

## CHAPTER 4.0: PROPERTY MANAGEMENT AND DISPOSITION

If you use CDBG funds to acquire real or personal property, Federal regulations make you, the subrecipient, responsible for ensuring that the property continues to be used for its intended (and approved) purpose, that you keep track of it, that you take care of it, and that if you sell it, you reimburse the grantee for the CDBG share of the property's value.

This fairly straightforward proposition about the ownership, use, management, and disposition of property is complicated by two facts. First, the rules about property management and disposition differ slightly depending on whether you are a public-sector or private-sector subrecipient. (The rules are generally more explicit for governmental subrecipients). Second, the rules depend on the nature of the property. Real property (e.g., land, buildings) is treated differently than personal property (e.g., equipment, supplies, intangible property like copyrights).

This chapter outlines the rules for subrecipients regarding the ownership, management, and disposition of real and personal property. Despite the different treatments, there are several key themes applicable to most property that should be emphasized at the outset:

- Property can only be acquired with CDBG funds for a *specific purpose* that must be approved by the grantee and should be made a part of the Subrecipient Agreement.
- The use of that property for the *approved purpose must continue*; in the case of personal **property**, generally for if the subrecipient owns it and the property is needed for the CDBG activity, and in the case of real **property** (acquired or improved with CDBG funds in excess of \$25,000), generally for at least 5 years following the expiration of the Subrecipient Agreement.
- If you own the property, you should *keep accurate records* for it (e.g., purchase date, price, location, physical description, maintenance history and condition, original and current use, and other inventory types of data).
- You have to *control the use* of the property (in accordance with its intended purpose) and *take good care* of it (that is, take adequate steps to prevent its damage, theft, or loss).
- If you no longer need the property, you can dispose of it but only according to specific rules (such as paying back the grantee, accounting for program income, etc.).

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The following chart summarizes the applicability of specific sections of the regulations to particular categories of property for governmental and private subrecipients and shows the relevant regulations affecting its ownership, use, and disposition.

**Exhibit 4-1: Rules for Property Management and Disposition**

Property Management and Disposition Regulations 24 CFR 570.503—all subrecipients (subs) 24 CFR 85.32–85.34, govt. subs 24 CFR 84.32–84.34, non-profit subs	Real Property (Acquired with CDBG funds)	Personal Property Acquired with CDBG funds		
		Tangible		Intangible
		Nonexpendable	Expendable	
<i>Typical Example</i>	<i>Land/Buildings</i>	<i>Cars/Equipment</i>	<i>Office Supplies</i>	<i>Copyrights</i>
Ownership	See property acquisition, 24 CFR 570.201(a), 201(c), 202, 203(a)	Vested in subs 24 CFR 85.32 24 CFR 84.34	Vested in subs 24 CFR 85.33 24 CFR 84.35	Nonexclusive license to govt. 24 CFR 85.34 24 CFR 84.36
Use & Management	24 CFR 570.505 governs grantees; subrecipients follow 503(b)(7) *	24 CFR 85.32 24 CFR 84.34	24 CFR 85.33 24 CFR 84.35	
Disposition	24 CFR 570.503(b)(7)	Generally, fair-market value or proceeds returned to grantee; with grantee approval, proceeds retained as program income 24 CFR 85.32 and 24 CFR 570.502(a)(8) 24 CFR 84.34 as modified by 570.502(b)(3)(vi)	Residual inventories 24 CFR 85.33 24 CFR 84.35	Nonexclusive license to use remains with govt.

\* 570.501(b) requires that units of general local government participating with, or as part of, an urban county, or as part of a metropolitan city, follow the same requirements as are applicable to subrecipients, except that the 5-year period identified under 570.503(b)(7)(i) begins with the date that the unit of general local government is no longer considered by HUD to be a part of the urban county or metropolitan city, instead of the date that the subrecipient agreement expires.

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#### AS YOU READ THIS CHAPTER, THINK ABOUT ...

1. Whether your agency would care for the property differently if it were purchased with agency funds rather than CDBG funds.
2. Whether your agency's records are up to date in documenting the ownership, use, management, and/or disposition of its property.
3. Whether the procedures for maintaining and protecting the agency's property are adequate or need strengthening.
4. If you are planning to dispose of any property, whether your agency has taken appropriate steps to ensure that the applicable disposition rules are followed for the particular type of property involved.

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#### 4.1 Overview

The relevant Federal regulations governing the management and disposition of property are 24 CFR 570.503 for all subrecipients, 24 CFR 84.34(g) as amended by 570.502(b)(3)(vi) for private sector subrecipients, and 85.32, as modified by 570.502(a)(8), and 85.33-34 for governmental subrecipients.

