Third-Party Affordability Monitoring Handbook

for

MassHousing 40B Homeownership Projects

(Updated December 8, 2025)

TABLE OF CONTENTS

INTRODUCTION **5**

PROGRAM BACKGROUND **5**

SUMMARY OF PROGRAM CHANGES **6**

MONITORING TASK SUMMARY TABLE **9**

MONITORING AGENT QUALIFICATIONS AND DUTIES **11**

DEED RESTRICTION AND MORTGAGE **12**

AFHMP REVIEW AND APPROVAL **13**

APPLICANT / BUYER GRIEVANCE **13**

CONFLICT OF INTEREST **14**

PRE AND POST PURCHASE HOMEOWNERSHIP COUNSELING **15**

INITIAL SALES PERIOD **15**

INITIAL SALES EVENTS/TIMELINE 17

SUPPLEMENTAL MONITORING SERVICES **19**

RESALES 19
AFFORDABLE UNIT FORECLOSURES 21
TRANSFER OF UNIT TO A TRUST OR OTHER ENTITY 22
CAPITAL IMPROVEMENTS 23
REFINANCING 24
ENFORCEMENT 25
ANNUAL MONITORING AND REPORTING REQUIREMENTS 26

APPENDIX A: DEFINITIONS **28**

APPENDIX B: POLICIES, PROCEDURES, FORMS AND LETTERS **36**

INITIAL SALES *38*
Initial Sales Policy 39
Letter to Developer - Initial Sale 46
Pre- and Post-Purchase Counseling Guidance 48
Lottery Agent / Monitoring Agent Roles and Responsibilities 50
AFHMP Guidelines 54
Affirmative Fair Housing Marketing and Resident Selection Plan (AFHMP) Checklist* 69
Monitoring Agent Certification - AFHMP Review and Recommendation for Approval* 73

Income Certification Checklist 74
Eligibility for Purchase Certification - Income and Asset Verification –to Lottery Agent and Developer 75
Approval of Buyer Financing to Developer, Lottery Agent and Buyer 77
Certificate of Compliance - Initial Sale* 78
Memo Regarding Initial Sale Documents to Closing Attorney* 79
Initial Sales Affordability Completion Report to MassHousing, Developer, and Municipality* 80
RESALES *81*
Resale Policy and Guidance on Procedure 82
Resale Process Letter to Owner 90
Property Resale Price Form 93
Property Information Form 94
Resale Buyer Selection Guidance 95
Letter to External Real Estate Broker 97
Buyer Approval and Next Steps Letter to Buyer 98
Buyer Approval and Next Steps Letter to Owner 99
Municipality Notice – Resale 101
Resale Price Certificate* 102
Closing Instructions Letter to Closing Attorney* 103
Certificate of Compliance-Resales or Foreclosure* 105
FORECLOSURES *106*
Foreclosure Policy 107
Notice of Foreclosure to Owner 113
Municipality Notice – Foreclosure* 114
Notice of Foreclosure Auction 115
CAPITAL IMPROVEMENTS *119*
Capital Improvements Policy and Guidance on Procedure 120
Capital Improvement Letter to Owner 125
Eligibility of Capital Improvement Request 127
Approval of Capital Improvement to Owner* 128
REFINANCING *129*
Refinancing Policy and Guidance on Procedure 130
Refinancing Letter to Owner 134
Eligible Refinance Certificate* 136
ENFORCEMENT *137*
Non-Compliance and Monitoring Agent Role in Enforcement 138
Enforcement Letter to Owner 142

Noncompliance Remedied Letter to Owner 143
ANNUAL MONITORING AND REPORTING *144*
Annual Monitoring and Reporting Policy 145
Annual Letter to Owner and Important 40B Terms* 147
Annual Certification Form to Owner* 149
Annual Compliance Report* 150
APPENDIX C: FACT SHEETS FOR OWNERS 154
Selling Your 40B Home 155
Renting Your 40B Home 156
40B Deed Restrictions and Mortgage 157
Making Improvements to Your 40B Home 158
Refinancing Your 40B Home 160
The Effects of Special Assessments and HOA Fees on Your 40B Home 161
Resources Available to 40B Owners 162
40B Deed Rider Info Sheet 165
APPENDIX D: KEY 40B DOCUMENTS AND FEE SCHEDULE 166

INTRODUCTION

This Handbook is intended to provide guidance for third-party Affordability Monitoring Agents (the "Monitoring Agent") contracted by MassHousing[1] (as "Subsidizing Agency") to enforce the Affordability Requirements of homeownership projects pursuant to Massachusetts General Laws Chapter 40B (MGL c. 40B). It is not intended to replace or supersede any portion of Massachusetts General Laws Chapter 40B, 760 CMR 56.00, or the Department of Housing and Community Development's Comprehensive Permit Guidelines (the "40B Guidelines"), any provisions of the Regulatory Agreement for a specific 40B Project, or the applicable Monitoring Agreement. Instead, it is intended to serve as a tool in assisting and answering questions for individuals and organizations serving as Affordability Monitoring Agents for 40B homeownership projects under the standard Affordable Housing Restriction required by MassHousing since 2007 (also known as the "Universal Deed Rider" (UDR), or "Fannie Mae Deed Rider"). In the case of any conflict between this Handbook and the Monitoring Agreement, the Monitoring Agreement shall control.

Pre-Universal Deed Rider Units

This Handbook does not address the intricacies and unique circumstances that affect the 40B units that are not under the Universal Deed Rider. In particular, the very early NEF units that pre-date MassHousing's tenure as the Subsidizing Agency may be under more restrictive conditions. MassHousing will work directly with Monitoring Agents on a case-by-basis to resolve questions regarding these units.

PROGRAM BACKGROUND

MassHousing's Planning and Programs Department is responsible for administering development under the Commonwealth's regional planning law, MGL c. 40B. MassHousing oversees projects financed by the Agency, and in February 2003, the Agency became the Project Administrator and Subsidizing Agency of projects financed by the Federal Home Loan Bank of Boston ("FHLBank Boston), under the New England Fund (NEF) program through its private member banks.

Since 2003, MassHousing oversight of the NEF program has not only meant issuing determinations of project eligibility and regulatory compliance with subsidy requirements, but also managing compliance of NEF's 40B portfolio dating back to 1999. It is important to note that MassHousing's ability to oversee some homeownership units from the very early years has been hampered by the lack of historical documentation of units and of assigned monitoring agents when the FHLB program handover occurred.

In 2007, MassHousing adopted a standard Affordable Housing Restriction. In 2014, a standard Affordable Housing Restriction Mortgage was instituted to more clearly alert prospective

[1] Beginning in 2020, Affordability Monitoring Agent Contracts were restructured so that Monitoring Agents would be compensated by MassHousing directly for services rather than by the Developer during the initial sales period.

creditors and lenders of the affordability restrictions and maximum resale formula attached to a 40B unit. See **DEED RESTRICTIONS AND MORTGAGE** section below for more detail on the mortgage.

SUMMARY OF PROGRAM CHANGES

The integrity of the 40B program remains of paramount importance to MassHousing. Since the 2020 program changes, the Agency has continued to review the administration of affordability compliance and the capacity of Monitoring Agents. In 2020, adjustments were made to support long-term sustainability and to address the challenges that Agents faced in performing ongoing compliance monitoring. In addition, since 2003, MassHousing has become aware of challenges commonly shared by Monitoring Agents as they performed the full scope of their ongoing and supplemental monitoring duties.

To continue ensuring the long-term sustainability of 40B development, MassHousing instituted critical changes in the affordability monitoring of homeownership units to address and alleviate key concerns raised by Monitoring Agents. The following summarizes the changes.

1. Fee Schedule

   The Initial Sales Fee was adjusted, and a new Annual Monitoring Service Fee was instituted on a per unit basis. An annual 2% inflation rate was applied to both fees beginning in July 2021. In 2021, the Annual Monitoring Service Fee was $130, per unit. The revisions for 2025 will update the current Annual Monitoring Service Fee to $170, per unit with an annual 3% escalation applied to both the initial monitoring service fee and the annual monitoring service fee starting in January 2026. Refer to Appendix D: Key 40B Documents and Fee Schedule for link to the current fee schedule.

2. Monitoring Services Agreements

   - Agreements were restructured into two (2) agreements, an “Initial Agreement” and “Established Project Agreement.” The Initial agreement is executed between MassHousing, the Developer, and the Monitoring Agent and includes both initial sales and supplemental monitoring services. The Established Agreement covers only the supplemental monitoring period and is executed between MassHousing and the Monitoring Agent only.

   - The Initial Sales Monitoring Services Fee and Annual Monitoring Services Fee will be paid from MassHousing directly to the Monitoring Agent. Initial Agreements will be executed in phases, with the Initial Sales Monitoring Services Fees covering only the units referenced in each respective phase. Past agreements required the Developer to pay the Monitoring Agent for the Initial Sales Fee and no annual monitoring fee existed (Section 2).

- Terms of a specific number of years have been assigned in the agreement and may be renewed. Past agreement had terms that ran with the Deed Rider (Section 4).

3. Updated Third-Party Affordability Monitoring Handbook

   This Handbook has been comprehensively updated to serve as a more effective tool in addressing the needs of Monitoring Agents in performing their duties. Additions were inspired by the wealth of feedback, information and forms shared by Monitoring Agents that have a long history of doing this work. Many of the new forms, letters and guidance were adapted from material that CHAPA shared, and these are identified accordingly.

   Key changes to this Handbook include:

   - Policies and Guidance regarding specific monitoring tasks.
   - Required / Standardized templates and forms are denoted with * in Appendix B: Policies, Procedures, Forms and Letters
   - Optional letters and forms that Monitoring Agents may want to use in completing their tasks.
   - A Monitoring Task Summary Table that lists all the available policies, guidance, letters, and forms by Task. (Monitoring Task Summary Table)
   - Table of Key 40B documents and link to the current Fee Schedule (Appendix D: Key 40B Documents and Fee Schedule
   - Links throughout the Handbook to help the reader access the documents referenced.
   - Fact Sheets for Owners covering topics and questions commonly requested (Appendix C: Fact Sheets for Owners)
   - Frequently Asked Questions (FAQs) have been added in an effort to answer questions commonly asked by both Monitoring Agents and Owners (Appendix E: FAQs)

4. Required / Standardized Letters and Forms

   Monitoring Agents must use specific required forms as they pertain to a particular task. This was instituted to (1) improve consistency in documentation at closings, (2) ensure a minimum level of communication with Owners annually, and (3) increase MassHousing's awareness of important transactions across the portfolio. See list of required forms below. See "Required Form(s)/Letter(s)" column in the Monitoring Task Summary Table for the list of documents.

   Notable new forms include:

   - Monitoring Agent Certification AFHMP Review and Recommendation for Approval*: The AFHMP Checklist* must be included with this form.

- Municipality Notice - Foreclosure*: MassHousing is requiring that Monitoring Agents send out this communication to both the affected Town/City and MassHousing so that key parties are adequately notified. There have been past instances in which MassHousing did not receive notice from the lender.
- Approval of Capital Improvement to Owner*: This new form requires that Monitoring Agents verify, AFTER improvement completion, both the cost of the improvements and the depreciation method that is to be used on that increased value.
- Annual Letter to Owner and Important 40B Terms*: This annual letter is intended to be a friendly reminder to Owners of their 40B obligations. The Annual Certification Form to Owner* must accompany the letter.

MONITORING TASK SUMMARY TABLE

Task	Policy/Guidance	Required Form(s)/Letters(s)	Optional Form(s)	Fact Sheet
1 Initial Sales	1. Initial Sales Policy 2. Pre and Post Purchase Counseling Guidance 3. Lottery Agent / Monitoring Agent Roles and Responsibilities 4. AFHMP Guidelines	1. AFHMP Checklist* 2. Monitoring Agent Certification AFHMP Review and Recommendation for Approval* 3. Certificate of Compliance - Initial Sale* 4. Memo Regarding Initial Sale Documents to Closing Attorney* 5. Initial Sales Affordability Completion Report*	1. Letter to Developer - Initial Sale 2. Income Certification Checklist 3. Eligibility for Purchase Certification - Income and Asset Verification - to Lottery Agent and Developer 4. Approval of Buyer Financing to Developer, Lottery Agent and Buyer	1. Selling Your 40B Home 2. Renting Your 40B Home 3. 40B Deed Restrictions and Mortgage 4. Making Improvements to Your 40B Home 5. Refinancing Your 40B Home 6. The Effects of Special Assessments and HOA Fees on Your 40B Home 7. Legal Resources Available to 40B Owners
2 Resales	1. Resale Policy and Guidance on Procedure 2. Resale Buyer Selection Guidance	1. Resale Price Certificate* 2. Certificate of Compliance - Resales or Foreclosure* 3. Closing Instructions Letter to Closing Attorney*	1. Resale Process Letter to Owner 2. Property Resale Price Form 3. Property Information Form 4. Letter to External Real Estate Broker 5. Buyer Approval and Next Steps Letter to Buyer 6. Buyer Approval and Next Steps Letter to Owner	1. Selling Your 40B Home 2. The Effects of Special Assessments and HOA Fees on Your 40B Home

Task	Policy/Guidance	Required Form(s)/Letters(s)	Optional Form(s)	Fact Sheet
			7. Municipality Notice - Resale	
3 Foreclosures	1. Foreclosure Policy	1. Municipality Notice - Foreclosure* 2. Certificate of Compliance - Resale or Foreclosure* 3. Resale Price Certificate* (if applicable)	1. Notice of Foreclosure to Owner	
4 Capital Improvements	1. Capital Improvements Policy and Guidance on Procedure	1. Approval of Capital Improvement to Owner*	1. Capital Improvement Letter to Owner 2. Eligibility of Capital Improvement Request	1. Making Improvements to Your 40B Home
5 Refinancing	1. Refinancing Policy and Guidance on Procedure	1. Eligible Refinance Certificate*	1. Refinancing Letter to Owner	1. Refinancing Your 40B Home
6 Enforcement	1. Non-Compliance and Monitoring Agent Role in Enforcement		1. Enforcement Letter to Owner 2. Noncompliance Remedied Letter to Owner	
7 Annual Monitoring / Reporting	1. Annual Monitoring and Reporting Policy	1. Annual Letter to Owner and Important 40B Terms* 2. Annual Certification Form to Owner* 3. Annual Compliance Report*	1. Notice of Condominium Lien to Owner 2. Notice to Condominium/ Homeownership Association	

MONITORING AGENT QUALIFICATIONS AND DUTIES

A Monitoring Agent must be retained before a Project can receive Final Approval from MassHousing. In terms of timing, a Monitoring Services Agreement should be signed after the Comprehensive Permit is approved, but before Final Approval is issued by MassHousing. The Monitoring Agreement is typically attached to and made part of the Regulatory Agreement and is recorded with the Regulatory Agreement at the Registry of Deeds. If units remain affordable in perpetuity under the Deed Rider, MassHousing will ensure that a Monitoring Agent is assigned to the unit as long as the Regulatory Agreement is in effect.

The Monitoring Services Agreement can be terminated "at will" by the Monitoring Agent or by MassHousing with sixty (60) days' notice. The Monitoring Agreement can also be terminated immediately by MassHousing should the Monitoring Agent become incapable of fulfilling their obligations. In both cases, MassHousing is responsible for assigning another Monitoring Agent to the affected unit(s) and notifying municipality. The Monitoring Agent is responsible for notifying the unit owner and lender (where applicable) of the change.

