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RESALE AND RECAPTURE REQUIREMENTS

A Little About Us ...

RESALE AND RECAPTURE REQUIREMENTS

- HUD's Community Planning and Development Training Initiative
- Workshop developed by HUD and ICF Consulting
- Who are we?
 - HUD CPD staff
 - ICF staff





Training Goals

- Understand basics of HOME Program resale/recapture requirements
- Practice determining when and how to use resale and recapture
- Understand PJ's responsibilities when assisted homebuyer sells or defaults

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Rules!!!!

- Ask questions
- Please keep side conversations to minimum
- Parking lot
- No cell phones that ring, please





Typical Programs

Assistance to homebuyers:

- Downpayment and/or closing cost assistance
- Direct loans first or junior mortgage to fill financing gap
- Interest subsidies reducing the mortgage interest rate
- Loan guarantees insuring the lender against loss if homebuyer defaults

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Typical Programs (cont)

Subsidies to developers:

- Construction financing
- · Gap between cost and market value
- Below-market sales price

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Eligible Activities for Homeownership

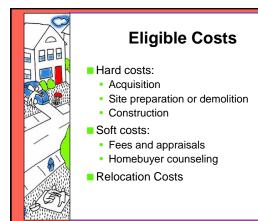
- HOME can be used for:
 - Acquisition
 - Acquisition/rehabilitation
 - New construction
 - Lease-purchase if conveyed within: ✓36 months of signing OR
 - 42 months of project completion (only if homebuyer does not purchase within 36 month period)
 - ✓ Converts to rental housing after 42 months

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Forms of Assistance

- PJs generally use:
 - Grants
 - Deferred payment loans
 - Below-market rate loans
- Subsidy limits, both maximum and minimum, apply
- Subsidy layering analysis required for projects with additional sources of government funds







Property Standards

- Different standards for acquisition only, acquisition/rehab and new construction
- PJ must inspect assisted units prior to occupancy by homebuyer



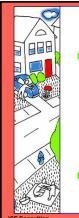
Homebuyer Applicants

RESALE AND RECAPTURE REQUIREMENTS

- Low-income
- Property will be principal residence
- No HOME affordability requirement applies to affordable principal, interest, taxes, and insurance (PITI): At purchase OR

 - Remain affordable over time
- Good practice to use ratios to determine ability to afford
 - Front end (housing cost)
 - Back end (all debt)
- Ratios help PJ avoid over-subsidizing units

and meet subsidy layering requirements

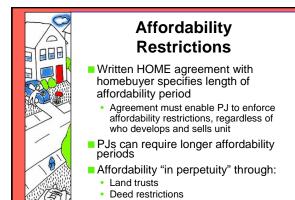


Forms of Ownership

- Types of ownership allowed:
 - · Fee-simple ownership
 - 99-year leasehold (or 50 years on Indian Trust land)
 - Condo ownership, and coop or mutual housing ownership/ membership, if recognized by state
 - Other forms must be HUD-approved
- Contract for deed is not ownership

	Long-Term Affordability Period		
	HOME \$	Affordability Period	
	< \$15,000	5 yrs.	
	\$15,000 - 40,000	10 yrs.	
- 1	Over \$40,000	15 yrs.	
	HOME affordability periods are minimums PJs can set longer terms		
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SALE AND RECAPTURE RE



Mortgage Financing vs. Recapture/Resale

- Financial documents (mortgage or deed of trust & promissory note) are:
 - Separate documents from, and
 - Independent of HOME agreement
- Must have affordability period independent of HOME financing
- Pre-payment of HOME investment provided as loan does not terminate affordability period



HOME and Refinancing

PJs should adopt refinancing policies for:

- Subordination of superior mortgages or HOME investment
- Refinancing policy should be in HOME written agreement
 - If allowed or unallowed
 - ✓ If allowed, under what circumstances

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• Procedure for approval (if applicable)