For the purposes of these Federal regulations, “property” is classified according to the following distinct categories:

- **Real property:** “real property” means land, including any improvements to and structures located on the land, but excluding any movable machinery or equipment.
- **Personal property:** “personal property” is basically any kind of property other than real property. Personal property can be *tangible* (such as supplies, furniture, and equipment), or *intangible* (such as copyrights, patents, and inventions).

Further distinctions can be made between:

- **Non-expendable personal property**, which generally is considered to include *tangible* personal property having a useful life of more than 1 year and an acquisition cost of \$300 or more per unit.
- **Expendable personal property**, which includes all *tangible* personal property other than non-expendable personal property.

The Federal requirements relating to property are organized according to title (ownership), use, and disposition. In general, a subrecipient’s property management system must provide for **accurate records, the conduct of regular inventories, adequate maintenance and control, and proper sales procedures**. Subrecipients must follow sales procedures that provide for competition, to the extent practicable, and that result in the highest possible return.

#### 4.2 Real Property

For *grantees*, the use of real property is governed by 24 CFR 570.505. For real property acquired or improved in whole or in part with CDBG funds in excess of \$25,000, the grantee cannot change the use or planned use of the property (including the beneficiaries of such use) without first providing affected citizens notice and opportunity to comment, and determining that either:

- a) The contemplated new use meets one of the National Objectives and is not a building for the general conduct of government.

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- b) The contemplated new use is deemed appropriate (after consultation with affected citizens) but will not meet a National Objective. In this latter case, the grantee must reimburse the CDBG program in the amount of the current fair market value of the property, less the value attributable to the non-CDBG portion of the acquisition or improvements.

*The Subrecipient Agreement* must be **explicit** about the use of any real property under the subrecipient's control that was acquired or improved in whole or in part with CDBG funds in excess of \$ 25,000. For such instances, **24 CFR 570.503(b)(7)** mandates that such real property either:

- Must be used by the subrecipient to continue to meet one of the CDBG program's National Objectives **for at least 5 years after the expiration of the Subrecipient Agreement** (or a longer time as specified by the grantee in the Subrecipient Agreement); or
- If a National Objective is not met during this time period, the grantee must be **reimbursed for the current fair market value**, less any portion of the value attributable to non-CDBG funds.

#### 4.3 Personal Property — Equipment

For **governmental subrecipients** (24 CFR 85.32):

- **Title:** Title to equipment acquired with CDBG funds is vested in the subrecipient, subject to the conditions described in the following section.
- **Use:** Equipment purchased with CDBG funds or other forms of Federal assistance must be used by the subrecipient in the program or project for which it was acquired, and **as long as needed, whether or not the program or project continues to be supported by Federal funds.**
  - When no longer needed for the original program or project, the equipment may be used in other activities currently or previously supported by a Federal agency.
  - The subrecipient also must make the acquired equipment **available for use on other projects or programs** currently or previously supported by the Federal

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Government **provided that such use will not interfere with the work on the project or program for which the equipment was originally acquired.**

- A subrecipient is **prohibited** from using CDBG-acquired equipment **to provide services for a fee to compete unfairly** with private companies that provide equivalent services unless specifically authorized by Federal statute.
- With the approval of the grantee, equipment acquired with CDBG funds may be used as **a trade-in on replacement property.**
- **Management requirements:** For equipment (including replacement equipment) acquired in whole or in part with CDBG funds, the subrecipient must have procedures and control systems in place to:
  - Keep **adequate equipment records**, which must include information on:
    - Property description.
    - Identification.
    - Funding source (grant number).
    - Title holder.
    - Acquisition date and cost.
    - Federal share of cost.
    - Location, use, and condition.
    - Unit acquisition cost.
    - Disposition data.
  - **Conduct a physical inventory** of the property no less often than every 2 years, with a reconciliation of the inventory results with the equipment records.
    - Ensure adequate **safeguards for preventing loss, damage, or theft** of property.

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- Maintain the equipment in **good condition**.
  
- **Disposition:** When original or replacement equipment acquired with CDBG funds is no longer needed for the original project or program or for other activities currently or previously assisted with Federal funds, the following rules of disposition will apply to **governmental subrecipients**:
  - 1) Equipment with a **current per-unit fair market value of less than \$5,000** may be retained, sold, or otherwise disposed of by the subrecipient *after notice to the grantee*, subject to the conditions in 3) in the following section.
  - 2) Equipment with a **current per-unit fair market value of \$5,000 or more** may *after notice to the grantee* be retained or sold by the subrecipient with the grantee having the right to compensation in an amount equal to multiplying the current fair market value *or* the proceeds from sale by the Federal share (percentage) in the original acquisition price of the equipment.
  - 3) The grantee may reserve **the right to transfer title of the equipment** to the Federal Government or a third party (24 CFR 85.32(g)).

