

Indiana Housing Conference

Indiana's must-attend conference for affordable housing professionals.



HOME Written
Agreements
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Indiana Housing & Community Development Authority

Welcome & Introductions



- Delivered by Steve Lathom, TDA Consulting
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- Session Objectives
 - Critical role of written agreement
 - HUD concerns
 - Key agreement types



Most Important HOME Document



- Generic term, but written agreement is:
 - Legally binding contract
 - Representing commitment of HOME funds
 - Establishing basis for compliance and enforcement
- HOME Final Rule outlines highly specific requirements for written agreements
 - Particularly at §92.504(c) but throughout part 92
 - 2013 HOME Rule added requirements and specificity, e.g. dated signatures, targeting special populations, CHDO operating, etc.



Source of Significant Concern at HUD



- When asked if there were common concerns at HQ about HOME written agreements...

“Everything!”

- HUD reviews written agreements when
 - Monitoring
 - Assessing compliance with commitment deadlines
 - Considering waivers



2013 HOME Final Rule added specificity

Issues Big & Small



- No agreement at all
 - Mortgage & note are not sufficient
- Missing
 - Dates, signatures, funding amounts, project descriptions...
- Include
 - Standards that don't apply (e.g. Uniform Administrative Requirements applied to Developer, CDBG regs, etc.)
- Inconsistencies
 - Within agreement, between agreement and financing documents, between agreement and Action Plan



Some Causes



- One size fits ~~all~~ *none*
- Copying from CDBG or another PJ
 - HUD expects PJ to enforce terms of agreement
 - Even when more restrictive than minimum requirements
- Legal counsel
 - Too involved
 - Not involved enough



Failure to reset and reassess

Making Sense of Written Agreements



- HOME is made up of multiple programs, each with key differences
 - Homeowner ≠ Homebuyer ≠ Rental
- Agreement driven by program role
 - Esp: Developer, subrecipient, low-income beneficiary
 - CHDO receiving optional benefits
 - Contractor procured by PJ
- One “project” = one agreement
- Agreement is policy
- Agreement is primary document
 - Also financing documents, deed restrictions, others



PJ

Developer/Owner
(inc. CHDOs)

CHDOs

Low-Income
Beneficiaries

Subrecipient/State
Recipient

Homebuyer
(For-Sale)

Operating

Owner Occupied
Rehab

Low-Income
Beneficiaries

But even that's not all..

Rental

Predevelopment

Homebuyer
Assistance (DPA)

Developers

TBRA



Agreement: Rental Owner/Developer



- Written agreement supported by
 - Deed restriction (required)
 - Mortgage/Note (nearly always)
 - Others – Guarantees, environmental or other indemnities, UCC filings, etc.
- Hints, Observations & Cautions
 - Balance btw specific instruction and generic rule citations
 - Provide for updated local procedures (e.g. reporting) and “self-correcting” amendments
 - Can’t set it and forget it – require approval of changes in budget, scope, timeline, cost allocation, etc.
 - Don’t defer PJ’s oversight/decision making to others



Agreement: Homebuyer Developer



- Written agreement supported by
 - Mortgage/Note (nearly always)
 - Deed restriction (sometimes, esp. w resale)
- Hints, Observations & Cautions
 - Separate agreement with low-income homebuyer at sale
 - Definition of the “project”
 - Setting the sales price
 - Communicate PJ buyer underwriting standards
 - Communicate affordability period, recapture/resale
 - Clearly describe flow of funds, plan for final reconciliation



Agreements: CHDOs



- Project funding, all developer agreement reqs plus
 - CHDO role, maintenance of CHDO status
 - Rental – tenant participation plan, grievance procedure
 - For-sale – CHDO proceeds retention/reuse (PJ option)
- CHDO Operating
 - Separate agreement, not part of project agreement
 - If applicable, establish basis for expectation of funding w/in 24 months



CHDO Predevelopment Loan

Separate agreement may be consolidated into

Agreement: Low-Income Buyer



- Written agreement supported by
 - Deed restriction (req. for resale, optional for recap)
 - Mortgage and Note (if loan)
- Hints, Observations & Cautions
 - Identifying affordability period (IDIS completion)
 - Recapture/resale issues
 - Inconsistent provisions among documents
 - Combining resale and recapture
 - Failure to include net proceeds provision in recapture
 - Distinguish between title transfer (recap/resale) and noncompliance (repay all HOME)
 - Ongoing monitoring of principal residency



Agreement: Homeowner Rehab



- Written agreement supported by
 - Mortgage and Note (usually, often forgivable)
 - Form rehab contract (btw. owner and contractor)
- Hints, Observations & Cautions
 - Clear delineation of roles and responsibilities, esp. relative to contractor
 - Inadvertent establishment of affordability period and ongoing monitoring requirements

Agreement: Subrecipient



- Written agreement may include
 - Policies & Procedures incorporated by reference
- Hints, Observations & Cautions
 - In consortium, lead member is PJ, other members are subrecipients
 - Subrecipient signs written agreements with beneficiaries (and developers/owners)... PJ's role in those
 - Level of program design left to subrecipients vs. specified by PJ (e.g. underwriting standards, form of assistance, resale/recapture, etc.)



HUD Checklists



- HUD written agreement checklists
 - On your flash drive!
 - Required and recommended provisions
 - To be published separately or attached to CPD Notice
- Still being reviewed/revised
 - Expect corrections and refinement
 - “Required” provision suggesting rental owner could charge monitoring fee to tenants (#71 in rental list)
 - But, being field tested in monitoring and other reviews, so best available



When somebody writes,
"call if you have any
questions," Do they really
mean ANY questions?
Because I'm really
wondering about
platypuses.

