

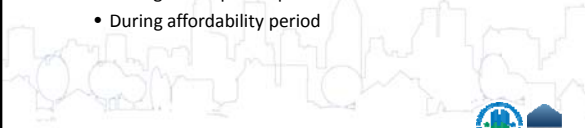


Written Agreements




Trainer & Agenda

- Trainer: Marsha Tonkovich, ICF
- Agenda:
 - Brief recap of HOME written agreements requirements
 - Written agreements as a management tool:
 - During development phase
 - During affordability period


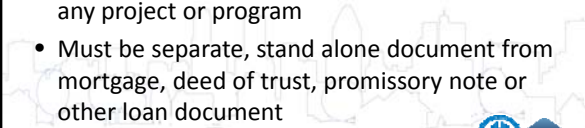


Side 2




What is a Written Agreement?

- Contract between PJ or designee and another entity
- Legally binds HOME funds to specific project or program (i.e., commits HOME funds)
- Execute before PJ disburses HOME funds for any project or program
- Must be separate, stand alone document from mortgage, deed of trust, promissory note or other loan document




Effective Written Agreements

- Define:
 - Activities to be carried out
 - Budget and Schedule
 - How they are funded
 - Responsibilities and options of entities involved
- Enforce compliance and support monitoring performance
- Inform parties of specific applications of HOME rules and other federal regulations



Effective Agreements (cont)

- Protect and manage HOME investment
- Help ensure productivity and performance
- Present clear and concise regulatory language (not just citations)




Ineffective Written Agreements

- Written for other programs
- Contain vague and/or conflicting regulatory references
- Lack adequate language on roles and responsibilities
- Hard to understand or find key parts
- Lack enforcement and/or default provisions
- Placed in drawer and never reviewed



Using Agreements as a Management Tool

- Help ensure appropriate project management and monitoring
- Communicate expectations across partners
- Track progress against agreed upon project/program goals, schedule, and conditions
- Incorporate contract performance in future funding decision making



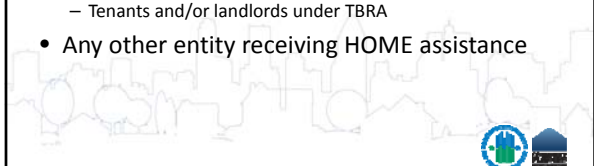
Entities Involved in Agreements

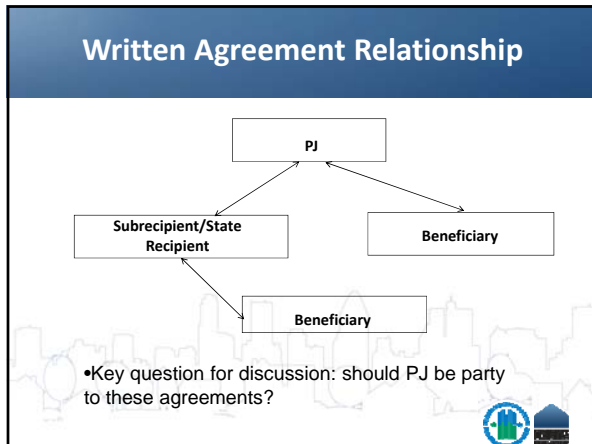
- PJ
- Subrecipients
- State recipients
- Owners, developers, and sponsors



Entities Involved in Agreements (cont)

- Contractors performing services (i.e., competitively procured)
- Beneficiaries of HOME assistance:
 - Homeowners
 - Homebuyers
 - Tenants and/or landlords under TBRA
- Any other entity receiving HOME assistance



