

Added "Residual receipts"; amended "Available cash", "Housing investment sale", "Maximum additional return", and "Purchase price"; and changed the name of "MAR Revolving Account" to "Housing Investment Sale Account".

5:80-32.2 Realization of maximum additional return

Upon the approval of its members in the exercise of their authority under the Fair Housing Act, N.J.S.A. 52:27D-321f, the Agency shall waive any or all of the investment-return restrictions imposed under the HMFA Law, N.J.S.A. 55:14K-1 et seq., in order to permit an eligible LD sponsor to realize, from available proceeds upon the closing of a housing investment sale, a maximum additional return, as well as any return otherwise allowable under the HMFA law. Sponsors who agree to comply with the requirements of this subchapter will meet the waiver criteria.

Amended by R.1997 d.102, effective March 3, 1997.

See: 28 N.J.R. 321(a), 29 N.J.R. 763(a).

Substituted "proceeds" for "cash".

5:80-32.3 Application procedure

(a) The eligible LD sponsor proposing to sell its project in a housing investment sale must submit to the Executive Director of the Agency a written request for approval of the sale, containing a detailed description of the terms of the sale. The request must also include a detailed project report presenting the current physical, financial, management and tenant needs of the housing project. The Agency will review this report for completeness and accuracy, may require additional information and may conduct its own review of the housing project's condition and operation. Full and complete disclosure of all material facts relating to the proposed sale must be made to the Agency in the request for approval, and the seller and all other parties to the transaction shall be under a continuing obligation to disclose such material facts through the closing of the sale.

(b) In selecting the prospective buyer for the project, the seller may solicit as many proposals as it deems necessary. Bidding is not required. The seller may negotiate among prospective buyers to obtain the best offer.

(c) The housing investment sale shall include an assignment from the seller and an assumption by the buyer of all existing project indebtedness. If the sale includes any supplemental financing, the amount of such financing shall not exceed the debt that the project can reasonably sustain from project income through the remainder of the Housing Assistance Payments (HAP) contract or, if no HAP contract exists, through the remainder of the original mortgage term, without jeopardizing the viability of the project as a low-income project for the remainder of the original mortgage term. Supplemental financing may be provided by the Agency or other lender or may be provided by the seller. The terms of any supplemental financing shall be subject to the approval of the Agency provided, however, that: in no event may the aggregate principal repayment of such indebtedness result in amounts in excess of the amounts payable

to the seller under N.J.A.C. 5:80-32.6(b)3i and ii; all such indebtedness must be subordinate to the Agency's first mortgage lien and security interest in the project; and the buyer shall agree not to prepay the Agency's first mortgage. The Agency's approval of a sale requiring supplemental financing shall be subject to the receipt of an opinion by nationally recognized bond counsel, in form and substance satisfactory to the Agency and the Attorney General, that such financing is permitted under any Bond resolution to which the payments under the Agency's mortgage on the project are pledged, and does not adversely affect the Federal and State tax treatment of any outstanding bonds, notes or other obligations of the Agency. The cost of such opinion shall be borne by the seller.

(d) As a condition of approving the sale, the Agency will require that the housing project be restored to sound physical condition in accordance with the report submitted by the seller under (a) above and the independent review by the Agency. Deferred maintenance must be completed no later than the closing of the sale, unless otherwise agreed by the Agency. Necessary repairs and capital improvements must be completed within a time frame acceptable to the Agency.

(e) As a condition of approving the sale, the Agency will also require payment of debt service arrearage, current unpaid invoices, total operating expenses covering three months (for senior citizen projects) and six months (for family projects), full funding of all reserves and any other obligations of the project.

(f) Upon assignment and assumption of the Agency's mortgage, provisions shall be included in the deed restriction clearly specifying the Agency's right to enforce these regulations for the 35-year period after the expiration of the term of the Agency's first mortgage.

Amended by R.1997 d.102, effective March 3, 1997.

See: 28 N.J.R. 321(a), 29 N.J.R. 763(a).

In (c), inserted text "Supplemental Financing may be provided . . . prepay the Agency's first mortgage." and "is permitted under any Bond resolution . . . project are pledged, and"; and in (f), substituted reference to inserting a provision in the deed for reference to modifying the mortgage, and inserted reference to 35-year post expiration period.

5:80-32.4 Required documents

(a) To assist the Agency in its review of an eligible LD sponsor's request for approval of a housing investment sale, as described in N.J.A.C. 5:80-32.3(a), the seller shall supply the Agency with the following documents, in form and substance satisfactory to the Executive Director:

1. Administrative questionnaires for the buyer;
2. Copies of the buyer's organizational documents;
3. Any Previous Participation Certificates (form 2530) for the buyer;
4. A physical inspection report approved by the Agency;

5. A financial report on project operations approved by the Agency; and

6. Any other documents or other information requested by the Agency that would reasonably assist it in reviewing the proposed housing investment sale.