In addition, per 24 CFR 570.502(a)(8), in all cases when equipment purchased with CDBG funds is sold, the net proceeds are considered **program income**.

For **non-profit subrecipients** (24 CFR 84.34):

- **Title:** Title to personal property acquired with CDBG funds is vested with the subrecipient, subject to the following conditions:
  - 1) **In all cases** in which personal property is no longer needed by the subrecipient for CDBG activities, it must be transferred to the grantee for the CDBG program or can be retained by the subrecipient after compensation to the grantee (per 24 CFR 570.502(b)(3)(vi)(B)).
  - 2) The grantee may reserve **the right to transfer title of the equipment** to the Federal Government or a third party (84.34(g)(4)).
  - 3) In all cases in which personal property is sold, the proceeds will be considered **program income** (24 CFR 570.502(b)(3)(vi)(A)).

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#### 4.4 Personal Property — Supplies

For **governmental subrecipients** (24 CFR 85.33):

- Upon termination of the subrecipient's agreement with or award from the grantee, **if there is a residual inventory of unused supplies exceeding \$5,000 in total aggregate fair market value, and if such supplies are not needed for any other Federally sponsored programs or project**, the subrecipient must compensate the grantee for the share of such supplies which were acquired with CDBG funds.

For **non-profit subrecipients**, the requirements of 24 CFR 84.35 apply; that is,

- The residual inventory of unused supplies exceeding \$5,000 not needed by the subrecipient for CDBG activities must be transferred to the grantee for the CDBG program or can be retained after compensating the grantee.
- **In all cases** in which the residual inventory of supplies is sold, the proceeds are considered **program income**.

#### 4.5 Personal Property — Copyrights

For **governmental subrecipients** (24 CFR 85.34) and for **non-profit subrecipients** (84.36):

- The Federal Government **reserves a royalty-free, nonexclusive, and irrevocable license** to reproduce, publish, or otherwise use and to authorize others to use, for Federal Government purposes:
  - The copyright to any work developed with CDBG funds.
  - Any rights of copyright which a subrecipient or a contractor purchases with CDBG support.



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#### Exercise for Chapter 4.0 — Property Management and Disposition

##### Circle the Correct Answer

1. For **real property** controlled by a subrecipient and acquired or improved with CDBG funds in excess of \$25,000, what is the *minimum* period of time following the expiration of the Subrecipient Agreement that such property must be used to continue to meet a National Objective?
  - (a) 1 year.
  - (b) 3 years.
  - (c) 5 years.
  - (d) 10 years.
  - (e) As long a period as the grantee feels is appropriate.
  
2. When are the proceeds from a subrecipient's sale of equipment purchased with CDBG funds considered to be **program income**?
  - (a) Never.
  - (b) When the proceeds are returned to the grantee as compensation for the original CDBG funding.
  - (c) When the net proceeds exceed the compensation due to the grantee.
  - (d) When the depreciated value of the equipment exceeds the CDBG portion of the original acquisition cost.
  - (e) Always.
  
3. A non-profit subrecipient has in its inventory a computer acquired with CDBG funds that is worth less than \$500. The subrecipient may retain it without paying the grantee for its current value if the grantee does not need it for any other Federally sponsored program or project.

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4. The Federal Government's copyright license for any written work developed by a subrecipient with CDBG funds does not preclude the subrecipient from reproducing or otherwise publishing such work.

**TRUE**

**FALSE**

*The answers are on next page.*

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#### Exercise for Chapter 4.0 — Property Management and Disposition (continued)

##### Answers to questions from preceding pages

1. The correct answer is “(c) 5 years.” Although a grantee may stipulate a longer time period (in a closeout agreement, for example), 5 years is *the minimum* period during which such property must continue to be used to address a CDBG National Objective. If, on the other hand, during that time period a national objective is no longer being met or the subrecipient chooses to dispose of the real property, the subrecipient must reimburse the grantee for the fair market value of the property, less any portion attributable to non-CDBG funds.
2. The correct answer is “(e) always,” with the qualification that if a portion of the equipment purchase was financed with non-CDBG funds, only the CDBG portion of the proceeds would be program income for the purposes of the CDBG program.
3. **FALSE.** The pertinent regulations for non-profit subrecipients (24 CFR 570.502(a)(8) and (b)(3)(vi)) require that, regardless of dollar value, equipment acquired with CDBG funds and no longer needed by the subrecipient for CDBG activities must be transferred to the grantee or retained by the subrecipient only after compensating the grantee.
4. **TRUE.** Although the Federal Government reserves a copyright license on such work, it is a *nonexclusive* license.