CITY OF NEWPORT NEWS

RECAPTURE POLICY FOR THE CITY OF NEWPORT NEWS HOMEOWNERSHIP PROGRAMS

IN CONJUNCTION WITH THE NEWPORT NEWS REDEVELOPMENT AND HOUSING AUTHORITY (NNRHA)

EQUAL HOUSING OPPORTUNITY

RECAPTURE POLICY
CITY OF NEWPORT NEWS, VIRGINIA
HOMEOWNERSHIP PROGRAMS

When federal assistance is provided to homebuyers using the City of Newport News' HOME Investment Partnerships Program (HOME) buyers are required to use the home as their principal residence for a certain length of time. This is called the "affordability period", and the length of time depends on the amount of federal assistance provided directly to homebuyers. NNRHA, administers the Homebuyer Assistance Programs on behalf of the City of Newport News and will ensure the requirements of the Recapture Policy are met by each homebuyer, sub-recipients, Developer and Community Housing Development Organization (CHDO) receiving HOME funds.

RECAPTURE PROVISIONS

The City of Newport News uses ***Recapture Provisions*** to ensure homes remain the buyers' principal residence throughout the affordability period.

For HOME-assisted homebuyer units under the recapture option, the period of affordability is based upon the direct HOME subsidy provided to the homebuyer that enabled the homebuyer to purchase the unit. In the event of a sale, foreclosure, or any other transfer of the HOME assisted unit during the affordability period some or all of the HOME investment must be repaid, depending on the manner in which the funds were originally provided. This allows the owner to sell the home to any buyer and once the appropriate HOME funds are repaid, the property is no longer subject to any federal, City or NNRHA restrictions.

Two key concepts in the recapture requirements – *direct subsidy to the homebuyer* and *net proceeds* - must be understood in order to determine the amount of HOME assistance subject to recapture, and the applicable period of affordability on the unit. The recapture approach requires that all or a portion of the *direct subsidy* provided to the homebuyer be recaptured from the *net proceeds* of the sale.

Direct subsidy is the amount of HOME assistance that enabled the household to purchase the home. The direct subsidy includes federal funds used to cover down payment, closing costs, principal reduction, interest subsidy, or other assistance provided directly to the homebuyer. In addition, direct subsidy includes any assistance that reduced the purchase price from the lesser of the HOME Homeownership Value Limit (maximum sale price) or fair market value (which may be less than the value limit), to an affordable price. The length of the affordability period is based on the direct subsidy:

HOUSING USED FOR HOMEOWNERSHIP		
Activity	**HOME Investment**	**Minimum Affordability Period**
Acquisition of existing housing or new construction	$14,999 or less	5 years
Acquisition of existing housing or new construction	$15,000 to $40,000	10 years
Acquisition of existing housing or new construction	Over $40,000	15 years

Net proceeds are defined as the sales price minus superior loan repayment (other than HOME funds) and any closing costs. Under no circumstances can the City or its subrecipients recapture more than is available from the net proceeds of the sale.

PERIOD OF AFFORDABILITY

The use of HOME funds for homebuyer programs requires an affordability period until the home is no longer the primary residence. The requirements must be incorporated in an agreement with the homebuyer and through the deed of trust and note on the property.

If a household decides to sell its home *or to no longer use the home as its principal residence*, the City must determine whether the affordability period requirements have been met. If they have, the household owes no more money and may sell the house free of any conditions. If they have not, the City must recapture some or the entire HOME subsidy.

- The amount of HOME investment to be recaptured will be reduced on a pro-rata basis for the time the homeowner has owned and occupied the housing measured against the required affordability period. A forgivable loan will be used to finance the HOME assistance to the homebuyer. The HOME balance due will be reduced by an equal amount annually during the affordability period. The HOME amount will be completely forgiven if the homebuyer remains the owner and occupant for the full affordability period.

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> *Under no circumstances can the City recapture more than is available from the net proceeds of the sale. If there are no net proceeds then no repayment is required.*

HOW DOES THIS WORK?

