




Public Housing Repositioning Wednesday Webinar Series: Repositioning Non-Dwelling Property: Overview of Tools and Strategic Tips

July 27, 2022

Webinar Topics	Dates
<u>RAD and Section 18 New Blend Options</u>	February 17, 2021
<u>Preservation Strategies</u>	March 17, 2021
<u>Environmental Review Procedures</u>	April 14, 2021
<u>Developer Roles for Repositioning Public Housing</u>	June 30, 2021
<u>Choice Neighborhoods and Repositioning</u>	October 27, 2021
<u>Homeownership Programs for Public Housing Authorities</u>	February 9, 2022
<u>Disaster Strikes! Protecting Residents and Evaluating Property Options</u>	June 22, 2022
 <u>Repositioning Non-Dwelling Property: Overview of Tools and Strategic Tips</u>	<u>July 27, 2022</u>

All webinars are recorded and posted at www.hudexchange.info



Why are we here?

The goal of this webinar series is to help explain and discuss common issues in the repositioning process.

Today's webinar will focus on:

- How to reposition or remove non-dwelling public housing real property (i.e., vacant land; community, administrative, maintenance buildings)
- RAD, Section 18 demo/dispo, and Part 200 retention will be discussed



Presenters

Office of Public Housing Investments (OPHI), Special Applications Center (SAC)

- James Isaacs
- Allison Kappeyne van de Coppello
- Alex Nasser
- Kathy Szybist

Office of Recapitalization

- John Ardovini
- Sarah Molseed

Office of Field Operations (OFO)

- Dan Esterling
- Melissa West



What is Non-Dwelling Public Housing Property?

Any non-dwelling property that was acquired, operated, or maintained with 1937 Act Funds

- What if it's not in IMS/PIC?
 - ✓ *Work with Field Office PIC Coach to add buildings, underlying acreage, and vacant land*
- What if a Declaration of Trust (DOT) is not recorded?
 - ✓ *Must record a DOT ASAP*
 - ✓ See [PIH-2019-14 \(hud.gov\)](https://www.hud.gov/PIH-2019-14)
- Distinctions between Non-Dwelling Units in Dwelling Property



Non-Dwelling Property (Examples)



- Central Office Buildings
- On-site Management Building of a PH Project
- Maintenance Buildings/Sheds with permanent foundations
- Vacant land
 - ✓ Land may have included units demolished under S18, HOPE VI or always vacant
 - ✓ PHA may be using land as playground, community garden
- Community or Neighborhood Network Buildings
- Parking Lots

Why Reposition Non-Dwelling Property?

- PHA is repositioning the project (units) associated with Non-Dwelling Property
- PHA is repositioning all PH units (RAD, Section 18) and closing out its PH program
- PHA wants to replace with new Non-Dwelling Property serving the same purpose (central admin building)



Repositioning Tools for Non-Dwelling Property

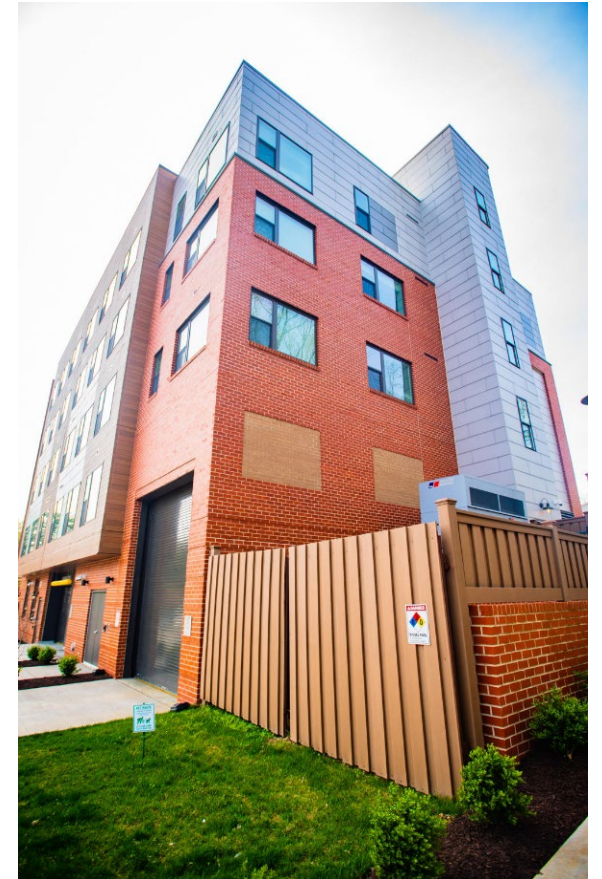
- Rental Assistance Demonstration (RAD)
- Disposition (Section 18)
- Demolition (Section 18)
- Retention (Part 200)



