GEORGIA DEPARTMENT OF COMMUNITY AFFAIRS

HOME RENTAL PROGRAM COMPLIANCE MANUAL
Revised February 2016

EQUAL HOUSING OPPORTUNITY

HOME RENTAL COMPLIANCE MANUAL POST DEVELOPMENT MONITORING ACTIVITIES

INTRODUCTION

This manual has been developed to assist recipients of HOME funds in maintaining a multi-family rental property during the period of affordability or the term on the loan, whichever is longer. This manual is not a substitute for the HOME requirements of the U.S. Housing and Urban Development (HUD). Compliance with the HUD requirements are the sole responsibility of the owner of any building for which HOME funds have been allocated. Owner/Recipient responsibilities in acceptance of HOME funds require adherance to certain regulatory requirements during the post-development period. DCA Compliance staff will be responsible for monitoring the owner/recipients' compliance with the regulations and policies. The areas subject to post-development monitoring are outlined in this manual. The *HOME Rental Housing Loan Program Manual* should also be referenced for additional information on the HOME and DCA requirements. Owners of multifamily rental properties layered with Low Income Housing Tax Credits (LIHTC) and HOME should also reference DCA's *Low Income Housing Tax Credits Program Compliance Manual.*

CHAPTER 1: GENERAL MONITORING REQUIREMENTS

1.1 DCA Responsibility

As the designated monitoring agency for state allocated HOME funds, DCA is responsible for performing desk audits, conducting site visits, reviewing tenant files, conducting physical inspections and providing the applicant/owner with a summary report of any findings**.**

1.2 Owner Responsibility

The applicant/owner is responsible for ensuring that the property abides by the rules, regulations, and restrictions specified in the Qualified Allocation Plan, the Land Use Restriction Agreement or Covenant, the Georgia HOME Rental Housing Loan Program and LIHTC Compliance Manual, HOME regulations, the approved application and the IRC Code and regulations, where applicable. Successful operation of a HOME funded development is management intensive and the owner is responsible for ensuring that the project is properly administered. Thorough understanding of HOME requirements and compliance monitoring procedures requires training of owners and managers. This training should occur before a development is occupied and should be provided to the on-site property management staff. At a minimum, such training should cover key compliance terms, determination of rents, tenant eligibility, file documentation, reporting, record retention requirements, and site visits. Continuing education each year or at a minimum every other year is strongly recommended in order to keep up with regulatory and procedural changes.

DCA is committed to providing training to the participants in the HOME program. Periodically, DCA will offer training courses on the HOME monitoring requirements. A representative for the owner/general partner of a funded project is required to successfully complete a compliance-training seminar prior to the beginning of lease-up. The training may be sponsored by DCA or other organizations which provide HOME training. The owner may be required to submit proof of attendance.

1.3 HOME Period Of Affordability

All HOME-assisted rental housing must remain affordable pursuant to certain rent and occupancy restrictions for a requisite period of time. The affordability period will begin on the date that the project is marked as "completed" in the HUD reporting system for the HOME Program. A rental project is complete when construction is complete and units are ready for occupancy. This beginning date will occur after all federal HOME funds for the activity have been expended. The affordability period will be specified in the recorded LURA. The affordability period may be terminated under certain circumstances related to foreclosure or a transfer in lieu of foreclosure. However, certain protections are afforded existing tenants for a three year period. Also, in certain circumstances this affordability period may be revived. For example, in a foreclosure situation, where the owner of record prior to the foreclosure obtains an ownership interest in the property after the foreclosure is complete, the LURA may be revived. HOME assisted units carry minimum statutory rent and occupancy restrictions for varying lengths of time, depending upon the average amount of HOME funds invested per unit. These statutory minimum periods are as follows:

Rehabilitation or Acquisition of Existing Housing (based on HOME amount per HOME assisted unit)

Less than $15,000 - 5 years
$15,000-$40,000 - 10 years
$40,000 or more - 15 years

New Construction or Acquisition of New Housing
20 years

The above referenced HOME affordability periods are minimum requirements.

DCA policies may require longer terms of affordability. It is generally DCA's policy that the period of affordability will be as long as the term of the HOME loan if it exceeds the statutory minimum.

1.4 Land Use Restriction Agreement (LURA)

DCA enforces income, rent and occupancy requirements and agreement through covenants running with the property. For projects receiving HOME loans, the Owner is also required to execute a Land Use Restrictive Agreement for the HOME program.
This document must be recorded with the local county clerk's office and is a deed restriction that carries forward to all subsequent owners of the property. When there is more than one financing source imposing land use restrictions on a project, e.g., a HOME Loan and Tax Credits, there may be restrictions from one program that are more restrictive than similar restrictions in the other program(s). In such instances, the most restrictive requirements will apply to the property. An owner may also make additional commitments during the application phase. These commitments may include occupant restrictions, structural restrictions, additional rent and income restrictions, single-family dwelling lease to purchase or that a local public housing authority will sponsor the project. Owners must adhere to all pledges made during the application phase throughout the compliance and extended use periods.

