




Resale & Recapture
Presented by:
Ramona Burks
ICF International



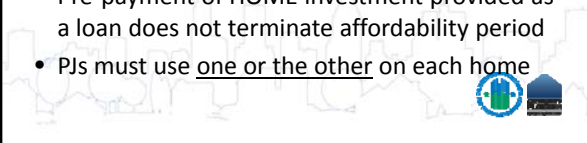
What We Will Cover

- Basic elements of resale and recapture
- Determining which approach will help you meet the goals of your program
- Design differences between resale and recapture
- Pitfalls to avoid when developing resale and recapture provisions



What is Resale/Recapture?

- Long-term affordability restrictions on HOME-assisted homebuyer properties
- Implemented through written HOME agreement
- Independent of the financing terms
- Pre-payment of HOME investment provided as a loan does not terminate affordability period
- PJs must use one or the other on each home



Long Term Affordability Period

HOME \$\$	Affordability Period
Under \$15,000	5 years
\$15,000 - 40,000	10 years
Over \$40,000	15 years

- HOME affordability periods are minimums -- PJs can set longer terms



Basics of Resale

- Resale keeps property affordable to low-income households
 - Price at resale must be affordable to a reasonable range of low-income buyers
 - May require additional HOME investment
 - New buyer must:
 - Be low-income
 - Occupy house as principal residence
 - Seller must receive a “fair return” on original investment + improvements




When to Use Resale

- Goal is to:
 - Restrict the future sales price of a HOME-assisted property, and/or
 - Limit purchasers to low-income households
- PJ has administrative capacity to manage resale process




When to Use Resale, cont.

- Especially appropriate for communities with high housing costs and/or rapidly increasing home prices
- Ensures affordability of home for duration of the affordability period
- Ensures some return to original homebuyer, **BUT**
- More difficult to administer and market




Basics of Recapture

- Recapture may recover HOME funds to be used for next household
 - Homebuyer may sell home:
 - To any willing buyer
 - At any price
 - At any time
 - PJ must collect part or all of HOME assistance from the net sale proceeds (if sufficient)
 - Cannot provide grant and use recapture




When to Use Recapture

- Goal is to:
 - Assist low-income households become homebuyers
 - Recover part or all of homebuyer subsidy when homebuyer resells the home
- Easiest to explain to prospective homebuyers
- Easiest for PJ to administer




When to Use Recapture, cont.

- Works best in stable housing markets
- Typically easiest to administer
- PJs operating in markets with increasing prices may require equity-sharing
- Opportunity to reuse funds for another family, **BUT**
- Ensures affordability of home for first purchaser, only



Include in Consolidated Plan


- PJs must specify which/both will be used
 - Provide detail for HUD and public to understand how will be applied/work
 - HUD must review for appropriateness and approve
- Resale – must define “fair return” and “reasonable range of low-income buyers”
- Recapture – limit to net proceeds in voluntary and involuntary transfers



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Determination of Affordability Period Differs

- Resale period based on total HOME \$\$:
 - Funds provided to developer, plus
 - Funds directly benefiting homebuyer
- Recapture period based on direct subsidy benefiting homebuyer:
 - Downpayment and closing cost assistance
 - Direct loan
 - Sales price discount from market value



Affordability Period Example

Recapture	Resale
\$50,000 HOME development assistance to CHDO	\$50,000 HOME development assistance to CHDO
\$10,000 discount on sales price to homebuyer	\$10,000 discount on sales price to homebuyer
\$10,000 HOME downpayment assistance to homebuyer	\$10,000 HOME downpayment assistance to homebuyer
Total HOME subsidy subject to recapture: \$10,000 + \$10,000 = \$20,000	Total HOME subsidy: \$50,000 + \$10,000 = \$60,000
Affordability period: 10 years	Affordability period: 15 years

- ### Recovery of HOME Funds Differs
- Resale:
 - Loan instrument (if any) determines funds paid back during loan term
 - Repayment in accordance with promissory note over the term of the loan
 - Recommend loan term at least equal to affordability period for enforcement leverage
 - If sale during loan term, promissory note determines amount owed PJ
 - Loan payments received are program income

- ### Recovery of HOME Funds Differs: Resale, cont.
- If funds provided as grant, no repayment of HOME funds to PJ
 - If homebuyer is in noncompliance or foreclosure occurs:
 - Entire HOME investment (minus any HOME funds already returned) repaid to PJ's HOME account
 - Funds collected are "repayment" funds

Recovery of HOME Funds Differs: Resale, cont.