Resale and Recapture

For each homebuyer, UP FRONT, the PJ must select the compliance requirement during the period of affordability, either:

Resale or

Recapture

PJ cannot mix Resale and Recapture -- must choose one

Consolidated Plan

PJ must specify in Consolidated Plan which method -- or both -- will be used

If both methods, then describe how method will be chosen for each assisted household/home

 Need to be consistent and treat families in same circumstances fairly

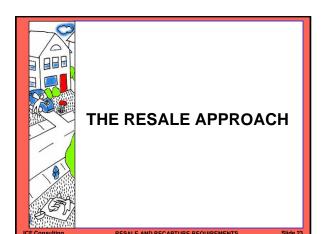


Consolidated Plan: States

- State PJs "pass down" resale and/or recapture requirements to state recipients, including:
 - HUD approval through Con Plan processSpecified language in HOME written
- agreements Either resale and/or recapture can be
- offered as options

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 If one option chosen, state should provide specific language in HOME written agreement (from State Con Plan)





What is Resale?

- Restricts homebuyer's ability to resell to HOME-eligible buyer
- Can be used for any HOME eligible project for any type of assistance
- Repayment of HOME funds dependent on PJ's mortgage financing terms



Affordability Period Under Resale

Affordability period based on total HOME investment in the property

Must include \$\$\$ of HOME
 assistance to buyer

RESALE AND RECAPTURE REQUIREMENTS

• PLUS total amount of HOME funds provided to developer



Affordability Period Under Resale

HOME subsidy provided to developer

- + HOME funds provided directly to homebuyer
- = Amount used to determine resale period



Resale Affordability Period Example

- \$25,000 HOME second mortgage at 3% interest for 20 years
- \$6,000 HOME downpayment assistance to homebuyer
- Total subsidy: \$31,000
- Affordability period: 10 years



Resale Affordability Period Example

- \$100,000 HOME provided to a
- Unit is sold \$20,000 below market
- Total subsidy: \$100,000
- Affordability period: 15 years



Resale Affordability Period Example

- \$50,000 HOME development assistance to CHDO
- \$10,000 HOME downpayment assistance to homebuyer
- Total HOME investment: \$60,000
- Affordability period: 15 years

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Resale Affordability Period Example

- \$50,000 HOME development assistance to CHDO
- Property will be sold for \$10,000 below market
- \$20,000 HOME second mortgage at 3% interest for 20 years
- \$6,000 HOME downpayment assistance to homebuyer
- Total subsidy: \$76,000
- Affordability period: 15 years



Resale: When Home is Sold

- Must be affordable to a reasonable range of low-income buyers
- New buyer must:
 - Be low-income
 - Occupy house as principal residence
- Seller must receive a "fair return" on original investment + improvements

RESALE AND RECAPTURE REQUIREMENTS



Affordable to Range of Homebuyers

Defined by PJ in Consolidated Plan

PJs typically require PITI not exceed stated percentage of income for targeted range of lowincome homebuyers

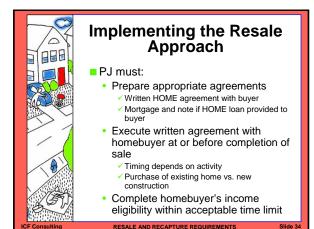
> •Example: PITI must be 30% for low-income homebuyers between 60 and 80% of AMI



Fair Return to Seller

- PJ must define "fair return" in Consolidated Plan
- Consider whether definition should be based on:
 - Initial investment plus improvements (min required)
 - May provide return on investment

- Note: a high return to the original owner means a high sales price
 - ... and higher probability that next buyer will need subsidy





Developing the Resale Agreement

 Written agreement must be between PJ and homebuyer, or enable PJ to legally enforce

- Written agreement must specify:
 Obligations of PJ, homebuyer and
 - subrecipient or CHDO if involvedPrincipal residency requirement
 - Restrictions on resale of property:
 ✓ Role of PJ in determining sales price,
 - identifying and qualifying new purchaser
 - ✓ How fair return will be determined
 - Continuation of affordability period