The City provides two types of assistance to buyers (buyers may receive one type or the other depending on their financial need):

1) **Deferred Mortgage Loan**. Newly constructed single family homes located in the Madison Heights Redevelopment area of the City may qualify for up to 40,000 towards down payment, principal reduction, and closing costs associated with the purchase of a home. The homebuyer receiving HOME funds may receive a no interest loan of up to $40,000 to assist with the purchase of these homes in this designated redevelopment area. The Deferred Loan is combined with a traditional first mortgage to make housing more affordable for low and middle income homebuyers. The first $10,000 is incrementally forgiven and does not require repayment as long as the household maintains the home as its principal residence. This is determined by dividing the number of years in the affordability period by $10,000 and a pro-rata amount is forgiven each year (the household does not have to repay the funds and, if they live in the home throughout the affordability period, the entire $10,000 is forgiven).

   The remaining balance of the homebuyer assistance will be in the form of deferred mortgage loan and will be amortized over a twenty year (240 months) period at zero percent and requires equal monthly payments based on the amount of HOME funds remaining and the number of months of the loan. The loan payments do not start until year six (6) after the loan closing.

Example: New construction home purchased in Madison Heights

Price of home: *$150,000*
1st Mortgage: *$120,000*
Deferred Loan *$30,000**

**HOME Affordability Period: 10 Years*
The 1st $10,000 is forgiven on prorate basis reduced at 10% per year (or $1,000/Year reduction)
Starting in Year six (6) the remaining balance of $20,000 will be amortized over a twenty year period (240 months) at zero percent interest ($20,000/240=$83.33)

2) **Down Payment/Closing Cost Assistance**: For persons interested in purchasing a newly constructed or pre-existing home, the sub-recipients, Developer and Community Housing Development Organization (CHDO) may provide down payment assistance of up to $10,000 toward the purchase a home located throughout the City. The HOME direct subsidy balance due will be reduced by an equal amount annually over a five (5) year period during the affordability period. This type of assistance is an incrementally forgiven, deferred loan that does not require repayment as long as the household maintains the home as its principal residence. However, if the property is sold within the five-year period, then a pro-rated amount of the forgivable loan shall be repaid to the City of City or it's subrecipient at the time of sale.

HOW MUCH MAY HAVE TO BE REPAID?

If the house is sold by the homebuyer during the affordability period, the City will recapture the remaining HOME funds out of net proceeds as follows:

1) Deferred Mortgage Loan. (***EXAMPLE 1)*****:**
2) Down Payment/Closing Cost Assistance: (***EXAMPLE* 2**)

EXAMPLE 1**:**
John and Jane Smith bought a new construction single family home in Madison Heights for $150,000 (including their closing costs) and got a bank loan for $120,000 of that amount. There was a gap of $30,000 that was needed to purchase this home.

The $30,000 in direct homebuyer assistance from the City was in the form of a $20,000 amortizing deferred loan and a $10,000 incrementally, forgivable loan. Their total assistance is $30,000, so the **affordability period** for their home is **ten years**.

In the third year, the couple decides to sell their home and move. At the time of the sale, they have lived in the home for three full years. The proceeds from the sale is first used to repay the first mortgage loan to the bank, and then to pay the remaining balance on their amortizing Deferred loan to the City ($20,000).

The $10,000 incrementally forgiven, loan has been forgiven at a rate of $1, 000 per year over the first 10 year period. Because they have lived in the home three years, $3,000 is forgiven. They are only responsible for repaying the remaining $7,000. The total amount due at the time of sale would be $27,000 ($20,000 remaining on the deferred loan + $7,000 remaining on the forgivable loan).

The City will recapture the amount of the direct HOME subsidy provided to the homebuyer before the homebuyer receives any proceeds from the sale. The city's recapture amount is limited to no more than the total net proceeds available from the sale. In some cases, such as declining housing markets, the net proceeds available at the time of sale may be insufficient to recapture the entire direct HOME subsidy provided to the homebuyer. Since the HOME rule limits recapture to available net proceeds, the City can only recapture what is available form net proceeds.

