



# City of Nashua

## Community Development Division

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### HOME Resale/Recapture Policy Home Buyer Assistance Program UPD Policy – Effective July 1, 2023

HOME is authorized under Title II of the Cranston-Gonzalez National Affordable Housing Act (HOME statute), as amended. HOME provides formula grants to States and localities in order to expand the supply of decent, safe, sanitary, and affordable housing available to low-income and very low-income residents.

Programs to assist homebuyers may include acquisition, rehabilitation, or new construction of housing to be purchased by low-income homebuyers. The HOME subsidy can be provided to the developer, the homebuyer, or both, and can be structured in a variety of ways, including low-interest, zero-interest, or deferred payment loans, grants, or interest rate subsidies.

The City may support home ownership development through subsidies to the developer that help close the funding gap. Preference would be given to Nashua residents, although assistance will also be available to buyers moving to Nashua. In some cases, a developer may propose to give preference to a certain population, such as veterans, homeless, victims of domestic abuse, disabled households, etc. If a proposal is submitted that limits beneficiaries, the limitation would be made public through the local funding approval process (via the Board of Aldermen), allowing the public an opportunity to comment. 24 CFR, Part 92.254(a)(5) requires the City to impose either resale or recapture requirements for all homebuyer activities.

The City may also support a homebuyer program, under which low-income (80% AMI) borrowers can obtain forgivable loans toward down payment, closing costs, and other such costs. Full program details will be contained in a separate document and available on the UPD webpage as developed.

### Recapture Policy For Direct Subsidy to Owner

HUD defines **Direct HOME subsidy** as the amount of HOME assistance, including any program income, that enabled the homebuyer to buy the unit. The direct subsidy includes down payment, closing costs, interest subsidies, or other HOME assistance provided directly to the homebuyer. In addition, direct subsidy includes any assistance that reduced the purchase price from fair market value to an affordable price. If HOME funds are used for the cost of developing a property and the unit is sold below fair market value the difference between the fair market value and the purchase price is considered to be directly attributable to the HOME subsidy. (Note: the above HUD definition includes all types of subsidy, including down payment/closing costs.)

The following recapture provisions shall apply to all HOME assistance provided as a direct subsidy to the buyer:

- The amount of HOME assistance subject to recapture is the direct subsidy that enabled the home buyer to purchase the property. Duration of the affordability period will be determined by the value of the total direct HOME subsidy to the buyer, according to the minimum number of years required by HUD.

<b>Total HOME investment in the unit:</b>	<b>Period of affordability:</b>
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Under \$15,000	5 years
Between \$15,000 and \$40,000	10 years
Over \$40,000	15 years

- J If the owner fails to occupy the property as his/her principle residence or violates other compliance terms in the HOME Agreement, the entire HOME assistance amount must be repaid. Failure to occupy is considered non-compliance and no portion of the loan will be forgiven.
- J The City will reduce the amount of direct HOME subsidy on a pro-rata basis for the time the homebuyer has owned and occupied the housing, measured against the required affordability period. The resulting ratio will be used to determine how much of the direct HOME subsidy the City will recapture, subject to net proceeds, in the event the home is sold or transferred (voluntarily or not) before the end of the affordability period.

$$\frac{\text{Number of years buyer occupied property}}{\text{Period of Affordability}} \times \text{Total direct HOME subsidy} = \text{Recapture Amt}$$

**EXAMPLE:**

A homebuyer receives \$10,000 of HOME down payment assistance and purchases a home developed with HOME funds for \$10,000 below fair market value. The total direct HOME subsidy to the homebuyer is \$20,000 and requires a 10-year period of affordability. If the homebuyer sells the unit in year 5 of the 10-year period of affordability, the City would *forgive* 50 percent of the direct HOME subsidy and *recapture* 50 percent of the direct HOME subsidy, or \$10,000 of the \$20,000 HOME investment, assuming that there are sufficient net proceeds available.

$$\frac{\text{Owner resided in home for 5 years}}{\text{10-year period of affordability}} \times \$20,000 \text{ HOME investment} = \$10,000 \text{ recaptured}$$

- J The City will permit a subsequent low-income purchaser of a HOME-assisted homeownership unit to assume the existing HOME loan and recapture obligation entered into by the original buyer when no additional HOME assistance is provided to the subsequent homebuyer (consistent with §92.254(a)(5)(ii)). The original buyer must submit this request in writing and the City must review and approve the subsequent buyer to determine eligibility.
- J These Recapture provisions will be documented through a written agreement with the homebuyer, and enforced by a deed restriction recorded at the Hillsborough County Registry of Deeds.

