

THE HFA INSTITUTE 2020

Resale/Recapture

January 13, 2020



**HOME and
Housing Trust
Fund**
JANUARY 12 – 14



Housing Credit
JANUARY 14 – 16



**MRBs and
Other Federal
Homeownership
Programs**
JANUARY 15 – 17



**Section 8 and
Other Federally
Assisted
Multifamily
Housing**
JANUARY 15 – 17



Topics

- Overview
- Recapture
- Resale
- Choosing the appropriate method(s)

Trainer

Monte Franke

MLFranke@aol.com

Recapture/Resale

- For each homebuyer activity, PJ must select Resale OR Recapture (92.254(a)(5)):
 - Select option before assistance is provided
 - Applies for the period of affordability
 - Option(s) must be described in Consolidated Plan
 - Must be approved in writing by HUD
- Guidance: Notice CPD-12-003
 - www.hudexchange.info/resource/2690/notice-cpd-12-003-guidance-resale-recapture-home/

Key Features: Recapture v. Resale

HOME Requirement	Recapture	Resale
Next buyer	No restrictions (unless LI buyer assumes or receives new HOME assistance)	Must sell to another LI buyer
Resale price	Price not restricted <u>but</u> Seller must repay some or all of HOME assistance out of net proceeds	Restricted price: <ul style="list-style-type: none"> Affordable to reasonable range of LI buyers <u>and</u> Fair return to seller
Post-sale restrictions	None (unless LI buyer assumes or receives new HOME assistance)	Buyer subject to principal residency & resale for remaining POA



Recapture

Recapture Basics

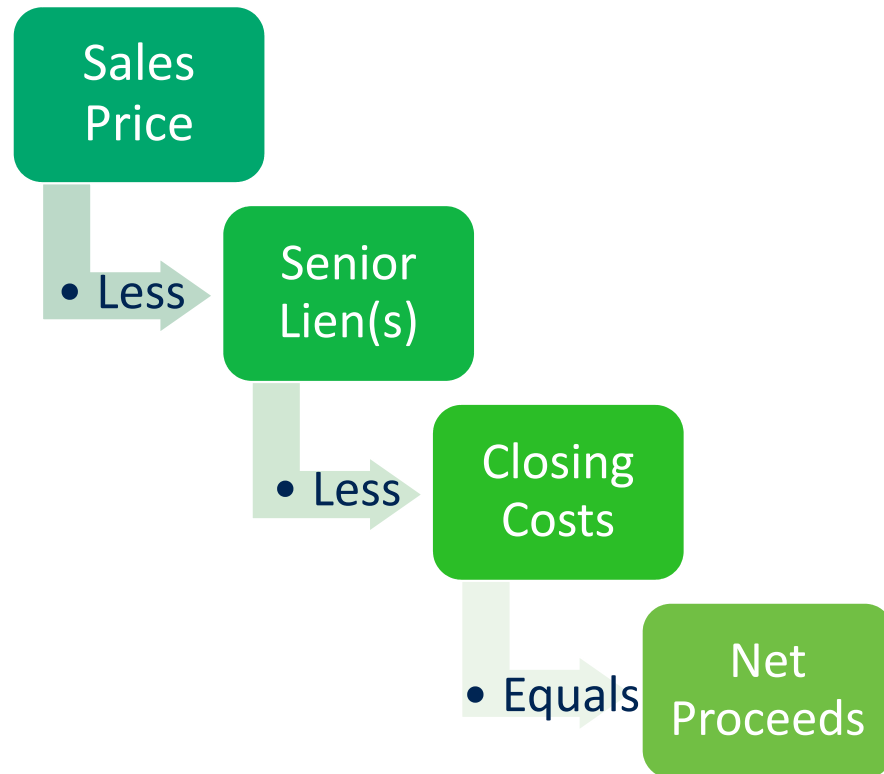
- May sell to anyone, but some or all of HOME is subject to recapture from net proceeds of sale
- Recapture options in Rule (92.254(a)(5)(ii)):
 - Recapture full amount of direct buyer subsidy
 - Forgive direct HOME subsidy pro-rata over the affordability period
 - Proportionately share net proceeds
 - Allow buyer to recover initial investment first
 - *Other approved by HUD (ConPlan/Annual Plan)*

