). Such areas of presumed affordability must be reviewed and approved by the HTFC and HUD.

HTFC will permit the use of notes and mortgages in addition to, but not in lieu of the restrictive covenant and resale restriction and/or deed restriction, to secure the rights of HTFC and to recover HOME funds in the event of non-compliance or adverse transfers.

The statute and rule (92.254(a)(5)(i)(A)) provides that the restriction may be extinguished by a third-party lender in the event of foreclosure, transfer in lieu of foreclosure or assignment of an FHA mortgage in order to clear title. HTFC will permit Local Program Administrators to use rights of first refusal or other means to intervene and preserve the affordability of the unit.

Affordability Period -- The following table outlines the required minimum affordability periods for homebuyer projects that are subject to resale restrictions:

If the total HOME investment in the unit is:	The period of affordability is:
Under \$15,000	5 years
\$15,000 to \$40,000	10 years
Over \$40,000	15 years

The period of affordability is determined by the total investment of HOME funds in the unit, regardless of whether or not the funds are reflected in buyer financing.

Low-income households eligible to purchase properties restricted by resale provisions must be households whose annual incomes do not exceed 80% of the median income for the area as determined by HUD with adjustments for family size and the housing must be occupied by the low-income household as its principal residence throughout the affordability period.

If the assisted property is sold while under the resale restrictions, the home must be sold to a HOME eligible buyer approved by HTFC or its Local Program Administrator.

The price at sale must provide the original HOME-assisted homebuyer a fair return on the investment and be affordable to a reasonable range of low-income buyers. Therefore, sales price during the affordability can occur at market value, with the following limitations:

- Fair return to seller – The price shall not exceed a price that results in net proceeds (after senior debt and sales costs) to the seller that exceeds: (1) the reimbursement of the original owner’s down payment made at the time of initial purchase, if any; (2) the verified costs of capital improvements to the property if any; and (3) principal amortized on the senior debt during the period of ownership. These net proceeds may be adjusted for increases in home prices, using the Housing Price Index (HPI) in the local market during the period of affordability.
- Affordable to range of low-income buyers – The sales price also cannot exceed a price that is affordable to households at or below 80% of area median income (AMI). The HTFC defines “affordable price” as a price at or below the amount that a low income family (at or below 80 % AMI) in which the family is paying no more than 35 percent of their monthly income for the payment of mortgage principal and interest, property taxes and insurance.

The seller must have the sales price approved by HTFC or its Local Program Administrator, in addition to approval of the HOME eligible buyer. If the fair market value of a HOME assisted property subject to resale provisions is more than what is affordable to the subsequent low-income purchaser, then additional HOME assistance may be given by HTFC or its local program administrators.