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Developing the Resale Agreement (cont)

Written agreement should specify:

- Forgiveness/loan term for any HOME funds loaned to homebuyer
 - Term <u>at least</u> equal to period of affordability provides leverage
 - ✓Key info from mortgage/note
 - Explain loan payoff doesn't end
- affordability period • Actions PJ will take if homebuyer in
- noncompliance



Recording the Resale Agreement

- Restriction must be tied to the land and recorded via:
 - Deed restriction
 - Land covenant
- Separate lien for HOME \$\$ to be repaid

PJ must be able to enforce the

- agreement, including principal residency: • Consult with counsel
- Ensure agreement legally binding and recorded

RESALE AND RECAPTURE REQUIREMENTS



Notifying Lienholders

- Important for PJ to ensure lienholders are aware of resale agreement
- Send letter requesting notification of delinquency or default
- Educate lenders and servicers about resale agreements

ALE AND RECAPTURE REQU

Foreclosure by a lienholder could wipe out PJ's agreement

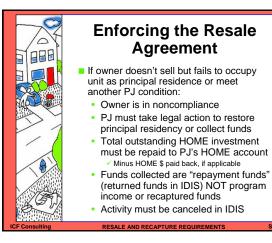
Monitoring Resale Agreement

Monitor ownership

- Review tax records
- Request copy of insurance bill
- Establish system for flagging pending sales

Recommend monitoring principal residency

- Request copy of insurance and/or utility bill
- Send out letter and certification form with "Do Not Forward"
- PJs typically monitor annually





Managing a Sale Under a Resale Agreement

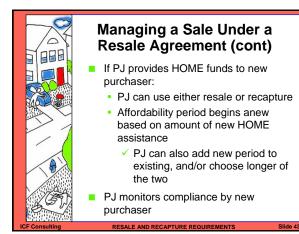
- Two types of sales possible:
 - Voluntary by homeowner to another eligible homebuyer
 - Foreclosure by a lender holding loan in default
- Resale provisions triggered by both
- Title transfer without sale also triggers resale provisions

ALE AND RECAPTURE REQU



Managing a Sale Under a Resale Agreement (cont)

- Voluntary sale (including sale before foreclosure):
 - PJ must approve sales price and calculate fair return to seller
 - New purchaser must be income qualified
 - Resale provisions and balance of affordability period remain in place if no additional HOME funds provided
 - Funds received by PJ from seller to repay any HOME loan are program income
- PJs should maintain a list of eligible homebuyers for resale





Presumption of Affordability Period

- PJ option for resale
- Limits administrative burden by allowing PJ to do market study
- PJ periodically documents that all homes in this neighborhood are affordable to low-income buyers using conventional financing
 - Document in Action Plan; update as necessary throughout period of affordability



Resale With New Affordability Period

- Homeowner sells home at end of 4th year of 5 year affordability period
- PJ provides \$10,000 in HOME downpayment assistance

RESALE AND RECAPTURE REQUIREMENTS

New period of affordability under resale:

5 years



Foreclosure and Resale

 Foreclosure also triggers resale provisions

- PJ has two options:
 - Ensure sale to low income person under terms of resale agreement OR
 - Repay total amount of outstanding HOME assistance to PJ's HOME account

RESALE AND RECAPTURE REQUIREMENTS

✓ Minus any HOME \$ paid back, if applicable
✓ These are "repayment funds" not program income or recaptured funds



Foreclosure and Resale (cont.)