Monitoring Agent Qualifications

The Monitoring Agent must be approved by MassHousing based on experience, qualifications, level of training and capacity. Monitoring Agents must minimally meet the following qualifications:

1. Working knowledge of eligible state and federal subsidy programs, particularly Massachusetts General Laws Chapter 40B, and the regulations at 760 CMR 56.00 and the Comprehensive Permit Guidelines issued pursuant thereto;
2. Excellent verbal and written communication skills;
3. Experience reviewing income, asset, and age certifications to determine eligibility under applicable subsidy programs and/or qualifying buyers with mortgage lenders;
4. Experience working with developers, lottery agents, and closing attorneys in the sale and resale of units subject to Affordable Housing Restrictions;
5. Experience responding to requests for refinancing, approval of capital improvements, further encumbrances and leasing units subject to an Affordable Housing Restriction;
6. Ability to resolve issues of non-compliance with Regulatory Agreements and/or Affordable Housing Restriction;
7. Demonstrated capacity to sustain and scale up monitoring services over time, as needed.

Monitoring Agent Duties

The duties of a 40B Monitoring Agent can be summarized as follows:

1. *Review and submit documentation recommending approval of the Affirmative Fair Housing Marketing Plan (AFHMP) and Unit Location Plan* – Identify necessary revisions and/or corrections and work with the Developer to ensure the Plan meets 40B guidelines and requirements.

2. *Monitor Initial Sales* **–** Work closely with the Developer and/or its Lottery Agent to ensure that Affordable Units included in a 40B Project are sold to Income Eligible Households and are subject to a long-term Affordable Housing Restriction.

3. *Monitor Resales* - Ensure that all Resales (including those resulting from foreclosures) comply with 40B regulations, the terms of the Affordable Housing Restriction, and the AFHMP.

4. *Annual Reporting* – Communicate with and collect information from Owners on an annual basis to prepare and submit an Annual Compliance Report to MassHousing and the Municipality regarding compliance of the Project with the Affordability Requirement.

5. *Supplemental Monitoring Services* - Ensure ongoing compliance by Owners including requests for refinancing, capital improvements, leasing, and resales preparing the Affordable Housing Restriction and the Non-Financial Mortgage.

6. *Enforcement* - Take necessary enforcement action in response to violations of the Regulatory Agreement and Affordable Housing Restriction.

DEED RESTRICTION AND MORTGAGE

At the closing of a 40B unit, both an Affordable Housing Restriction (Deed Restriction) AND an Affordable Housing Restriction Mortgage (Mortgage) must be recorded. The Affordable Housing Restriction Mortgage reinforces the terms of the Affordability Restrictions and was instituted in 2014 as a deliberate mechanism to alert financial institutions of the unit's value under the 40B program. The mortgage was precipitated by numerous past instances where Owners secured additional financing (e.g. a home equity loan or cash-out refinance) that exceeded the maximum resale price of their home due to lack of due diligence from the lender/bank. For some Owners, this led to a threat of foreclosure and for units with older Deed Riders, the unit's long-term affordability was at risk, which in turn led to a potential reduction of the Municipality's Subsidized Housing Inventory (SHI) count.

The Affordable Housing Restriction Mortgage was put in place because financing institutions are particularly and consistently sensitive to existing mortgages on a property's title in contemplating their underwriting. Thus, the Affordable Housing Restriction Mortgage directs lenders to the restrictions in determining a loan amount that is consistent with the value restrictions on a 40B home.

AFHMP REVIEW AND APPROVAL

All 40B Projects are included in the Subsidized Housing Inventory (SHI) maintained by the Commonwealth of Massachusetts and must have an Affordable Fair Housing Marketing and Resident Selection Plan (AFHMP) that meets the standards set forth in EOHLC's *Affirmative Fair Housing Marketing and Resident Selection Plan Guidelines*[1]. The Plan maps out the process for marketing Affordable Units within a 40B Project, including identifying and selecting Eligible Buyers.

The Developer, or a Lottery Agent working on behalf of the Developer, is responsible for preparing the AFHMP. The Developer is also responsible for all costs associated with initial marketing and buyer selection. Section III of the 40B Guidelines outlines requirements for the preparation and administration of the AFHMP for the full term of the Affordability Requirement, which in most cases extends in perpetuity. The AFHMP should therefore address not just the Initial Sales of Affordable Units but should also include information about the Resale process.

One of the most important responsibilities of the Monitoring Agent is to review and recommend approval of the AFHMP to MassHousing. The Monitoring Agent is responsible for reviewing and working with the Developer to ensure the finalized Plan meets EOHLC guidelines before submission of the AFHMP Checklist*and Monitoring Agent Certification - AFHMP Review and Recommendation for Approval*. The Monitoring Agent must be completely familiar with its contents and should be ready to serve as a resource to MassHousing throughout its implementation.

> *See AFHMP Guidelines for detail on the structure, components and considerations for approval.*

APPLICANT / BUYER GRIEVANCE

Complaints or grievances from lottery applicants that believe they were unfairly treated or incorrectly disqualified from the lottery are outside the Monitoring Agent's roles and responsibilities. In some instances, a Lottery Applicant Appeal and Grievance process may be needed, and as such this is provided in the AFHMP and managed accordingly.

If a prospective Buyer that has been selected by the lottery agent but was disqualified by the Monitoring Agent and believes s/he was incorrectly disqualified or feels s/he was unfairly treated by the Monitoring Agent, the aggrieved Buyer should be directed to MassHousing. MassHousing is obligated to address the grievance in a manner consistent with 40B guidelines and in accordance with any existing EOHLC 40B grievance policy.

[1] https://www.mass.gov/doc/ma-fair-housing-marketing-and-resident-selection-plan-guidelines-1/download

CONFLICT OF INTEREST

MassHousing and Monitoring Agents must manage conflicts of interest, both real and perceived. Even the perception of unfair administration of the 40B program could create problems including political controversies, legal challenges, loss of public confidence, marketing challenges, or other obstacles. In all cases, the likely outcome is some amount of detrimental impact to the 40B program. As such, it is in the best interest of all stakeholders involved in the administration of 40B to carefully manage perceived or real conflicts of interest in order to maintain credibility and legitimacy in the public eye.

Because access to a 40B unit is a scarce and precious good, the potential exists for unscrupulous behavior in securing or maintaining such access. During the lifecycle of a 40B property, there is potential for conflicts of interest at several stages, including but not limited to:

1. Project Development, with respect to:
    - the authorization to produce a 40B development
    - density and permitting decisions
2. Lottery Administration, Initial Sales and Marketing, with respect to:
    - setting initial prices
    - acceptance into the lottery
    - lottery winners
    - any discretionary decisions with respect to eligibility
3. Ongoing Ownership and Compliance Monitoring, with respect to:
    - findings of disallowed behaviors/uses
    - non-compliance consequences, including fines, deemed ineligibility, or forced sale
4. Unit Resales
    - sales commissions
    - access to units available for re-sale

Note that the potential for conflicts is greater when administrators of the 40B program, including Monitoring Agents, are professionals with ties to finance, insurance, construction, or development. The following items are highlighted to promote transparency, fairness, and credibility and guide the permitted behavior of Monitoring Agents and 40B homebuyers and homeowners.

<u>Prohibition on Self-Oversight</u>

Individuals employed by or in any way acting as Lottery or Monitoring Agents are in no case permitted to occupy units administered by themselves or their employer.

Oversight of Family Members

Family members (defined as parents, siblings, current or former spouses, children, first cousins, grandparents, and grandchildren) of Lottery and Monitoring Agents are permitted to occupy units administered by their family members as long as the full lottery process and all monitoring documentation has been completed, and has or could be found to have been fully compliant with prescribed lottery and monitoring processes. Where possible and at MassHousing's sole discretion, a different Monitoring Agent may be assigned to encourage the administration or oversight of a 40B unit by non-related persons.

PRE AND POST PURCHASE HOMEOWNERSHIP COUNSELING

While important to successful homeownership and a priority for MassHousing in its administration of the 40B program, most of the pre- and post-purchase preparation of prospective Buyers is not a responsibility of Monitoring Agents. See Pre and Post Purchase Counseling Guidance.

INITIAL SALES PERIOD

Guidance:	1. Initial Sales Policy 2. Pre and Post Purchase Counseling Guidance 3. Lottery Agent / Monitoring Agent Roles and Responsibilities 4. AFHMP Guidelines
Required:	1. AFHMP Checklist* 2. Monitoring Agent Certification AFHMP Review and Recommendation for Approval* 3. Certificate of Compliance - Initial Sale* 4. Memo Regarding Initial Sale Documents to Closing Attorney* 5. Initial Sales Affordability Completion Report*
Optional:	1. Letter to Developer - Initial Sale 2. Income Certification Checklist 3. Eligibility for Purchase Certification - Income and Asset Verification - to Lottery Agent and Developer 4. Approval of Buyer Financing to Developer, Lottery Agent and Buyer
Fact Sheet(s)	1. Selling Your 40B Home 2. Renting Your 40B Home 3. 40B Deed Restrictions and Mortgage 4. Making Improvements to Your 40B Home 5. Refinancing Your 40B Home 6. The Effects of Special Assessments and HOA Fees on Your 40B Home 7. Legal Resources Available to 40B Owners

The Initial Sales period extends for the entire time in which the Affordable Units in the Project are being marketed and sold directly by the Developer to the initial Eligible Buyer. It is important to note that it is entirely possible for a Project to have some units that are being built

and sold for the first time, while others are being "re-sold" by their initial owners to subsequent Eligible Buyers. Initial Sales are complete only when all the Affordable Units in a 40B Project have been sold by the Developer for the first time to an initial buyer.

Throughout the Initial Sales period the Monitoring Agent works closely with the Developer and/or the designated Lottery Agent to ensure compliance with the terms of the Regulatory Agreement and the Comprehensive Permit Regulations. Once all units in a Project are sold, the Initial Sales period ends, and the Monitoring Agent assumes primary responsibility for monitoring ongoing compliance. Primary responsibilities of the Monitoring Agent from when the Comprehensive Permit is issued and when all affordable units in a Project are sold include and are not limited to:

1. Reviewing and recommending approval of the project's AFHMP to MassHousing.
2. Securing the Maximum Initial Sales Price from MassHousing
3. Determining that the Buyer meets 40B asset and income eligibility requirements
4. Confirming that Buyer's financing meets 40B requirements
5. Securing the Resale Price Certificate from MassHousing
6. Securing a signed Homebuyer Disclosure Statement from the Buyer
7. Issuing a Certificate of Compliance to affirm that 40B affordability requirements have been substantively met
8. Preparing, collecting, and reviewing the requisite 40B documentation to be recorded at the closing
9. Coordinating communications with MassHousing, the Developer, Lottery Agent, Buyer, and closing attorney.
10. Establishing and managing a project file for ongoing compliance monitoring.
11. Confirming that all requisite 40B documentation has been recorded at the County Registry of Deeds.
12. Submission of the Initial Sales Affordability Completion Report* to MassHousing, the Developer, and the Municipality.

See Initial Sales Policy for more detail on Monitoring Agents' roles and responsibilities.

INITIAL SALES EVENTS/TIMELINE

Event	Who is Responsible	When Does it Typically Occur
Monitoring Services Agreement	-MassHousing assigns the Monitoring Agent and executes an "Initial Agreement" with the Monitoring Agent.	-After the Comprehensive Permit is issued by the Municipality; -Before Final Approval for the Project is granted by MassHousing
Preparation/Approval of AFHMP	-Developer or their consultant prepares AFHMP -Monitoring Agent reviews, provides recommendation to MassHousing -MassHousing formally approves	-Submitted as a part of the Final Approval Application -Must be approved before marketing commences
Local Preference	-Municipality requests -Monitoring Agent may review and make a recommendation to MassHousing -MassHousing approves/disproves	-Request *should* be submitted within three months after the issuance of the Comprehensive Permit -*Must* be submitted before Final Approval is issued, typically as a part of the AFHMP
Affordable Sales Price	-Developer or MassHousing (at Developer's request) -Approved by MassHousing	-Submitted as a part of the Final Approval Application - Before marketing commences
Marketing Initial Eligibility Review Lottery, Buyer Selection	-Developer/Consultant (Lottery Agent)	-No more than six months before marketing
Review/Approve Buyer Eligibility	-Lottery Agent provides complete packages to Monitoring Agent -Monitoring Agent Reviews -Monitoring Agent Notifies Lottery Agent and MassHousing	-After Lottery -Before Purchase and Sale is signed -No more than 60 days before closing (can be updated)

Event	Who is Responsible	When Does it Typically Occur
Homebuyer Disclosure Statement	-Monitoring Agent goes over the document with and collects the signed statement from the Buyer	-After Purchase and Sale is signed and the Buyer has been approved by the Monitoring Agent.
Resale Price Certificate	-Developer Requests -MassHousing drafts for Initial Sales only -Monitoring Agent Reviews	-Prior to closing (up to 60 days)
Fills out Deed, Affordable Housing Restriction, and Affordable Housing Restriction Mortgage.	-Lottery Agent in consultation with Developer	-Prior to closing
Sends Deed, Affordable Housing Restriction, Affordable Housing Restriction Mortgage to Monitoring Agent	-Lottery Agent	-Prior to closing
Reviews “Closing Package” Deed, Affordable Housing Restriction, Affordable Housing Restriction Mortgage, RPC, and Financing.	-Monitoring Agent	-Prior to closing
Issues Compliance Certificate	- Monitoring Agent	-Prior to closing
Sends “Closing Package” and Compliance Certificate to Closing Attorney	- Monitoring Agent	-Prior to closing
Record all Documents	-Closing Attorney	-After closing
Check that all docs have been recorded	-Monitoring Agent	-Within 10 days after closing
Provide Subsidizing Agency with “Initial Sales Data and Compliance Report”	-Monitoring Agent	-When ALL affordable units have sold for the first time

SUPPLEMENTAL MONITORING SERVICES

After Initial Sales are complete, the Monitoring Agent assumes primary responsibility for ensuring that Affordable Units remain in compliance with the terms set forth in the Affordable Housing Restriction and the Comprehensive Permit Rules in general. This is the Supplemental Monitoring phase of 40B compliance. After the "Initial Agreement" term comes to an end, MassHousing may renew the Monitoring Agent's contract with the "Established Project Agreement" which covers the supplemental phase of 40B monitoring. Core Monitoring Agent responsibilities include:

- Resales
- Oversight of foreclosure or threatened foreclosure
- Review and approval of homeowner requests (refinancing and capital improvements)
- Verification of annual compliance, including registry searches every year.
- Enforcement of non-compliance.

Throughout the Supplemental Monitoring Phase, the Monitoring Agent plays a critical role as the primary point of contact between the Affordable Unit owner, the Municipality and the Subsidizing Agency. To that end, it is the Monitoring Agent's responsibility to keep in touch with the owners of the Affordable Units, to remind them of the terms of the Affordable Housing Restriction, and to provide annual compliance reporting to the Municipality and MassHousing. Finally, the Monitoring Agent is also responsible for enforcing, to the extent possible, the terms of the Affordable Housing Restriction should they become aware of an incidence of non-compliance.

Start with the Affordable Housing Restriction!

This Handbook reflects the most recent version of the Regulatory Agreement and Affordable Housing Restriction. Therefore, it is critical to consult the deed and associated Affordability Housing Restriction for each unit because many existing 40B units being monitored pre-date current regulations.

RESALES

Guidance:	1. Resale Policy and Guidance on Procedure 2. Resale Buyer Selection Guidance
Required:	1. Resale Price Certificate* 2. Certificate of Compliance - Resales or Foreclosure* 3. Closing Instructions Letter to Closing Attorney*

Optional:	1. Resale Process Letter to Owner 2. Property Resale Price Form 3. Property Information Form 4. Letter to External Real Estate Broker 5. Buyer Approval and Next Steps Letter to Buyer 6. Buyer Approval and Next Steps Letter to Owner 7. Municipality Notice - Resale
Fact Sheet(s)	1. Selling Your 40B Home 2. The Effects of Special Assessments and HOA Fees on Your 40B Home

The Resale process is an important supplemental monitoring duty that does not require MassHousing approval or review. The Monitoring Agent is responsible for ensuring that Affordable Units are conveyed in accordance with the 40B Rules and the terms of the Affordable Housing Restriction for the property. Therefore, MassHousing has not prescribed a resale process that Monitoring Agents must follow. Instead, the Procedure section of the Resale Policy and Guidance on Procedure has been provided to assist and a Monitoring Agent may formulate his/her process so long as it is consistent with the Affordable Housing Restriction (Section 4) and the Monitoring Services Agreement.