EXAMPLE 2

A homebuyer receives $10,000 of HOME down payment assistance to purchase a home. The direct HOME subsidy to the homebuyer is $10,000, which results in a five-year period of affordability. If the homebuyer sells the home after three years, the City or its subrecipient would recapture, assuming that there are sufficient net proceeds, $4,000 of the direct HOME subsidy. The $10,000 is incrementally forgiven at a rate of $2,000 per year over the five-year affordability period. Because they have lived in the home three years, $6,000 is forgiven. They are only responsible for repaying the remaining $4,000. All federal program requirements have been met, and there are no additional restrictions.

If the net proceeds are insufficient, the homebuyer may not receive their entire investment back or the City may not be able to recapture the full amount due under the recapture agreement from net proceeds available. In such instances where there are insufficient net proceeds to recapture the amount due, the City is not responsible for repaying the difference between the amount of direct HOME subsidy due and the recaptured amount available for net proceeds.

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Under no circumstances can the City recapture more than is available from the net proceeds of the sale. If there are no net proceeds then no repayment is required.

HOW IS THIS ENFORCED?

The City will enforce the recapture provision requirement in its contractual agreement with its sub-recipients, developers and CHDOs. This recapture provision must be used by all sub-recipients, developers and CHDO's when there is a sale of property using HOME Investment Partnership program. Therefore, all the sub-recipients, developers or CHDOs will be responsible for passing the recapture provision requirement to the purchaser of the HOME assisted unit in the form of a deed of trust that runs concurrently with the affordability period.

Noncompliance

During the period of affordability the city will monitor the owner's compliance with the principal residency requirement. A homebuyer is noncompliant with the HOME affordability requirements if he/she fails to reside in the unit as their principal residence without transferring title (i.e., by either vacating or renting the unit to another occupant) or if he/she sells the property without complying with the applicable recapture provisions. In the event of noncompliance, the city reserves the right to require the buyer to repay the entire HOME investment (including the direct subsidy and any other additional development subsidy provided).

Refinancing Policy

In order for new executed subordination agreement to be provided to the senior first lien holder, the senior first lien refinance must meet the following conditions:

1. The new senior first lien will reduce the monthly payments to the homeowner, thereby making the monthly payments more affordable; or
2. Reduce the loan term;
3. The new senior lien interest rate must be fixed for the life of the loan (Balloon or ARM loans are ineligible);
4. No cash equity is withdrawn by the homeowner as a result of the refinancing actions;
5. Newport News and/or /NNRHA will, at its discretion, agree to accept net proceeds in the event of a short sale to avoid foreclosure

The refinancing request will be processed according to the following procedure:

1. Submit a written request to NNRHA Community Development Department to verify the minimum refinancing requirements with one month in advance from the expected closing;
2. Newport News and/or /NNRHA will review the final HUD-1 Settlement Statement two weeks prior to closing the refinance.
3. If applicable, the City of Newport News/NNRHA will issue written approval a week prior to the closing date.
4. Newport News and/or /NNRHA will be provided with a copy of the final, executed HUD-1 Settlement Statement, Promissory Note, and recorded Deed of Trust three days in advance of the closing date.
5. If written permission is not granted by the City of Newport News/NNRHA allowing the refinance of the Senior Lien, the DPA OR Soft Second Loan will become immediately due and payable prior to closing the refinance.
6. If written permission is granted by the City of Newport News/NNRHA and it is determined that the refinancing action does not meet the conditions as stated above, the DPA OR Soft second Loan will become immediately due and payable prior to closing the refinance.
7. Home Equity loans will trigger the repayment requirements of the DPA OR soft second Programs loans.
8. The DPA OR Soft Second Notes must be paid-in-full in order for the City of Newport News/NNRHA to execute a release of lien.

Revised 8/2015