Montana Department of Commerce Resale and Recapture Policies

Requirement for Homebuyer Assistance

Recapture provisions will only be used for direct assistance to the homebuyer and resale provisions will be used for all development subsidy and for homebuyer assistance when homes will be placed in a community land trust. Any of the entities who have elected to provide homebuyer assistance under this program are required to specify their recapture or resale provisions as applicable for the period of affordability. Written agreements for homebuyer assistance activities funded by Commerce will include the appropriate provisions to ensure the period of affordability, principal residency requirements, and any other recapture or resale terms and conditions to comply with HOME regulations.

Principal Residency

The initial homebuyer must reside in the home as their principal residence for the duration of the period of affordability (see **Table 1**). If the home is transferred within the period of affordability, the applicable resale or recapture provisions will be enforced.

Period of Affordability

The recapture and resale provisions are in effect for a period of affordability based on the total amount of HOME funds provided directly to the homebuyer that enabled the homebuyer to purchase the unit or the amount of HOME funds invested in the development of the unit. Any HOME program income used to assist the homebuyer or development is included when determining the period of affordability under recapture or resale provisions.

The minimum affordability periods for recapture and resale provisions are outlined in **Table 1**.

Table 1 – HOME Affordability Periods

HOME Assistance to Buyer	Period of Affordability
Less than $15,000	5 years
$15,000 - $40,000	10 years
More than $40,000	15 years

Written agreement and enforcement mechanisms

Whether using recapture or resale, entities must establish and enforce provisions through a written agreement with the homebuyers that accurately reflects the resale or recapture provisions, before or at the time of sale. Commerce will use deed restrictions, trust indenture, covenants running with the land, mortgages, or other similar enforcement mechanisms to retain the authority to ensure the provisions being used are in accordance with those stated in the written agreement with the entities. Commerce will specify which enforcement mechanism it will use.

During grant monitoring of the HOME Program entities, Commerce will review the deed restrictions, trust indenture, covenants running with the land, mortgages, or other similar mechanisms placed on the HOME-assisted property to ensure the provisions being used are in accordance with those stated in the written agreement with the entities. During the period of affordability, the entities must complete an annual compliance check to ensure that the initial homebuyer still resides in the property as their principal residence. The most current utility statement, proof of paid taxes, or certificate of homeowner’s insurance are acceptable documentation.

If a homeowner voluntarily or involuntarily transfers their property (e.g., through sale or foreclosure) during the period of affordability, the appropriate recapture or resale provisions will go into effect. Commerce must be notified of a voluntary or involuntary sale or transaction changing ownership, and the applicable recapture or resale provisions must be employed.

Triggering resale or recapture provisions

Noncompliance occurs when the homeowner does not comply with the terms and conditions of the written agreement during the period of affordability, which includes when the homeowner does not occupy the unit as their principal residence, or when the home is voluntarily or involuntarily transferred in a transaction changing ownership without proper notice and the appropriate provisions were not enforced. In the event of noncompliance, the appropriate recapture or resale provisions will go into effect, and the homeowner is subject to repayment of all HOME assistance invested in the housing unit. This is based on the amount of HOME subsidy invested in the property (subsidy includes any program income or HOME funds invested). The repayment amount is not subject to any reductions that might otherwise apply under the recapture or resale provisions listed in this document.

1. Resale Provisions

Resale provisions will be used when HOME assistance is only used as development subsidy and therefore is not subject to recapture. If homebuyer assistance is provided for a home that will be put into a community land trust, resale provisions will be used. The resale option is typically used in areas with predominantly high home sales prices, areas subject to rapidly appreciating housing costs, areas with a shortage of affordable homes for sale and no available land to build new homes.

Commerce has adopted the following provisions for resale requirements as specified in the HOME rule at CFR 92.254(a)(5)(i). Under these resale provisions, Commerce will ensure that when a HOME-assisted homebuyer sells his or her property, either voluntarily or involuntarily, during the period of affordability, the following will apply:

- The property is sold to an eligible low-income household who will use the property as his or her principal residence through the period of affordability;
- The original homebuyer receives a fair return on investment, (i.e., the homebuyer's down payment (if any is made at the time of purchase) plus capital improvements made to the house); and
- The property is sold at a price that is "affordable to a reasonable range of low-income buyers."

Ensuring Long Term Affordability

If the housing is transferred, voluntarily or otherwise, during the period of affordability, it must be made available for subsequent purchase only to another buyer whose household qualifies as low income and will use the property as its principal residence. To qualify as low-income, a household's income must be below 80% AMI. An organization awarded HOME funds for housing development must enforce these affordability requirements.

Fair Return on Investment

If a home is sold during the period of affordability, the price at resale must provide the original HOME-assisted homebuyer a fair return on investment. Net proceeds (after senior debt and sales costs) to the seller shall not exceed the sum of:

1. The reimbursement of the original owner's down payment and/or closing costs made at the time of initial purchase, if any;
2. The principal paid on the senior debt during the period of ownership;
3. The investment in eligible capital improvements defined as any individual improvement made specifically to the structure or major system of the HOME-assisted housing unit in which the cost was more than $3,000 and where applicable, the work was properly permitted, inspected locally, and the actual cost has been documented with third party receipts.