Beginning in 2021, standard templates for the Resale Price Certificate*, Certificate of Compliance - Resales or Foreclosure* and Closing Instructions Letter to Closing Attorney* were instituted to ensure a level of consistency in preserving the affordability of 40B homeownership units.

Key stages of the resale process can be summarized as follows:

1. Owner provides Municipality and Monitoring Agent with a Conveyance Notice indicating that they are intending to sell the property.

2. Monitoring Agent calculates Maximum Resale Price, and issues Resale Price Certificate (if requested/required).

3. Monitoring Agent markets the unit (with cooperation from Owner, and supplemented by additional marketing efforts of Owner's real estate agent if they choose to hire and pay for one), ***with the initial collection period (e.g. 10 days) clearly advertised***, and locates an Eligible Buyer in accordance with the AFHMP guidelines.

4. Monitoring Agent confirms buyer eligibility, prepares and reviews Affordable Housing Restriction.

5. Monitoring Agent works with the Buyer to secure a signed Homebuyer Disclosure Statement from the Buyer. The Statement is not recorded at closing and should be filed as part of the Monitoring Agent's records for that unit.

6. Monitoring Agent provides Owner and closing attorney with a Certificate of Compliance.

7. Monitoring Agent prepares and provides the Closing Attorney with the Universal Deed Rider (Affordable Housing Restriction), the Certificate of Compliance - Resales or Foreclosure*, Affordable Housing Restriction Mortgage (MassHousing Mortgage), the Closing Instructions Letter to Closing Attorney*, Resale Fee Invoice from the Monitoring Agent, and the Resale Price Certificate* (if required). The Closing attorney records all documents, along with the deed and mortgage. The Attorney provides Monitoring Agent with copies of all materials within 10 days of closing.

See Resale Policy and Guidance on Procedure for more detail.

AFFORDABLE UNIT FORECLOSURES

Guidance:	1. Foreclosure Policy
Required:	1. Municipality Notice - Foreclosure* 2. Certificate of Compliance - Resale or Foreclosure* 3. Resale Price Certificate* (if applicable)
Optional:	1. Notice of Foreclosure to Owner
Fact Sheet(s):	N/A

The holder of record of any mortgage on a property (the Mortgagee) must send a copy of the Foreclosure Notice to the Monitoring Agent, the Municipality and any senior Mortgagees **at least 120 days prior** to a foreclosure sale, or acceptance of a deed in lieu of foreclosure[1].

An essential first step for the Monitoring Agent upon receiving a notice of foreclosure is to review the terms of the property deed and any associated Affordable Housing Restrictions. It is important to note that many of the units completed prior to 2006 (before adoption of the uniform Affordable Housing Restriction) are not subject to provisions that would require affordability to survive foreclosure. For properties **not** subject to the uniform Affordable Housing Restriction, the foreclosure process is handled on a case-by case basis depending on the provisions of the deed and associated restrictions.

Monitoring Agents are neither authorized nor expected to act as housing counselors or foreclosure prevention specialists. Instead, the Monitoring Agent should contact the Owner as soon as the Agent is aware of the situation (Notice of Foreclosure to Owner) and guide the Owner towards resources designed to assist in avoiding foreclosure, such as:

- Refinancing
- Negotiating with the lender on the terms of the loan

[1] Affordable Housing Restriction - Section 7

- Working with the lender to secure approval for a short sale.

It is possible that the Municipality where the unit is located has funds available through its Housing Trust or Community Preservation Fund to either purchase the home or assist the distressed owner. Beginning in 2021, MassHousing requires that the Monitoring Agent notify the Town / City and MassHousing about the foreclosure using the Municipality Notice - Foreclosure* template. This requirement is intended to assist MassHousing and the affected Town/City in the early detection of units at risk of losing its affordability so that efforts to preserve the unit are undertaken as soon as possible.

See Foreclosure Policy for more information on options to address foreclosures and what Monitoring Agents can do.

TRANSFER OF UNIT TO A TRUST OR OTHER ENTITY

Guidance:	N/A
Optional:	N/A
Required:	N/A
Fact Sheet(s):	N/A

Over the course of homeownership, the Owner may inquire about the process of passing on her/his unit to a trust or family member. Under the Affordable Housing Restriction, **this is not permitted**. This is a condition that the Owner agreed to when s/he purchased the unit.

However, adding or removing co-signers are permitted so long as the co-signer is a member of the household. This may be requested during a refinancing. See Refinancing Policy and Guidance on Procedure for more information on this.

Transfer Upon Death of Unit Owner[2]

A transfer by will or executor or owner of the administrator's estate to the **Owner's spouse *only*** is permitted under the 40B Comprehensive Permit Guidelines. Specifically, the transfer will not trigger the resale or transfer restrictions in the Deed Rider provided that:

1. The executor or administrator within 90 days of his/her appointment has given the Monitoring Agent notice of the transfer and
2. The Owner's spouse intends to continue to use the unit as a principal residence.
3. Any other person who is an heir, legatee, or devisee of the unit owner must demonstrate to EOHLC's satisfaction within the 90-day period that he/she is an eligible

[2] 40B Guidelines - Section IV (E)

purchaser, as defined in the Deed Rider; otherwise that person must transfer the unit in accordance with the Deed Rider.

*The Monitoring Agent must **document a Transfer upon Death of Unit Owner event** (include transfer status and the unit address) in the next **Annual Monitoring Report** submission to MassHousing. It possible that the Monitoring Agent may not learn of such event until s/he receives the Annual Certification Form to Owner*.*

CAPITAL IMPROVEMENTS

Guidance:	1. Capital Improvements Policy and Guidance on Procedure
Required:	1. Approval of Capital Improvement to Owner*
Optional:	1. Capital Improvement Letter to Owner 2. Eligibility of Capital Improvement Request
Fact Sheet(s):	1. Making Improvements to Your 40B Home

Capital Improvements must be approved by the Monitoring Agent in writing in order to be considered for inclusion in the Resale price. At the time that the unit is sold, the Monitoring Agent can add the cost of Approved Capital Improvements to the value of the home, factoring in depreciation.

The Annual Letter to Owner and Important 40B Terms* that is sent to Owners each year includes brief information about permitted and depreciable capital improvements. For a permitted capital improvement cost to be added to a future resale price, the following should occur.

1. The owner must contact and provide to the Monitoring Agent the following information in writing:
    - description of the work to be done
    - an estimate of the cost
    - an explanation why the work is a capital improvement

    Owners are to submit their written capital improvement requests *prior* to the initiation of the work.
2. Monitoring Agents are expected to review the request and render a written decision to the Owner. Each capital improvement request should be reviewed according to what is permitted in the Affordable Housing Restriction.
3. If the request is approved, the Owner must provide copies of all paid invoices and receipts to document the actual cost of the project after the work is completed. If the Owner

purchases materials and completes the project on her/his own, only the cost of materials will be considered.

4. Monitoring Agents should follow up with a written communication to the Owner confirming the approved value of the capital improvements and the schedule of depreciation that will be applied against the capital improvement's value. The Monitoring Agent is expected to maintain a copy in her/his records for reference at resale. Approval of Capital Improvement to Owner* must be used for this purpose.

5. Only after the Monitoring Agent has collected and reviewed the documentation of the actual improvement cost and provided written approval of the capital improvement request, can the improvement cost (with depreciation) be added to the value of the home. In any case, the resale price must be affordable to an Eligible Buyer under the Affordable Housing Restriction.

See Capital Improvements Policy and Guidance on Procedure for more detail on Monitoring Agents' roles and responsibilities

REFINANCING

Guidance:	1.	Refinancing Policy and Guidance on Procedure
Required:	1.	Eligible Refinance Certificate*
Optional:	1.	Refinancing Letter to Owner
Fact Sheet(s):	1.	Refinancing Your 40B Home

Owners are permitted to refinance or obtain a second mortgage under the 40B homeownership program; however, any refinancing must be approved by the Monitoring Agent before the Owner can close on a new loan. The goal in considering such a request is to make sure that:

1. The monthly costs of the unit remain affordable as set forth in the Affordable Housing Restriction.
2. The Owner is able to afford their monthly payments.
3. There is a benefit from proceeding with the refinancing (e.g. lower monthly payments).

In general, the only refinancing requests that should be considered are those that would serve to lower the monthly or long-term cost of the unit such as a reduction in the interest rate of the loan. In reviewing request for a first loan refinancing or a second mortgage (home equity loan), Owners should be discouraged from loan products with high closing costs, a higher interest rate than on the existing loan, or loans that roll unsecured debt into the mortgage. Details on

financing requirements (loan amount, interest rate, term, and other conditions) and other refinancing considerations are detailed in Refinancing Policy and Guidance on Procedure.

Owners must provide the Monitoring Agent with a written request. If the Monitoring Agent determines that the request is permitted, the Agent must provide an Eligible Refinance Certificate* indicating approval of the refinancing and prepare an "Amendment and Subordination of Mortgage[3]" that is provided by MassHousing. The certificate and Amendment must be recorded with the new loan.

Changes to Co-signers on the Deed

The Owner may also use refinancing as an opportunity to add or remove a household member from the deed. In this situation, the Owner's attorney must prepare a new deed for the Monitoring Agent's review prior to recording. The new deed must reference the current recorded deed rider with the book and page numbers of the original deed rider. It is important to remind the Owner that only household members are permitted as a co-signer.

See Refinancing Policy and Guidance on Procedure for more detail on Monitoring Agents' roles and responsibilities

ENFORCEMENT

Guidance:	1. Non-Compliance and Monitoring Agent Role in Enforcement
Required:	N/A
Optional:	1. Enforcement Letter to Owner 2. Noncompliance Remedied Letter to Owner
Fact Sheet(s):	N/A

The Regulatory Agreement, Affordable Housing Restriction, and Affordable Monitoring Agent Agreements detail the legal rights that Monitoring Agents have to enforce the Affordability Requirements. Enforcement is one of the more challenging aspects of a Monitoring Agent's duties.

The Annual Letter to Owner and Important 40B Terms* and Annual Certification Form to Owner* serve as annual reminders to Owners of their 40B obligations and include brief information about enforcement actions that could occur as a result of noncompliance. In addition to identifying non-compliance events from annual reporting activities, Monitoring Agents are expected to address and contact Owners regarding incidents of non-compliance reported by the Municipality, other stakeholders, or an abutting homeowner.

[3] The Amendment replaces Exhibit B to the Affordability Restriction Mortgage and subordinates MassHousing's non-financial mortgage to the refinanced mortgage in first position.

In practice, many instances of non-compliance can be addressed with a letter or a phone call to the Developer, Owner, or the Municipality. Monitoring Agents are responsible for documenting non-compliance events and, if applicable, the enforcement status in their Annual Monitoring Reports. Should the Owner be nonresponsive or require a higher level of attention, the Monitoring Agent should contact MassHousing to discuss enforcement options. MassHousing will work with the Monitoring Agent and the Owner directly to identify appropriate solutions and support the Monitoring Agent accordingly.

See Non-Compliance and Monitoring Agent Role in Enforcement for more detail on Monitoring Agents' roles and responsibilities.

ANNUAL MONITORING AND REPORTING REQUIREMENTS

Guidance:	1. Annual Monitoring and Reporting Policy
Required:	1. Annual Letter to Owner and Important 40B Terms* 2. Annual Certification Form to Owner* 3. Annual Compliance Report*
Optional:	N/A
Fact Sheet(s):	N/A

MassHousing will reach out to Monitoring Agents each year to remind them of their Annual Compliance submissions. Monitoring Agents must submit to the Municipality and MassHousing an Annual Compliance Report* for each 40B project[4]. Reports must be received within 120 days of the end of the calendar year. The purpose of the report is to provide MassHousing some detail about the status of 40B properties, and to demonstrate that the Monitoring Agent has performed her/his duties in ensuring that affordability restrictions are being monitored. Monitoring Agents are expected to track and report as appropriate:

1. Owner-occupancy status
2. Title search results
3. Instances of noncompliance and status of enforcement, if instituted.
4. Instances of associated monitoring transactions (resales, capital improvements, refinances, foreclosure, and unit transfers).

At a minimum, the Annual Letter to Owner and Important 40B Terms* and Annual Certification Form to Owner* must be sent to Owners to collect the information needed to populate the Annual Compliance Report*.

[4] Affordability Monitoring Services Agreement - Section 1 (b)

No Ongoing Eligibility and Recertification in Homeownership

Unlike rental units created under Chapter 40B, homeownership units do not undergo a "recertification" or later confirmation of eligibility.

See Annual Monitoring and Reporting Policy for more detail on Monitoring Agents' roles and responsibilities

APPENDIX A: DEFINITIONS

Affordability Monitoring Services Agreement or Monitoring Agreement – Initial and Established
An agreement between the Developer, the Subsidizing Agency (MassHousing) and the Monitoring Agent outlining their respective roles and responsibilities relative to enforcement of the Affordability Requirement for the Project as set forth in the Regulatory Agreement.

Affordability Requirement
The requirement placed on the Developer that Affordable Units be sold to Eligible Buyers in accordance with 40B Regulations and the terms of the Affordable Housing Restriction. Affordable Units shall only be sold to Eligible Buyers at no greater than the Maximum Sale Price in accordance with the Comprehensive Permit Rules and the terms of the Affordable Housing Restriction. The Monitoring Agent is responsible for enforcing compliance with the Affordability Requirement during the period of Initial Sales and for all subsequent Resales.

Affordable Housing Fund
A fund established by the Municipality for the purpose of reducing the cost of housing for Eligible Purchasers, or for the purpose of encouraging, creating, or subsidizing the construction or rehabilitation of housing for Eligible Purchasers or, if no such fund exists, a fund established by the Municipality pursuant to Massachusetts General Laws Chapter 44, Section 55C.

Affordable Housing Restriction (Deed Restriction, Deed Rider)
A restriction incorporated in and made part of the deed for each Affordable Unit setting forth the rights and restrictions to which each Affordable Unit is subject, and which shall be enforceable by the Municipality and the Monitoring Agent. The Affordability Restriction is signed by the Seller and the Buyer. A standard Affordable Housing Restriction was instituted in 2007. This Handbook addresses monitoring services under the standard Affordable Housing Restriction, also known as the Universal Deed Rider (UDR) and Fannie Mae Deed Rider.

Affordable Housing Restriction Mortgage ("the Mortgage", MassHousing Mortgage)
A recorded mortgage from MassHousing on 40B units to alert prospective lenders and banks of the affordable housing restrictions placed on the unit.

Affordable Unit
A unit of housing subject to an Affordable Housing Restriction.

Annual Compliance Report ("the Annual Report")
A report prepared annually by the Monitoring Agent and delivered to MassHousing and the Zoning Enforcement Officer of the Municipality each year including information about the compliance of a Project with the Affordability Requirement to which it is subject. During the period of Initial Sales, the Annual Report should include information on the status of the Project

including number of Affordable Units built, sold, occupied and resold. A standard format (Annual Compliance Report*) for this report was adopted in 2021.

Applicable Foreclosure Price
Per the Affordable Housing Restriction and specifically in the event of foreclosure on a 40B unit: The greater of (i) the sum of the outstanding principal balance of the note secured by such foreclosing Mortgagee's mortgage, together with the outstanding principal balance(s) of notes secured by mortgages senior in priority to such mortgage (but in no event shall the aggregate amount thereof be greater than one hundred percent (100%) of the Maximum Resale Price calculated at the time of the granting of the mortgage) plus all future advances, accrued interest and all reasonable costs and expenses which the foreclosing Mortgagee and any senior Mortgagee(s) are entitled to recover pursuant to the terms of such mortgages (the "Mortgage Satisfaction Amount") and (ii) the Maximum Resale Price (which for this purpose may be less than the purchase price paid for the property by the owner.)

