

Resale and Recapture Policy

Resale and Recapture Policies

Participating Jurisdictions (PJs) undertaking HOME-assisted homebuyer activities, including any projects funded with HOME Program Income (PI) must establish written resale and/or recapture provisions that comply with HOME statutory and regulatory requirements. These provisions must also be set forth in the PJ's Consolidation Plan. The written resale and/or recapture provisions that a PJ submits in its annual Action Plan must clearly describe the terms of the resale and/or recapture provisions, the specific circumstances under which these provisions will be used (if more than one set of provisions is described), and how the PJ will enforce the provisions for HOME-funded ownership projects. HUD review and approves the provisions as part of the annual Action Plan process.

The purpose of this section is to provide the "resale" and "recapture" policies of the City of Tuscaloosa's Office of Federal Programs (OFP). As stated above, HOME requires that PJs utilize resale and/or recapture provisions to ensure continued affordability for low to moderate income homeowners and as a benefit to the public through the wise stewardship of federal funds.

(OFP) has three programs which use HOME funds to assist homeowners or homebuyers:

1. Down Payment Assistance (DPA) - new homebuyers;
2. Acquisition and Development – developers of new ownership housing, and;
3. Homeowner Rehabilitation Loan Program – owners of existing homes.

Resale

The resale provision under the City of Tuscaloosa HOME funded program ensures that the HOME-assisted units remain affordable over the entire affordability period. The Resale method is used in cases where HOME funding is provided directly to a developer to reduce development costs, thereby, making the price of the home affordable to the buyer.

Specific examples where the City of Tuscaloosa would use the resale method include:

1. Providing funds for the developer to acquire property to be developed or to acquire affordable ownership units;
2. Providing funds for site preparation or improvement, including demolition; and
3. Providing funds for construction materials and labor.

The City of Tuscaloosa Resale Policy

Notification to Prospective Buyers. The resale policy is explained to the prospective homebuyer(s) prior to signing a contract to purchase the HOME-assisted unit. The prospective homebuyer(s) sign an acknowledgement that they understand the terms and conditions applicable to the resale policy as they have been explained. This document is included with the executed sales contract. (See attached Notification for Prospective Buyers.)

Enforcement of Resale Provisions

The resale policy is enforced through the use of a Restrictive Covenant signed by the homebuyer at closing. The Restrictive Covenant will specify:

1. The length of the affordability period (based on the dollar amount of HOME funds invested in the unit; either 5, 10, or 15 years);
2. That the home remain the Buyer's principal residence throughout the affordability period; and
3. The conditions and obligations of the Owner should the Owner wish to sell before the end of the affordability period, including:
 - a. The Owner must contact the City of Tuscaloosa Office of Federal Programs in writing if intending to sell the home prior to the end of the affordability period;
 - b. The subsequent purchaser must be low income as defined by HOME, and occupy the home as his/her new purchaser's primary residence for the remaining years of the affordability period. (However, if the new purchaser receives direct assistance through a HOME-funded program, the affordability period will be re-set according to the amount of assistance provided); and
 - c. The sales price must be affordable to the subsequent purchaser; affordable is defined as limiting the Principal, Interest, Taxes, and Insurance (PITI) amount to no more than 30% of the new purchaser's monthly income.

Fair Return on Investment

The City of Tuscaloosa will administer its resale provisions by ensuring that the Owner receives a fair return on his/her investment and that the home will continue to be affordable to a specific range of incomes. Fair Return on Investment means the total homeowner investment which includes the total cash contribution plus the approval capital improvements credits as described below:

1. The amount of the down payment;
2. The cost of any capital improvements, documented with receipts provided by the homeowner, including but not limited to:
 - a. Any additions to the home such as a bedroom, bathroom, or a garage;

- b. Replacement of heating, ventilation, and air conditioning systems;
- c. Accessibility improvements such as bathroom modifications for disabled or elderly, installation of wheel chair ramps and grab bars, any and all of which must have been paid for directly by the Owner and which were not installed through a federal, state, or locally-funded grant program; and
- d. Outdoor improvements such as a new driveway, walkway, retaining wall, or fence.

Note: All capital improvements will be visually inspected to verify their existence.

- 3. The percentage of change as calculated by the **Housing Price Index (HPI)** Calculator of the Federal Housing Finance Agency. The HPI Calculator is currently located at www.fhfa.gov/Default.aspx?Page=86 and projects what a given house purchased at a point in time would be worth today if it appreciated at the average appreciation rate of all homes in the area. The calculation shall be performed for the City of Tuscaloosa, AL Metropolitan Statistical Area.