PJ may specify right of first refusal or purchase option in original agreement with homebuyer

PJ may:

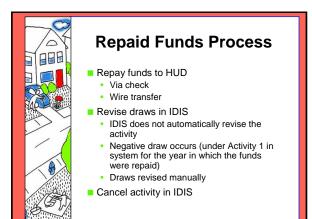
- Purchase prior to or at foreclosure sale, or
- Assist another eligible homebuyer to purchase before or at foreclosure sale

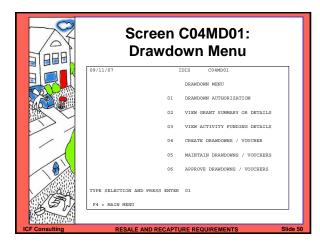


Foreclosure and Resale (cont)

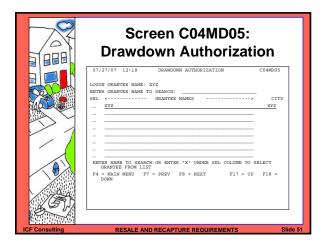
Additional HOME funds may be used for next buyer:

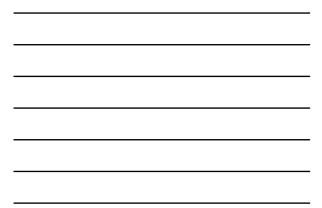
- For acquisition, rehab, and new buyer if within subsidy limit
- Cannot use HOME funds to reimburse PJ or retire existing HOME debt
- If property at subsidy limit, HOME admin may be used to acquire

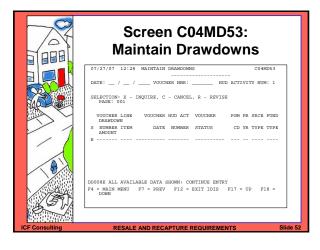




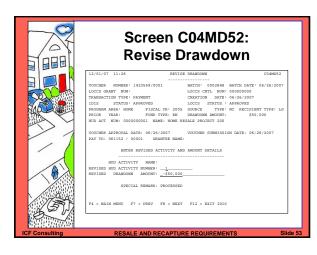


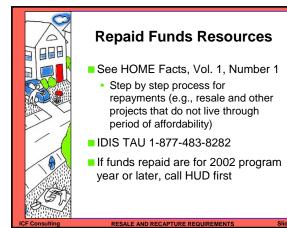


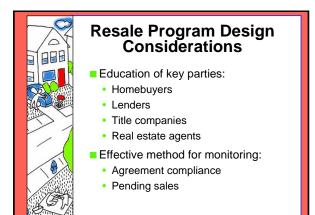














Resale Program Design Considerations (cont)

Plan and process for second homebuyer and determining:

RESALE AND RECAPTURE REQUIREMENTS

Affordable price

Who?

✓ Waiting list

- ✓ Affirmative marketing and advertisements
- Real estate agents
 Whether to provide additional
- HOME subsidy
- What if buyer can't be found?

AND RECAPTURE REQUIREMENT





What is Recapture?

- Homebuyer may sell home:
 - To any willing buyer
 - At any price
 - At any time
- PJ <u>must</u> collect part or all of HOME assistance from the net sale proceeds (if sufficient)

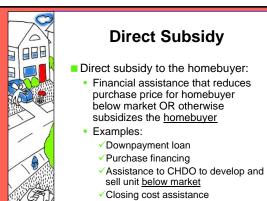
RESALE AND RECAPTURE REQUIREMENTS



Use of Recapture

- Recapture can <u>only</u> be used when:
 Provide <u>direct subsidy</u> to
 - homebuyer
 - Must have an amount that can be recaptured
 - ✓ If pure grant, then must use resale
- Resale can be used for any HOMEassisted homebuyer

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Affordability Period Under Recapture

- Affordability period based on total direct subsidy benefiting homebuyer
 - · Known as "amount subject to recapture"
- Does not include HOME amounts to subsidize development when that cost exceeds market
 - · Known as development subsidy

RESALE AND RECAPTURE REQUIREMENTS



Development Subsidy Example

- Subdivision of 15 town homes
- Total development costs of \$2,400,000 or \$160,000 per home