- At resale during period of affordability:
 - PJ must determine affordable sales price and calculate fair return to seller
 - These must be determined before HOME assistance provided
 - Thorough explanation to homebuyer before purchase is critical
 - PJ may have to invest additional HOME funds to meet both of these requirements, triggering new affordability period
 - Resale provisions and balance of affordability period remain in place if no additional HOME funds provided



Recovery of HOME Funds Differs, cont.

- Recapture
 - Loan instrument determines if/when funds paid back during loan term
 - Recommend loan term at least equal to affordability period
 - Loan payments received are program income
 - Recapture agreement determines amount recaptured at sale
 - Agreement must limit recapture to net proceeds and describe how recapture amount determined



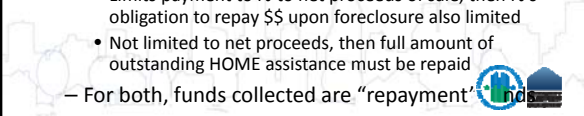
Recovery of HOME Funds Differs: Recapture, cont.

- PJs can use options approved by HUD to determine amount to recapture or design own:
 1. Recapture amount of direct HOME subsidy provided to the homebuyer;
 2. Forgive direct HOME subsidy pro-rata over the affordability period;
 3. Proportionately share net proceeds; or
 4. Allow buyer to recover his/her initial investment first.
- Can combine with shared appreciation
- Funds collected are "recaptured" funds



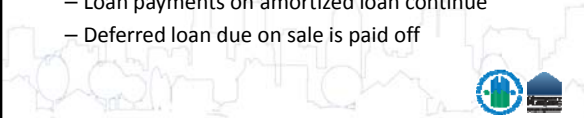
Recovery of HOME Funds Differs, cont.

- Recapture, cont.
 - Noncompliance by homebuyer:
 - Full amount of outstanding HOME investment (minus HOME funds already returned) must be repaid to PJ's HOME account
 - Foreclosure, if recapture agreement:
 - Limits payment to PJ to net proceeds of sale, then PJ's obligation to repay \$\$ upon foreclosure also limited
 - Not limited to net proceeds, then full amount of outstanding HOME assistance must be repaid
 - For both, funds collected are "repayment"



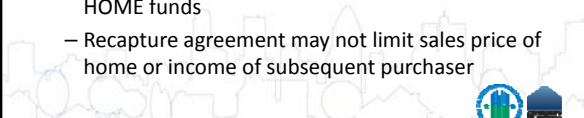
After HOME Period of Affordability Ends

- HOME resale or recapture agreement is released or expires
- PJ's own period of affordability, if any, begins
- HOME funds received by PJ are program income, for example:
 - Loan payments on amortized loan continue
 - Deferred loan due on sale is paid off



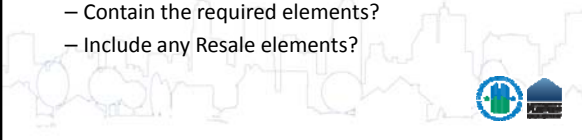
Resale or Recapture?

- PJs must select one option for each HOME-assisted homebuyer property
- Elements of both may not be combined in one HOME agreement, for example:
 - Resale agreement may not specify recapture of HOME funds
 - Recapture agreement may not limit sales price of home or income of subsequent purchaser




Sample Provisions Activity

- Look at the sample provisions on the handout
- Do the Resale provisions:
 - Contain the required elements?
 - Include any Recapture elements?
- Do the Recapture provisions:
 - Contain the required elements?
 - Include any Resale elements?