Rental Assistance Demonstration (RAD)

Non-Dwelling Property that can be Converted

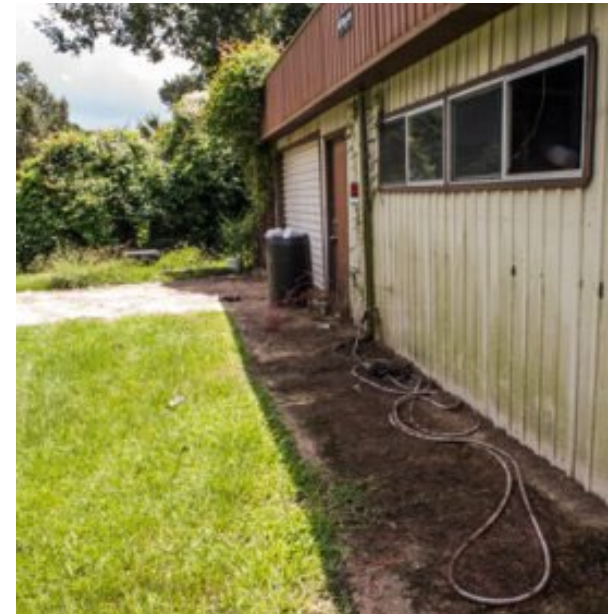
- ✓ Non-dwelling space in dwelling buildings
- ✓ Necessary appurtenances for the RAD units (e.g., parking lots, playgrounds)
- ✓ Non-dwelling structures (e.g., sheds, community buildings) that will be demolished (include in RAD RCC)
- ✓ Free standing non-dwelling buildings that will “support” the RAD units (e.g., project-specific community centers, maintenance building, management office building), Vacant land and other real property necessary to support the RAD units (e.g., landscaping, community gardens, or reasonable green-space that is required for zoning)
- ✓ Vacant land and other real property necessary to support the RAD units (e.g., landscaping, community gardens, or reasonable green-space that is required for zoning).



Rental Assistance Demonstration (RAD) (continued)

Requirements

- ✓ Property must be transferred to/owned by RAD entity
- ✓ Property must go under a RAD use agreement
- **See RAD Notice (Attachment 1A, Paragraph M)**



Section 18 (Disposition)

Disposition Application. Can be Stand-alone. Or part of application that repositions units.

Justification. 24 CFR 970.17(d). Property exceeds the needs of the project OR disposition is incidental to, or does not interfere with, continued operation of the remaining portion of the project.

Structure of Disposition.

- Fair Market Value (FMV) (negotiated/public bid) (use of proceeds)
- Below FMV (commensurate public benefit and use agreement)

Examples of Commensurate Public Benefit.

- Admin building will serve PHA's central HCV program
- Maintenance/Community building will serve repositioned units
- Vacant land will be developed as “Faircloth to RAD” units



Section 18 (Demolition)

Obsolescence Test (24 CFR 970.15)	Examples when used	Example SAC Review Documents
Physical	Demolish and build a replacement serving the same use (community building, office building) in the same location	-RS Means cost index (building type, SF and construction materials) -Rehab Cost Estimate
Location	Demolish because building or site because threatened by environmental hazard (i.e., Superfund site) makes it unsafe to use for its public housing purpose (community, admin)	-Third-party report showing mitigation or remediation cost exceed cost-test
Functional Other	<ul style="list-style-type: none"> • Building no longer needed: PHA asset management and no longer needs building (i.e., central warehouse) • Vacancy/Safety Risk: Building is far from its housing and is not utilized. PHA cannot sell property in as-is condition, and wants to demolish and sell vacant land • PHA Plan Management: PHA to demolish as part of a comprehensive redevelopment (bldg included in S18 demo) 	Case-by-case