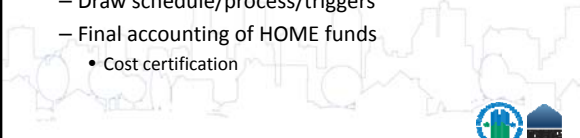


- ### HOME Agreement Required Provisions
1. Use of Funds
 2. Affordability
 3. Program Income
 4. Uniform Administrative Requirements
 5. Project Requirements
 6. Property Standards
 7. Other Federal Requirements
 8. Affirmative Marketing
 9. Requests for Disbursement of Funds
 10. Reversion of Assets
 11. Records and Reports
 12. Enforcement
 13. Duration of Agreement
 14. Religious Organizations
 15. CHDO Provisions
-

- ### What Is PJ Seeking to Achieve During Construction Period?
- Units that meet quality standards and agreed upon specifications
 - Completion on budget, within cost limits meeting HOME rules on eligible costs
 - Compliance with cross-cutting other federal requirements
 - Timely and effective completion of units
 - Quick lease-up upon unit completion
- Slide 12
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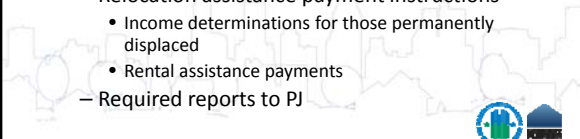
Management Issue: Unit Quality & Cost

- Optional agreement clauses/topics that can help:
 - Frequency and scope of construction inspections
 - Attach detailed development budget
 - Process for change orders
 - Draw schedule/process/triggers
 - Final accounting of HOME funds
 - Cost certification



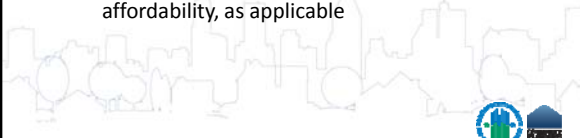
Management Issue: Compliance with Other Federal Requirements

- Optional agreement clauses/topics that can help:
 - Required project plan for temporary or permanent relocation
 - Phase by phase plan
 - Recap of required notices for tenants
 - Relocation assistance payment instructions
 - Income determinations for those permanently displaced
 - Rental assistance payments
 - Required reports to PJ



Management Issue: Compliance with Other Federal (cont)

- Optional agreement clauses/topics that can help:
 - Lead based paint procedures
 - Worksheet instructions on determining the level of assistance (rehabilitation)
 - Required notices
 - Ongoing compliance throughout period of affordability, as applicable



Management Issue: Timely Performance and Effectiveness

- Use agreement budget and timeline to set benchmarks
 - Ensure on time, budget, and met plans/specifications
- Incentives for quick completion included in agreement
 - Release of developer fees tied to milestones
 - Level of developer fee tied to timeliness, accuracy of work (must still be reasonable)
 - Use of retainage approach



Management Issue: Lease-Up

- Optional agreement clauses/topics that can help:
 - Some PJs withhold final payment until receipt of rent/occupancy data
 - Explicit clause about start of affordability period and tie to rent/occupancy data
 - Frequency and format of rent and occupancy reports
 - Timing of rent-up (i.e. X% of units by Y date)
 - Description of who takes what role in marketing



What Is PJ Seeking to Achieve During Affordability Period?

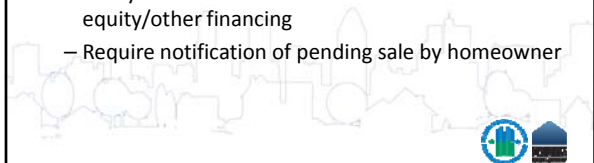
- Homebuyer units that comply with resale or recapture provisions
- Rental units that remain standard during affordability period
- Rental units that are occupied by eligible households
- Maintain proper number of HOME-assisted units at proper rents
- Projects that remain viable and compliant for affordability period