Appropriate-Sized Household
A household with a number of members equal to the number of bedrooms plus one.

Approved Capital Improvement
The reasonable cost of extraordinary capital improvements made to the Affordable Unit by the Owner, provided that the Monitoring Agent shall have given written authorization for incurring the cost of the improvement prior to the cost being incurred, and that the original cost of such improvement shall be discounted over the course of its useful life. A standard format (Approval of Capital Improvement to Owner*) was adopted in 2021.

Area Median Income (AMI)
The most recently published median income for the Primary Metropolitan Statistical Area or non-metropolitan area that includes the Project, as determined by HUD.

Base Income Number
The Area Median Income (AMI) for a four-person household.

Buyer
See "Eligible Buyer"

Compliance Certificate (Certificate of Compliance)
A certificate obtained and recorded, signed and acknowledged by the Monitoring Agent at the time of sale of an Affordable Unit, referring to the Property, the owner, and the selected purchaser, which states that the proposed conveyance to the selected purchaser is in compliance with the terms of the Affordable Housing Restriction. Standard formats for Resales, Foreclosures, and Initial Sales (Certificate of Compliance - Resale or Foreclosure* and Certificate of Compliance - Initial Sale*) were adopted in 2021.

Comprehensive Permit

A permit for the development of housing including some or all low or moderate income housing issued by a local board or committee (typically a local Zoning Board of Appeals) pursuant to M.G.L. c. 40B Sections 20-23 and 760 CMR 56.00.

Comprehensive Permit Requirements
Massachusetts General Laws Chapter 40B Section 20-23, and the regulations at 760 CMR 56.00 and the Comprehensive Permit Guidelines issued pursuant thereto.

Conveyance Notice
A written notice provided by the Owner to the Monitoring Agent and the Municipality, which states that they want to sell, dispose of, or otherwise convey the Property.

Developer
A public agency, non-profit organization or limited dividend organization that has applied for and received a Comprehensive Permit for a Project including Low or Moderate Income Housing and its successors and assigns.

Depreciation
A reduction in the value of improvements made to the unit due to aging and wear-and-tear.

Eligible Buyer (Buyer, Eligible Purchaser)
An individual or household certified by the Monitoring Agent to have met all of the eligibility requirements set forth in the Affordable Housing Restriction and applicable Program Guidelines to buy an Affordable unit, including limits on income and assets, suitability of financing, etc.

EOHLC Guidelines
The most recent version of the Comprehensive Permit Guidelines prepared by EOHLC

The Executive Office of Housing and Livable Communities (EOHLC) (formerly known as DHCD) EOHLC is the state agency responsible for developing 40B policy and regulations. EOHLC also serves as the Affordability Monitoring Agent for all 40B projects and Local Action Units (LAU's) approved under the Local Initiative Program. EOHLC periodically issues new or revised regulations that can impact Affordability Monitoring processes.

Fannie Mae Deed Rider
See "Standard Affordable Housing Restriction"

Foreclosure Notice
A notice from the holder of record of any mortgage on a property in the event of default for which the Mortgage Holder intends to commence foreclosure proceedings or similar remedial actions pursuant to its mortgage.

Homeowner
See "Owner"

HUD
The United States Department of Housing and Urban Development.

Income Eligible Household
A household of one or more persons whose income does not exceed the percentage of Area Median Income specified in the Affordable Housing Restriction, and in no case exceeds 80% of AMI.

Ineligible Buyer
A household or individual that does not meet the income and/or asset limits, or has unsuitable financing, as required to be eligible to purchase an Affordable Unit.

Initial Sales
The first sale of each of the Affordable Units in a Project which are required to be sold to Eligible Buyers.

Initial Sales Data
Information provided by the Developer or Lottery Agent to the Monitoring Agent relative to the Initial Sales of Affordable Units necessary for the Monitoring Agent to determine compliance of the Project with the Affordability Requirement. This can include Marketing Documentation; income, asset, and age certifications; deeds; and Affordable Housing Restrictions.

Initial Sales Period
The entire period between when Affordable Units in the Project are being marketed and sold directly by the Developer to the initial Eligible Buyer. It is important to note that it is entirely possible for a Project to have some units that are being built and sold for the first time, while others are being "re-sold" by their initial owners to subsequent Eligible Buyers. The Initial Sales period is complete only when all the Affordable Units in a 40B Project have been sold by the Developer for the first time to an initial buyer.

Throughout the Initial Sales period the Monitoring Agent works closely with the Developer and/or the designated Lottery Agent to ensure compliance with the terms of the Regulatory Agreement and the Comprehensive Permit Regulations. Once all units in a Project are sold, the Initial Sales period ends

Lottery Agent
A qualified individual or agency hired by the Developer to conduct resident selection for the Affordable Units during the period of Initial Sales, including the development of an Affirmative Fair Housing Marketing Plan, marketing of the units, administering the initial lottery process and determining the qualification of potential buyers or tenants. In some cases the Developer performs the functions of the Lottery Agent for their own project.

Low or Moderate Income Housing
A unit of housing whose occupancy is subject to an Affordable Housing Restriction that limits occupancy to Income-Eligible Households.

Marketing Documentation
A record of all newspaper ads, outreach letters, translations, leaflets, and all Affirmative Fair Marketing efforts as described in the Marketing Plan.

Marketing Plan
A document describing a process for identifying and selecting Eligible Purchasers for Affordable Units. The Marketing Plan must provide for Affirmative Fair Marketing of Affordable Units in accordance with current Department Guidelines.

MassHousing Mortgage
See "Affordable Housing Restriction Mortgage"

Maximum Initial Sales Price
The purchase price of an Affordable Unit for which a credit-worthy Eligible Purchaser earning that percentage of Area Median Income for an Appropriate Size Household specified in the Affordable Housing Restriction could obtain mortgage financing as determined by the Subsidizing Agency (MassHousing) using the same methodology used by EOHLC for its Local Initiative Program (LIP).

Maximum Resale Price
The sum of i) the Base Income Number (at the time of resale) multiplied by the Resale Price Multiplier, plus ii) the Resale Fee and any necessary marketing expenses (including the broker's fees) as may have been approved by the Monitoring Agent, plus iii) Approved Capital Improvements, if any, provided that in no event shall the Maximum Resale Price be greater than the purchase price for which a credit-worthy Eligible Purchaser could obtain mortgage financing (such purchase price as determined by the Monitoring Agent using the same methodology used by EOHLC for its Local Initiative Program or similar comprehensive permit program); and further provided that the Maximum Resale Price shall not be less than the purchase price paid for the Property by the Owner unless the Owner agrees to accept a lower price.

Monitoring Agent
The Monitoring Agent is a qualified individual or agency retained by the Developer at the request of the Subsidizing Agency (MassHousing) for the purposes of administration, monitoring, and enforcement of the Affordability Requirement for a Project pursuant to the Affordability Monitoring Services Agreement.

Mortgage Satisfaction Amount
The sum of the outstanding principal balance of the note secured by the foreclosing Mortgagee's mortgage, together with the outstanding principal balance(s) of any note(s)

secured by mortgage(s) senior in priority to such mortgage (but in no event shall the aggregate amount thereof be greater than one hundred percent (100%) of the Maximum Resale Price calculated at the time of the granting of the mortgage) plus all future advances, accrued interest, and all reasonable costs and expenses that the foreclosing Mortgagee and any senior Mortgagee(s) are entitled to recover pursuant to the terms of such mortgages.

Municipality
The city or town where the project will be located, and whose local board (typically a Zoning Board of Appeals) issues the Comprehensive Permit for the Project.

New England Fund (NEF)
A program originally administered by the Federal Home Loan Bank of Boston (FHLBB) that financed 40B projects through FHLBB's private member banks.

Owner (Homeowner)
The owner of a 40B homeownership unit and appropriately named in all related ownership documents record in the County Registry of Deeds or similar database. The Owner must live in the unit as her/his primary residence.

Project
A development involving the construction or substantial rehabilitation of units of Low or Moderate Income Housing permitted by a Comprehensive Permit issued by a local Board of Appeals.

Regulatory Agreement
An agreement between the Developer, the Subsidizing Agency (MassHousing) and the Municipality, which memorializes the rights and responsibilities of each party relative to the development of housing pursuant to a Comprehensive Permit in accordance with the Comprehensive Permit Rules. A completed and executed Regulatory Agreement is required prior to the issuance of a Building Permit for work on the proposed housing developed.

Resale
"Resales" refers to all subsequent sales of Affordable Units that occur after the Initial Sale by the Developer.

Resale Fee
The fee paid to the Monitoring Agent as compensation for monitoring and enforcing compliance with the terms of the Affordable Housing Restriction, including supervision of the Resale process. For projects under the Standard Affordable Housing Restriction, the Resale Fee shall equal no more than 2.5% (or such other number as is defined in the Affordable Housing Restriction) of the Base Income Number (at the time of Resale) multiplied by the Resale Price Modifier. Some older Monitoring Agreements specify a different (generally lower) amount.

Resale Period
The 90 days after the Monitoring Agent receives the Conveyance Notice from the Owner. The Monitoring Agent is tasked with completing a sale to an Eligible Buyer during this 90-day period with full cooperation from the Owner. The Period may be extended depending on the Owner's level of cooperation and the Eligible Buyer's ability to secure mortgage financing.

Resale Price Certificate
A Certificate that sets forth the Resale Price Multiplier to be applied on the Resale of the Affordable Unit in accordance with the terms of the Affordable Housing Restriction. The Resale Price Certificate must be issued by MassHousing at the time of the Initial Sale of the Affordable Unit; subsequent Resale Price Certificates are issued by the Monitoring Agent.

Resale Price Multiplier
The number calculated by dividing the Property's initial sale price by the Base Income Number at the time of the initial sale from the Developer to the first Eligible Buyer.

Restriction Mortgage
See "Affordable Housing Restriction Mortgage".

Standard Affordable Housing Restriction (Universal Deed Rider (UDR), Fannie Mae Deed Rider)
The Affordable Housing Restriction that was instituted in 2007. This Handbook addresses monitoring services under the Standard Affordable Housing Restriction.

Subsidy
Assistance provided by a Subsidizing Agency for the construction or substantial rehabilitation of Low or Moderate Income Housing, including direct financial assistance; indirect financial assistance through insurance, guarantees, tax relief, or other means; and non-financial assistance, including in-kind assistance, technical assistance, or other supportive services.

Subsidizing Agency
The Subsidizing Agency is an agency of state or federal government that provides a subsidy for the construction or substantial rehabilitation of Low or Moderate Income Housing. If the Subsidizing Agency is not an agency of state government, the Department may appoint a state agency to administer the responsibilities of the Subsidizing Agency with respect to 760 CMR 56.00. MassHousing serves as the Subsidizing Agency for all 40B Projects which receive loans from the New England Fund or the Federal Home Loan Bank of Boston.

Subsidized Housing Inventory (SHI)
A list compiled by EOHLC containing the count of Low or Moderate Income Housing units by city or town.

Supplemental Monitoring Period
The affordability period following initial sales of a 40B unit. During this period, the Monitoring Agent is monitoring owner compliance involving without limitation, the owner-occupancy requirement, resales, refinancing, capital improvements, abutter/stakeholder complaints and registry searches for further encumbrances.

Universal Deed Rider (UDR)
See “Standard Affordable Housing Restriction”.

APPENDIX B: POLICIES, PROCEDURES, FORMS AND LETTERS

The header of each document categorizes how the document is to be used:

OPTIONAL =	*Letter or Form that may be used at Monitoring Agents' discretion.*
GUIDANCE =	*Procedures and information that may be used at the Monitoring Agents' discretion.*
REQUIRED =	*Policies or Standard Forms that Monitoring Agents must use in performing their monitoring duties. In some instances a procedure is included with a Policy for guidance only.*
Document Type	*"Guidance" is generally related to procedures and intended to assist in performing a task and is not directive or mandatory.*
	"Policy" involves requirements that Monitoring Agents must adhere to when performing a task.

*Documents with * are Forms and Documents that must be used in the indicated format to ensure consistency.*

CONTENTS:

INITIAL SALES 38

Initial Sales Policy 39
Letter to Developer - Initial Sale 46
Pre- and Post-Purchase Counseling Guidance 48
Lottery Agent / Monitoring Agent Roles and Responsibilities 50
AFHMP Guidelines 54
Affirmative Fair Housing Marketing and Resident Selection Plan (AFHMP) Checklist* 69
Monitoring Agent Certification - AFHMP Review and Recommendation for Approval* 73
Income Certification Checklist 74
Eligibility for Purchase Certification - Income and Asset Verification –to Lottery Agent and Developer 75
Approval of Buyer Financing to Developer, Lottery Agent and Buyer 77
Certificate of Compliance - Initial Sale* 78
Memo Regarding Initial Sale Documents to Closing Attorney* 79
Initial Sales Affordability Completion Report to MassHousing, Developer, and Municipality* 80

RESALES 81

Resale Policy and Guidance on Procedure 82
Resale Process Letter to Owner 90
Property Resale Price Form 93
Property Information Form 94

Resale Buyer Selection Guidance 95
Letter to External Real Estate Broker 97
Buyer Approval and Next Steps Letter to Buyer 98
Buyer Approval and Next Steps Letter to Owner 99
Municipality Notice – Resale 101
Resale Price Certificate* 102
Closing Instructions Letter to Closing Attorney* 103
Certificate of Compliance-Resales or Foreclosure* 105

FORECLOSURES 106

Foreclosure Policy 107
Notice of Foreclosure to Owner 113
Municipality Notice – Foreclosure* 114

CAPITAL IMPROVEMENTS 119

Capital Improvements Policy and Guidance on Procedure 120
Capital Improvement Letter to Owner 125
Eligibility of Capital Improvement Request 127
Approval of Capital Improvement to Owner* 128

REFINANCING 129

Refinancing Policy and Guidance on Procedure 130
Refinancing Letter to Owner 134
Eligible Refinance Certificate* 136

ENFORCEMENT 137

Non-Compliance and Monitoring Agent Role in Enforcement 138
Enforcement Letter to Owner 142
Noncompliance Remedied Letter to Owner 143

ANNUAL MONITORING AND REPORTING 144

Annual Monitoring and Reporting Policy 145
Annual Letter to Owner and Important 40B Terms* 147
Annual Certification Form to Owner* 149
Annual Compliance Report* 150

A Word format of each document is available to download on the MassHousing website except for the Property Resale Price Form which is in Excel format.
Monitoring Agent's letterhead may be used as appropriate.

INITIAL SALES

Initial Sales Policy

DOCUMENT TYPE: Policy and Guidance	**EFFECTIVE DATE**: XX/XX/2021 LAST REVISION: XX/XX/2021 REVISION HISTORY: N/A
REFERENCE(S): Regulatory Agreement; Comprehensive Permit; 40B Guidelines; Affordable Housing Restriction	
REQUIRED FORM(S) AND LETTER(S): 1. AFHMP Checklist* 2. Monitoring Agent Certification AFHMP Review and Recommendation for Approval* 3. Certificate of Compliance - Initial Sale* 4. Memo Regarding Initial Sale Documents to Closing Attorney* 5. Initial Sales Affordability Completion Report*	
OPTIONAL FORM(S) AND LETTER(S): 1. Letter to Developer - Initial Sale 2. Income Certification Checklist 3. Eligibility for Purchase Certification - Income and Asset Verification - to Lottery Agent and Developer 4. Approval of Buyer Financing to Developer, Lottery Agent and Buyer	

OBJECTIVE: To clarify the requirements that must be met during the Initial Sales period before a Project can receive Final Approval from MassHousing. Some recommendations on the process (guidance) are provided at the end of this document.