1.5 Record Keeping Requirements (CFR 92.508)

DCA asserts the right to perform an on-site inspection of tenant records on any project receiving HOME Rental Housing Loan Program funding at any time from initial allocation, through the end of the Compliance Period, the Period of Affordability, or the term of the HOME Loan, whichever is longer. Copies of tenant records on any project receiving HOME Rental Housing Loan funds may be requested at anytime during the compliance period or period of affordability, whichever is longer.

The following are the records that must be kept:

- Records demonstrating that each project meets the property standards of §92.251 and the lead based paint requirements of §92.355.
- Records demonstrating that each family is income eligible in accordance with § 92.203.
- Records demonstrating that each rental housing project meets the affordability and income targeting requirements of § 92.252 for the required period. Records must be kept for each family assisted.
- Records documenting required inspections, monitoring reviews and audits, and the resolution of any findings or concerns.

- Records concerning other Federal requirements (i) Equal opportunity and *fair housing records.* (A) Data on the extent to which each racial and ethnic group and single-headed households (by gender of household head) have applied for, participated in, or benefited from, any program or activity funded i in whole or in part with HOME funds.
- Records demonstrating compliance with the affirmative marketing procedures and requirements of § 92.351. Records demonstrating compliance with the requirements of § 92.353 regarding displacement, relocation, and real property acquisition, including property occupancy lists identifying the name and address of all persons occupying the property on the date described in § 92.353(c)(2)(i)(A), moving into the property on or after the date described in § 92.353(c)(2)(i)(A), and occupying the property upon completion of the project.
- Records demonstrating compliance with the lead-based paint requirements.

For rental housing projects, records may be retained for five years after the property completion date; except that records of individual tenant income verifications, property rents and property inspections must be retained for the most recent five year period, until five years after the affordability period terminates. (CFR 92.508(c)) Records covering displacements and acquisition must be retained for five years after the date by which all persons displaced from the property and all persons whose property is acquired for the project have received the final payment to which they are entitled in accordance with § 92.353. Please note that on a layered site, other programs may require tenant records be kept for a longer period of time.

Chapter 2: HOME COMPLIANCE MONITORING

2.1 Occupancy and Marketing of Vacant Units

Within six months of project completion; DCA will determine if any units remain unoccupied and obtain information from the owner on the efforts to market the unit. Once obtained from the owner, the efforts to market the unit will be provided to HUD. If necessary, DCA will require the owner to develop an enhanced plan for marketing the unit so that it is leased as quickly as possible prior to the 18 month deadline stipulated in paragraph §92.252. If marketing efforts are unsuccessful and the unit is still unoccupied within 17 months from the date of project completion, DCA will initiate actions to obtain the repayment of all HOME funds invested in the unit from the owner. The HOME funds associated with the vacant unit will be repaid to HUD.

Down units are those units that are not suitable for occupancy. (Some examples of down units are those units that are missing parts of the HVAC system, missing appliances, units that are trashed, units that have infestation, unsecured units, and units with mold and/or mildew). A down unit is not suitable for occupancy and does not satisfy the vacant unit rule.

2.2 Compliance Monitoring Reviews

DCA compliance staff will conduct periodic desk reviews, tenant files reviews and physical inspections of each property funded under the state Qualified Allocation Plan. This will certify that the property is managed in accordance with all applicable federal, state and local fair housing laws. DCA will conduct an initial inspection which will consist of a review of tenant files and physical inspection of the property within 12 months after project completion.

During the Affordability Period, DCA may inspect each property annually utilizing the Uniform Physical Condition Standards (UPCS) to ensure the property continues to meet or exceed applicable property standards and to verify the information submitted by the owners regarding rent, occupancy and unit mix. DCA will contact property staff to schedule the review at least two weeks prior to the on-site review. Prior to the site review, the owner will receive a request to submit certain information to DCA. It is the responsibility of the owner to ensure that all tenant income certifications are available and all units are accessible for physical inspection by DCA staff during the on-site review. DCA considers the failure to respond to monitoring requests or to provide access to tenant files or access to units to be major instances of non-compliance. The tenant file reviews will assess continued compliance with the documentation of tenant eligibility including the certification of income, assets and rents as described in 4350.3 REV-1, Change 4 HUD Handbook and 2013 HOME Final Rule.

In accordance with 2013 HOME Final Rule, DCA will use a risk-based methodology which will guide DCA's decisions on frequency of its physical inspection visits. For inspections conducted annually, the inspection will include a sample of at least 10% percent of the HOME assisted units at the property and a minimum of one unit in every building. For inspections conducted every three years, the inspection will include a sample size of at least 20% percent of the HOME assisted units at the property and a minimum of one unit per building.