Amended by R.1997 d.102, effective March 3, 1997.
See: 28 N.J.R. 321(a), 29 N.J.R. 763(a).

Deleted (a)4, relating to a buyer's certified financial statement, and recodified former (a)5 through (a)7 as (a)4 through (a)6.

5:80-32.5 Fee

The eligible LD sponsor seller shall pay a processing fee to the Agency in such amount, as determined by the Agency, as will reimburse the Agency for its administrative cost (that is, Agency staff time and actual expenses incurred) in reviewing and processing the seller's request to engage in a housing investment sale. With its initial request for approval of the sale, the seller shall submit a non-refundable \$5,000 deposit that shall be credited toward the processing fee. The seller will be billed for any balance due at the closing of the sale, and said balance shall be due and payable at that time.

5:80-32.6 Closing

(a) At the closing of any approved housing investment sale, the following documents, in form and substance satisfactory to the Agency, shall be delivered:

1. Legal opinions from the seller's and buyer's attorneys to the effect that the respective entities' participation in the housing investment sale is fully lawful; and

2. Any legal opinion of nationally recognized bond counsel reasonably required by the Agency relating to the proposed housing investment sale or its effect upon any outstanding obligations of the Agency.

(b) At the closing of any approved housing investment sale, the following shall occur:

1. The eligible LD sponsor shall transfer title to the realty and tangible personalty comprising its project, as well as any required project accounts, escrows and reserves, to the buyer;

2. The buyer shall pay to the eligible LD sponsor the purchase price for the project by assuming the project indebtedness of the eligible LD sponsor and paying the balance of the purchase price in cash and indebtedness of the buyer in favor of the seller; and

3. The Agency shall review and approve the following payments to be made from the available cash of the eligible LD sponsor:

i. To the eligible LD sponsor, an amount equal to its investment in the project, as determined under the HMFA Law payable in cash and/or permitted indebtedness of the buyer;

ii. To the eligible LD sponsor, an amount equal to 50 percent of its maximum additional return payable in cash and/or permitted indebtedness of the buyer;

iii. To the Housing Investment Sales Account, an amount equal to 50 percent of the maximum additional return of the eligible LD sponsor payable in cash and/or permitted indebtedness of the buyer to the seller assigned by the seller to the Agency;

iv. To the State Treasurer, the balance of eligible LD sponsor's available cash, as required under the Limited Dividend Law payable in cash only;

v. In the case of indebtedness of the buyer in favor of the seller, the amount payable to the Agency under (b)3iii above representing such indebtedness is not required to be paid in cash at closing. Instead, the Agency shall receive such amount through assignment by the seller to the Agency of 50 percent of the annual repayment of the indebtedness of the buyer in favor of the seller.

Amended by R.1997 d.102, effective March 3, 1997.

See: 28 N.J.R. 321(a), 29 N.J.R. 763(a).

In (b)2, inserted reference to payment by buyer's indebtedness to the seller; in (b)3i and (b)3ii, inserted reference to payment in cash and/or indebtedness; in (b)3ii, substituted "Housing Investment Sales Account" for "MAR Revolving Account"; in (b)3iv, inserted "payable in cash only"; and added (b)3v.

5:80-32.7 Developer's fee and return on equity

(a) The Agency may credit buyers with a developer's fee of 10 percent of the purchase price at the time of closing. The developer's fee may only be pledged as equity in the project. No project funds or available cash may be used to pay a developer's fee to the buyer.

(b) Buyers shall be eligible to earn a return on equity based upon any equity investment in the project including the developer's fee which is being pledged as equity. The rate of return shall be established pursuant to N.J.A.C. 5:80-3.3(b), unless the buyer elects to qualify for enhanced return on equity under (c) below. During the regulatory period, after expiration of the term of the Agency mortgage, the return on equity restrictions shall continue as provided in this section until the owner funds an operating reserve account in the amount provided in N.J.A.C. 5:80-5.10(b)6. The operating reserve account shall be maintained until the expiration of the deed restriction and administered as provided in N.J.A.C. 5:80-5.10(b)6. If the operating reserve account is used, the return on equity restrictions hereunder shall be reinstated until the operating reserve account is again fully funded.

(c) Buyers which agreed to fund a capital improvement account, and agree to preserve the low-income status of the project for an additional 15 years, as provided below, may receive enhanced return on equity during the term of the Agency's mortgage through a split of the project's residual receipts on a ⁵⁰/₁₀₀ basis with the Agency.