Slide 18

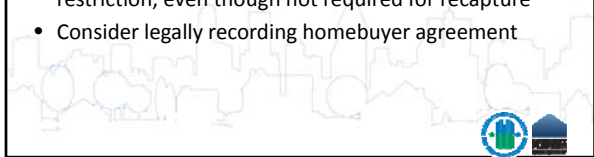
**Management Issue:
Resale/Recapture**

- Write homebuyer agreement in plain language and/or have agreement summary of key owner obligations
- Optional agreement clauses/topics that can help:
 - Prohibition on pre-payment or refinancing of HOME loan
 - Policy about subordination of HOME loan to home equity/other financing
 - Require notification of pending sale by homeowner



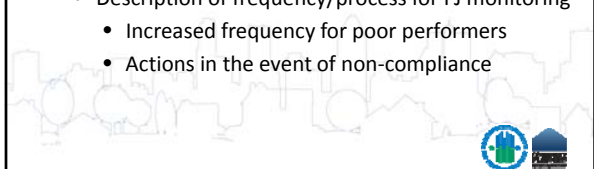
**Management Issue:
Resale/Recapture (cont)**

- Describe procedures in event unit is no longer principal residence
 - Consider including requirement for annual check-in, such as return receipt notification or submission of proof of insurance
- Record requirement as land covenant/deed restriction, even though not required for recapture
- Consider legally recording homebuyer agreement




**Management Issue: Standard,
Income-Eligible Rental Units with
Proper Unit Mix**

- Optional agreement clauses/topics that can help:
 - Standard owner reporting, documentation forms
 - Description of HQS/unit quality inspection process
 - Description of frequency/process for PJ monitoring
 - Increased frequency for poor performers
 - Actions in the event of non-compliance



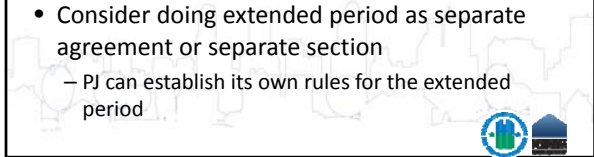
**Management Issue:
Project Viability**

- Optional agreement clauses/topics that can help:
 - PJ right to change management company
 - PJ right to approve ownership changes/transfer
 - Budget review & required financial reports
 - Annual report required but could make more frequent
 - PJ right to review/approve reserves contributions/disbursement approvals
 - Access to CPA/auditor



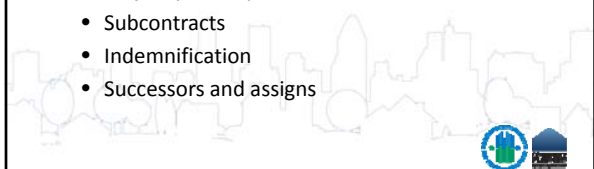
**Management Issue:
Extended Affordability Period**

- HOME requires compliance with entire term of affordability period in written agreement
- If have extended period beyond HOME minimum, will be required to monitor for this period
- Consider doing extended period as separate agreement or separate section
 - PJ can establish its own rules for the extended period



**Other Optional (but recommended)
Agreement Provisions**

- Cancellation
- Non-assignability
- Modification
- Insurance
- Project publicity
- Subcontracts
- Indemnification
- Successors and assigns




Enforcement When Partners Don't Comply

- Recommend corrective action plan and timetable
- Establish and follow a management plan
- Cancel and/or revise activities, before spending additional HOME funds
- Assign another entity as mentor
- Recommend and/or replace (with authority) property manager and/or owner



Enforcement When Partners Don't Comply (cont)

- Withhold funds and reprogram to another activity
- Seek reimbursement of funds
- Impose monetary fines or penalties
- Suspend disbursement of funds
- Terminate written agreement
- Limit future funding
- Debar or suspend related parties



Using Lessons Learned From Agreement Monitoring to Improve Programs

- Review agreement prior to execution
 - Develop agreement jointly between legal and program staff
- Use agreement provisions to help strengthen performance and compliance
 - Reference provisions in monitoring reports and communications
- Identify and fix deficiencies in program procedures, application, and/or processes
- Amend agreement templates to reflect problem areas identified