

**Urbana HOME Consortium
Resale and Recapture Guidelines for
HOME Program Activities**

The Urbana HOME Consortium will use HOME Investment Partnerships Program funds to provide housing for low-income persons. The forms of funding used to assist homebuyers and/or developers include: down payment assistance, development subsidies, or some combination of these methods. The Consortium will use the Recapture method of insuring affordability for all homebuyer activities in which direct HOME funds assistance is provided. The Consortium will use the Resale provision of insuring affordability when direct HOME funds assistance is not provided. Only one method shall be utilized for each project, the Recapture method is only allowed when there is direct HOME funds assistance provided.

Recapture Provisions

Subject to recapture are the HOME funds that are invested in a HOME assisted unit, as a direct subsidy to the homebuyer. The subsidy could include down payment assistance and the amount of each subsidy would be a minimum of \$1,000 and differ per each homebuyer. The minimum length of affordability is based on the total direct HOME funds assistance provided:

Total HOME Subsidy per unit	Minimum period of Affordability
Under \$15,000	5 Years
\$15,000 to \$40,000	10 Years
Over \$40,000	15 Years

Affordability Requirements for the HOME Program

The period of affordability shall commence from the date the activity is identified as "completed" in HUD's Integrated Disbursement Information System (IDIS).

The Recapture Provisions are as follows:

- The Affordability Period shall be based on the total direct HOME subsidy to the homebuyer and does not take into account a development subsidy provided on the unit.
- The buyer must be purchasing the home to use as a principal residence. In other words, the buyer must intend to live in the home for the entire affordability period and not be buying the home for any other purpose, such as investment or rental property.
- Enforcement Mechanisms – Recapture provisions shall be detailed within each program written agreement between the homebuyer and a Consortium entity and enforced through a ~~Notice of Use Restriction~~ mortgage and promissory note filed with the Champaign County Recorder's Office. The Urbana HOME Consortium members and designated Community Housing Development Organizations agree that, to the extent allowable by law, to secure the HOME funds, an agreement with the homebuyer, as well as a ~~mortgage, and~~ promissory note, ~~and land use regulatory agreement~~ shall be executed for any HOME funded homeownership property. Each document will include the prescribed net sales proceeds provisions for the recapture of HOME funds. The mortgage and promissory note are to be recorded against the title to the property.
- The requirements within shall be triggered upon sale or transfer of the HOME assisted property. As listed below:

- In the event of a sale, conveyance or other transfer of the property, excluding any one or more of the following (each, a “Permitted Transfer”): any sale, conveyance or transfer
 - (A) to a spouse upon a dissolution of marriage, (B) to the surviving spouse upon the death of a joint tenant Owner, (C) by will, or (D) upon foreclosure or deed in lieu of foreclosure, provided however that there are no Net Proceeds from the foreclosure or deed in lieu of foreclosure or that the Consortium has received all or a portion of the funds from the Net Proceeds from the foreclosure or deed in lieu of foreclosure, then the Consortium shall receive a portion of the funds from the Net Proceeds.
- The Consortium will reduce the HOME investment amount to be recaptured from the Net Proceeds on a prorated basis for the time the Homeowner has owned and occupied the housing measured against the remaining years in the required Affordability Period. The prorated basis is as follows:
 - First Year - 90% of HOME investment from available Net Proceeds
 - Second Year - 70% of HOME investment from available Net Proceeds
 - Third Year - 50% of HOME investment from available Net Proceeds
 - Fourth Year - 30% of HOME investment from available Net Proceeds
 - Fifth Year - 10% of HOME investment from available Net Proceeds
- The amount of recapture funds are subject to the availability of Net Proceeds available from the resale of the property. The term “Net Proceeds” shall mean the proceeds as indicated upon a closing settlement statement of the net amount to be paid to the seller. In the event that no such statement exists, “Net Proceeds” shall mean the amount equal to the sales price (X) minus any superior private debt (Y) and minus any reasonable closing costs (Z), ~~as determined by the Consortium, including, but not limited to, title insurance, recording fees, Realtor's commissions or property taxes, which are defined as including only the following: title search fees, state, county, and local transfer fees, recording fees, courier fees, and closing officer fees.~~
- Additionally, the assisted Homebuyer will agree within the Affordability Period, to not vacate and then lease the property. In the event that the Homebuyer should vacate and then lease the property within the Affordability Period, the Homebuyer agrees, upon written demand from the Consortium sent to the Homebuyer’s last known address, to re-occupy the property within a reasonable time as determined by the Consortium and remain in the property until the expiration of the Affordability Period. If re-occupancy does not occur the Homebuyer agrees to repay the total amount of the HOME subsidy assistance to the Consortium. The repayment shall become due and payable upon the Consortium’s demand.

