



## COMMUNITY DEVELOPMENT

### DEPARTMENT OF METROPOLITAN DEVELOPMENT

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# Homebuyer Program Guidelines including Recapture and Resale Provisions

## For HOME funded Programs

The purpose of this document is to define the Homebuyer Program Guidelines including the Recapture-Resale provisions for subrecipients using funds provided with HOME dollars.

## Purpose of Homebuyer Program:

The City of Evansville (City) by and through its Department of Metropolitan Development (DMD) receives federal funds from the U.S. Department of Housing and Urban Development (HUD) and administers the HOME Investment Partnerships Grant Program (HOME). The City/DMD provides HOME allocations to Community Development Housing Organizations (CHDOs)/Developers interested in providing affordable housing to low income persons residing in Evansville, Indiana. The HOME Final Rule and HOME regulations are reference guides in administrating the various homebuyer programs.

### Participant Eligibility

- A. The applicant(s) household income may not exceed 80% of the area median income.
- B. Household income is verified for all members over the age of 18 years-old.
- C. Annual income is determined by examining at least two months of recent source documents.
- D. The applicant(s) housing debt (principal, interest, taxes, insurance "PITI") may not exceed 30% of the total gross income.
- E. The applicant(s) total debt may not exceed 40% of the total gross income.
- F. The applicant(s) must be able to obtain standard financing at a fixed rate. Sales contracts are prohibited.
- G. The applicant(s) must complete housing counseling homebuyer education provided by an approved partner agency.
- H. The applicant(s) must be a first time homebuyer (down payment assistance only).
- I. The applicant must order a home inspection performed by a licensed home inspector identifying all health and safety repairs and maintenance repairs. All items listed on the Summary Inspection Report must be corrected by licensed contractors, if applicable.

### Property Eligibility

- A. The housing must be located within the corporate city limits of Evansville, Indiana.
- B. The housing must be single family (Additional units up to 4 units is allowable, however the addition of rental units will likely increase the affordability period.)
- C. The housing must be modest – may not exceed 95% of the area median purchase price (must be verified with HUD)
- D. The housing must be the principal residence of the homebuyer(s)
- E. The forms of ownership permitted include:
  1. Fee simple title
  2. 99-year lease
  3. Condominium
  4. Cooperative Housing
- F. An appraisal is required to determine the property's market value.
- G. The property must be inspected by a certified housing inspector for homebuyer **acquisition only** prior to the homebuyer sales agreement to assure that the property satisfies local housing standards. All requested repairs must be completed by the seller, through a licensed contractor if applicable, and be inspected by the DMD Rehab Inspector.
- H. Homebuyer projects – new construction, reconstruction, or rehab must satisfy local housing standards and receive a Certificate of Occupancy from the Evansville-Vanderburgh County Building Commission.

**Loan Terms**

- A. Minimum loan amount of assistance - \$1,000
- B. Maximum loan amount - the loan is based on the purchase price plus closing costs minus the maximum allowed by the prime lender. See Property Eligibility, C 1. and C 2.
- C. Non-interest bearing loans – usually forgivable loan termed over the affordability period.
- D. Down payment and closing costs are not provided to homebuyer(s) who own other real estate.
  
- E. Other Allowable Forms of HOME Assistance
  - 1. Down Payment Assistance
  - 4. Guarantee loans
  - 2. Non-interest bearing loans
  - 5. Interest bearing loans
  - 3. Equity Investments
  - 6. Grant – subject to resale provisions

**Recapture Provision** – When the real estate is sold below fair market value; the difference between the fair market value and the purchase price plus reasonable closing costs is considered the direct subsidy to the homebuyer(s). The amount does not include the cost of development (development subsidy).

- A. **The City/DMD uses Recapture Provisions when HOME funds are provided to a homebuyer.**
  
- B. **Periods of affordability.** The HOME-assisted housing must meet the affordability requirements for not less than the applicable period specified in the following table, beginning after project completion. The per unit amount of HOME funds and the affordability period that they trigger are described more fully in paragraphs (a) (5) (i) (resale) and (ii) (recapture) of this section.

Homeownership assistance HOME amount per-unit	Minimum period of affordability in years
Under \$15,000	5 years
\$15,000 to \$40,000	10 years
Over \$40,000	15 years

- C. City/DMD will recapture the balance of the forgivable mortgage if the property is sold, or when the original purchaser is no longer the primary resident during the affordability term, and prior to the homebuyer receiving any net proceeds.
- D. **Net Proceeds** is the difference between the sales price and the primary mortgage balance plus reasonable closing costs.
- E. City/DMD will not require repayment of the mortgage if no net proceeds are available.
- F. City may only collect part or all of the HOME assistance from the net proceeds
  - a. Recapture agreement is satisfied upon receipt of any HOME funds due
  - b. Lien is released and affordability period terminates
- G. Net Proceed Calculation - Example

**SALES PRICE – PRIMARY MORTGAGE BALANCE + CLOSING COSTS = NET PROCEEDS**

**NET PROCEEDS – BALANCE OF CITY/DMD MORTGAGE = NET PROCEEDS TO MORTGAGEE (IF AVAILABLE).**

Shared Net Proceeds – City/DMD may share net proceeds at the time of sale or refinance.

1. Determine the Value – Current Appraised Value
2. Actual and Reasonable Sales Costs – property taxes, title insurance, cost of appraisal, realtor fees
3. Cost of depreciable improvement
  - a. Formula  
$$\text{Shared Appreciation} = (\text{Net Proceeds} - \text{Total Original Development}) \times (\text{Original Principal} / \text{Total Original Development})$$
  - b. Component Definitions
    - 1.) Original Principal = the loan amount
    - 2.) Total Original Development = Appraised fair market value of property at the time of the loan and the agreed purchase at the time of the loan.