DEFINITION: The Initial Sales period extends for the entire time in which the Affordable Units in the Project are being marketed and sold directly by the Developer to initial Eligible Buyers. It is important to note that it is possible for a Project to have some units that are being built and sold for the first time, while others are being "re-sold" by their initial owners to subsequent Eligible Buyers. ***Initial Sales are complete only when all Affordable Units in a 40B Project have been sold by the Developer for the first time to an initial buyer*.**

POLICY:

A Monitoring Agreement should be executed after the Comprehensive Permit is approved, and before Final Approval is issued by MassHousing. Under the agreement, the Monitoring Agent is to work closely with the Developer and/or their designated Lottery Agent to ensure compliance with the terms of the Regulatory Agreement and the Comprehensive Permit Regulations throughout the Initial Sales period. Once all units in a Project are sold, the Monitoring Agent assumes primary responsibility for supplemental monitoring to ensure ongoing compliance.

The Developer / Lottery Agent is responsible for marketing the Affordable Units and locating Eligible Buyers. The Monitoring Agent, in turn, is responsible for confirming that each Affordable Unit has been sold to an Eligible Buyer in compliance with the Affordability Requirement for that specific unit and in accordance with the Comprehensive Permit Regulations. See Lottery Agent / Monitoring Agent Roles and Responsibilities for more detail.

AFHMP REVIEW

Monitoring Agent must review and work with the Lottery Agent / Developer to get the AFHMP in a place that meets the AFHMP Guidelines so that the Monitoring Agent is able to submit Monitoring Agent Certification AFHMP Review and Recommendation for Approval* and AFHMP Checklist* to MassHousing.

INITIAL SALE PRICE

The Maximum Initial Sales Price for an Affordable Unit ***must be calculated by MassHousing and established at the time of initial marketing.*** Thereafter, the price cannot be increased for buyers selected through the lottery process, even if interest rates or HUD income guidelines change. The exception to this rule is for phased projects, in which case the Maximum Initial Sales price would be established at the time of marketing for each phase. In instances where units remain unsold for an extended period or construction takes longer than anticipated (generally 4 years), the sales price should be reset, provided the units are remarketed accordingly. For all subsequent Resales, the Monitoring Agent is responsible for establishing the Sales Price.

MassHousing uses the standards set forth in the EOHLC Guidelines for the Local Initiative Program (LIP) for establishing the Maximum Initial Sales Price for an affordable unit. Initial purchase prices are established so that appropriately sized households earning 70% of area median income (AMI) are not required to spend more than 30% of their gross income on total housing costs. HUD publishes annually the Area Median Income (AMI) for all the Metropolitan Statistical Areas (MSAs), which you can easily access at the HUD website.

EOHLC has also developed a calculator that can be used to plug in variables to come up with a Maximum Allowable Housing Cost, which in turn determines the Maximum Initial Sales Price.

Sample Calculation[1] of Purchase Price Limits (from EOHLC 40B Guidelines):

Sales Price	**$156,600**
5% Down payment	$7,8308
Mortgage	$148,770
Interest rate	**5.00%**
Amortization	30
Monthly P&I Payments	$798.63
Tax Rate	**$13.40**
monthly property tax	$170
Hazard insurance	**$52**
PMI	$97
Condo/HOA fees (if applicable)	**$125**
Monthly Housing Cost	**$1,122**
Necessary Income (70 AMI limit[2]):	$44,894
Household Income:	
# of Bedrooms	2
Sample Household size	3
80% AMI/"Low-Income" Limit	$58,500
Target Housing Cost (80%AMI)	$1,463/month
10% Window	$51,188
Target Housing Cost (70%AMI)	**$1,280 /month**

Assumptions made in this initial calculation include 1) a 30-year fixed-rate mortgage, 2) maximum 5% down payment and 3) an interest rate approximately .25 % above the prevailing rate as listed on Freddie Mac's latest interest rate survey. Other factors to consider include monthly property tax, insurance, and condo or homeowner fees when applicable. With all of this factored in, monthly housing cost cannot exceed 30% of the monthly income of a household earning 70% of the area median income.

BUYER ELIGIBILITY – INCOME AND ASSET VERIFICATION[3]

Once the Lottery Agent has selected and reviewed the eligibility of the lottery winner(s), the Lottery Agent is to provide the income, asset, and age certifications to the Monitoring Agent. The Monitoring Agent is responsible for reviewing the documents and providing written documentation confirming preliminary approval of buyer eligibility (e.g. Eligibility for Purchase - Income and Asset Verification - Letter to Lottery Agent and Developer) to the Lottery Agent and Developer. The communication is intended to confirm that the buyer is program- and income-eligible (i.e., household annual income does not exceed 80% of the area median income, or such lower income limit as may have been established for the particular project) based on current documents (no more than 60 days from purchase closing) and *should be delivered to the Lottery Agent / Developer no more than sixty (60) days from purchase closing and before a Purchase and Sale Agreement may be signed*.

[1] Note that the calculations serve only as an example and the assumptions are program-specific. If the program lacks a statutory basis, regulations, or guidelines, please note some of the assumptions deviate from 40B Guidelines

[2] AMI is based on an appropriate-sized household for that unit. Household size shall not exceed, nor may maximum allowable household size be more restrictive than, State Sanitary Code requirements for occupancy of a unit (See 105 CMR 400). Exclusions may apply for households with disabilities.

[3] 40B Guidelines - Sections II (A), III (G), VI (5)

MassHousing uses the eligibility criteria set forth in the LIP Guidelines as follows:

Income Limits:	Household income may not exceed 80% of the Area Median Annual Maximum Income (or whatever percent is specified in the Comprehensive Permit)
Asset Limits:	Household assets may not exceed the following limits established by EOHLC in the 40B Guidelines: • For age-restricted homeownership Projects, household assets shall not exceed $275,000 in value, including equity in a dwelling (to be sold). • For non-age restricted homeownership units, household assets shall not exceed $75,000 in value.
First-Time Homebuyer Requirement:	Eligible Purchasers / Buyers may not have owned a home within three years preceding their application. For exceptions to this rule please refer to the 40B Guidelines, Section II (3) b.
Occupancy:	Must intend to occupy the unit as their principal residence

MassHousing does not allow oral forms of verification. If the Monitoring Agent feels that the documentation provided suggests that past, current or anticipated income reported is not accurate, the Agent can request additional verification including a notarized affidavit describing the amount and source of all income.

The table below identifies the source documents for calculating income and assets to determine buyer eligibility.

For Calculating Income	HUD requirements and guidance pursuant to 24 CFR 5.609.
	Appendix II.2 of the EOHLC Guidelines (updated December, 20142013) provides specific guidance on Medical Payment Exclusions, Self-Employment Income, and Sporadic Child Support Payments
For Calculating Assets	HUD Handbook 4350.3: Occupancy Requirements of Subsidized Multifamily Housing Programs

FINANCING REQUIREMENTS

Prior to the sale of a unit the Monitoring Agent must review the eligibility of the loan for compliance with the EOHLC Guidelines. The Monitoring Agent should work with the Buyer to obtain the financing documents that need to be reviewed. Closing of the sale is contingent on the Monitoring

Agent's approval of the Buyer's financing, which must meet MassHousing standards (same as the LIP Program in 40B Guidelines VI (E)):

- Down payment must be at least 3% of the purchase price, at least half of which must come from the buyer's funds;
- Loan must be from an institutional lender;
- Loan must have a fixed interest rate through the full term of the mortgage that is a current fair market interest rate;
- The loan can have no more than two points;
- Monthly housing costs (inclusive of principal, interest, property taxes, hazard insurance, private mortgage insurance and condominium or homeowner association fees[*]) may not exceed 38% of monthly income for a household earning 80% of area median income, adjusted for household size;
- Non-household members may not be permitted as co-signers of the mortgage.

RESALE PRICE CERTIFICATE[4]

Prior to final sale of an Affordable Unit and the Developer's delivery of the deed making the initial conveyance of each Affordable Unit, the Developer or Lottery Agent must contact MassHousing to request a Resale Price Certificate which identifies the unit and sets forth the Resale Price Multiplier to be applied when it is sold to a new owner. ***The Resale Price Certificate at Initial Sale is issued by MassHousing*** and sent directly to the Monitoring Agent. For subsequent sales the Resale Price Certificate is issued by the Monitoring Agent. A separate Resale Price Certificate is required for each Affordable Unit sold and must be recorded at the time of sale along with the deed.

AFFORDABLE HOUSING RESTRICTION AND RESTRICTION MORTGAGE

The Monitoring Agent is responsible for preparing the Affordable Housing Restriction and Restriction Mortgage in advance of the closing.

FINAL SALE AND CLOSING[5]

After the Monitoring Agent has reviewed all relevant documents and determined substantive compliance with the Affordability Requirement, the Agent shall issue a Certificate of Compliance - Initial Sale* certifying that the sale of the Affordable Unit is in compliance with the Comprehensive Permit Rules, and the Affordability Requirement.

---

[4] Resale Price Certificate is described in the Definitions sections of the Affordable Housing Restriction and Regulatory agreement for

[5] Affordability Monitoring Services Agreement 1 (a); 40B Guidelines VI E (1) b

[*] The assessment of condominium fees is controlled by Massachusetts General Laws, Chapter 183A. The legislation allows for the developer to set condo fees base on sales price or square footage. Developers may charge the same condo fee across the board at the outset so that affordable unit owners aren't disadvantaged when it comes to voting. Neither MassHousing nor the monitoring agent has the authority to regulate the condominium or HOA fee. The condo association or HOA are separate legal entities set apart from the Chapter 40B regulations.

In advance of the closing, the Monitoring Agent must coordinate and deliver to the Closing Attorney:

1. The Resale Price Certificate
2. The Affordable Housing Restriction (as defined in the Regulatory Agreement)
3. The Affordable Housing Restriction Mortgage (as defined in the Regulatory Agreement)
4. The Certificate of Compliance - Initial Sale* (as defined in the Affordable Housing Restriction)
5. The Memo Regarding Initial Sale Documents to Closing Attorney*

Within ten (10) days after the closing, the Attorney should provide the Monitoring Agent with copies of all documents and evidence that all deeds and deed riders have been recorded. The Monitoring Agent is responsible for verifying that the Resale Price Certificate, the Affordable Housing Restriction, the Affordable Housing Restriction Mortgage, and the Certificate of Compliance are all recorded with the Registry.

INITIAL SALES AFFORDABILITY COMPLETION REPORT[6]

Following the completion of all Initial Sales for a 40B development, the Monitoring Agent must submit an Initial Sales Affordability Completion Report* to MassHousing, the Developer and the Municipality confirming substantive compliance with the Marketing Plan and Affordability Requirement for the Initial Sales period and, if not, the action(s) the Monitoring Agent is taking to achieve full compliance with the Affordability Requirement (in which case, the Monitoring Agent shall deliver a supplemental written confirmation of compliance when achieved). The Report also serves to notify the Municipality of the Monitoring Agent's role under the Regulatory Agreement, the Deed Rider and the 40B Rules.

RECOMMENDATIONS ON PROCESS:

1. Send an initial communication such as Letter to Developer - Initial Sale to the Developer after the Monitoring Services Agreement is executed. This will help set clear expectations at the outset and create the space to clarify who does what and discuss critical details such as schedules and review of the AFHMP.
2. Create a project file/record (electronic or paper) as soon as the Monitoring Agreement is signed and include copies of the recorded Regulatory Agreement (including Affordability Monitoring Services Agreement), the recorded Comprehensive Permit, the AFHMP, the address and unit number of every affordable unit in the development, and contact information for the Developer / Lottery Agent and Owner after each item is finalized.
3. The Income Certification Checklist can assist in keeping track of the documents needed to complete buyer eligibility review.
4. Maintain communications with the Buyer and Developer / Lottery Agents during the initial sales period. Eligibility for Purchase Certification - Income and Asset Verification - to Lottery

[6] Affordability Monitoring Services Agreement 1 (a)

Agent and Approval of Buyer Financing to Developer, Lottery Agent and Buyer may be helpful communications when an Eligible Buyer has been confirmed.

5. After approval of the Buyer, go over the Homebuyer Disclosure Statement with the Buyer to reiterate the responsibilities of a 40B Owner. Collect the signed statement and file for your records. This document is not recorded at closing.

Letter to Developer - Initial Sale

DATE

DEVELOPER NAME
STREET ADDRESS
TOWN/CITY, MA ZIPCODE

Dear DEVELOPER:

I am pleased to have been selected by MassHousing to serve as the Affordability Monitoring Agent for NAME OF DEVELOPMENT. In order for me to do the best job possible, I need you to please provide the following documents as soon as possible:

1. Complete contact information for Developer and Lottery Agent
2. Copy of Recorded Comprehensive Permit
3. Copy of Recorded Regulatory Agreement
4. Affirmative Fair Housing Marketing Plan (AFHMP)
5. Affordable Housing Restriction (Deed Rider)

Once I have approved the AFHMP and marketing has begun, I will need the following information for **each** applicant selected to purchase an affordable unit, so that I can verify each applicant's eligibility.

6. Completed lottery applications for each selected buyer, including income and asset documentation
7. Unit address, number of bedrooms and sale price
8. Proposed Purchase and Sale Agreement and Affordability Restriction
9. Condominium or Homeowner Association Documents, including schedule of beneficial interests
10. Loan commitment letter and lender contact information
11. Contact information for closing attorney

Following review of items 6-11 (above) I will provide you with a Certificate of Buyer Compliance. Once the affordable unit has sold, I will need recorded copies of the following documents:

12. Deed and Affordable Housing Restriction
13. Certificate of Buyer Compliance
14. Resale Price Certificate (to be obtained from MassHousing by the Developer after buyer eligibility has been determined and before closing)

If you have any questions, please contact me at EMAIL ADDRESS or (XXX) XXX-XXXX.

Sincerely,

YOUR NAME
Monitoring Agent

Pre- and Post-Purchase Counseling Guidance

DOCUMENT TYPE: Guidance	**EFFECTIVE DATE**: XX/XX/2021 LAST REVISION: XX/XX/2021 REVISION HISTORY: N/A
REFERENCE(S):	
REQUIRED FORM(S) AND LETTERS: 1. AFHMP Checklist* 2. Monitoring Agent Certification - AFHMP Review and Recommendation for Approval*	
OPTIONAL FORM(S) AND LETTERS: N/A	

OBJECTIVE: To highlight the importance of pre- and post-purchase homeownership counseling and clarify the limited role of the Monitoring Agent.

PRE-PURCHASE COUNSELING:

While important to successful homeownership and a priority for MassHousing in its administration of the 40B program, most of the pre-purchase preparation of prospective homebuyers is not a responsibility of Monitoring Agents. However, Monitoring Agents are encouraged to become familiar with (but not be directly involved in) the pre-purchase activities normally carried out by Lottery Agents, so that Monitoring Agents are aware of what homebuyers already do (and do not) understand about 40B homeownership. In particular, Monitoring Agents are encouraged to review the Lottery Agents' activities (see Lottery Agent / Monitoring Agent Roles and Responsibilities) with respect to reviewing the Homebuyer Disclosure Statement with prospective Buyers. This would be helpful because, in addition to performing a Buyer's income and asset verification at the time of a purchase, Monitoring Agents will ultimately be the primary points of contact with Owners on matters relevant to capital improvements and maintenance, refinancing, subletting, resale, foreclosure, inheritance/asset transfer, non-compliance, and other homeownership related events.

POST-PURCHASE COUNSELING:

Monitoring Agents are the primary avenue through which 40B homeowners will retain a relationship with the 40B program and its rules. Therefore, Monitoring Agents must be prepared to provide homeowners with clear information about what is expected of them during their ownership, including at times when an owner may be contemplating a transaction (e.g. capital improvement, refinancing, resale).

Monitoring Agents are encouraged to maintain proactive communications with Owners, reiterating the responsibilities related to 40B restrictions and requirements (e.g. occupancy, insurance, capital improvements). Communications can supplement the Annual Certification Form to Owner* and Annual Letter to Owner and Important 40B Terms* with a newsletter or e-blasts throughout the year, though it is important for the Monitoring Agent to use her/his judgement in determining the right balance in the frequency and content of communications to Owners.