The value of the owner's investment (the sum of 1-3 above) will be adjusted by using the Housing Price Index (HPI) as measured by the Federal Housing Finance Agency. The change in the HPI from the original purchase to the time of sale will be applied to the value of the owner's investment, so that the value of the investments is increased or decreased by the amount of increase or decrease in the housing market overall.

Continued Affordability
In addition to ensuring that the HOME-assisted homebuyer receives a fair return on investment, the entities will ensure that the housing under a resale provision will remain affordable to a reasonable range of low-income homebuyers. The sales price may not exceed a price that is affordable to households with incomes at or below 80% AMI. To be affordable, a household would be expected to pay no more than 32% of its monthly income for mortgage principal and interest, property taxes, and insurance. And in no case could the price exceed the HOME Program purchase price limits as defined by HUD and provided on Commerce's website.

2. **Recapture Provisions**

Direct HOME Subsidy/Amount Subject to Recapture
Commerce has adopted the following provisions for recapture as specified by 24 CFR 92.254 that are outlined in the HOME regulations and in CPD notice 12-003. Homebuyers assisted under HOME will be required to adhere to recapture guidelines applied to their home. An organization awarded HOME funds (the "subrecipient") for homebuyer assistance will be instructed to use the recapture method and must submit their policy for the applicable recapture method if a home is sold during the period of affordability, to include:

- Recapture of the entire direct HOME subsidy; and
- Owner investment is returned first.

Commerce may also adopt recapture provisions that differ from the model provisions in the HOME regulations. The particular recapture provision adopted (whether one of the models or an alternate approach) requires an amendment to the AAP and HUD approval.

Commerce or an entity can never recapture more than the amount of available net proceeds upon voluntary or involuntary sale or transaction changing ownership, unless noncompliance has occurred. Net proceeds is defined as the sale price of the home minus the superior loan repayment (not including HOME loans) and any closing costs. If the amount to be recaptured is more than the net proceeds (i.e., foreclosure or declining housing markets) the seller would be required to repay the balance of the net proceeds, which could be less than the original HOME direct subsidy.

Recapture of the Entire Direct HOME Subsidy

The following are the conditions under which Commerce will enforce the use of recapture of the entire direct HOME subsidy as a recapture provision. In this recapture provision, Commerce or the entity recaptures the entire amount of HOME subsidy provided to the homebuyer before the household receives proceeds from the sale of the property. This recapture is limited to the net proceeds available from the voluntary or involuntary sale or transaction changing ownership during the period of affordability.

This recapture provision will be enforced in the event of a voluntary or involuntary sale or transaction changing ownership that occurs during the period of affordability years 0 through 9, as applicable to **Table 1**. Enforcement of the recapture provision that occurs during the period of affordability years 10 through 15 (see **Table 1**) will follow the recapture provision owner investment is returned first. If the period of affordability is less than 10 years, recapture of the entire direct HOME subsidy will only be used; no other recapture provision will be permitted. This will be enforced through the written agreement with the household.

As an example, if the assisted unit received $12,000 in HOME assistance and the unit is voluntarily or involuntarily sold or a transaction changing ownership has occurred during year 4, the entire direct HOME subsidy ($12,000) would need to be repaid according to the net proceeds calculation. If the assisted unit received $42,000 in HOME assistance and the unit is voluntarily or involuntarily sold or a transaction changing ownership has occurred during year 11, the entire direct HOME subsidy recapture provision would not be triggered, rather the owner investment is returned first recapture provision would be triggered.

Owner Investment Returned First

The following are the conditions under which Commerce will enforce the use of owner investment is returned first as a recapture provision. In this recapture provision, Commerce or the entity recaptures all or a portion of the HOME subsidy provided to the homebuyer but allows the homebuyer to recover their entire investment (down payment and capital improvements made by the owner since the purchase) before recapturing the HOME investment. This recapture includes the net proceeds available from the voluntary or involuntary sale or transaction changing ownership during the period of affordability. However, if net proceeds are insufficient, the homebuyer may not receive their entire investment back, and Commerce or the entity may not be able to recapture the full amount due from the net proceeds available.

Eligible capital improvements include permanent property improvements that improve or enhance the basic livability or utility of the property but are not normal or recurring maintenance items. The value of capital improvements will be based on the actual costs of the improvements as documented by the homeowner's receipts.

This recapture provision will be enforced in the event of a voluntary or involuntary sale or transaction changing ownership that occurs during the period of affordability years 10 through the minimum years (see **Table 1**) to include owner investment is returned first. This will be enforced through the written agreement with the household.

As an example, if the assisted unit received $40,000 and the unit is voluntarily or involuntarily sold or a transaction changing ownership has occurred during year 10, the homebuyer's investment would be calculated based on the documented capital improvements made during the period of affordability and any investment made during the original sale. This amount would be deducted from the amount to be repaid according to the net proceeds calculation that would be paid to homeowner and Commerce or the entity.