Affordability to a Range of Buyers

The City will ensure continued affordability to a range of buyers, particularly those whose total household incomes range from 65 percent to no greater than 80 percent MFI. If the City of Tuscaloosa implements a Community Land Trust, the range of incomes will be broadened considerably.

Sales prices shall be set such that the amount of Principal, Interest, Taxes, and Insurance does not exceed 30 percent of the new Buyer's annual income. For FY 2012-13, the affordable sales shall not exceed \$175,000, which would be affordable to a 4-person household at 80 percent MFI at today's lower home mortgage interest rates.

***Example:** A home with a 10-year affordability period was purchased six years ago by a person (the "original homeowner") who now wishes to sell. The original homeowner's mortgage was \$52,250 at 6.75% interest for 30 years, and has made payments for 72 months. The current mortgage balance is \$48,270. The principal amount paid down so far is \$3,980.*

Calculating Fair Return on Investment

Down Payment: The original homeowner was required to put down \$1,000 earnest money at the signing of the sales contract.

Cost of Capital Improvements: The original homeowner had a privacy fence installed four years ago at the cost of \$1,500 and has receipts to document the improvement. A visual inspection confirmed the fence is still in place.

Percentage of Change: The original purchase price for the home was \$55,000 and the amount of developer subsidy was \$25,000, thus requiring the 10-year affordability period.

For the purposes of using the Federal Housing Finance Agency's Housing Price Index calculator, the home was purchased in the 3rd Quarter of 2006, and will be calculated using the most current quarter available, 1st Quarter 2012. Using the Housing Price Index Calculator, the house would be worth approximately \$61,112.

Calculating the Fair Return to the Original Owner:

Down Payment:	\$1,000
Capital Improvements:	\$1,500
Principal Paid:	\$3,980
Increase in value per HPI:	<u>\$6,112</u>

\$12,592 Fair Return on Investment

In order to realize a fair return to the original homeowner, the sales price must be set at roughly \$61,000 (i.e. \$55,000 [\$3,980 in principal payments made plus remaining mortgage balance of \$48,270] + \$1,000 down payment + \$1,500 capital improvements + \$6, 112 HPI increase = \$60, 862).

Affordability for a Range of Buyers. If the original homeowner sets the sales price at \$61,000 to get a fair return on investment, and if current (2012) assumptions are used for front/back ratios, interest rates, insurance, taxes, an 80% Loan-To-Value (LTV) Ratio, etc., the monthly PITI would be approximately \$483.

The PITI of \$483 could, in theory, be supported by an annual household income of \$19,500 and not exceed 30% of the subsequent homeowner's monthly income. The housing costs could be supported more realistically by households with incomes between 50% and 80% MFI. However, with an 80% LTV ratio, most buyers will require down payment assistance which, if HOME funds are used, would create a new affordability period based on the level of the new HOME investment.

If the subsequent homeowner does not require any HOME subsidy to purchase the home, the affordability period would end in 4 years at which time the subsequent homeowner could sell to any buyer at any price.

The resale requirements are in accordance with Section 92.254(a)(5)(i) of the HOME Investment Partnerships Program regulations.

Recapture

Under HOME recapture provisions financial assistance must be repaid if it is provided directly to the buyer or the homeowner. Upon resale, the seller may sell to any willing buyer at any price. The written agreement and promissory note will disclose the net proceeds percentage, if any, that will be allotted to the homebuyer and what proceeds will return to the PJ. Once the HOME funds are repaid to the PJ, the property is no longer subject to any HOME restrictions. The funds returned to the PJ may then be used for other HOME-eligible activities.

The City of Tuscaloosa Recapture Policy

The City of Tuscaloosa HOME funded programs under the recapture provisions is the Down Payment Assistance Program (DPA) and the Homeowner Rehabilitation Loan Program.

The (HOME) federal assistance will be provided in the form of a 0% interest, deferred payment loan. The full executed (by all applicable parties) and dated Loan Agreement, Promissory Note and Mortgage and Warranty Deed will serve as the security for these loans. The Mortgage and Warranty Deed will also be recorded in the land records of Tuscaloosa.

The repayment of the DPA or County Homeowner Rehabilitation Loan Program Promissory Notes is made solely from the net proceeds of sale of the Property (except in the event of fraud or misrepresentation by the Borrower described in the Promissory Note).

Standard Down Payment Assistance. The City of Tuscaloosa will calculate the recapture amount and add this to the existing payoff balance of the DPA loan. The entire payoff balance must be paid to the City before the homebuyer receives a return. The recapture amount is limited to the net proceeds available from the sale.