Development subsidy:		
Cost per home:	\$ 160,000	
Market value:	\$ <u>130,000</u>	
Development subsidy:	\$ 30.000 n	

0,000 per home Under recapture, this subsidy not included when determining affordability period



Affordability Period Under Recapture (cont)

Amount subject to recapture:

- Amounts provided directly to, or on behalf of, the homebuyer, including: ✓ Downpayment / closing cost assistance
 - PLUS
- · HOME assistance that lowers cost of home below market price
- Must have lien covering full amount subject to recapture



Recapture Affordability Period Formula

Market value of home (if development HOME assisted)

- Sales price of home
- = Discount benefiting homebuyer
- + HOME funds provided directly to homebuyer
- = Amount subject to recapture

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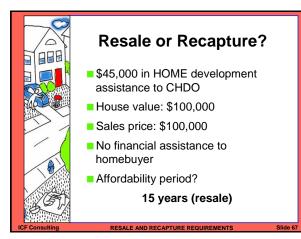
Recapture Affordability Period Example

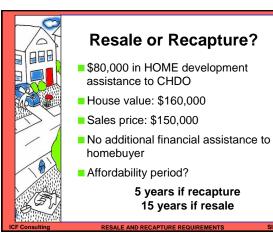
- Homebuyer purchases existing home on the open market
- \$45,000 HOME second mortgage at 3% interest for 20 years
- \$6,000 HOME downpayment assistance deferred, forgivable loan
- Total direct subsidy: \$51,000
- Affordability period: 15 years

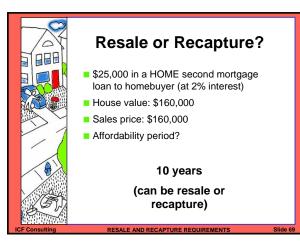
RECAPTURE REQU

Recapture Affordability Period Example \$50,000 HOME development assistance to CHDO

- Property will be sold for \$10,000 below market
- \$6,000 HOME downpayment assistance to homebuyer
- Total direct subsidy: \$16,000
- Affordability period: 10 years









Resale or Recapture?

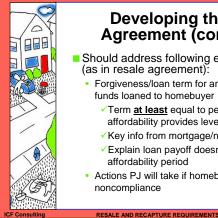
- \$60,000 in HOME development assistance to CHDO
- House value: \$160,000
- Sales price: \$150,000
- \$10,000 in HOME downpayment to homebuyer
- Affordability period?
 - 10 years if recapture 15 years resale

RESALE AND RECAPTURE REQUIREMENT



Developing the Recapture Agreement

- Written agreement must be between PJ and homebuyer, or enable PJ to legally enforce
- Written agreement must specify:
 - · Principal residency requirement
 - Duration of affordability period
 - Recapture of funds if sale occurs
 - before end of affordability period ✓ Limited by net proceeds, to protect PJ
 - ✓ How recapture amount will be calculated



Developing the Agreement (cont)

- Should address following elements (as in resale agreement):
 - Forgiveness/loan term for any HOME funds loaned to homebuyer
 - ✓Term at least equal to period of affordability provides leverage
 - ✓Key info from mortgage/note
 - ✓Explain loan payoff doesn't end affordability period
 - Actions PJ will take if homebuyer in



Recording the Recapture Agreement

- Can be recorded via:
 - Promissory note or lien
 - Consider land covenant or deed restriction to ensure senior debt holder notifies PJ of delinquency
- PJ must be able to enforce the agreement:
 - Consult with legal counsel

RESALE AND RECAPTURE REQUIREMENTS

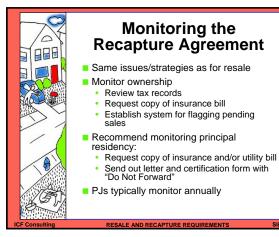
 Ensure agreement legally binding and recorded