Part 200 (Retention)

Justification. No longer needed for original (PH) purposes (or retention/DOT release does not interfere with the continued operation of remaining portion of project as PH)

Compensation Requirement. HUD's percentage of participation in the cost of the original purchase (plus improvements) of the property to FMV

Compensation Exception. Akin to reg waiver. Approved by A/S. Case-by-case analysis based on good cause. Generally housing or other support for low-income housing and/or low-income families (80% and below AMI)

Processed by SAC. Disposition Instructions under 2 CFR 200.311(c)(1) in PIH Notice 2016-20. See HUD-52860-G.



Environmental Review and Historic Considerations

- Environmental Review (ER) under Part 58 (or in limited circumstances, Part 50) required before SAC will approve a Section 18 or Part 200 application
 - ✓ Inventory removal actions under Section 18 require a categorical exclusions subject to § 58.5 (CEST) level of ER at a minimum
- If Non-Dwelling Property is a building, is it eligible for or listed on the historic register?
 - ✓ *ER must include review under Section 106 of National Historic Preservation Act (NHPA)*
 - ✓ HUD (FO) confirms responsibilities under Section 106 have been met
 - ✓ *HUD or Responsible Entity may require recording of a historic preservation covenant if it is determined the transfer of the property constitutes an “adverse action”*
 - ✓ *Concurrence from SHPO generally required*



Closeout Considerations

- ✓ Cannot closeout (ACC termination) until Non-Dwelling Property is repositioned. PIH Notice 2019-13
- ✓ If closeout under PIH Notice 2014-24, PHA transfers remaining Non-Dwelling Property to Receiving PHA
- ✓ If you get proceeds from Non-Dwelling Property dispositions, how will you use the proceeds?



Example Chart

Repositioning Goal	RAD	Section 18	Part 200
Central Office Building for HCV and/or PHA's local affordable housing programs and mission	No, unless building will primarily support RAD units	Yes—must dispose to third party (may be PHA's non-profit); HUD releases DOT ✓ If below FMV, Commensurate Public Benefit (CPB) & Use Agreement (UA)	Yes—PHA retains in its name; HUD releases DOT ✓ If not compensating HUD, good cause and UA
Community Building, management office, storage shed, playground, other Non-Dwelling property that will primarily support repositioned units	Yes ✓ RAD Use Agreement ✓ RAD Owner	Yes (if part of application with units) ✓ If below FMV, CPB & UA ✓ Generally, to same entity as units, but could be to another entity	Maybe—if PHA has a reason to retain property it is name rather than transfer it as part of repositioning ✓ If not compensating HUD, good cause and UA
Vacant Land or other Non-Dwelling Property excess to the repositioned units, no longer needed; or disposition is incidental to, or does not interfere with, continued operation of the remaining portion of the PH project	No, unless building will primarily support RAD units	Yes ✓ If below FMV, CPB & UA	Yes ✓ If not compensating HUD, good cause and UA



Resources

- Repositioning webpage: www.hud.gov/
- SAC webpage: www.hud.gov/sac
- PIH Notice 2021-07:
<https://www.hud.gov/sites/dfiles/OCHCO/documents/2021-07pihn.pdf>
- RAD Notice: https://www.hud.gov/sites/dfiles/Housing/documents/H-2019-09-PIH-2019-23_RAD_Notice%20Rev4_20190905.pdf (Attachment 1A, Paragraph M)
- PIH Notice 2019-14: [PIH-2019-14 \(hud.gov\)](http://www.hud.gov/pih/2019-14)
- PIH Notice 2016-20:
<https://www.hud.gov/sites/dfiles/PIH/documents/PIH-2016-20.pdf>
- PIH Notice 2019-13: <https://www.hud.gov/sites/dfiles/PIH/documents/PIH-2019-13.pdf> (Section 6A)



Questions?