Monitoring Agents are not expected to or authorized to serve as financial advocates or homeownership counselors to 40B Owners, but MassHousing recognizes that many 40B Owners have questions and may need personalized guidance during the period of their ownership. Monitoring Agents are advised to direct homeownership questions outside of the Monitoring Agent's responsibilities to the MassHousing Homeownership department at https://www.masshousing.com/home-ownership. MassHousing recognizes the importance of having information and resources that apply only to Owners of 40B units.

Lottery Agent / Monitoring Agent Roles and Responsibilities

DOCUMENT TYPE: Guidance	**EFFECTIVE DATE**: XX/XX/2021 LAST REVISION: XX/XX/2021 REVISION HISTORY: N/A
REFERENCE(S): "Lotteries and Application Process" in the AFHMP Guidelines	
REQUIRED FORM(S): N/A	
OPTIONAL FORM(S): N/A	

OBJECTIVE: To understand the qualifications of a Lottery Agent and clarify, to the extent possible, the roles of the Lottery Agent and the Monitoring Agent during the Initial Sales Period.

LOTTERY AGENT QUALIFICATIONS:

1. May be in-house Developer Staff or 3rd party contractor.

2. Must have substantial and successful prior experience in each component of the AFHMP for which the party will be responsible (e.g. drafting the plan, marketing and outreach activities, administering the lottery process and/or determining eligibility under applicable subsidy programs and/or qualifying buyers with mortgage lenders).

3. Must have successfully carried out similar AFHMP responsibilities for a minimum of three (3) projects in Massachusetts or the individual with primary responsibility for the resident selection process has successfully carried out similar AFHMP responsibilities for a minimum of five (5) projects in Massachusetts.

4. Must have capacity to address matters relating to limited English language proficiency. This shall include language access planning and providing reasonable language assistance, at no cost to the applicant, so that applicants with Limited English Proficiency ("LEP") may meaningfully apply and access the housing opportunity. Marketing informational materials must therefore provide notice of free language assistance to applicants, translated into the languages of LEP populations anticipated to apply.

5. "Successfully", for the purposes of these Guidelines, means that with respect to both the entity and the relevant staff, (a) the prior experience has not required intervention by a Subsidizing Agency to address fair housing complaints or concerns; and (b) that within the past five (5) years, there has not been a finding or final determination against the entity or staff for violation of any state or federal fair housing law.

6. ***Must have been vetted by MassHousing and be on the MH Lottery Agent List.***

ROLES AND RESPONSBILITIES

		Responsible Party				
	Task	**Developer**	**Lottery Agent**	**Monitor Agent**	**Mass Housing**	**Notes**
1	Selects the Lottery Agent	X				
2	Approves selection of the Lottery Agent				X	Agent must have been vetted by MassHousing and on MassHousing's Lottery Agent List.
3	Writes the lottery process and procedure in the AFHMP	X	X			Lottery Agent generally writes and prepares the AFHMP but the Developer is ultimately responsible for ensuring approval of the AFHMP.
4	Approves the AFHMP				X	Monitoring Agent must review, work with the lottery agent/developer, complete and submit a checklist and certification recommending approval of the AFHMP. MassHousing is responsible for AFHMP approval.
5	Attends Information Session(s)	X	X			
6	Prepares Lottery Applications		X			
7	Distributes Lottery Applications		X			
8	Performs Outreach and Marketing of the Lottery in conformance with the AFHMP		X			Monitoring Agents should not be monitoring lotteries or the work of Lottery agents. However, if nonconformance to the AFHMP is identified, the Monitoring Agent may notify MassHousing of the issue.
9	Administers the Lottery Assigns lottery numbers Draws lottery numbers Documents the Lottery process		X			
10	Maintains records of the lottery, marketing and the AFHMP during initial sale	X				Developer is obligated to maintain record of the marketing and lottery process related to the unit during the first 5 years following initial sale. The info must be made readily available upon request by MassHousing.
11	Attends the Lottery	X	X			Monitoring Agents are not required to attend lotteries and generally do not attend them.
12	Pre-screens Applicants for eligibility to enter the lottery and purchase a 40B unit		X			Monitoring Agents are not to be involved in any applicant screening at this stage of the process.
13	Pays for the cost of administering the lottery (including Lottery Agent fees)	X				

		Responsible Party				
	Task	**Developer**	**Lottery Agent**	**Monitor Agent**	**Mass Housing**	**Notes**
14	Collects Lottery Fee from Lottery Applicants					A lottery entry fee is not permitted!
15	Administers the lottery and selects lottery winner(s).		X			
16	Determines the buyer(s) for Purchase and Sale (P&S)		X	X		The Lottery Agent selects the winner and the Monitoring Agent must verify the Lottery winner's eligibility status. A buyer may be selected off the waitlist if a lottery winner is determined to be ineligible.
17	Certifies Buyer Eligibility			X		The Lottery Agent is responsible for providing the buyer's income and asset verification documents to the Monitoring Agent. The Monitoring Agent must substantively review the buyer's qualifications and submit an Eligibility to Purchase Certificate to MassHousing, the Developer, and the Buyer before a Purchase and Sale Agreement can be executed.
18	Determines next steps (e.g. second lottery) if an eligible buyer has not been found.		X			If the buyers selected by the Lottery Agent are deemed not eligible to purchase a 40B unit and the waiting list is exhausted, the Lottery Agent determines next step in finding buyers.
19	Resolves Buyer eligibility if the Lottery Agent and Monitoring Agent are not in agreement				X	Any issues that the Lottery Agent and Monitoring Agent are not able to resolve should be brought to MassHousing.
20	Executes Purchase and Sale Agreement with the Buyer	X	X			
21	Works with/supports the Buyer in securing financing of the home					Homeownership support may be accessed through homebuyer education and counseling outside of the 40B program. The Buyer cannot be required to use a specific lender for their pre-approval letter or their mortgage.
22	Supplies to the Monitoring Agent financing documents for Buyer Financing Approval.					The Monitoring Agent needs to work with the Buyer to obtain the financing documents that need to be reviewed.
23	Works with the Buyer in understanding the process of purchasing a 40B unit.	X	X	X		The lottery agent introduces the process during the lottery process. Then the other parties work with the Buyer as needed.

	Responsible Party				
Task	**Developer**	**Lottery Agent**	**Monitor Agent**	**Mass Housing**	**Notes**
24 Works with the Developer and Legal team to ensure closing includes the requisite affordability restrictions.			X		Closing of the sale is contingent on (but not limited to) MA submission of: Eligibility for Purchase Certificate Approval of Buyer Financing Form Certificate of Compliance – Initial Sale of Affordable Unit.
25 Reviews Buyer's Closing Statement			X		Monitoring Agents must review the Buyer's Closing Statement as part of the initial sales process.
26 Provides post-purchase homeownership counseling Maintenance expectations HOA responsibilities					
27 Approves post-purchase requests from the new homeowner, including for capital improvements, refinancing, resales, and foreclosure			X		Monitoring Agents review requests and render decisions insofar as it falls under a supplemental monitoring duty.
28 Provides Annual oversight of the property to ensure it is in 40B compliance, including i) having annual contact with the homeowner to collect yearly certification, ii) conducting an annual registry search to confirm no changes in ownership, iii) follows up on external inquiries related to the unit, and iv) provides certification info to the municipality			X		
29 Maintains 40B-related records, including transactions and requests, related to the unit			X		Monitoring Agents are expected to readily provide information requested by MassHousing for all units being monitored by the Agent.

AFHMP Guidelines

DOCUMENT TYPE: Policy	**EFFECTIVE DATE**: XX/XX/2021 LAST REVISION: XX/XX/2021 REVISION HISTORY: N/A
REFERENCE(S): Guidelines for G.L. C.40B Comprehensive Permit Projects Subsidized Housing Inventory (Section III) [1]; Regulatory Agreement (section 3(c)).	
REQUIRED FORM(S) AND LETTERS: 1. AFHMP Checklist* 2. Monitoring Agent Certification - AFHMP Review and Recommendation for Approval*	
OPTIONAL FORM(S) AND LETTERS: N/A	

OBJECTIVE: To inform Monitoring Agents' review and approval of the AFHMP during the Initial Sales Period. The guidelines below are the same as in the 40B Guidelines.

POLICY:

A. Introduction

The Commonwealth of Massachusetts has a compelling interest in creating fair and open access to affordable housing and promoting compliance with state and federal civil rights obligations. Therefore, all privately assisted housing or housing for inclusion on the Subsidized Housing Inventory (SHI) shall have an Affirmative Fair Housing Marketing and Resident Selection Plan (AFHMP). With respect to rental housing and Assisted Living Facilities, *the affordable Use Restriction documents of said housing must require that the AFHMP, subject to the approval of the subsidizing or funding agency, shall be implemented for the term of the affordability restriction*.

Affirmative Fair Housing requirements apply to the full spectrum of activities that culminate with occupancy, including but not limited to means and methods of outreach and marketing through to the qualification and selection of residents. All AFHMP plans must, at a minimum, meet the standards set forth by the Department of Housing and Community Development (EOHLC), as may be amended from time to time. In the case of M.G.L. c.40B projects and other projects subsidized by a Subsidizing Agency, the AFHMP must be approved by the Subsidizing Agency.

The developer (Developer) is responsible for resident selection, including but not limited to drafting the resident selection plan, marketing, administering the initial lottery process, and determining the qualification of potential buyers and/or tenants. The Developer is responsible for paying for all of the costs of affirmative fair marketing and administering the lottery and may use in-house staff, provided that such staff meets the qualifications described below. The Developer may contract for such services provided that any such contractor must be experienced and qualified under the following standards.

Note: As used in these AFHMP Guidelines, "Developer" refers to the Project Owner and/or the entity with which the Developer has contracted to carry out any or all of the tasks associated with an AFHMP.

B. Developer Staff and Contractor Qualifications

[1] https://www.mass.gov/doc/ma-fair-housing-marketing-and-resident-selection-plan-guidelines-1/download

The entity as well as the individual with primary responsibility for resident selection, whether in-house staff or a third-party contractor, must have substantial, successful prior experience in each component of the AFHMP for which the party will be responsible, e.g. drafting the plan, marketing and outreach activities, administering the lottery process and/or determining eligibility under applicable subsidy programs and/or qualifying buyers with mortgage lenders.

Subsidizing Agencies reserve the right to reject the qualifications of any Developer or contractor. However, generally, Developers or contractors that meet the following criteria for each component, as applicable, will be considered to be qualified to carry out the component(s) for which they are responsible:

1. The entity has successfully carried out similar AFHMP responsibilities for a minimum of three (3) projects in Massachusetts or the individual with primary responsibility for the resident selection process has successfully carried out similar AFHMP responsibilities for a minimum of five (5) projects in Massachusetts.

2. The entity has the capacity to address matters relating to limited English language proficiency. This shall include language access planning and providing reasonable language assistance, at no cost to the applicant, so that applicants with Limited English Proficiency ("LEP") may meaningfully apply and access the housing opportunity[2]. Marketing informational materials must therefore provide notice of free language assistance to applicants, translated into the languages of LEP populations anticipated to apply.

3. "Successfully" for the purposes of these Guidelines means that, with respect to both the entity and the relevant staff, (a) the prior experience has not required intervention by a Subsidizing Agency to address fair housing complaints or concerns; and (b) that within the past five (5) years, there has not been a finding or final determination against the entity or staff for violation of any state or federal fair housing law.

C. Affirmative Fair Housing Marketing Plan

1. Duration

The Developer and contractor, if any, or other delegated entity, shall review and update the AFHMP at least every five years, or more frequently if relevant demographics change, or as otherwise needed in order to ensure compliance with applicable law and EOHLC's AFHMP guidelines, as may be amended from time to time (or any successor guidelines or directives).

(May 2013 Update: Addition of language on duration; no change in policy.)

2. Contents

The Developer shall prepare the following materials which shall comprise an AFHMP:

a. Informational materials for applicants including a general description of the overall project that provides key information such as the number of market/affordable units, amenities, number of parking/garage spaces per unit, distribution of bedrooms by market and affordable units, accessibility, etc.

b. A description of the eligibility requirements.

c. A description of the rules for applying and the order in which applications will be processed.

[2] See EOHLC 's Language Access Plan at http://www.mass.gov/hed/docs/dhcd/hd/fair/languageaccessplan.pdf for information about language access planning obligations and requirements.

d. Lottery and resident selection procedures.

e. A clear description of the preference system being used (if applicable).

f. A description of the measures that will be used to ensure affirmative fair marketing will be achieved including a description of the affirmative fair marketing and outreach methods that will be used, sample advertisements to be used, and a list of publications where ads will be placed.

g. Application materials including:

(1) The application form.

(2) A statement regarding the housing provider's[3] obligation not to discriminate in the selection of applicants on the basis of race, color, national origin, disability, age, ancestry, children, familial status, genetic information, marital status, public assistance recipiency, religion, sex, sexual orientation, gender identity, veteran/military status, or any other basis prohibited by law, and such a statement must also be included in the application materials.

(3) Information indicating that persons with disabilities are entitled to request a reasonable accommodation in rules, policies, practices, or services, or to request a reasonable modification in the housing, when such accommodations or modifications may be necessary to afford persons with disabilities an equal opportunity to use and enjoy the housing[4].

(4) An authorization for consent to release information.

h. For homeownership transactions, a description of the use restriction and/or deed rider.

i. The Developer and contractor, if any, shall sign the AFHMP document as follows:

"As authorized representatives of [Developer] and [contractor], respectively, each of us has reviewed this plan and agrees to implement this AFHMP, which shall be made effective as of the approval date. Further, by signing this form, [Developer] agrees to review and update its AFHMP as necessary in order to comply with all applicable statutes, regulations, executive orders and other binding EOHLC requirements pertaining to affirmative fair housing marketing and resident selection plans reasonably related to such statutes, regulations, executive orders, as same may be amended from time to time. We hereby certify that all the information stated herein, as well as any information provided herewith, is true and accurate.

Note: The Developer shall not utilize the HUD AFHMP form unless required to submit an AFHMP to HUD for review and approval.

3. Approval

The Subsidizing Agency must approve the AFHMP before the marketing and application process commences.

[3] Note: housing providers include owners of accessory apartments and their agents.

[4] It is important to remember that legal obligations with respect to accessibility and modifications in housing extend beyond the Massachusetts Architectural Access Board requirements, including federal requirements imposed by the Fair Housing Act, the Americans with Disabilities Act, and the Rehabilitation Act. Under state law, in the case of publicly assisted housing, multiple dwelling housing consisting of ten or more units, or contiguously located housing consisting of ten or more units (see M.G.L. c. 151B, § 1 for definitions), reasonable modification of existing premises shall be at the expense of the owner or other person having the right of ownership if necessary for the person with a disability to fully enjoy the premises. M.G.L. c. 151B, § 4(7A). See also 24 C.F.R. part 8 for Rehabilitation Act requirements of housing providers that receive federal financial assistance.

4. Applicability

Aside from the advertising component of the AFHMP, which applies to all units, the AFHMP shall be applied to affordable units upon availability for the term of affordability and must consist of actions that provide information, maximum opportunity, and otherwise attract eligible persons protected under state and federal civil rights laws that are less likely to apply.

5. Criminal Background Checks

Criminal background checks are not required under these AFMHP guidelines. However, if criminal background inquiries and checks will be utilized during the application process, the use of such inquiries and checks are subject to the approval of the Subsidizing Agency. Criminal background screening shall not be conducted as a precondition for applicant participation in the lottery. For further guidance on criminal background screening, see the Model Policy Regarding Applicant Screening on the Basis of Criminal Records, available at http://www.mass.gov/hed/economic/eohed/dhcd/legal/fair-housing-and-civil-rights-information.html

(May 2013 Update: New requirement for signature/certification of AFHMP submissions; advice on use of HUD form; and new language on CORIs but no change in policy.)