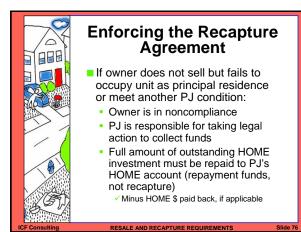


Notifying Lienholders

- Important for PJ to ensure senior lienholders are aware of recapture agreement
- Send letter requesting notification of delinquency or default
- Educate lenders and servicers about recapture agreements
- Foreclosure by a senior lienholder could wipe out PJ's agreement
- State laws differ on lien holder notification

RECAPTURE REQUIREMENT







Managing a Sale Under a Recapture Agreement

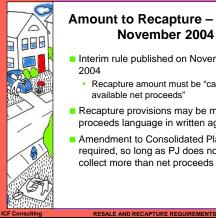
- Two types of sales possible:
 - Voluntary by homeowner to another eligible homebuyer
 - Foreclosure by a lender holding loan in default
- Recapture provisions triggered by both
- Title transfer without sale also triggers recapture provisions

ALE AND RECAPTURE REQUIREMENT



Managing a Sale Under Recapture (cont)

- PJ recapture should be based on net proceeds
- Recapture agreement is satisfied upon receipt of any funds due
- Lien is released and affordability period terminates
- PJ has no further role unless purchaser receives HOME assistance



Amount to Recapture – Prior to November 2004

- Interim rule published on November 22, 2004
 - Recapture amount must be "capped at available net proceeds"
- Recapture provisions may be missing net proceeds language in written agreements
- Amendment to Consolidated Plan is not required, so long as PJ does not want to collect more than net proceeds

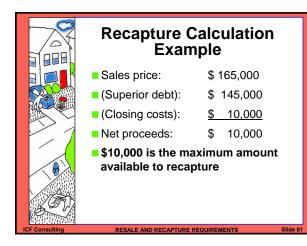


Amount to Recapture post November 2004

Sale Price

- Superior Non HOME Debt
- **Closing Costs**
- Net proceeds =
- PJ cannot collect more than net proceeds
- Required for written agreements and Consolidated Plans after November 22, 2004
- Program waivers must be submitted and approved by HUD Offices

ALE AND RECAPTURE REQ





Actual Recapture Amount

Based on the PJ's recapture requirement as approved by HUD and capped by net proceeds

- Options approved by HUD:
- Recapture amount of direct HOME subsidy to the homebuyer;
- Forgive direct HOME subsidy pro-rata over the affordability period;
- Proportionately share net proceeds; or
- Allow buyer to recover his/her initial investment first.

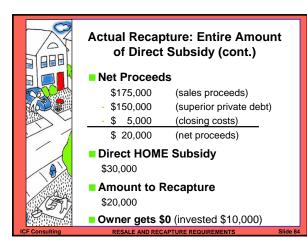
RESALE AND RECAPTURE REQUIREMENTS

 Can combine any of these options with shared appreciation

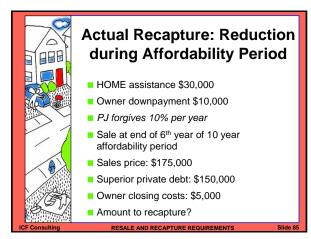


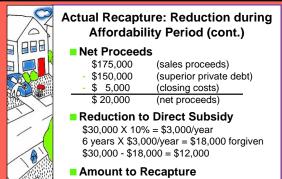
Actual Recapture: Entire Amount of Direct Subsidy

- HOME assistance \$30,000
- Owner downpayment: \$10,000
- PJ gets repaid first
- Sale at end of year 6
- Sales price: \$175,000
- Superior non-HOME debt: \$150,000
- Owner closing costs: \$5,000
- Amount to recapture?









