

Lake County HOME Consortium: Recapture and Resale Provisions

Resale and Recapture Policies

These guidelines apply when a homebuyer or developer is assisted with HOME Investment Partnerships Program funds and the homebuyer sells or transfers the assisted property subsequent to the initial HOME-assisted purchase.

Period of Affordability

Consistent with 24 CFR Part 92.254(a)(4), the following minimum period of affordability shall be enforced:

<u>HOME amount per unit</u>	<u>Minimum Period of Affordability</u>
Under \$15,000	5 years
\$15,000 to \$40,000	10 years
Over \$40,000	15 years

The Lake County Consortium may use HOME Program funds to provide homeownership assistance. The forms of subsidy to be used to assist homebuyers and/or developers include down payment assistance, interest subsidy, development cost subsidy, direct loan, project grant, or some combination of these methods. Lake County shall determine, based upon the type of subsidy, form of ownership, and type of market in which the property is located, whether the period of affordability shall be enforced by either Resale or Recapture provisions.

Resale Provisions

- A. Activity Types - Resale provisions as outlined in 24 CFR Part 92.254(a)(5)(i)(A) and (B) shall be required or encouraged in the following cases:
 - Resale provisions shall be required when the HOME subsidy is provided in the form of a development subsidy in which HOME funds are divided among each HOME-assisted unit and not provided as a direct subsidy to the homebuyer.
 - Resale provisions shall be encouraged when the HOME subsidy is provided in the form of a direct subsidy to the homebuyer and a Community Land Trust or other similar entity maintains ownership of the HOME-assisted property to ensure its continued affordability in perpetuity.
 - Resale provisions shall be encouraged when the HOME subsidy is provided in the form of a direct subsidy to the homebuyer and it is determined that the property is located in a highly appreciating market for the purpose of maintaining the unit's affordability throughout the entire period of affordability.
- B. Methods – The resale option ensures that the HOME-assisted unit remains affordable over the entire period of affordability. All HOME-assisted units “designated as affordable units” shall meet the following criteria:
 - The new purchaser must be low-income, meeting the HOME Program definition, and within the same income limit as the original buyer. Additionally, the homebuyer must occupy the property as their principle residence.
 - To ensure that the sales price is affordable to a low-income homebuyer, the homebuyer may receive direct assistance through a reduction in sales price, downpayment assistance, or closing cost assistance.

- The sales price must be “affordable” to the new purchaser. In this instance, affordability of the new purchaser is defined as the income-eligible household’s maximum mortgage capacity as defined by a mortgage lender using generally-accepted underwriting criteria.
- Under no circumstances may the “affordable” sales price exceed 95% of the median purchase price for the area.
- Net proceeds from the sale must provide the original homebuyer, now the home seller, a “fair return” on their investment (including any downpayment and capital improvement investment made by the owner since purchase). In general, Lake County shall consider “fair return” to be the maximum sales price as calculated using the following formula:

$$\text{Maximum Permitted Resale Price} = \left(\frac{\text{Initial Homebuyer Equity} + \text{Loans} + \text{Capital Improvements}}{\text{Initial Area Median Income}} \right) \times \text{Resale Area Median Income}$$

Initial Median Income is defined as the HUD-determined HOME 100% Area Median Income for a four-person household at the time of the Owner’s purchase of the Home.

Resale Area Median Income is defined as the HUD-determined HOME 100% Area Median Income for a four-person household at the time of the Owner’s Notice of Intent.

Capital Improvement is defined as investment by the original homebuyer into the home’s infrastructure such as the roof, heating system, or windows. In order for the cost of the Capital Improvement to be eligible the original homebuyer must show proof of payment.

Loans is defined as the first mortgage and any subordinate mortgages.

Homebuyer Equity is defined as the portion of the downpayment that is the homebuyer’s financial contribution.

Individual projects/ programs may apply for changes in the above formula for application to that specific project/program with the approval of Community Development Staff. The formula for “fair return” must be included in the contract between Lake County and the project/program partner.

- C. Enforcement Mechanisms - Resale requirements shall be enforced through deed restriction, covenant, land use restriction agreement, or other similar mechanism filed with the Lake County Recorder of Deeds and the requirements within shall be triggered upon sale or transfer of the HOME-assisted property.

Recapture Provisions

- A. Activity Types - Recapture provisions as outlined in 24 CFR Part 92.254(a)(5)(ii)(A)(1) through (7) shall be enforced in cases where HOME funds are provided as a direct subsidy to the homebuyer as downpayment and/or purchase- price assistance.
- B. Methods – The recapture option allows Lake County to recapture the entire HOME subsidy, subject to net proceeds if any, if the HOME recipient decides to sell the unit within the period of affordability at whatever price the market will bear. All HOME-assisted unit sales under the recapture option shall meet the following criteria:
 - The homebuyer may sell the property to any willing buyer.

- The sale of the property during the period of affordability triggers repayment of the direct HOME subsidy, subject to net proceeds if any, to Lake County that the buyer received when he/she originally purchased the home.
- C. Enforcement Mechanisms - Recapture provisions shall be enforced through a mortgage, note and Recapture Agreement filed with the Lake County Recorder of Deeds, and the requirements within shall be triggered upon sale or transfer of the HOME-assisted property.
- D. Amount of Repayment – Lake County requires that when the recapture requirement is triggered by a sale (whether voluntary or involuntary), it will recapture the Home investment up to the total net proceeds remaining, if any, after the sale as modified by program specific choices under 24 CFR Part 92.254(a)(5)(ii)(A)(1) through (4). Net proceeds are the sales price minus the superior loan repayment (other than HOME funds) and any closing costs. In cases where the superior loan repayment and closing costs meet or exceed the sales price, net proceeds are zero. The specific method of recapture as capped by net proceeds, if any, is the following:
- a. Reduction during the affordability period - Reduce the HOME investment amount to be recaptured on a pro rata basis for the time the homeowner has owned and occupied the housing measured against the required affordability period.

Period of Affordability - Years	Period of Affordability - Months	Pro rata Monthly Reduction
5	60	1/60
10	120	1/120
15	180	1/180

- E. Mortgage Release - Upon receipt of recaptured funds, Lake County shall file a “Release” document with the Lake County Recorder of Deeds to release the original HOME-assisted homebuyer from the requirements of the mortgage or other similar mechanism.
- F. Repayments – Repayments of recaptured funds shall be remitted directly to Lake County to be utilized for HOME-eligible activities only.

Compliance

- A. If the homebuyer is in noncompliance with the HOME Program requirements, the homebuyer shall repay the direct HOME Program subsidy to the Lake County Consortium within 90 days of notification of noncompliance.
- B. Noncompliance with the HOME Program requirements includes: (1) failure to occupy the unit as the homebuyer’s principal place of residence, either by vacating or leasing the unit, throughout the entire Period of Affordability; (2) purposefully providing false information as to the homebuyer’s income or status as low-income; (3) failure to maintain the unit in accordance with all State and local housing quality standards or codes; (4) failure to comply with Lake County Consortium monitoring to determine compliance with the principal residency or property standards requirements; or (5) the sale or transfer of the unit without adherence to the resale/recapture provisions established in the mortgage, note, and homebuyer agreement.