



**U.S. Department of Housing and Urban Development**

Seattle Regional Office  
Seattle Federal Office Building  
Office of Community Planning & Development  
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Seattle, WA 98104-1000  
[www.hud.gov/washington.html](http://www.hud.gov/washington.html)

April 4, 2018

Michael Torres, Program Manager  
Community Housing and Development  
Clark County  
1601 E 4th Plain Boulevard, Building 17 Suite A419  
P.O. Box 5000  
Vancouver, WA 98666-5000

Dear Mr. Torres:

**SUBJECT: Approval of Revised Resale and Recapture Policies for 2017 Annual Action Plan**

We have approved the enclosed Resale and Recapture Policies submitted electronically by Clark County in March 2018. The Resale and Recapture Policies are required for the use of HOME funds for homebuyer assistance activities. Please ensure that the revised Resale and Recapture Policies are incorporated into the 2017 Annual Action Plan.

If you have questions, please contact Stephanie Potts at (206) 220-5257 or [Stephanie.E.Potts@HUD.gov](mailto:Stephanie.E.Potts@HUD.gov).

Sincerely,

A handwritten signature in blue ink that reads "John W. Peters".

John W. Peters  
Director  
Office of Community Planning  
and Development

Enclosure



# Resale and Recapture Policies

## Introduction

Clark County is a participating jurisdiction in HUD's HOME Investment Partnerships Program. When undertaking HOME-assisted homebuyer activities, which Clark County does, federal regulations must establish written resale and recapture policies that comply with HOME statutory and regulatory requirements. These policies are set forth in the Five-Year Consolidated Plan and Annual Action Plan and clearly describe the terms of the resale and recapture provisions, the specific circumstances under which these provisions will be used, and how Clark County will enforce the provisions for HOME-funded ownership projects. HUD reviews and approves the provisions as part of the annual Action Plan process. The purpose of this section is to provide the Resale and Recapture policies for Clark County's HOME Investment Partnerships Program. As stated above, HOME requires jurisdictions to utilize resale and/or recapture policies to ensure continued affordability for low to moderate-income homeowners and as a benefit to the public through the wise stewardship of federal funds. Clark County has used HOME funds for different types of programs to assist with single-family residences:

- Down Payment Assistance provided to new homebuyers;
- Acquisition and Development provided to developers of new single-family housing for ownership;
- Community Land Trust acquisition of a parcel of land under an existing single-family home to provide affordable ownership

Not all of these programs are always available; program providers are able to apply for funding on an annual basis and may or may not receive an award.

## General HOME Property Restrictions

For a homebuyer or homeowner to be eligible for HOME assistance, they must have a low to moderate income, at or below 80% of area median income, as provided by HUD. The household must be purchasing, constructing, or rehabilitating a home that they intend to maintain as their primary residence. Depending on the amount of HOME assistance provided to the residence, the property must remain affordable for the number of years indicated. If the property is sold during this time, or if it is no longer the primary residence of the household, either resale or recapture restrictions will be enforced.

HOME Assistance per-unit	Minimum period of affordability in years
Under \$15,000	5
\$15,000 to \$40,000	10
Over \$40,000	15

**Resale Policy**

Clark County’s Resale policies ensure that HOME-assisted units remain affordable throughout the entire affordability period. The Resale method is used in cases where HOME funding is invested directly into a property, through a developer or nonprofit, to reduce development or acquisition costs, thereby, making the price of the home affordable to an eligible buyer.

Specific examples where Clark County would use the resale method for homeowner assistance include:

1. Providing HOME funds to acquire property to be developed or to acquire affordable owner units;
2. Providing HOME funds for site preparation or improvement, including demolition; and
3. Providing HOME funds for construction materials and/or labor.

**Resale Policy Notification to Prospective Buyers**

The resale policy is explained to prospective homebuyers prior to signing a contract to purchase a HOME-assisted unit. The prospective homebuyers sign an acknowledgement that they understand the terms and conditions applicable to the resale policy as they have been explained. This document is included with the executed sales contract. (See attached Notification for Prospective Buyers.)