DCA will provide the owner with a summary report of its findings and deficiencies. If the report indicates noncompliance, the owner is expected to respond to DCA within 45 days of the date the report was provided. The owner must provide clarification and supporting documentation that issues of noncompliance have been resolved.

DCA reserves the right to request follow-up documentation with 24 hours for noncompliance relating to health and safety issues. The follow up documentation must address whether the non-compliance issues have been corrected, remain uncorrected or no non-compliance exists. All cure documentation must be submitted in the DCA Required Format Response.

Questions about the "*Notice To Cure File And Physical Review Findings*" letter should be addressed to the auditor prior to the close of the response window. Items with insufficient or missing response will remain out of compliance. It is the responsibility of the owner to ensure a full and complete response is provided to DCA before the cure period deadline.

2.3 Property Standards

Projects that are rehabilitated or constructed with HOME funds must meet all applicable state and local codes, standards and ordinances. If no state and local codes apply, the project must meet one of the following national model codes: International Building Code (January 1, 2000), **or** Minimum Property Standard at 24 CFR 200.25

DCA Property Standards. In addition, to the property standards required under the IRC and HOME regulations, the property must also meet all DCA standards including, but not limited to the appropriate accessibility requirements and DCA architectural requirements. HOME funding properties will also be inspected according to the Uniform Physical Condition Standards (UPCS).

2.4 Monitoring Fees

All HOME funded developments will be charged an annual asset management fee in the amount of $750 per project for the duration of the affordability period, beginning no later than 24 months after the HOME construction loan closing. The fee covers the actual costs and estimated staffing time associated with financial oversight of the project and is based upon the industry standard rate for financial reviews. The review will include processing of annual audited financial statements and an assessment of the operating performance of the property to verify continued financial viability. The asset management fee will be included in the project's operating costs when DCA conducts the HOME underwriting review for the project. It will also be included in the DCA HOME loan agreement.

Chapter 3: HOME INCOME, RENT, AND UTILITY ALLOWANCES

3.1 Determining Income And Rent Limits

Owners and managers **must** understand how income limits are applied if they are to be successful in maintaining a property in compliance. Each year HUD publishes new income limits with an effective date. The household's total annual gross income must be at or below the applicable income limit as elected by the owner. Once HUD publishes both the income limits and the HOME Rents for use in the HOME program, DCA will notify owners and managers via a Compliance broadcast email that the limits have been published for use. It is the owner's responsibility to maintain the proper rent restrictions.

3.2 Household Income Calculation

The household's total annual gross anticipated income must be calculated to determine if a household meets the applicable income limit and is income eligible for a HOME unit. At initial tenant certification for any HOME Rental Housing Funded Project, the household's annual gross anticipated income should be calculated in a manner consistent with the determination of annual income under Section 8 of the United States Housing Act of 1937 (HUD Handbook 4350.3), not in accordance with the determination of gross income for federal income tax liability.

DCA requires property owners to use the Section 8 definition of income for initial qualification. At re-certification, the annual adjusted income may be used, if necessary.

Please refer to the most recent version of the HUD 4350 Handbook for guidance on calculating income.

3.3 Over Income Tenant Restrictions

If DCA HOME Loans are utilized in the financing of a property, additional over income restrictions shall apply. Upon re-certification of a previously eligible tenant, if it is determined that the tenant's adjusted income exceeds 80% of are median income (AMI), the tenant's rent must be increased to the lesser of: 30% of the tenant's adjusted annual income or HUD's fair market rent limitations, not to exceed limitations set by state or local laws (if any). Any exceptions to this requirement must be approved in writing by DCA.

Tenants who no longer qualify as HOME-assisted families must pay rent of 30 percent of the family's adjusted income, except that tenants of HOME-assisted units that have been allocated low-income housing tax credits by DCA must pay rent as governed by the tax credit program. The next available comparable unit in the same building must be rented to a qualified HOME assisted tenant.

3.4 Approval of Rent Increases

DCA will review and approve the rents for each HOME-assisted rental project ***each year*** to ensure that rents comply with the HOME rent limits. Rent increases must be approved by DCA prior to implementation. Pre- approval from DCA is required in accordance to the 2013 Rule amendment §92.252(f)(2). DCA's Rent Review Template is posted to the DCA Compliance website and must be submitted to conduct the required annual rent review for HOME properties. The current HOME and Tax Credit income and rent limits are built into the template and are also included in the workbook. Additional instructions on use and submission of the template are located on the Compliance website.