\$12,000

Owner gets \$8,000(invested \$10,000)

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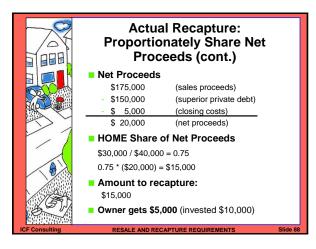


Actual Recapture: Proportionately Share Net Proceeds

- HOME assistance \$30,000
- Owner downpayment \$10,000
- PJ proportionately shares proceeds

AND RECAPTURE REQUIREMENTS

- Sale at end of year 6
- Sales price: \$175,000
- Superior private debt: \$150,000
- Owner closing costs: \$5,000
- Amount to recapture?





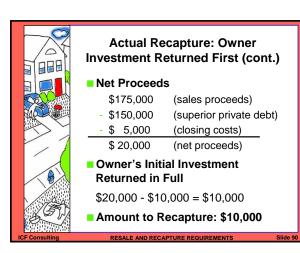


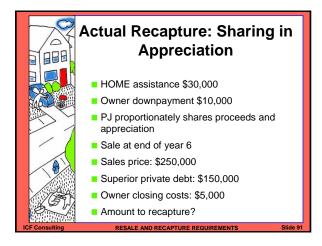
Actual Recapture: Owner Investment Returned First

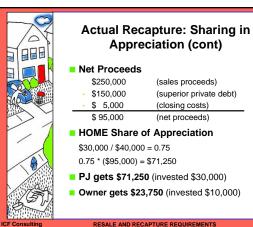
- HOME assistance \$30,000
- Owner downpayment: \$10,000
- PJ agreed owner downpayment to be repaid first
- Sale at end of year 6
- Sales price: \$175,000
- Superior private debt: \$150,000

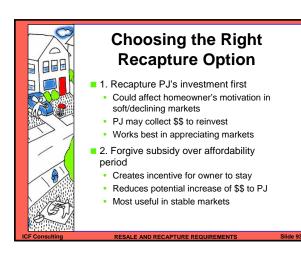
SALE AND RECAPTURE REQ

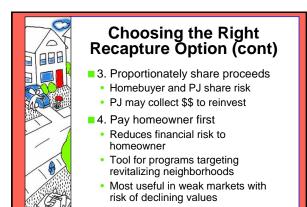
- Owner closing costs: \$5,000
- Amount to recapture?













Foreclosure Under a Recapture Agreement

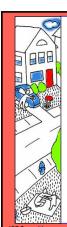
RESALE AND RECAPTURE REQUIREMENTS

- Foreclosure also triggers recapture agreement
- Funds must be repaid to PJ's HOME account

If recapture agreement:

SALE AND RECAPTU

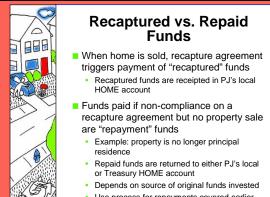
- Limits payment to PJ to net proceeds of sale, then PJ's obligation to repay \$\$ upon foreclosure also limited
- Not limited to net proceeds, then full amount of outstanding HOME assistance must be repaid



Foreclosure Under Recapture (cont)

Remember:

- PJ may specify right of first refusal or purchase option in agreement
- PJ may purchase at foreclosure sale and additional HOME funds may be spent:
 - ✓ For acquisition/rehab/new buyer
 ✓ If within subsidy limit
- If property at subsidy limit, HOME admin may be used to acquire
- If PJ forecloses on own loan can't
- spend any additional HOME \$\$ to acquire



Use process for repayments covered earlier

RESALE AND RECAPTURE REQUIREMENT



Recaptured Funds vs. Program Income

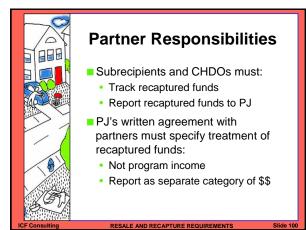
- Loan payments made by all homebuyers are program income
- When home is sold, recapture agreements trigger payment of "recaptured" funds
- Recaptured funds may not be used for program admin

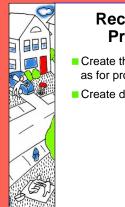
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PJ Responsibilities