**Enforcement of Resale Restrictions**

The resale restrictions are enforced through the use of a covenant, or ground lease, signed by the homebuyer at closing. This document will specify:

1. The length of the affordability period (based on the dollar amount of HOME funds invested in the unit; either 5, 10, or 15 years);
2. That the home remain the Buyer’s principal residence throughout the affordability period; and
3. The conditions and obligations of the Owner should the Owner wish to sell before the end of the affordability period, including:
  - a. The Homeowner must contact Clark County in writing if intending to sell the home prior to the end of the affordability period;
  - b. The subsequent purchaser must be low-income as defined by HOME, and occupy the home as their primary residence for the remaining years of the affordability period. (However, if the new purchaser requires any additional HOME assistance, the affordability period will be reset according to the amount of assistance provided); and
  - c. The sales price must be affordable to the subsequent purchaser; affordable is defined as limiting the Principal, Interest, Taxes, and Insurance (PITI) amount to no more than 35% of the new purchaser’s monthly income.

**Fair Return on Investment**

Clark County will administer the resale restrictions to ensure that the Owner receives a fair return on investment and that the home will continue to be affordable to a specific range of incomes.

The resale formula used by Clark County provides a fair return to the homeowner at resale, based on an objective standard that is publicly accessible and can be easily measured, both at the time of initial purchase and at resale.

Clark County uses an appraisal-based resale formula to achieve its dual goals of providing a fair return to the original homeowner/seller at resale and ensuring an affordable price to the incoming, low-income homebuyer.

The resale formula stipulates that the homeowner, should they choose to sell, will be able to sell the home for the original price paid, plus 25% of any increase in the combined appraised value of the home and the land during the time of ownership. Additionally, at resale, the homeowner is allowed to receive an equity “credit” for qualified capital improvements made, as follows:

- 100% of the increase in appraised value attributable to the addition of one or more bedrooms and one or more bathrooms
- 50% of the cost of major systems replacement within five years prior to resale. This does not include repairs but is for upgrades or improvements that do not typically increase market value in an appraisal but do increase a home’s useful life (i.e., roof, furnace, electrical system).

**Fair Return at Resale Example**

Here is an example of how the resale formula is designed to work, using hypothetical market conditions:

**At initial purchase:**

\$250,000	Market value of land and improvements, as determined by appraisal at initial purchase
<u>(\$ 70,000)</u>	HOME affordability subsidy
\$180,000	Purchase price of home paid by homebuyer

**At resale – 10 years later:**

\$310,000	Market value of land and improvements, as determined by appraisal at time of resale
\$60,000	Increase in value of land and improvements from initial purchase to resale, as determined by appraisal
25%	Homeowner’s percentage share of appreciation in value
\$15,000	Homeowner’s dollar value of appreciation, per resale formula (\$60,000 x 25% - \$15,000)
\$12,500	Credit for qualified capital improvements made by homeowner
<u>\$33,846</u>	Equity earned by homeowner by amortization of mortgage after 10 years <sup>1</sup>
\$61,346	Total equity earned by homeowner/seller at resale (\$15,000 share of appreciation + \$12,500 credit for qualified capital improvements + \$33,846 equity earned through mortgage amortization)

**Sale to next buyer:**

\$207,500	Purchase price paid by incoming low-income homebuyer: \$180,000 (initial affordable purchase price) plus \$15,000 (paid to original homeowner as share of appreciation) plus \$12,500 (paid to original homeowner as a credit for capital improvements).
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In this example, the home is sold to an eligible low-income household – a property that now has an appraised market value of \$310,000 – for an affordable price of \$207,500 without requiring investment of additional affordability subsidies. After the departing homeowner has been paid all that is owed, as per the resale formula, the incoming, low-income homebuyer pays 100% of the HOME-assisted property’s new \$207,500 purchase price.

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<sup>1</sup> Assuming 5%, fixed-rate, 30-year mortgage loan of \$179,500 to original homeowner.

