

§ 904.114 Payment upon resale at profit.

(a) *Promissory note.* (1) When a homebuyer achieves ownership (regardless of whether ownership is achieved under § 904.113 or § 904.115), he shall sign a note obligating him to make a payment to the LHA, subject to the provisions of paragraph (a)(2) or this section, in the event he resells his home at a profit within 5 years of actual residence in the home after he becomes a homeowner. If, however, the homeowner should purchase and occupy another home within one year (18 months in case of a newly constructed home) of the resale of the Turnkey III home, the LHA shall refund to the homeowner the amount previously paid by him under the note, less the amount, if any, by which the resale price of the Turnkey III home exceeds the acquisition price of the new home, provided that application for such refund shall be made no later than 30 days after the date of acquisition of the new home.

(2) The note to be signed by the homebuyer pursuant to paragraph (a)(1) of this section shall be a non interest-bearing promissory note (see Appendix IV) to the LHA. The note shall be executed at the time the homebuyer becomes a homeowner and shall be secured by a second mortgage. The initial amount of the note shall be computed by taking the appraised value of the home at the time the homebuyer becomes a homeowner and subtracting (i) the homebuyer's purchase price plus the Incidental Costs and (ii) the increase in value of the home, determined by appraisal, caused by improvements paid for by the homebuyer with funds from sources other than the EHPA or NRMR. The note shall provide that this initial amount shall be automatically reduced by 20 percent thereof at the end of each year of residency as a homeowner, with the note terminating at the end of the five-year period of residency, as determined by the LHA. To protect the homeowner, the note shall provide that the amount payable under it shall in no event be more than the net profit on the resale, that is, the amount by which the resale price exceeds the sum of (A) the homebuyer's purchase price plus the Incidental Costs, (B) the costs of the re-

sale, including commissions and mortgage prepayment penalties, if any, and (C) the increase in value of the home, determined by appraisal, due to improvements paid for by him as a homebuyer (with funds from sources other than the EHPA or NRMR) or as a homeowner.

(3) Amounts collected by the LHA under such notes shall be retained by the LHA for use in making refunds pursuant to paragraph (a)(1) of this section. After expiration of the period for the filing of claims for such refunds, any remaining amounts shall be applied (i) to reduce the LHA's capital indebtedness on the Project and (ii) after such indebtedness has been paid, for such purposes as may be authorized or approved by HUD under such Annual Contributions Contract as the LHA may then have with HUD.

Illustration. If the homeowner's purchase price is \$10,000, the Incidental Costs are \$500, the value added by improvements is \$1,000, and the FHA appraised value at the time he acquires ownership is \$17,000, the note computation would be as follows:

| | | |
|----------------------------------|----------|----------|
| FHA appraised value | | \$17,000 |
| Homeowner's purchase price | \$10,000 | |
| Incidental costs | 500 | |
| Improvements | 1,000 | 11,500 |
| <hr/> | | |
| Initial note amount | | 5,500 |

In this example, the amount of the note during the first year of residence is \$5,500. In the second year, the amount of the note is \$4,400, and in the third year, it is \$3,300, etc. The note shall terminate at the end of the fifth year.

If the homeowner in this example resells his home during the first year for a sales price of \$17,500, has resale costs of \$1,600 (including a sales commission), and has added \$1,500 value by further improvements, he would be required to pay the LHA \$2,900 rather than the \$5,500, as indicated in the following computations:

| | | |
|---|---------|----------|
| Resale price | | \$17,500 |
| Resale costs | \$1,600 | |
| Purchase price and Incidental costs | 10,500 | |
| All improvements | 2,500 | 14,600 |
| <hr/> | | |
| Payable to LHA | | 2,900 |

(b) *Residency requirements.* The five-year note period does not end if the homeowner rents or otherwise does not use the home as his principal place of residence for any period within the first five years after he achieves ownership. Only the actual amount of time

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he is in residence is counted and the note shall be in effect until a total of five years time of residence has elapsed, at which time the homeowner may request the LHA to release him from the note, and the LHA shall do so.

§ 904.115 Achievement of ownership by subsequent homebuyers.

(a) *Definition.* In the event the initial homebuyer and his family vacate the home before having acquired ownership, a subsequent occupant who enters into a Homebuyer's Ownership Opportunity Agreement and who is not a successor pursuant to § 904.107(l)(2) is here-in called a "subsequent homebuyer."

(b) *Determination of initial purchase price.* The initial purchase price for a subsequent homebuyer shall be an amount equal to (1) the purchase price shown in the initial homebuyer's Purchase Price Schedule as of the date of this Agreement with the subsequent homebuyer plus (2) the amount, if any, by which the appraised fair market value of the home, determined or approved by HUD as of the same date, exceeds the purchase price specified in paragraph (b)(1) of this section.

(c) *Purchase price schedule.* The subsequent homebuyer's Purchase Price Schedule shall be the same as the unexpired portion of the initial homebuyer's Purchase Price Schedule except that where his purchase price includes an additional amount as specified in paragraph (b)(2) of this section, the initial homebuyer's Purchase Price Schedule shall be followed by an Additional Purchase Price Schedule for such additional amount based upon the same monthly debt service and the same interest rate as applied to the initial homebuyer's Purchase Price Schedule.

(d) *Residual receipts.* After payment in full of the LHA's debt, if there are any subsequent homebuyers who have not acquired ownership of their homes, the LHA shall continue to pay to HUD all residual receipts from the operation of the Project, including payments received on account of any Additional Purchase Price Schedules applicable to the homes, provided the aggregate amount of such payments of residual receipts does not exceed the aggregate

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amount of annual contributions paid by HUD with respect to the Project.

§ 904.116 Transfer of title to homebuyer.

When the homebuyer is to obtain ownership as described in § 904.113 or § 904.115, a closing date shall be mutually agreed upon by the parties. On the closing date the homebuyer shall pay the required amount of money to the LHA, sign the promissory note pursuant to § 904.114, and receive a deed for the home.

§ 904.117 Responsibilities of homebuyer after acquisition of ownership.

After acquisition of ownership, each homeowner shall be required to pay to the LHA or to the homeowners association, as appropriate, a monthly fee for (a) the maintenance and operation of community facilities including utility facilities, if any, (b) the maintenance of grounds and other common areas and, (c) such other purposes as determined by the LHA or the homeowners association, as appropriate, including taxes and a provision for a reserve. This requirement shall be set out in the planned unit development or condominium documents which shall be recorded prior to the date of full availability, or in an LHA-homeowner contract in this regard.

§ 904.118 Homeowners association—planned unit development (PUD).

If the development is organized as a planned unit development:

(a) *Ownership and maintenance of common property.* The common areas, sidewalks, parking lots, and other common property in the development shall be owned and maintained as provided for in the approved planned unit development (PUD) program except that the LHA shall be responsible for maintenance until such time as the homeowners association assumes such responsibility (see § 904.112(d)).

(b) *Title restrictions.* The title ultimately conveyed to each homebuyer shall be subject to restrictions and encumbrances to protect the rights and property of all other owners. The homeowners association shall have the