Recapture: “Direct Subsidy”

- Direct subsidy to the buyer: assistance that reduces purchase price below market OR otherwise subsidizes homebuyer, e.g.:
 - Down payment and closing cost assistance
 - Purchase financing (e.g., 2nd mortgage)
 - Assistance to developer for sale below market value
- Affordability period based on direct subsidy
 - Does not include HOME development subsidy (costs that exceeds value) or “appraisal gap”

Recapture: “Net Proceeds”

- Recapture is capped at what is available out of “net proceeds”



Recapture: Legal Documents

- Must be in written agreement with buyer
 - Agreement must also enforce residency status
- Typically secured by:
 - Promissory note
 - Recorded Lien (mortgage or deed of trust)
- May also be applied via deed restriction

Recapture: Assumption Option

- Under recapture, PJ cannot require initial buyer to sell to Low-Income buyer, but
- PJs are permitted to allow subsequent buyer to assume the HOME assistance if:
 - New buyer is Low-Income
 - No additional HOME assistance is provided
 - Residency & recapture apply for remainder of POA
- PJ may always assist new LI buyer with new funds and new affordability period



Resale

Resale Basics

- When the home is sold (during POA):
 - Buyer must be Low-Income
 - Buyer must occupy house as principal residence
 - Resale price
 - Must be affordable to a reasonable range of low-income buyers
 - Original buyer must receive a “fair return”
 - Remaining resale restrictions apply to new buyer
 - But if additional HOME assistance provided, the period of affordability must be extended

Affordable to Range of LI Buyers

- PJ defines affordability range in resale policy
 - Max is 80% AMI, but should the bottom limit be 50%/60%/70% to 80%?
 - What HH size relative to unit size?
 - What housing ratio? Lower ratio (e.g. 25-28%) will be more affordable to more buyers, higher ratio (e.g. 30-32%) will provide more return to seller
- Presumption of affordability option?
 - Neighborhood market/demographics show all housing affordable to LI buyers
 - Requires market assessment and HUD approval via Action Plan

Fair Return to Seller

- PJ must define “fair return” in policy
 - Base on initial investment or on full value of home?
 - Higher return means higher sales price and the more likely the need to subsidize next buyer

Resale Affordability Period

- Affordability period based on total HOME investment
 - Total amount of HOME funds provided to developer
 - PLUS**
 - Any direct HOME assistance to buyer

Resale: Legal Documents

- Must be included in buyer written agreement
 - Must also enforce residency status
- Must also be recorded via deed restriction, land covenant, or similar restriction
- Depending on program design, may also use note and mortgage/deed of trust



Choosing Resale or Recapture



When to Use Resale or Recapture

- Resale can be used for any homebuyer
- Recapture can only be used when:
 - There is a direct subsidy to homebuyer
 - If pure grant, then must use resale
- Resale also used for community land trusts

Choosing the Right Resale/Recapture Policy

- Resale/recapture policy should balance goals:
 - Provide a fair deal to the buyer
 - Achieve long-term LI ownership affordability
 - Protect/recover the taxpayer's investment
- PJ should consider:
 - Market conditions: availability of affordable ownership
 - Level of assistance provided
 - Policy: Level of long-term affordability control desired
 - Appropriateness to changing market conditions

Considerations

	Resale	Recapture
Response to market conditions	Strong controls for appreciating markets & limited LI opportunities	Options for different markets: <ul style="list-style-type: none"> • Full: stable markets • Declining: flat/declining markets • Owner investment returned 1st: flat/declining markets • Shared appreciation: appreciating markets
Administrative burden	Transaction involvement: <ul style="list-style-type: none"> • Price approval • Buyer approval 	Calculate recapture amount
Long-term impact	Preserves affordable units for POA	Recapture of all or some funds, but may not cover funding needed for another unit

Discussion

- What is your current resale/recapture policy?
- Is this achieving your policy objectives?
- Does it fit your current market conditions?



Wrap Up



MLFranke@aol.com