6. Outreach and Marketing

Marketing should attract residents outside the community by extending to the regional statistical area as well as the state and must meet the following requirements:

Advertisements should be placed in local and regional newspapers, and newspapers that serve minority groups and other groups protected under fair housing laws. Notices should also be sent to local fair housing commissions, area churches, local and regional housing agencies, local housing authorities, civic groups, lending institutions, social service agencies, and other non-profit organizations.

a. Advertisements should be placed in local and regional newspapers, and newspapers that serve minority groups and other groups protected under fair housing laws. Notices should also be sent to local fair housing commissions, area churches, local and regional housing agencies, local housing authorities, civic groups, lending institutions, social service agencies, and other non-profit organizations.

b. Affordable units in the Boston Metropolitan Statistical Area (MSA) must be reported to the Boston Fair Housing Commission's Metrolist (Metropolitan Housing Opportunity Clearing House). Such units shall be reported whenever they become available (including upon turnover).

c. Accessible[5] units must be listed with MassAccess (see http://www.chapa.org or http://www.massaccesshousingregistry.org) whenever they become available (including upon turnover).

[5] Note: The owner or other person having the right of ownership shall, in accordance with M.G.L. c. 151B, §4(7A), give at least fifteen days' notice of the vacancy of a wheelchair accessible unit to the Massachusetts Rehabilitation Commission. Said statute also requires the owner or other person having the right of ownership to give timely notice that a wheelchair accessible unit is vacant or will become vacant to a person who has, within the past 12 months, notified the owner or person or person having the right of ownership that such person is in need of a wheelchair accessible unit.

d. Affordable rental and affordable ownership units, whether or not they are accessible, must also be listed with MassAccess whenever they become available (including upon turnover). Where applicable, all MassAccess data input fields relating to accessible and adaptable status and accessibility features must be completed. Available affordable ownership units must also be listed with the Massachusetts Affordable Housing Alliance website (see http://www.mahahome.org or http://www.massaffordablehomes.org).

e. Marketing should also be included in non-English publications based on the prevalence of particular language groups in the regional area. To determine the prevalence of a particular language by geographical area, see for example http://www.lep.gov/demog_data/demog_data.html.

f. All marketing should be comparable in terms of the description of the opportunity available, regardless of the marketing type (e.g., local newspaper vs. minority newspaper). The size of the advertisements, including the content of the advertisement, as well as the dates of the advertising unless affirmative advertising occurs first, should be comparable across regional, local, and minority newspapers.

g. All advertising and marketing materials should indicate resident selection by lottery or other random selection procedure, where applicable.

h. All advertising should offer reasonable accommodations in the application process.

i. Advertisements should run a minimum of two times over a sixty day period and be designed to attract attention. Marketing of ownership units should begin approximately six months before the expected date of project occupancy.

j. Pursuant to fair housing laws[6], advertising/marketing must not indicate any preference or limitation, or otherwise discriminate based on race, color, disability, religion, sex, familial status, sexual orientation, gender identity, national origin, genetic information, ancestry, children, marital status, or public assistance recipiency. This prohibition includes phrases such as "active adult community" and "empty nesters". Exceptions may apply if the preference or limitation is pursuant to a lawful eligibility requirement.

k. All advertising and marketing materials portraying persons should depict members of classes of persons protected under fair housing laws, including majority and minority groups as well as persons with disabilities.

l. The Fair Housing logo and slogan ("Equal Housing Opportunity") should be included in all marketing materials. The logo may be obtained at HUD's website at: http://www.hud.gov/library/bookshelf11/hudgraphics/fheologo.cfm .

(May 2013 Update: Clarification on MassAccess requirements; the specific references to examples of prohibited phrases in 6.j; no change in policy.)

7. Availability of Applications

Advertising and outreach efforts shall identify locations where the application can be obtained. **Applications shall be available at public, wheelchair accessible locations, including one that has some night hours; usually, a public library will meet this need.** The advertisements and other marketing materials shall include a telephone number, as well as the TTY/TTD telephone number, that persons can call to request an application by mail. Advertisements and other marketing materials cannot indicate that applicants must appear in person

[6] 42 U.S.C. § 3604(c); M.G.L. c. 151B, § 4(7B).

in order to receive or submit applications or that they will be have an advantage over applicants who do not appear in person.

8. Informational Meeting

At the time of initial marketing, the lottery administrator must offer one or more informational meetings for potential applicants to educate them about the lottery process and the housing development. These meetings may include local officials, developers, and local bankers. The date, time, and location of these meetings shall be published in ads and flyers that publicize the availability of lottery applications. The workshops shall be held in a municipal building, school, library, public meeting room or other accessible space. Meetings shall be held in the evening or on weekend days in order to reach as many potential applicants as possible. However, attendance at a meeting shall not be mandatory for participation in a lottery.

The purpose of the meeting is to answer questions that are commonly asked by lottery applicants. Usually a municipal official will welcome the participants and describe the municipality's role in the affordable housing development. The lottery administrator will then explain the information requested on the application and answer questions about the lottery drawing process. The Developer should be present to describe the development and to answer specific questions about the affordable units. It is helpful to have representatives of local banks present to answer questions about qualifications for the financing of affordable units. At the meeting, the lottery administrator should provide complete application materials to potential applicants.

9. Homeownership – Establishing Sales Prices

Sale prices shall be established at the time of the initial marketing of the affordable units. Thereafter, the prices of homes cannot be increased for lottery winners, even if interest rates and HUD income guidelines change.

For large, phased developments maximum sale prices of units sold in subsequent phases will be calculated prior to the start of marketing for each phase, or approximately 6 months prior to expected occupancy of the units. In such cases, each phase will require its own affirmative fair marketing efforts and lottery.

D. Local Preferences

1. Threshold Requirements

   a. Required Supporting Documentation

   If a municipality wishes to implement a local selection preference, it must:

   (1) Demonstrate in the AFHMP the need for the local preference. For instance, a community that has a subsidized rental housing or public housing waiting list with local applicants likely to apply for the project (whether or not the project provides rental assistance will be considered) may support a local preference for a rental development.

   (2) Justify the extent of the local preference (the percentage of units proposed to be set aside for local preference). That is, how does the documented local need, in the context of the size of the community, the size of the project and the regional need, justify the proposed size of the local preference for a given project? *Note, however, that in no event may a local preference exceed 70% of the (affordable) units in a Project.*

   (3) Demonstrate that the proposed local preference will not have a disparate impact on protected classes (see e.g., the "Avoiding Potential Discriminatory Effects" section below).

b. Failure to Provide Supporting Documentation

A municipality must provide to the Developer the documentation required to support a local preference within 3 months of final issuance of the Comprehensive Permit. Failure to comply with this requirement shall be deemed to demonstrate that there is not a need for a local preference and a local preference shall not be approved as part of any AFHMP or use restriction.

2. Approval

The Subsidizing Agency, and in the case of LAUs, EOHLC as well as the municipality, must approve a local preference scheme as part of the AFHMP. Therefore, the nature and extent of local preferences should be approved by the Subsidizing Agency (or EOHLC in the case of LAUs) prior to including such language in any zoning mechanism. Furthermore, a comprehensive permit shall only contain requirements or conditions relating to local preferences to the extent permitted by applicable law and this AFHMP policy.

(May 2013 Update: Clarification on what is required to establish the local preference set-aside.)

3. Local Preferences

a. Allowable Preference Categories

(1) Current residents: A household in which one or more members is living in the city or town at the time of application. Documentation of residency should be provided, such as rent receipts, utility bills, street listing or voter registration listing.

(2) Municipal Employees: Employees of the municipality, such as teachers, janitors, firefighters, police officers, librarians, or town hall employees.

(3) Employees of Local Businesses: Employees of businesses located in the municipality.

(4) Households with children attending the locality's schools, such as METCO students.

b. When determining the preference categories, the geographic boundaries of the local resident preference area may not be smaller than municipal boundaries.

c. Durational requirements related to local preferences, that is, how long an applicant has lived in or worked in the residency preference area, are not permitted in any case.

d. Preferences extended to local residents should also be made available not only to applicants who work in the preference area, but also to applicants who have been hired to work in the preference area, applicants who demonstrate that they expect to live in the preference area because of a bona fide offer of employment, and applicant households with children attending the locality's schools, such as METCO students.

e. A preference for households that work in the community must not discriminate (including have a disproportionate effect of exclusion) against persons with disabilities and elderly households in violation of fair housing laws.

f. Advertising should not have a discouraging effect on eligible applicants. As such, local residency preferences must not be advertised as they may discourage non-local potential applicants.

4. Avoiding Potential Discriminatory Effects

a. General.

The local selection preferences must not disproportionately delay or otherwise deny admission of non-local residents that are protected under state and federal civil rights laws. The AFHMP should demonstrate what efforts will be taken to prevent a disparate impact or discriminatory effect. For example, the community may move minority applicants into the local selection pool to ensure it reflects the racial/ethnic balance of the HUD defined Metropolitan Statistical Area ("MSA") as described below[7]. However, such a protective measure may not be sufficient as it is race/ethnicity specific; the AFHMP must address other classes of persons protected under fair housing laws who may be negatively affected by the local preference. For instance, a preference solely based on employment in the municipality may have a disparate impact on the elderly or some persons with disabilities. In such instance, an applicant residing in the community who is age 62 or older or is a person with a disability must be given the benefit of the employment preference.

b. Lottery Process

(1) To avoid discriminatory effects in violation of applicable fair housing laws, the following procedure should be followed unless an alternative method for avoiding disparate impact (such as lowering the original percentage for local preference as needed to reflect demographic statistics of the MSA) is approved by the Subsidizing Agency. If the project receives HUD financing, HUD standards must be followed.

(2) A lottery for projects including a local preference should have two applicant pools: a local preference pool and an open pool. After the application deadline has passed, the Developer should determine the number of local resident minority households there are in the municipality and the percentage of minorities in the local preference pool. If the percentage of minority local resident households in the local preference pool is less than the percentage of minorities in the surrounding HUD-defined area, the Developer should make the following adjustments to the local preference pool:

(a) The Developer should hold a preliminary lottery comprised of all minority applicants who did not qualify for the local preference pool, and rank the applicants in order of drawing.

(b) Minority applicants should then be added to the local preference pool in order of their rankings until the percentage of minority applicants in the local preference pool is equal to the percentage of minorities in the surrounding HUD-defined area.

(c) Applicants should be entered into all pools for which they qualify. For example, a local resident should be included in the local preference pool and the open pool.

(d) Minorities should be identified in accordance with the classifications established by HUD and the U.S. Census Bureau, which are the racial classifications: Black or African American; Asian; Native American or Alaska Native; Native Hawaiian or Pacific Islander; or other (not White); and the ethnic classification Hispanic or Latino.

E. Household Size Requirements

[7] Note: This protective measure may not be dispositive with respect to discriminatory effects. For example, the non-local applicant pool may contain a disproportionately large percentage of minorities, and therefore adjusting the local preference pool to reflect demographics of the regional area may not sufficiently address the discriminatory effect that the local preference has on minority applicants. Therefore, characteristics of the non-local applicant pool should continually be evaluated.

In order to make the best use of limited affordable housing resources, household size should be appropriate for the number of bedrooms in the home. Minimum household standards shall be established and shall conform with the following requirements. A "household" shall mean two or more persons who will live regularly in the unit as their principal residence and who are related by blood, marriage, law or who have otherwise evidenced a stable inter-dependent relationship, or an individual.

1. Preferences.

Lottery drawings shall result in each applicant being given a ranking among other applicants with households receiving preference for units based on the above criteria below.

a. First Preference

Within an applicant pool first preference shall be given to households requiring the total number of bedrooms in the unit based on the following criteria:

(1) There is at least one occupant per bedroom[8].

(2) A husband and wife, or those in a similar living arrangement, shall be required to share a bedroom. Other household members may share but shall not be required to share a bedroom.

(3) A person described in the first sentence of (b) shall not be required to share a bedroom if a consequence of sharing would be a severe adverse impact on his or her mental or physical health and the lottery agent receives reliable medical documentation as to such impact of sharing.

(4) A household may count an unborn child as a household member. The household must submit proof of pregnancy with the application.

(5) If the applicant is in the process of a divorce or separation, the applicant must provide proof that the divorce or separation has begun or has been finalized, as set forth in the application.

b. Second Preference

Within an applicant pool second preference shall be given to households requiring the number of bedrooms in the unit minus one, based on the above criteria.

c. Third Preference

Within an applicant pool third preference shall be given to households requiring the number of bedrooms in the unit minus two, based on the above criteria.

2. Maximum Household Size

Household size shall not exceed, nor may maximum allowable household size be more restrictive than, State Sanitary Code requirements for occupancy of a unit (See 105 CMR 400)[9].8

A. Lotteries and Application Process

[8] Households with disabilities must not be excluded from a preference for a larger unit based on household size if such larger unit is needed as a reasonable accommodation

[9] Note, however, that fair housing exceptions may apply: see HUD Fair Housing Enforcement—Occupancy Standards Notice of Statement of Policy, Docket No. FR-4405-N-01 (1998).

1. Lottery Application

   a. "First Come, First Served"

   Resident selection for affordable units must generally be based on a lottery, although in some cases it may be based on another fair and equitable procedure approved by the Subsidizing Agency[10]. A "first-come, first-serve procedure," generally is not permissible as it is likely to disadvantage non-local applicants or may otherwise present an impediment to equal housing opportunity for some applicants, including some applicants with disabilities. However, first-come, first-serve may be permissible in circumstances for which a lottery or other random selection procedure would be unduly burdensome or impracticable, including for individual homeownership units after the initial lottery.

   b. Application Period.

   The application period should be at least 60 days. To ensure the fairness of the application process, applicants must not be required to deliver application materials and instead must be permitted to mail them or submit by alternative means such as fax or e-mail.

   c. Application Contents and Verification

      (1) The lottery application must address a household's income, assets, size and composition, minority status (optional disclosure by the household), eligibility as a first-time buyer (for ownership units), and eligibility for local preference

      (2) The lottery administrator shall request verification to verify eligibility; e.g., for homeownership units, three prior year tax returns with the W2 form and for rental housing, one year prior tax return with the W2 form; 5 most recent pay stubs for all members of the household who are working, three most recent bank statements and other materials necessary to verify income or assets. Only applicants who meet the applicable eligibility requirements shall be entered into a lottery.

(May 2013 update: clarification that "first come, first serve" generally is not permitted as a selection process.)

2. Lottery Procedure

   a. General

      (1) Once all required information has been received, qualified applicants should be assigned a registration number. **Only applicants who meet the applicable eligibility requirements shall be entered into a lottery[11]. The lottery shall be conducted after any appeals related to the project have been completed and all permits or approvals related to the project have received final action.**

      (2) Ballots with the registration number for applicant households are placed in **all** lottery pools for which they qualify. The ballots are randomly drawn and listed in the order drawn, by pool. If a project has units with different numbers of bedrooms, units are then awarded (largest units first) by proceeding down the list to the first household on the list that is of appropriate size for the largest unit available according to the appropriate-unit-size criteria established for the

[10] In the case of project based Section 8 properties where resident selection is to be performed by the housing authority pursuant to a Section 8 waiting list, a lottery procedure is not required.

[11] Only applicants who are eligible for a local preference, where applicable, shall be entered into a local preference lottery pool.

lottery. Once all larger units have been assigned to appropriately sized households in this manner, the lottery administrator returns to the top of the list and selects appropriately sized households for smaller units. This process continues until all available units have been assigned to appropriately sized applicant households.

(3) The lottery should ordinarily be held at a public, wheelchair accessible location.

b. Deposits/Fees

(1) Prohibited - Successful lottery participants cannot be required to pay any fee or deposit to hold a unit pending construction completion nor can applicants be required to pay any form of fee or deposit to be placed on a wait list.