**Homebuyer Agreement** – 92.504 Written Agreements executed between the City/DMD and the mortgagee(s) are required and must include the following:

- A. Amount of Direct Subsidy to Mortgagee(s) and Use of mortgage
- B. Principal residency requirement
- C. Duration of the Affordability period
- D. How recapture will be calculated. Net Proceeds – Sale prior to the end of the affordability period – balance of City/DMD mortgage repaid first
- E. The Homebuyer Agreement is signed by the homebuyer(s) at the loan closing

**Other Documents signed by the homebuyer(s)**

- A. Deed Restriction – enforces the affordability period
- B. Mortgage and Promissory Note – enforces affordability period when deed restriction cannot be used.
  1. Loan amount
  2. Affordability Terms (5-15 years)
  3. Recapture or Resale Provision
  4. Pre-payment – does not end the affordability period.

**When DMD uses Resale (not recommended)**

- A. When a homebuyer(s) purchase would result in resale where financial assistance was not required by the homebuyer(s), the direct assistance would result in the HOME allocation amount provided to the CHDO/Developer/Owner to develop the property.
- B. When homebuyer assistance is a grant would result in resale
- C. When a homebuyer unit cannot be sold within nine months after completion; the unit must be converted to a rental unit would result in resale. If new construction, then the affordability period changes from fifteen years to 20 years
- D. When a homebuyer purchases a single-family unit greater than one unit and less than 4 units.
- E. Program Terms and Conditions
  1. Homebuyer Household Income must be less than 80% AMI.
  2. Affordability Period – a low-to-moderate household must occupy the residence during the entire affordability period
  3. Principal residency requirement
  4. Upon sale of the property the initial homeowner must receive a “fair return”  
**Fair Return** – homeowner’s return on original investment including down payment and any capital improvements, less the amount of deferred maintenance that does not meet local code requirements and remediation of all deficiencies identified during inspection

5. **Capital Improvements** – Homebuyer would obtain approval from City/DMD prior to work being completed
  - a. Energy upgrades – HVAC, Water Heater, Insulation
  - b. Home modernization
6. **Consumer Price Index** – used to calculate the percent gain which applies to sales within the affordability period
7. **Consult with City/DMD**
  - a. Agree on New Sales Price with professional consultation
  - b. Appraisal provided to City/DMD
  - c. Confirm the Fair Return
  - d. Verify income eligibility of subsequent buyer
  - e. Confirm Principal residency requirement
  - f. Determine if new buyer needs homebuyer assistance
8. **Default:** Failure to comply with the Period of Affordability requirements may result in demanding repayment of the development subsidy provided to the homebuyers. The City will include in the executed agreements the right of first refusal or purchase options. The City law department will discuss the default issues with the primary lender.
  - a. Failure to maintain property taxes and insurance
  - b. Residency Requirement not maintained or change in use of property
  - c. Transfer of interest in property
  - d. Foreclosure by primary lender
  - e. Breach of Loan Agreement
9. **92.251 Property Standards** – all homebuyer projects, down payment assistance, new construction or rehabilitation with HOME funds must meet all applicable State and local codes, ordinances, and zoning requirements. HOME-assisted new construction projects must meet State or local residential and building codes, as applicable or, in the absence of a State or local building code, the International Residential Code or International Building Code (as applicable to the type of housing) of the International Code Council. The housing must meet the applicable requirements upon project completion.

### Specific HUD Property Standards

PROPERTY STANDARD	NEW CONSTRUCTION	REHABILITATION
Accessibility – Section 504	√	√
Disaster Mitigation	√	√
Written Construction documents	√	√
Project Cost Estimate	√	√
Construction progress inspections	√	√
Health & Safety	√	√
Major systems – useful life of affordability period		√
Lead Base Paint		√
State and local Codes	√	√
Zoning Requirements	√	
Uniform Physical Condition Standards		√
Homebuyer Inspection		√

**Subordination Agreement** - Refinancing of the HOME investment is allowed with authorization from City/DMD

- A. The homeowner contacts DMD requesting the subordination of their HOME mortgage.
- B. The financial institution/title company used by the homeowner provides a copy of the settlement sheet and appraisal to DMD. The DMD Finance Officer evaluates the documents.
  1. DMD may approve refinancing to secure better loan terms.
  2. DMD may approve refinancing for necessary code related repairs.
  3. DMD will not approve refinancing to secure non-housing debt.
- C. DMD requests the financial institution/title company to provide a copy of a blank subordination request.
- D. DMD submits subordination agreement to the City attorney for review.
- E. Upon approval from the City attorney, DMD completes the subordination request and the Executive Director signs on behalf of DMD/City, witnessed and signed by a notary.
- F. The completed subordination request is provided to the financial institution/title company to be recorded with the closing documents.
- G. Early loan payoff by the existing homebuyer does not end affordability period.

**Ongoing monitoring for recapture and resale** – The subrecipients and CHDOs are required to monitor annually the homebuyers’ compliance with the principal residence requirement during the affordability period. Various methods are used including but not limited to: the review of utility and insurance records or certified mailing to the homeowner. All non-compliant homebuyers are reported to DMD for further action.

**Release of Mortgage, Promissory Note, and Protective Restrictive Agreement** – After the POA is satisfied the homebuyer may contact the subrecipient, CHDO, or DMD and request the release of the recorded documents. The release is prepared and given to the homebuyer to take to the Vanderburgh County Recorder’s Office. All release fees are paid by the homebuyer.