

Recapture Provision

The City of Joliet utilizes a recapture provision in its First-Time Homebuyer Downpayment Assistance Program. The period of affordability is based on the amount of HOME assistance, including any program income, provided as direct HOME subsidy to the homebuyer that enables him or her to buy the unit. The direct subsidy includes downpayment, closing costs, interest subsidies, or other HOME assistance that reduces the purchase price from fair market value to an affordable price. This means that if HOME funds are used for the cost of developing a property and the unit is sold below fair market value, the difference between the fair market value and the purchase price is considered to be directly attributable to the HOME subsidy and is assistance to the homebuyer. The chart below specifies the length of the affordability period for varying amounts of assistance:

Direct Assistance to Homebuyer	Minimum Period of Affordability
Under \$15,000.00	5 years
\$15,000.00 - \$40,000.00	10 years
Over \$40,000.00	15 years

The recapture provision requires that all or a portion of the direct subsidy provided to the homebuyer be recaptured from the net proceeds of the sale. Net proceeds are defined as the sales price minus superior loan repayment (other than HOME funds) and any closing costs. Under no circumstances can the City of Joliet recapture more than is available from the net proceeds of the sale. If the homebuyer transfers the property either voluntarily or involuntarily during the period of affordability, the City of Joliet recovers, from available net proceeds, all or a portion of the HOME assistance provided to the homebuyer. Under recapture, there is no requirement that the original HOME-assisted homebuyer sell the unit to another low-income homebuyer. Recapture of the HOME funds releases the original homebuyer from additional HOME affordability obligations. The City of Joliet then uses the recaptured HOME funds for another HOME eligible activity.

The City of Joliet has adopted the “Reduction During Affordability Period” option as its recapture provision for its First-time Homebuyer Downpayment Assistance Program. Under this recapture option, the City of Joliet reduces the amount of direct HOME subsidy on a pro-rata basis for the time the homebuyer has owned and occupied the housing, measured against the required affordability period. The resulting ratio is used to determine how much of the direct HOME subsidy the City recaptures. The pro-rata amount recaptured by the City of Joliet cannot exceed what is available from net proceeds. The computation to determine the pro-rata amount recaptured by the City of Joliet is as follows:

- Divide the number of years the homebuyer occupied the home by the period of affordability.
- Multiply the resulting figure by the total amount of direct HOME subsidy originally provided to the homebuyer. The result is the amount forgiven.

- Subtract the amount forgiven from the total amount of direct HOME subsidy. The result is the recapture amount.

Another way to express this computation is:

$$\frac{\text{Number of years homebuyer occupied the home}}{\text{Period of Affordability}} \times \text{Total direct HOME subsidy} = \text{Amount Forgiven}$$

Then:

$$\text{Total direct HOME subsidy} - \text{Amount Forgiven} = \text{Recapture Amount}$$

In the event that there are insufficient net proceeds available at sale to recapture the full pro-rata amount due, the homebuyer is not required to repay the difference between the prorated direct HOME subsidy due and the amount the City of Joliet is able to recapture from available net proceeds. In the event that that ownership of the HOME-assisted housing is conveyed pursuant to a foreclosure or other involuntary sale, the City of Joliet will attempt to recoup any net proceeds that may be available through the foreclosure sale.

Also included in the recapture agreement is the provision for noncompliance, in which (1) the original HOME-assisted homebuyer no longer occupies the unit as his or her principal residence but no transfer has occurred; or (2) the HOME-assisted unit was sold during the period of affordability and the applicable recapture provisions were not enforced. In the event of non-compliance, the prorated reduction included in the recapture agreement with respect to a property transfer does not apply and the full amount of the direct HOME subsidy is due and payable. The City of Joliet will utilize all legal means available to recoup the entire direct HOME subsidy in the event of noncompliance by the homebuyer.

The City of Joliet imposes recapture requirements for its First-Time Homebuyer Downpayment Assistance Program in the mortgage, note and recapture agreement, which is executed by the homebuyer at the time of sale and filed with the Recorder of Deeds in Will or Kendall County, depending upon the housing unit's location. The recapture requirements within these documents are triggered by the sale or transfer of the HOME-assisted property.

Ongoing monitoring of the principal residency requirement during the period of affordability will consist of verifying on an annual basis that the homebuyer's name appears on the water billing records for the home.

In the event that the City of Joliet provides HOME funds to a subrecipient or CHDO to develop and sell affordable housing, and a direct HOME subsidy is made to the homebuyer of the HOME-assisted property, a recapture agreement between the City of Joliet and the homebuyer is executed by the homebuyer at the time of sale and filed with the Recorder of Deeds in Will or Kendall County, depending upon the housing unit's location. The terms of the recapture agreement are the same as those outlined above for the City of Joliet's First-Time Homebuyer Downpayment Assistance Program.

