

Dakota County HOME Consortium HOME Program Resale/Recapture Policy

Purpose

Federal regulation as required within 24 CFR 92 place certain restrictions on HOME-assisted units in order to ensure long-term affordability of the HOME units. If ownership of a HOME-assisted unit is transferred during the period of affordability these restrictions come into play. The HOME program allows for two different options: Resale and Recapture. These tools ensure that the HOME subsidy invested in the unit continues to be used for affordable housing during the period of affordability.

This Resale/Recapture Policy of the Dakota County HOME Consortium hereinafter referred to as “the Consortium” shall identify how and when each option shall be used to ensure long-term affordability of HOME-assisted units. This document describes two policies in detail:

1. Length of Affordability Periods of HOME-assisted units in the Consortium; and
2. The use of Resale versus Recapture.

Policy

Section 1: Length of Affordability Period of HOME-Assisted Units in the Consortium

Federal regulations impose minimum restrictions on long-term affordability but each Consortium member reserves the right to require stricter standards should they choose to do so. The HOME rule ties the length of a unit’s affordability period to the amount of HOME investment in the units. Specifically, 24 CFR 92.254(a)(4) mandates the following timelines for homeownership unit affordability periods:

If the total HOME investment (resale) or direct subsidy (recapture) in the units is:	The Minimum Period of Affordability is:
Under \$15,000	5 Years
Between \$15,000 and \$40,000	10 Years
Over \$40,000	15 Years

Each HOME unit activity funded by the Consortium shall be governed by a written agreement that will include an explicit definition of the required affordability period for the project. It is the intention to use the federally required minimum affordability period as listed above unless otherwise directed by the Consortium to require a longer affordability period. The affordability period shall commence on the day that the project is entered into the federal Integrated Disbursement and Information System (IDIS) as a completed project.

Section 2: The Use of Resale Versus Recapture

As mentioned above, 24 CFR 92.254(a)(5) identified the resale and recapture option as defined below as the only two acceptable methods for securing the long-term affordability of HOME-assisted units.

Key Resale/Recapture Term Definitions:

1. **Direct Homebuyer Subsidy:** A direct subsidy consists of financial assistance that reduces the purchase price from fair market value to an affordable price or otherwise subsidizes the purchase, i.e. down payment, purchase price discount, or closing cost assistance.
2. **Development Subsidy:** A development subsidy is the difference between the cost to develop housing and the fair market price (appraised value). For example, the Consortium may provide \$20,000 in grant funds to a developer to rehabilitate a home, the after rehab value is only \$15,000 because of neighborhood and market conditions. The \$5,000 difference is a development subsidy. While the subsidy does not go directly to the homebuyer, it helps make the development of the home feasible.
3. **Homebuyer investment:** The homebuyer's investment consists of the portion of initial down payment paid by the homebuyer combined with the value of any capital improvements made with the homebuyer's funds.
4. **Net Proceeds:** The net proceeds of a sale are an amount equal to the sales price minus non-HOME loan repayments and any closing costs. There are no circumstances wherein the Consortium will recapture more than is available from the net proceeds of the sale.
5. **Period of Affordability:** HOME regulations require that assisted properties remain affordable for a specific period of time depending on the level of HOME funds invested and whether the unit is under resale or recapture provisions. As described above, the Consortium identifies its own affordability periods that are typically equal to the HUD-required minimum period.
6. **Noncompliance:** Failure to comply with the resale or recapture requirements means that:
 - a. The original HOME-assisted homebuyer no longer occupies the unit as his/her principal residence (i.e., unit is rented or vacant), or
 - b. The home was sold during the period of affordability and the applicable resale or recapture provisions were not enforced.

Resale. Under the resale option, if the current homeowner decides to sell his/her home during the period of affordability the new homeowner must be income-qualified under the HOME program and must occupy the home as his/her principal residence. The original HOME-assisted owner must receive a fair return on investment, which is based on the initial investment plus improvements, as identified below. Additionally, the sale price must be affordable to a range of subsequent low-income owner-occupied households.

As required by 24 CFR 92.254(a)(5), the Consortium must ensure that the price at resale provides the original HOME-assisted owner a fair return on investment. The Consortium shall meet this requirement by using the percentage change in the Consumer Price Index (CPI) as its standard index for Fair Return on investment over the period of ownership. The Consortium will

multiply this percentage change by the combined amount of down payment funds provided by the initial owner at the time of purchase and the cost of capital improvements made by the initial owner during the ownership period. This multiplied amount, plus the original value of the down payment funds and capital improvement made, will constitute the fair return to the original homebuyer in the event there are net proceeds available from the resale.

Capital improvements will include improvements made to the property that adds basis to the home as defined within IRS Publication 523. The initial homeowner must keep written documentation regarding the costs of capital improvements, including receipts or copies of contracts and payments made to contractors, in order to receive credit for the value of the capital improvements at resale. The initial homeowner must also keep written documentation confirming the necessary permitting and inspection processes were followed, when applicable.