**Resale Policy  
for Development Subsidy**

When the home buyer is directly assisted, as described above, the City's recapture provisions will apply. However, when a buyer is not directly assisted, recapture is not allowed as detailed in 24 CFR Part 92.254(a)(5)(i). For example, if the City provides HOME assistance to the developer to subsidize the cost of construction and/or rehab and the home is sold at fair market value, the buyer is not directly assisted and resale provisions must be applied. The City's resale provisions are as follows:

- J The Resale provisions will be documented through a written agreement with the homebuyer, and enforced by a deed restriction recorded at the Hillsborough County Registry of Deeds
- J The resale provisions will be triggered by any transfer of title, either voluntary or involuntary, during the established HOME period of affordability
- J The HOME rule at §92.254(a)(3) requires that all HOME-assisted homebuyer housing be acquired by an eligible low-income family, and the housing must be the principal residence of the family throughout the period of affordability. If the housing is transferred, voluntarily or otherwise, during

the period of affordability, it must be made available for subsequent purchase *only* to a buyer whose family qualifies as low-income, and will use the property as its principal residence.

- J The affordability period will be determined by the amount of per-unit HOME assistance provided. Under resale, §92.254(a)(5)(i) of the HOME rule states that the period of affordability is based on the *total* amount of HOME funds invested in the housing. In other words, the total HOME funds expended for the unit determines the applicable affordability period. Any HOME program income used to assist the project is included when determining the period of affordability under a resale provision.

Total HOME investment in the unit:	Period of affordability:
Under \$15,000	5 years
Between \$15,000 and \$40,000	10 years
Over \$40,000	15 years

- J The price at resale must provide the original HOME-assisted owner a fair return on investment and ensure that the housing will remain affordable to a reasonable range of low-income homebuyers.
  - o Affordable to a reasonable range of low-income buyers means that the principle, interest, taxes and insurance (PITI) shall not exceed 30% of gross income for buyers between 70-80% area median income.
  - o In some cases, it may be necessary for the City to provide HOME assistance to the subsequent homebuyer to ensure that the original homebuyer receives a fair return and the unit is affordable to the defined low-income population. The resale price cannot be set based upon what is affordable to a *specific* homebuyer.

- J Fair Return to Initial Buyer: Fair Return is defined as the return of the initial homeowner’s original investment (i.e. down payment) plus the cost of eligible capital improvements (below). The average change in the Consumer Price Index (CPI) over the period of ownership will be applied to the investment basis. The fair return will only apply to sales within the HOME Affordability Period.

It is important to note that in certain circumstances, such as a declining housing market where home values are depreciating, the original homebuyer may not receive a return on his or her investment because the home sold for less or the same price as the original purchase price.

Example: The City provides HOME funds for the construction of a single-family homebuyer unit. The homebuyer provides \$5,000 for a downpayment. The City uses the average change in the Consumer Price Index over the period of ownership as its standard index for fair return on investment.

The original homebuyer decides to sell their home during the period of affordability and is able to sell the home at a price that permits the original homebuyer to realize a full return on his investment.

In the past year, the original homebuyer undertook a \$9,000 kitchen renovation. The City determines that the average change in the Consumer Price Index over the original homebuyer’s period of ownership is 3.5 percent. The original homebuyer’s initial downpayment investment of \$5,000 plus the kitchen improvements, valued at \$9,000, would result in a fair return of \$490. Total return at sale, assuming the price at sale permits the original homebuyer to realize a full return on his investment, would include the original homebuyer’s initial investment of \$5,000, plus the \$9,000 investment in capital improvements, plus a \$490 fair return on both of those investments.

$$(\$5,000 + \$9,000) \times 3.5\% = \$490 \text{ fair return on initial and capital investments}$$

$$\$5,000 + \$9,000 + \$490 = \$14,490 \text{ total return to the original homebuyer at sale}$$

) Eligible Capital Improvements: Capital improvements made by the original homebuyer must be supported by receipts/contracts/cashed checks or other proof of payment. All work must have been conducted in accordance with state and local building codes. If a permit was required for the work, it must be on file and have been approved by the City of Nashua Building Department. NOTE: If the owner does not have proof of payment or work was conducted without local approvals, it will not be included in the Fair Return calculation.

Eligible capital improvements include:

- o Energy upgrades such as solar hot water system, heating system or increased insulation
- o Replacement kitchen or bathroom
- o Kitchen modernization
- o Addition of driveway, sprinkler systems, retaining walls or fence

Excluded work includes:

- o Maintenance costs
- o Cosmetic improvements, such as paint, wallpaper, landscaping, lighting, etc

) The City will use deed restrictions to impose the resale requirements. The affordability restrictions may terminate upon occurrence of any of the following termination events: foreclosure, transfer in lieu of foreclosure or assignment of an FHA insured mortgage to HUD. The City may use purchase options, rights of first refusal or other preemptive rights to purchase the housing before foreclosure to preserve affordability. The affordability restrictions shall be revived according to the original terms if, during the original affordability period, the owner of record before the termination event, obtains an ownership interest in the housing.