Resale Provisions

Subject to Resale Provisions are the total HOME funds that are invested in a HOME-assisted unit in which no direct subsidy assistance is provided. The minimum length of affordability is based on the total HOME funds assistance provided:

Affordability Requirements for the HOME Program

Total HOME Subsidy per unit	Minimum period of Affordability
Under \$15,000	5 Years
\$15,000 to \$40,000	10 Years
Over \$40,000	15 Years

The period of affordability shall commence from the date the activity is identified as “completed” in HUD’s Integrated Disbursement Information System (IDIS).

The Resale Provisions are as follows:

- The Affordability Period is based on the total amount of HOME funds invested in a property.
- The buyer must be purchasing the home to use as a principal residence. In other words, the buyer must intend to live in the home for the entire affordability period and not be buying the home for any other purpose, such as investment or rental property.
- Enforcement Mechanisms – Recapture provisions shall be detailed within each program written agreement between the homebuyer and the Urbana HOME Consortium and enforced through a Notice of Use Restriction filed with the Champaign County Recorder's Office.
- Methods – The Resale option ensures that the HOME assisted unit remains affordable over the entire period of affordability. Resale Provisions must be used where there is no direct HOME funds assistance provided.
- The requirements within shall be triggered upon sale or transfer of the HOME assisted property.

As listed below:

- Within the Affordability Period, the Owner agrees to only sell, convey or otherwise transfer the property to a low-income buyer for a sales price that is affordable and provides a fair return on owner investment, excluding any one or more of the following (each, a "Permitted Transfer"): any sale, conveyance or transfer (A) to a spouse upon a dissolution of marriage, (B) to the surviving spouse upon the death of a joint tenant Owner, (C) by will to a low-income buyer, or (D) upon foreclosure or deed in lieu of foreclosure, provided however the Affordability Period has not expired and any resale of the property is to a low-income buyer who will occupy the property for the remainder of the Affordability Period.
- The term "low-income buyer" has an annual income, as adjusted for family size, that is less than or equal to eighty percent (80%) of the area median income (as defined by HUD) for the Champaign County area.
- For HOME assisted projects that do not include direct buyer assistance, a resale restriction will be used, to be in effect for the duration of the affordability period. The affordability period is based on the amount of HOME assistance provided to the project. A land use restriction shall be recorded against the title to the property. This document will include a provision restricting the sales price such that it must be "affordable" to low-income buyers. In this instance, the affordable price results in a monthly housing cost for principal, interest, taxes and insurance of not more than 30% of the gross monthly income for a household below 80% of the area median income for the Champaign County Area.
- For HOME-assisted, homeownership units, wherein HOME funds are not utilized to provide direct assistance to the homebuyer, net proceeds from the sale must provide the original homebuyer, now the home seller, a "fair return" on his/her investment (including any down payment and capital improvement investment made by the seller since purchase). The sales price may encompass the following in its formula:
 - The cost of any capital improvements, documented with receipts including ~~but not limited~~ to only the following:
 - Any additions to the home such as a bedroom, bathroom, or garage;
 - Wholesale Replacement of heating, ventilation, and air conditioning systems;
 - Accessibility improvements such as bathroom modifications for disabled or elderly which were not installed through a federal, state, or locally-funded grant program; and
 - Outdoor improvements such as a new driveway, walkway, retaining wall, or fence.

- The increase in the value of owner equity and investment as calculated by the cumulative percentage of change which is calculated by the Housing Price Index (HPI) calculator of the Federal Housing Finance Agency (X) plus 1.00 times the total owner investment at time of purchase (Y) plus the documented improvements as described above (Z).
 - (Example - Home purchased in 2000 for \$50,000. The HPI for 2000-2004 stayed the same at +.03 for each year, which calculates to a cumulative percentage of .12. To calculate "fair return" one must multiply $\$50,000 \times 1.12 = \$56,000$, plus the documented improvements of \$4,000 would total \$60,000. The "fair return" to the seller would be the increase in value of \$60,000, minus the original investment of \$50,000 to equal a \$10,000 fair return.)
- Additionally, the assisted Homebuyer will agree within the Affordability Period, to not vacate and then lease the property. In the event that the Homebuyer should vacate and then lease the property within the Affordability Period, the Homebuyer agrees, upon written demand from the Consortium sent to the Homebuyer's last known address, to re-occupy the property within a reasonable time as determined by the Consortium and remain in the property until the expiration of the Affordability Period. If re-occupancy does not occur the Homebuyer agrees to repay the total amount of the HOME subsidy assistance to the Consortium. The repayment shall become due and payable upon the Consortium's demand.