

INTRODUCTION TO SAMPLE MORTGAGE AND NOTE

A common mortgage and promissory note can be used to preserve affordability. Efforts to create affordable housing often involve providing a subsidy to the party purchasing the home. The subsidy provider, which may be a non-profit corporation, would sell one of its homes to a low-or moderate-income person who meets the criteria that it has established. The subsidy provider can determine if it wishes to sell the house at a reduced price and/or provide a low- or no-interest loan. If a reduced price is offered, the “subsidy” can be recaptured either in the form of a promissory note for the amount of the subsidy (plus the amount of any accompanying loan) or in the mortgage through a provision to recapture the amount upon sale and/or to share in the appreciation upon sale through a predetermined formula. If a low- or no-interest loan is made, this form of “subsidy” would be recaptured in a promissory note for the amount of the loan secured by a mortgage. The sample promissory note (APP Exhibit 5) is designed to recapture the subsidy provided to the purchaser.

The sample mortgage (APP Exhibit 4), in addition to securing repayment of the subsidy or loan, also includes a provision that the home be the principal residence of the mortgagor/buyer, a shared appreciation clause, a restriction allowing a sale or transfer only to a spouse or child or to an income-qualified buyer, a restriction limiting a sale to a maximum sale price, and/or a right of first purchase. Restricting sales to a maximum sale price is a useful tool to maintain affordability.