Resale Provision:

When the only HOME funds invested in a project are for development subsidies to the developer that do not result in assistance to the homebuyer, there are no HOME funds subject to recapture. Although the City of Joliet does not, nor does it intend to, operate such a program in the future, the following resale provision would be used by the City of Joliet to enforce the period of affordability and principal residency requirement and terms under those circumstances. When utilizing a resale provision, the period of affordability is based on the amount of HOME funds, including program income, invested per unit. The chart below specifies the length of the affordability period for varying amounts of assistance:

HOME Funds Provided	Minimum Period of Affordability
Under \$15,000.00	5 years
\$15,000.00 - \$40,000.00	10 years
Over \$40,000.00	15 years

The HOME resale requirements ensure that, when a HOME-assisted property is sold by the homebuyer, either voluntarily or involuntarily, during the affordability period that the sale meets the following criteria: (1) The property is sold to another low-income homebuyer who will occupy the unit as his or her principal residence; (2) The original homebuyer receives a fair return on investment; and (3) The property is sold at a price that is affordable to a reasonable range of low-income homebuyers.

The City of Joliet defines the original homebuyer’s investment as his or her initial investment and capital improvements made during the period of ownership. A capital improvement is the addition of a permanent structural improvement or the restoration of some aspect of a property that will either enhance the property’s overall value or increases its useful life. The value of the capital improvement is based on the actual cost of the improvement, as documented by receipts from the homeowner. The City includes the following capital improvements for purposes of determining fair return:

- **Additions:** bedroom, bathroom, deck, garage, porch, patio
- **Lawn & Grounds:** landscaping, driveway, walkway, fence, retaining wall, swimming pool
- **Exterior:** storm windows/doors, new roof, new siding
- **Insulation:** attic, walls, floors, pipes and duct work
- **Systems:** heating system, central air conditioning, furnace, duct work, central humidifier, central vacuum, air/water filtration systems, water heater, soft water system, plumbing, wiring, security system
- **Interior:** built-in appliances, kitchen modernization, flooring, wall-to-wall carpeting, fireplace

The following improvements are not considered capital improvements:

- Any costs of repairs or maintenance that are necessary to keep the home in good condition but do not add to its value or prolong its life, including painting (interior or exterior), fixing leaks, filling holes or cracks or replacing broken hardware.
- Any costs of any improvements that are no longer part of your home, such as wall-to-wall carpeting that you installed but later replaced.
- Any costs of any improvements whose life expectancy, when installed, was less than 1 year.
- The value of any labor you did yourself or did not pay for.

The City of Joliet uses the average percentage change in median home prices over the period of ownership for the nine county Chicago Primary Metropolitan Statistical Area (PMSA) as its standard index for fair return on investment. The Chicago PMSA, as defined by the U.S. Census Bureau, includes the counties of Cook, DeKalb, DuPage, Grundy, Kane, Kendall, Lake, McHenry and Will. In declining housing markets, where home values may be depreciating, the original HOME-assisted homebuyer may not receive a return on his or her investment because the home sells for less or the same price as the original purchase price. In these circumstances, this would be considered a fair return.

In addition to ensuring that the original homebuyer receives a fair return on his or her investment, the City of Joliet must ensure that the housing is affordable to a reasonable range of low-income homebuyers. The City of Joliet has determined that a reasonable range of low-income homebuyers are families with incomes between 70 and 80 percent of area median income and that housing is affordable when no more than 30 percent of a low-income homebuyer's income is spent on the fixed costs of owning a home: principal, interest, property taxes and insurance (PITI). Under no circumstances can the resale price of the affordable unit exceed 95% of the median purchase price for the area as determined by HUD. In some instances, it may be necessary for the City of Joliet to provide HOME assistance to the subsequent homebuyer to ensure that the original homebuyer receives a fair return and the unit is affordable to the defined low-income population. In this case, the additional HOME investment may extend the original period of affordability. The original HOME investment plus any additional HOME investment cannot exceed the maximum per unit subsidy as the cost of assisting a subsequent homebuyer is a project-specific cost.

Under the resale provision, the City of Joliet will record a separate deed restriction agreement to ensure that the HOME-assisted unit qualifies as affordable housing for the duration of the affordability period. The resale provision will be triggered by any transfer of title during the established HOME period of affordability.

The affordability restrictions imposed by deed restriction may terminate upon foreclosure, transfer in lieu of foreclosure or assignment of an FHA insured mortgage to HUD. The City of Joliet will include language in the deed restriction that it may use purchase options, rights of first refusal or other preemptive rights to purchase the housing before foreclosure to preserve affordability. However, the affordability

restrictions must be revived according to the original terms if, during the original affordability period, the owner of record before the termination event, obtains an ownership interest in the housing.

Ongoing monitoring of the principal residency requirement during the period of affordability will consist of verifying on an annual basis that the homebuyer's name appears on the water billing records for the home.