By using a market rate (fee simple) appraisal conducted by an independent, state-licensed appraiser to establish the value of the property prior to the initial purchase of the home, Clark County follows the standard practice for all real estate purchase transactions. By obtaining a new market rate fee simple appraisal, upon notice of intent to sell by the homebuyer, Clark County ensures that standard techniques for determining property values throughout the real estate industry are always used. In this way, market values are easily measured, professionally determined, and publicly accessible. No subjective judgments are made by Clark County or the homeowner as to what constitutes value and how value is determined.

The HUD publication entitled "First-Time Homebuyers and the HOME Program – A Guide to Using the HOME Investment Partnership Program for a First-Time Homebuyers Program," published June 29, 1992, addresses this issue of what a "fair return" might be. It bears noting that, in this publication, the appraisal-based formula in which a seller is allowed to receive a 25% share of the appreciation in value is actually one of the examples used by HUD to explain to Participating Jurisdictions what an acceptable resale formula might be in determining a "fair return on investment."

### **Affordability to a Range of Buyers**

Using the resale method, the county will ensure continued affordability to a range of buyers, particularly those whose total household incomes is between 60 and 80% of area median income. Sales prices shall be set such that the amount of Principal, Interest, Taxes, and Insurance does not exceed 35% of a household's income who earns 80% of the area median income.

### **Recapture Policy**

Clark County will use recapture provisions for down payment assistance programs, where HOME funds are provided to an eligible household for the purchase of a single-family unit that will be their primary residence.

The amount recaptured is limited to the net proceeds available from the sale of the residence. If the net proceeds (sale price minus non-HOME mortgage repayment and closing costs) are sufficient, the full amount of the HOME assistance plus shared equity shall be recaptured.

If the net proceeds are not sufficient to recapture the full HOME investment, plus enable the homeowner to recover the amount of the original down-payment and any capital improvement investments made since purchase, the participating jurisdiction may share the net proceeds. The net proceeds are the sales price minus loan repayment (other than HOME funds) and closing costs.

If the housing purchased with HOME assistance is sold, refinanced or no longer the principle residence prior to the end of the affordability period, the County expects to recapture the initial investment.

## NOTIFICATION TO PROSPECTIVE BUYER

This notification is provided to \_\_\_\_\_ who is/are purchasing a home with the assistance of HOME Investment Partnerships Program funding administered through Clark County, by and through the Department of Community Services, P.O. Box 5000, Vancouver, WA 98666.

THEREFORE, IT IS MUTULLY AGREED as follows:

1. Clark County provided HOME funds in the form of a loan to \_\_\_\_\_ for the acquisition of a house located at \_\_\_\_\_.
2. The U.S. Department of Housing and Urban Development (HUD) Affordability Period (24 CFR Part 92.254(4)) is 15 years, from the date the deed is signed.
3. Resale provisions are applicable for this residence assisted with HOME funds when the property does not continue to be the principal residence of the household for the duration of the 15 Year Home Affordability Period. The Buyer shall annually certify that they continue to use the house as their principal residence.
4. If the Buyer does not continue to occupy the home as his/her principal residence during the Affordability Period, as defined above, or sells the property during the Affordability Period, the following resale provision shall be followed:

Upon sale of the property by the initial homeowner and each successive homeowner during the affordability period, the homeowner must receive a "fair return" on their investment. Fair Return is defined as twenty-five percent (25.00%) of the appreciation and any improvements. The full amount of the downpayment is then added to the 25% calculation. Appreciation is the increase in sales price from the time of purchase to the time the owner sells the house. The fair return will only apply to sales during the HOME affordability period. The minimum fair return to a seller will be their downpayment.

Owner improvements are defined in the U.S. Department of Treasury Internal Revenue Service (IRS) Publication 523 Selling Your Home.

The house must be made available for subsequent purchase only to qualified low-income buyers who will use the house as their principal residence. "Low-income" mean a household income not exceeding 80 percent of the area median income as established by HUD, adjusted for household size, at the time of home purchase. Each subsequent buyer, during the HOME Affordability Period, shall not pay more than 35% of their gross income for mortgage payments including principal and interest, property taxes, and homeowner's property insurance.

By signing below, the Buyer understands and agrees to the terms contained in this notification.

Buyer: \_\_\_\_\_

Date: \_\_\_\_\_