3.5 Utility Allowance Calculation

If the cost of any utilities (other than telephone) for a residential rental unit is paid directly by the tenant(s), the gross rent for that unit includes the applicable tenant paid utility allowance. Any changes in utility type or source must be approved by DCA Compliance.

Owners of HOME funded properties must use the HUD Utility Schedule Model or determine a project's utility allowance based upon actual utilities usage at the property.

NOTE: The requirement to use the HUD Utility Model is pending a revised implementation date and further guidance from HUD. Thus, DCA's policy may be amended when additional guidance is published.

The State of Georgia Water Stewardship Act was passed to encourage conservation measures and to drastically reduce consumption at large residential and commercial properties. For all new multifamily buildings receiving permits on or after July 1, 2012, the owner is responsible for charging tenants for water and sewer based on usage, which can be determined by using sub meters.

The IRS clarified in 2009 that sub-metered utilities are acceptable and that a modest charge, not to exceed $5.00 per bill may be applied to defray billing cost.

Chapter 4: HOME REPORTING REQUIREMENTS

4.1 Administrative And Reporting Requirements

Owners of properties under the HOME program are required to certify annually using the Annual Owner Certification (AOC) form that all program requirements have been met and that all HOME-assisted units are suitable for occupancy. Certification is due on or before March 31st, or the stated date, each year. The annual reporting must also include the Affirmative Fair Housing Market Plan (AFHMP) if this is the initial submittal. All other properties must submit if there was a change to the plan.

4.2 Mitas Database

All owners are required to submit/upload MITAS Data information to DCA on a monthly basis. The MITAS system is a web-based property management system used to compile and monitor tenant rent and income data for properties receiving funding through DCA.

4.3 Transfer of Ownership

When a sale or transfer occurs after the placed-in-service date, the owner must submit a Project Concept Change Request Form advising and requesting DCA's approval in advance of the transfer of ownership. DCA must be notified of **all** changes in ownership interest or project participant structure. Current and potential owners are reminded that the LURA will be enforced by DCA. If a transfer is approved, the previous owner must provide a completed Property Information Form to DCA prior to disposition of the property.

DCA will recognize a new owner or ownership entity only after all required documentation has been submitted. Until such time, all compliance requirements will be the responsibility of the owner of record. All changes in ownership interest or project participant structure must be reported to DCA. Failure to promptly report a change could jeopardize or cause a default in the HOME Loan. Current and potential owners are reminded that early repayment of a HOME loan will not extinguish the LURA. If a transfer is approved, the previous owner must provide a completed Transfer of Ownership Interest form to DCA prior to disposition of the property.

CHAPTER 5: IDENTIFYING EARLY WARNING SIGNS OF PROPERTY DISTRESS

5.1 Financial Oversight

The owner of each HOME assisted property must submit audited financial statements for the property each year in accordance with the HOME loan documents. The purpose of this requirement is to enable DCA to identify HOME-assisted projects that may become financially troubled before problems become severe. If the financial review indicates potential problems, DCA shall take actions to correct those problems, to the extent feasible. On at least an annual basis, DCA shall examine the financial condition of HOME-assisted rental projects with 10 or more HOME-assisted units to determine the continued financial viability of the project. DCA will conduct an assessment of the operating performance of the financed property in order to evaluate the risk of financial loss and the risk of loss of tenant use if the property is underperforming.

5.2 Troubled HOME-Assisted Rental Housing Projects

This section applies only to existing HOME- assisted rental projects that are no longer financially viable *during* the period of affordability and are at-risk of foreclosure.
§92.210(a) of the HOME Investment Partnership Program specifies that a HOME- assisted rental unit is no longer financially viable when its operating costs significantly exceeds its operating revenue. For troubled projects, DCA may approve one or both of the actions described in paragraphs (a) and (b) of this section to strategically preserve a rental project after consideration of market needs, available resources, and the likelihood of long-term viability of the project.

a) Investment of additional HOME funds §92.210(b) - allows DCA to invest additional HOME funds in financially troubled projects, making an exception to the restriction on investing additional HOME funds in a project after the first 12 months following project completion. The use of these funds can be in the form of additional funds to rehabilitate the HOME-assisted units or to recapitalize project reserves for the HOME units. The total HOME funding for the project (initial investment amount plus the additional funds) may not exceed the maximum per unit subsidy, established at §92.250(a). This determination is made using the maximum per unit subsidy that is in effect at the time the additional funds are invested. HUD's approval for this action must be in the form of a written memorandum of agreement.

(b) Reduction of the number of HOME-assisted units §92.210(c) - permits a reduction in the number of HOME-assisted units in the project, but only if the project contains more than the minimum number of units required to be designated as HOME-assisted units under §92.205(d). In determining whether to permit a reduction in the number of HOME-assisted units, DCA will take into account the required period of affordability and the amount of HOME assistance provided to the project.