- PJs need mechanism for tracking recaptured funds, including funds received by subrecipients and CHDOs
- Recaptured funds must be:

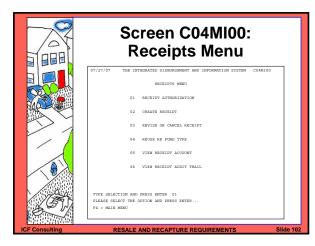
- Recorded in IDIS
- Spent before additional funds drawn from Treasury account

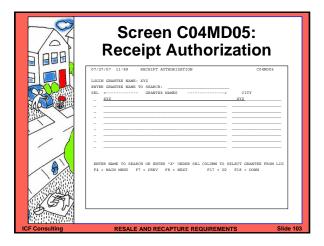




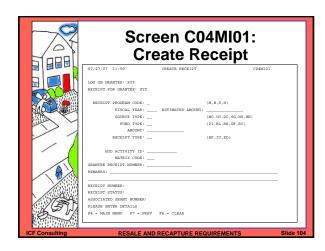
Recapture Receipt Process in IDIS

- Create the receipt (same process as for program income)
- Create drawdown





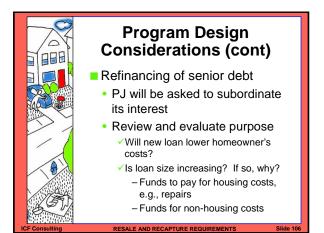






Program Design Considerations

- Loan prepayments and payoffs:
 - Early return of capital a plus <u>BUT</u>
 - May affect PJ's ability to enforce agreement and affordability period





Program Design Considerations (cont)

Strategies for identifying pending sales and foreclosures

- Periodic communication with real estate agents, lenders, and title companies
- Provide list of assisted addresses to taxing entity and request notification
- Others?

Program Design Considerations (cont) Homebuyer counseling Encourage homeowners in financial trouble to contact PJ PJ may offer counseling referrals and resources

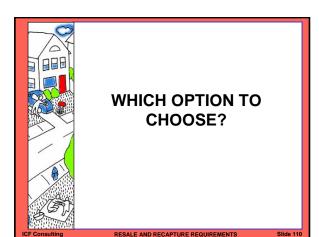
- Can't use HOME funds to provide counseling to previously assisted household
- Identify other local resources that may be able to help



Program Design Considerations (cont)

- Assistance to new purchasers when sale occurs
 - Does PJ want to invest again in same property?
 - May be necessary in appreciating markets
 - Funds recaptured from sale can be reinvested to assist new homebuyer
 - Offer to assist purchaser to help ensure PJ notified of pending sale

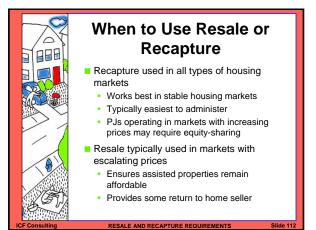
RESALE AND RECAPTURE REQUIREMENTS





Key Questions to Ask

- Do homebuyers require direct HOME assistance?
- Will developers receive HOME funds?
 - If yes, will units sell below market?
- If no subsidy to homebuyer, must use resale
- If homebuyer subsidy, can choose





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Advantages and Disadvantages of Resale

- Especially appropriate for communities with rapidly increasing home prices
- Ensures affordability of home for duration of the affordability period
- Better "return" on development subsidies, BUT
- More difficult to administer and market

Advantages and Disadvantages of Recapture

- Easiest for homebuyer to understand and for PJ to administer and market
- Opportunity to reuse funds for another family, **BUT**
- Ensures affordability of home for first purchaser, only
- Recaptured \$\$ may be insufficient to help another homebuyer in rapidly appreciating market



Seminar Wrap Up

Suggested next steps

- Develop "to do" list items for when you return to your office
- Identify people with whom to consult (e.g., legal counsel, program manager)
- Stay tuned for revised Resale and Recapture guidebook