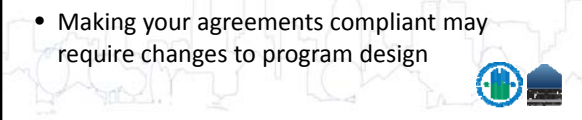
Summary

- Resale and Recapture are different tools
 - Designed to address different markets and program goals
 - PJ's administrative role differs
- Resale and Recapture may not be combined in the same HOME written agreement



Wrap Up

- Review your resale and recapture provisions
- Tweak or re-write as necessary to ensure they are compliant
 - Review HOME regulations, HOMEfires and other HUD guidance
 - Attend Resale and Recapture workshop
- Making your agreements compliant may require changes to program design



Resale and Recapture Provisions Exercise

Resale Provisions:

1. The home must remain affordable for the duration of the period of affordability. If the property is sold while this agreement is in effect, the HOME second mortgage must be repaid as follows:
 - a. If the purchaser's income is at or below 80% of median the seller will receive the value of the original downpayment, principal payments on the first mortgage, and the value of documented property improvements. The principal amount of the HOME mortgage will be reduced, or will be assumed by the purchaser, provided that housing related expenses will not exceed 30% of the purchaser's adjusted gross monthly income.
 - b. If the purchaser's income is above 80% of median the seller will receive the value of the original downpayment, principal payments on the first mortgage, and the value of documented property improvements. Repayment of the HOME mortgage will be made to the extent possible from any funds remaining.
 - Does this resale provision meet the HOME requirements? Yes No
 - If no, why not? Are there any recapture elements in the provision?

2. The homebuyer may sell the property during the period of affordability to a low or moderate income household, which is defined as gross income at or below 80% of median, adjusted for family size. The purchaser must agree to assume the balance of the affordability period. The sale price may not exceed the lesser of the appraised value at the time of sale, or a price that would be affordable to a 4-person household at 80% of median income paying 30% of gross income for housing costs. Additional HOME funds, if available and necessary, will be provided as downpayment assistance to an eligible purchaser to reduce housing costs to 30% of gross income and/or ensure the home seller receives a fair return.

The seller's fair return will include the value of the original downpayment, the amount of mortgage principal repaid, and the value of any improvements installed at the seller's expense. Any appreciation that remains after the payoff of any mortgage debt and closing costs, and payment of fair return to the seller will be shared equally between the seller and the City.

- Does this resale provision meet the HOME requirements? Yes No
- If no, why not? Are there any recapture elements in the provision?

Recapture Provisions:

1. Upon sale of the property or transfer of title, the HOME assistance will be recaptured from the net proceeds. Net proceeds is defined as the sales price minus superior loan repayment and any closing costs incurred by the homebuyer. If the net proceeds are insufficient to recapture the City's HOME investment and return the homebuyer's downpayment, principal payments, and the value of capital improvements, the HOME assistance may be reduced pro rata based on the amount of time the homebuyer has owned and occupied the unit in comparison to the period of affordability. However, the homeowner may never receive more than the total of the downpayment, principal payments, and the value of capital improvements.

- Does this recapture provision meet the HOME requirements? Yes No
- If no, why not? Are there any resale elements in the provision?

2. In the event of a voluntary or involuntary transfer of the property during the applicable period of affordability, the City will recapture all or a portion of the direct subsidy provided to the homebuyer. This direct subsidy is provided as downpayment assistance in the form of a deferred payment 0% interest loan. The loan will be forgiven pro rata over the period of affordability, as long as the home remains the principal residence of the home buyer. If the net proceeds from a voluntary or involuntary sale are insufficient to repay the prorated amount of the HOME subsidy, the City shall recapture the balance due on the loan or 100% of net proceeds from the sale, whichever is less. If there are no net proceeds from the sale, no repayment is required. Net proceeds is defined as the sales price minus superior loan repayment and any closing costs incurred by the homebuyer.

- Does this recapture provision meet the HOME requirements? Yes No
- If no, why not? Are there any resale elements in the provision?