A fair return on investment to the initial homebuyer may be less than the full value calculated above or no return if there are no or insufficient net proceeds from the resale. This can occur when market conditions are such that the median sales price has stagnated or decreased during the ownership period or when the initial homebuyer has paid more for capital improvements than can be supported by the market at the time of resale.

To provide continued affordability of the property, the Consortium will ensure the home is affordable to a range of homebuyers at the time of resale. The targeted population of such buyers will include households with incomes between 50% and 80% Area Median Income (AMI) who pays no more than 30% of gross income for principal, interest, property taxes, homeowner association dues, and insurance. If providing funds as a development subsidy to certain developers that work with lower income households, the targeted income range of subsequent buyers may be of lower incomes as defined in a written agreement between the Consortium member and the recipient of the development subsidy. If the market price that provides a fair return to the initial homebuyer is too high to be affordable for the subsequent buyer within the targeted range to purchase the property, the Consortium, at its sole discretion, may provide HOME assistance as a direct subsidy to the subsequent buyer.

It is important to note that in certain circumstances, such as a declining housing market where home values are depreciating, the original homebuyer may not receive a return on his/her investment because the home sold for less or the same price as the original purchase price.

Recapture. The recapture option requires that all or a portion of the direct HOME subsidy be reimbursed to the Consortium if the homeowner decides to transfer the property within the period of affordability. The HOME-assisted homeowner must occupy that home as his/her principal residence throughout the period of affordability. In the event that the owner ceases to occupy the home as his/her principal residence during the period of affordability this shall be deemed to constitute a violation of the written agreement governing the use of funds and all HOME funds shall be required to be repaid.

The maximum amount of the HOME subsidy that may be recaptured is capped at the amount of available net proceeds. The net proceeds of a sale are an amount equal to the sales price minus non-HOME loan repayments and any closing costs. The homeowner may transfer the house at whatever price the market will bear and to any person regardless of income. Recaptured funds must be used for HOME-eligible activities. The recapture option is only available to HOME funds that were a direct subsidy to the homeowner. The direct subsidy may be provided in conjunction with a development subsidy; however, the affordability period is based on the direct subsidy. The recapture option cannot be used on HOME funds that are solely considered development subsidies.

Anoka County, Ramsey County, Washington County and the City of Woodbury recapture the entire amount of the direct HOME subsidy provided to the homebuyer before the homebuyer receives a return. The amount recaptured is limited to the net proceeds available from the sale. Dakota County follows the shared net proceeds option of recapture.

If HOME funds are a loan to a homebuyer, the homebuyer shall be allowed to retain all appreciation; however, the mortgage and note that secure the HOME funds shall determine the structure in which principal and interest are repaid during the term of the loan.

Section 3: Consortium Uses

Determination of when Resale or Recapture will be used:

- When HOME funds are awarded only as a development subsidy to a developer for a homebuyer activity, the resale option will be used.
- When HOME funds are used to provide a direct subsidy to homebuyer(s), the recapture option will be used.

Section 4: Enforcement Documentation

The affordability period of any HOME-assisted units shall be governed by a legal instrument recorded at the appropriate County Recorder's office. This same instrument shall also identify and enforce the resale or recapture provisions of the HOME program. Such documentation shall be provided by the Consortium member and may include one or more of the following depending on the type of project:

1. Resale:
 - a. Deed Restriction; or
 - b. Declaration of Covenant.
2. Recapture:
 - a. Anoka County – Recorded Repayment Agreement and Note;
 - b. Dakota County - Mortgage and Note;
 - c. Ramsey County - Grant of Lien, Note and Declaration;
 - d. Washington County - Mortgage, Note and Declaration;
 - e. City of Woodbury – Mortgage and Note.

The precise nature of the documentation will be identified in the written agreement that governs the usage of the HOME funds in the project. Please contact the appropriate

Consortium member to ensure the correct document for enforcement of the HOME resale/recapture provision is used and recorded.

HOME Written Agreement. The HOME written agreement must be a separate legal document from any loan instrument and must, at a minimum, comply with the requirements at 24 CFR 92.504(c)(5) of the HOME rule. If the Consortium member provides HOME funds to a subrecipient or CHDO to develop and sell affordable housing, the Consortium member must prepare and execute the agreement with the buyer, or be a party to the agreement along with the entity it funded to ensure it can enforce the written agreement.

The executed HOME written agreement with the homebuyer must be recorded at the appropriate County Recorder's office when resale or recapture is used.

Section 5: Ongoing Monitoring

For HOME-assisted homebuyer projects under resale or recapture agreements, the Consortium will perform ongoing monitoring of the principal residency requirement during the period of affordability to confirm that the buyer is using the property as his/her principal residence. This can be accomplished through a variety of means, including, but not limited to verification of the buyer's name on utility company records, insurance company records for the home, property records verification, and or postcard or letters mailed with "do not forward" instructions can demonstrate whether the buyer is receiving mail at the home.