Appraised Value of Property or Sales Price (whichever is less)		\$
Original Senior Lien Note Amount	(-)	\$
Any reasonable and customary sales expenses paid by the Borrower in connection with the sale (Closing Costs)	(-)	\$
Net Proceeds		\$
DPA Original Note Amount	(-)	\$
Equity to Borrower/Seller	=	\$

Net proceeds consist of the sales prices minus loan repayment, other than HOME funds, and closing costs. If the net proceeds of the sale are insufficient to fully satisfy the amounts owed, the City of Tuscaloosa may not personally seek or obtain a deficiency judgment or any other recovery from the Borrower/Seller. The amount due to Lender is limited to the net proceeds, if any, if the net proceeds are not sufficient to recapture the full amount of HOME funds invested plus allow Borrower to recover the amount of Borrower's down-payment and capital improvement investment, including, but not limited to cases of foreclosure or deed-in-lieu of foreclosure. If there are no net proceeds, the City of Tuscaloosa will receive no share of net proceeds.

However, in the event of an unsecured Default, the City of Tuscaloosa may, at its option, seek and obtain a personal judgment for all amounts payable under the Note. This right shall be in addition to any other remedies available to the City of Tuscaloosa. If there are insufficient funds remaining from the sale of the property and the City of Tuscaloosa recaptures less than or none of the recapture amount due, the City of Tuscaloosa must maintain data in each individual HRLP file that documents the amount of the sale and the distribution of the funds.

This will document that:

1. There were no net sales proceeds; or
2. The amount of the net sales proceeds was insufficient to cover the full amount due; and
3. No proceeds were distributed to the homebuyer/homeowner.

Under "Recapture" provisions, if the home is SOLD prior to the end of the required affordability period, the net sales proceeds from the sale, if any, will be returned to the City of Tuscaloosa to be used for other HOME-eligible activities. Other than the actual sale of the property, if the homebuyer or homeowner breaches the terms and conditions for any other reason, e.g. no longer occupies the property as his/her/their principal residence, the full amount of the subsidy is the immediately due and payable. This repayment of funds is in accordance with Section 92.254(a)(5)(ii) of the HOME Investment Partnerships Program regulations which provides for the recapture of the full HOME investment out of the net proceeds from the sale of the property.

If Borrower/Seller is in Default, the City of Tuscaloosa may send the Borrower/Seller a written notice stating the reason Borrower/Seller is in Default and telling Borrower/Seller to pay immediately:

- (i) The full amount of Principal then due on this Note.
- (ii) All of the interest that Borrower/Seller owes, and that will accrue until paid on that amount; and
- (iii) All of the City of Tuscaloosa’s costs and expenses reimbursable Recovery against the Borrower/Seller responsible for the fraud or misrepresentation is not limited to the proceeds of sale of the Property, but may include personal judgment and execution thereon to the full extent authorized by law.

Affordability Periods

HOME Program Assistance Amount	Affordability Period in Years
\$1,000-\$14,999.99	5
\$15,000-\$40,000	10
Over \$40,000	15
Reconstruction Projects*	20

*City of Tuscaloosa Policy

A HOME Written Agreement, Note and Deed of Trust will be executed by the Borrower and the City of Tuscaloosa that accurately reflects the resale or recapture provisions before or at the time of sale.

References: [HOMEfires Vol 5 No2, June 2003 – Repayment of HOME Investment; Homebuyer Housing with a ‘Recapture’ Agreement; Section 219(b) of the HOME Stature; and 92.503 (b)(1)-(3) and (c)]

City of Tuscaloosa 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. The City will, at its discretion, agree to accept net proceeds in the event of a short sale to avoid foreclosure; and
6. Only if the borrower meets the minimum requirements to refinance, the City can re-subordinate to the first lien holder.

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

1. Submit a written request to Compliance Division to verify the minimum refinancing requirements with one month in advance from the expected closing;
2. The City of Tuscaloosa will review the final HUD-1 Settlement Statement two weeks prior to closing the refinance.
3. If applicable, the City of Tuscaloosa will issue written approval a week prior to the closing date.
4. The City of Tuscaloosa 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 granted by the City allowing the refinance of the Senior Lien, the DPA OR HRLP Loan will become immediately due and payable prior to closing the refinance.
6. If written permission is granted by the City and it is determined that the refinancing action does not meet the conditions as stated determined that the refinancing action does not meet the conditions as stated above, the DPA OR HRLP 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 HRLP Programs loans. The DPA or HRLP Notes must be paid off no later than when the HOME Equity Loan is closed and funded.
8. The DPA OR HRLP Notes must be paid-in-full in order for the City of Tuscaloosa to execute the release of a lien.

