

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)



RECAPTURE POLICY
CITY OF NEWPORT NEWS, VIRGINIA
HOMEOWNERSHIP PROGRAMS

PURPOSE

The City utilizes HOME Investment Partnerships Program (HOME) funds to assist eligible homebuyers in achieving affordable homeownership. In accordance with federal HOME regulations, homebuyers receiving HOME assistance must occupy the assisted property as their principal residence for a specified affordability period.

The Newport News Redevelopment and Housing Authority (NNRHA), on behalf of the City, administers HOME-funded homebuyer assistance programs and is responsible for ensuring compliance with all applicable HOME regulations, including recapture requirements.

RECAPTURE PROVISIONS

The City 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 may provide eligible homebuyers with up to \$25,000 in HOME-funded assistance to support homeownership opportunities throughout the City. Eligible assistance may be used for down payment assistance, closing costs, principal reduction, and other eligible homebuyer expenses as permitted under the HOME Investment Partnerships Program. HOME assistance shall be provided as a zero-interest deferred forgivable loan secured by a Promissory Note and Deed of Trust. The assistance will be forgiven on a prorated basis over the applicable affordability period established by HUD regulations. Provided the homeowner continues to occupy the property as their principal residence throughout the affordability period, the HOME assistance will be fully forgiven and no repayment will be required.

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 \$25,000 toward the purchase of a home located throughout the City. The HOME direct subsidy balance due will be reduced by an equal amount annually over a ten (10) 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 ten-year period, then a pro-rated amount of the forgivable loan shall be repaid to the City or its 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:

Down Payment/Closing Cost Assistance: (EXAMPLE)

EXAMPLE: A homebuyer receives \$25,000 in HOME-funded down payment assistance to purchase a home. The direct HOME subsidy to the homebuyer is \$25,000, which results in a ten-year affordability period. The HOME assistance is forgiven on a prorated basis at a rate of ten percent (10%) per year over the ten-year affordability period.

If the homebuyer sells the home after three years, thirty percent (30%) of the HOME assistance, or \$7,500, will have been forgiven. The remaining seventy percent (70%), or \$17,500, will be subject to recapture, provided there are sufficient net proceeds available from the sale.

The City or its subrecipient will recapture the remaining unforgiven HOME assistance from the net proceeds after repayment of superior loan obligations and payment of customary closing costs. Once the recapture requirements have been satisfied, all applicable federal HOME program requirements will be considered fulfilled, and no additional affordability restrictions will apply.

If the net proceeds are insufficient to repay the full amount due under the recapture agreement, the amount recaptured shall be limited to the available net proceeds. Under no circumstances shall the City, NNRHA, or its subrecipients be required to recover more than the available net proceeds, nor shall the homebuyer be required to repay any deficiency beyond the amount available from the sale.

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 agreements 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. City 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. City and/or /NNRHA will review the final HUD-1 Settlement Statement two weeks prior to closing the refinance.

3. If applicable, the City/NNRHA will issue written approval a week prior to the closing date.
4. City 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/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/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/NNRHA to execute a release of lien.