Basic Terminology

Affordable Housing: The City of Tuscaloosa follows the provisions established on 24 CFR 92.254, and consider that in order for homeownership housing to qualify as affordable housing it must:

- Be single-family, modest housing,
- Be acquired by a low-income family as its principal residence, and
- Meet affordability requirements for a specific period of time as determined by the amount of assistance provided.

The City: means the City of Tuscaloosa Office of Federal Programs (OFP).

Fair Return on Investment: means the total homeowner investment which includes the total cash contribution plus the approved capital improvements credits.

Capital Improvement: means additions to the property that increases its value or upgrades the facilities. These include upgrading the heating and air conditioning system, upgrading kitchen or bathroom facilities, adding universal access improvements, or any other permanent improvement that would add to the value and useful life of the property. The costs for routine maintenance are excluded.

Capital Improvement Credit: means credits for verified expenditures for Capital Improvements.

Direct HOME subsidy: is the amount of HOME assistance, including any program income that enabled the homebuyer to buy the unit. The direct subsidy includes down payment, closing costs, interest subsidies, or other HOE assistance provided directly to the homebuyer. In addition, direct subsidy includes any assistance that reduced the purchase price from fair market value to an affordable price.

Direct HOME subsidy for the Homeowner Rehabilitation Loan Program: is the amount of HOME assistance, including any program income that enabled the homebuyer to repair or reconstruct the unit. The direct subsidy includes hard costs and soft cost according to 24 CFR 92.206

Net Proceeds: are defined as the sales price minus superior loan repayment (other than HOME funds) and any closing costs.

Recapture: The recapture provisions are established at 92.253 (a)(5)(ii), permit the original homebuyer to sell the property to any willing buyer during the period of affordability while the PJ is able to recapture all or a portion of the HOME-assistance provided to the original homebuyer.

Source Notice: CPD 12-003 <http://www.hud.gov/offices/cpd/lawsregs/notices/2012/12-003.pdf>

INFORMATION FOR PROSPECTIVE BUYERS

**The [Five] [Ten] [Fifteen] – Year Affordability Period
&
The Restrictive Covenant Running With the Land**

I understand that because a certain amount of federal funds were used by _____ (Name of Developer) to develop the property at _____, the federal government requires that certain restrictions apply to the occupancy or re-sale of this home for a period of [five (5) ten (10) or fifteen (15)] years. I understand that during that [five (5) ten (10) or fifteen (15)] – year period, those requirements will be enforced through a legally-enforceable document called a “Restrictive Covenant Running with the Land.”

If I choose to purchase this home, at the time the home is sold to me, I will sign a Restrictive Covenant Running with the Land and it will be filed in the Official Public Records of the Tuscaloosa County Clerk’s Office. The requirements of the Restrictive Covenant Running with the Land are: *(Please initial below)*

_____ That I **must occupy the home as my principal residence** during the [five (5) ten (10) or fifteen (15)] – year period in which the Restrictive Covenant is in effect;

_____ If I wish to sell the Property before the end of that period, I am required to sell it to a subsequent buyer whose total household income is **at or below 80% of the Tuscaloosa area Median Family Income** in effect for the year I wish to sell the home.

_____ The sales price must be set such that I receive **a fair return** which shall be defined as:

1. The amount of any cash contributions including the down payment and principal payments made;
2. The cost of any capital improvements, documented with receipts, and including but not limited to:
 - a. Any additions to the home such as a bedroom, bathroom, or a garage;
 - b. Replacement of heating, ventilation, and air conditioning systems;
 - c. Accessibility improvements such as bathroom modifications for disabled or elderly, installation of wheel chair ramps and grab bars, any and all of which must have been paid for directly by the Owner and which were not installed through a federal, state, or locally-funded grant program; and
 - d. Outdoor improvements such as a new driveway, walkway, retaining wall, or fence.

_____ The sales price must be set so that the monthly principal, interest, taxes and insurance to be paid by the subsequent buyer **will not exceed 30% of that subsequent buyer's monthly household income.**

_____ **I will notify the City of Tuscaloosa in writing** so that COT can assist with the compliance of this federal regulation.

I/We acknowledge having received this information about the federal requirements involved if I/we decide to purchase this home.

Signature Date

Signature Date