(2) Permitted – The foregoing language shall not prevent an Owner from requiring a deposit from a home buyer upon signing an offer and/or purchase and sales agreement, nor at the time that the Owner is offering to lease a specific rental unit to the applicant household. In the latter instance, the deposit shall not exceed the amount that the Owner would otherwise be permitted to require as a security deposit.

c. Accessible Units/Units with Adaptive Features; Reasonable Accommodations

(1) If the project includes units that are fully accessible, or units that have adaptive features (also commonly referred to as "adaptable" units), for occupancy by persons with mobility impairments or hearing, vision or other sensory impairments, first preference (regardless of applicant pool) for those units shall be given to persons with disabilities who need such units, including single person households, in conformity with state and federal civil rights laws. This preference applies to fully accessible units (e.g., in projects in which 5% of the total units are to be wheelchair accessible and 2% are to be communications accessible in accordance with applicable accessibility standards)[12]. In projects that do not have such units but that have units with adaptive features[13] for persons with mobility impairments and/or hearing, vision or other sensory impairments, this preference also applies to the units with adaptive features; however, such a preference is not required to exceed 5% (mobility) or 2% (sensory) of the total units under these guidelines.

(2) Fulfilling the obligation for a providing a first preference, as described above, does not limit an owner's fair housing obligations with respect to persons with disabilities. When a person with a disability is the next eligible applicant and the development contains available units with adaptive features, the applicant must be made aware of such availability and of the owner's obligation to adapt the unit as needed.

(3) The owner also has obligations to make reasonable accommodations such as granting the request for an appropriately sized first floor unit.

d. Wait Lists

(1) General - The lottery administrator should retain a list of households who are not awarded a unit, in the order that they were drawn from the general (non-local) pool. If any of the initial

[12] e.g., Massachusetts Architectural Access Board (MAAB) ("Group 2 units"), Uniform Federal Accessibility Standards (UFAS), and 2010 ADA Standards.
[13] e.g., in accordance with the Fair Housing Act Guidelines and MAAB ("Group 1 units") standards.

renters/buyers do not rent/purchase a unit, the unit shall be offered to the highest ranked household on that retained list.

(2) Units with Adaptive Features - Where a person with a disability is awaiting an accessible unit and a unit with adaptive features becomes available, the owner/management agent must offer to adapt the unit.

(3) Term of Wait List - The wait list generally may be retained and used to fill units for up to one year. However, other factors such as the number of households remaining on the list, the likelihood of the continuing eligibility of such households, and the demographic diversity of such households may inform the retention time of the list, subject to the approval of the Subsidizing Agency.

(4) Updating - After the initial lottery, waiting lists should be analyzed, maintained, and updated (through additional marketing) so that they remain consistent with the objectives of the housing program and are adequately representative of the racial, ethnic, and other characteristics of potential applicants in the housing market region.

(May 2013 Update: Clarification on deposit policy and fair housing requirements with respect to accessible and/or adaptive units; no change in policy.)

3. Lottery Example

This theoretical lottery has an OPEN pool that includes all applicants and a LOCAL PREFERENCE pool with only applicants from the local area.

- Total applicants in lottery: 100
- Total minority applicants: 20
- The community in which the lottery takes place falls within the HUD Boston-Cambridge-Quincy Metropolitan Statistical Area which has a minority population of 27.0%.

a. Determine the number of applicants who claim a LOCAL preference according to approved criteria.

b. Determine the number of minority applicants in the LOCAL preference pool.

c. Determine the percentage of minority applicants in the LOCAL preference pool.

Total Applicants in Local Preference Pool	Total Minority Applicants in Local Preference Pool	% Minority Applicants in Local Preference Pool
60	10	16.7%

Since the percentage of minority applicants in the LOCAL preference pool is below the percentage of minority residents in the HUD defined metropolitan statistical area (16.7% as opposed to 27.0%), a preliminary lottery is required.

d. The 10 minority applicants who do not have LOCAL preference are entered into a preliminary drawing and assigned a rank based on the order of their draw. Minority applicants are added to the LOCAL preference pool in order of their rank until the LOCAL preference pool has at least as great a percentage of minority applicants as the larger statistical area. In this example, 9 applicants will be added to the LOCAL preference pool to bring the percentage of minority applicants up to 21.827.5%.

Total Applicants in Supplemented Local Preference Pool	Total Minority Applicants in Supplemented Local Preference Pool	% Minority Applicants in Supplemented Local Preference Pool
69	19	27.5%

e. Draw all ballots from the adjusted LOCAL pool and assign rankings to each household. Preference for appropriately sized households will still apply and all efforts should be made to match the size of the affordable units to the legitimate need for bedrooms of each household.

f. Once all units for LOCAL residents have been allocated, the OPEN pool should proceed in a similar manner. All LOCAL residents should have ballots in both pools, and all minority applicants that were put in the LOCAL pool should remain in the OPEN pool as well.

4. Rental: Opening Waiting Lists, Re-Marketing or Continuous Marketing

Although owner/management agent standards for opening waiting lists or re-marketing to generate sufficient applications after the initial rent-up stage may vary, the following are generally applicable: the waiting list is re-opened when it contains less than the number of applicants anticipated to be placed in the next 12 months, or, if the waiting list has not closed, additional marketing is needed undertaken to generate at least enough applicants as was needed to fill the previous year's vacancies.

a. Minimum Application Period

At such or similar points in time, consistent with a Developer or management agent's policies and practices with respect to marketing and wait lists, when a wait list (whether for a project or a particular unit type) is re-opened or units are remarketed, a minimum application period during which applicants may receive and submit applications is required. The appropriate length of the application period may vary depending on the number of units that are or will become available. In some instances 20 or more business days will be appropriate, but in no event shall the application period be less than 10 business days.

b. "First Come, First Served"

A "first-come, first-serve" method of generating the waiting list order of new applicants that apply during said application period shall not be permitted as it may present an impediment to equal housing opportunity for some applicants, including some applicants with disabilities. Therefore, a random selection or other fair and equitable procedure for purposes of adding persons to a wait list upon opening the wait list or remarketing the units must be utilized, subject to the approval of the Subsidizing Agency[14]. This does not require any changes to the wait list as it exists prior to adding the new applicants.

c. Continuous Marketing/Persons with Disabilities

If the wait list is not closed and marketing is ongoing continuously in order to generate sufficient applicants, then, so as to avoid a disparate impact on persons with disabilities who require a reasonable accommodation with the application process, including additional time to receive, complete and/or submit an application, and who therefore may be disadvantaged by wait list placement based upon the date/time of receipt of the application, the application will be date/time

[14] Note: the random selection procedure requirement does not preclude the application of the larger household size and accessible/adaptable preferences described herein.

stamped prior to being mailed or otherwise provided to such applicants and upon submission of a complete application the household shall be placed on the wait list based upon such date/time stamp, provided that the application is returned or postmarked not more than 30 days of such date/time stamp. The ongoing affirmative and general marketing/outreach materials will contain language that explicitly gives notice of the availability of reasonable accommodations with respect to the application process and a telephone number for applicants who may want to request a reasonable accommodation and/or assistance with the application process.

For marketing requirements, see "Outreach and Marketing" and "Availability of Applications" under Sections B.6 and B.7, above.

(May 2013 Update: Explicit standards for re-opening rental housing waiting lists or re-marketing rental units.)

B. Homeownership

1. Household Eligibility

A Subsidizing Agency housing program may establish eligibility requirements for homebuyers. In the absence of such provisions, the following requirements shall apply.

In addition to meeting the requirements for qualifying a Project or dwelling unit for the SHI (see Section II.A), the household shall not have owned a home within three years preceding the application, with the exception of:

a. displaced homemakers, where the displaced homemaker (an adult who has not worked full-time, full-year in the labor force for a number of years but has, during such years, worked primarily without remuneration to care for the home and family), while a homemaker, owned a home with his or her partner or resided in a home owned by the partner;

b. single parents, where the individual owned a home with his or her partner or resided in a home owned by the partner and is a single parent (is unmarried or legally separated from a spouse and either has 1 or more children of whom the individual has custody or joint custody, or is pregnant);

c. households where at least one household member is 55 or over;

d. households that owned a principal residence not permanently affixed to a permanent foundation in accordance with applicable regulations; and

e. households that owned a property that was not in compliance with State, local or model building codes and that cannot be brought into compliance for less than the cost of constructing a permanent structure.

Individuals who have a financial interest in the development and their families shall not be eligible.

2. Final Qualification and Closing

a. Securing Financing.

(1) Once the lottery has been completed, applicants selected to purchase units must be given a reasonable pre-specified time period in which they must secure financing.

(2) The Developer should invite the lottery winners to a loan application workshop.

(3) The Developer should make prior arrangements with local financial institutions with respect to financing qualified purchasers. Often such institutions will give preliminary approvals of loans, which make the remainder of the process more efficient for all parties. **However, applicants cannot be required to use a specific lender for their pre-approval letter or their mortgage**.

(4) Applicants should be made aware that they should confirm that their lender accepts the "Universal Deed Rider" employed by the Subsidizing Agencies.

(5) Non-household members should not be permitted as co-signers of the mortgage.

b. Approval by Subsidizing Agency

Before a Purchase and Sale Agreement is signed, the lottery agent should submit income and asset documentation of the applicant to the Subsidizing Agency. Income verification should include tax returns and W-2s from the past three years, five most recent pay stubs, three months recent bank statements and 401 K reports, reliable documentation as to other sources of income and assets. The Subsidizing Agency will then verify that the household's annual income does not exceed 80% of the area median income, or such lower income limit as may have been established for the particular project. The Subsidizing Agency also will verify that household assets do not exceed the maximum allowed. **Closing of the sale will also be contingent on the Subsidizing Agency's approval of the buyer's financing.**

3. Resales

a. Ongoing AFHMP Requirements

AFHMP requirements apply to the housing for its duration. The AFHMP must include a plan, satisfactory to the Subsidizing Agency, to address AFHMP requirements upon resale. The proposal must, at a minimum, require that units for re-sale to eligible purchasers be listed with CHAPA's MassAccess site and MAHA's homeownership lottery sites as described above and establish minimum public advertising requirements. The proposal cannot impose the AFHMP requirements upon a homeowner other than requiring compliance with requirements of a Use Restriction, reasonable public advertising, and listing with CHAPA and MAHA.

b. "Ready-Buyer" List

A "ready-buyer" list of eligible buyers maintained by the municipality or other local entity is encouraged. This list may be created through local, regional, and statewide lists and resources. As stated above, the list should continually be analyzed, maintained, and updated (through additional marketing) so that it remains consistent with the objectives of the housing program and is adequately representative of the racial, ethnic, and other characteristics of potential applicants in the housing market region.

Affirmative Fair Housing Marketing and Resident Selection Plan (AFHMP) Checklist*

The checklist below does not replace the requirements of the AFHMP Guidelines. The AFHMP Plan must be reviewed and assessed against the AFHMP Guidelines in its entirety before the Monitoring Agent renders approval. This checklist must be included with the Monitoring Agent Certification AFHMP Review and Approval* to MassHousing.

City/Town:	**Reviewer:**
Project Name:	**Date of Review:**
Project Address:	**Proposed Sales Prices:**

DEVELOPER/CONTRACTOR INFORMATION:

Are the developer staff and contractor qualifications consistent with the Guidelines? YES ☐ NO ☐
Did developer/contractor representative(s) certify that the AFHMP is consistent with the Guidelines?
YES ☐ NO ☐

MARKETING:

Will the application period run for at least 60 days? YES ☐ NO ☐

Will advertisements be placed in local and regional newspapers? YES ☐ NO ☐
If YES, which newspapers: _____

Will advertisements be placed in newspapers that serve minority groups and other protected classes?
YES ☐ NO ☐ *(digital newspaper acceptable as long as there is sufficient and confirmed equal or greater circulation)*
If YES, which newspapers: _____

Will advertisements run at least two times over a 60-day period? YES ☐ NO

Are sample ads included? YES ☐ NO ☐

Is marketing comparable in local, regional and minority newspapers: YES ☐ NO ☐
If NO, explain: _____

Are outreach notices to be sent to local fair housing commissions? YES ☐ NO ☐
To other local/regional religious institutions, housing authorities, social service agencies, nonprofits, etc.? YES ☐ NO ☐ If YES, where: _____

Is the outreach appropriate to the type of housing proposed (e.g., marketing to senior centers for elderly housing)?
YES ☐ NO ☐ Explain:_____

Are applications made available at public, wheelchair accessible locations including one that has some night hours?
YES ☐ NO ☐

Does the advertisement and other marketing include a telephone number, including a TTY/TTD phone number, to call to request an application via mail? YES ☐ NO ☐

Does the advertisement and other marketing indicate that applications may be submitted by mail, fax or e-mail?
YES ☐ NO ☐

Does marketing include non-English publications? YES ☐ NO ☐
If YES, which languages: _____

What is the basis for determining the languages? Explain: _____

Will available Metro Boston Area affordable units be reported to Metrolist? YES ☐ NO ☐

Will available affordable and available accessible units be listed with MyMassHome (CHAPA's Housing Registry)?
YES ☐ NO ☐

Will available affordable ownership units be listed with MAHA's lottery website? YES ☐ NO ☐

Are Fair Housing logo and slogan included in all marketing materials? YES ☐ NO ☐

Do applicant materials include a statement of the housing provider's obligation to not discriminate in the selection of applicants? YES ☐ NO ☐

Do applicant materials state that persons with disabilities may request reasonable accommodations in rules, policies, practices or services or reasonable modifications in the housing? YES ☐ NO ☐

Do informational materials provide notice of free language assistance to applicants, translated or to be translated into the languages of LEP populations anticipated to apply? YES ☐ NO ☐

Does marketing refrain from describing characteristics of desirable applicants/residents (e.g., "for four persons only", "active lifestyle community," "empty nesters")? YES ☐ NO ☐ If NO, explain: _____

Does marketing convey unlawful preferences or limitations (e.g., only white models)? YES ☐ NO ☐
If YES, explain: _____

Does marketing include reference to local residency preferences? YES ☐ NO ☐ [NOTE: not permitted]

Does marketing indicate resident selection by lottery or other random selection procedure? YES ☐ NO ☐

Are the affordable units on the unit location plan evenly distributed? YES ☐ NO ☐

RESIDENT SELECTION:

Are copies of a sample application and information packets for potential applicants included and acceptable? YES ☐ NO ☐

Are info sessions scheduled to allow for maximum opportunity to attend (i.e., evenings, weekends, accessible location)? YES ☐ NO ☐

Are the eligibility criteria consistent with the Guidelines? YES ☐ NO ☐

Is resident selection based on a lottery? YES ☐ NO ☐

If NO, is it based on a fair and equitable procedure (i.e., not "first come, first served") approved by the subsidizing agency? YES ☐ NO ☐ Explain: _____

If a lottery is to be used, will the lottery be held at a public, wheelchair accessible location?
YES ☐ NO ☐
Are the lottery procedures consistent with the Guidelines? YES ☐ NO ☐

Is the community choosing to implement a local selection preference? YES ☐ NO ☐

If YES, is the need for the local preference demonstrated consistent with the Guidelines?
YES ☐ NO ☐ Explain: _____
[NOTE: 70% local preference is maximum permitted, but percentage must be justified based on documented local need]

Does the demonstrated need correspond to the housing type and eligibility criteria of the project? (e.g., local municipality maintains an affordable homeownership wait list for residents at similar income levels) YES ☐ NO ☐ Explain: _____

Are all the proposed preference types consistent with the Guidelines? YES ☐ NO ☐

Are the geographic boundaries of the local preference area smaller than the municipal boundaries? YES ☐ NO ☐ [NOTE: not permitted]

Does the AFHMP include efforts to address potential discriminatory effects of a local selection preference (e.g., will minority applicants be moved into the local selection pool to ensure it reflects the racial/ethnic balance of the region and/or other efforts consistent with the Guidelines)?
YES ☐ NO ☐ Explain: _____

Is the working preference the only local preference? YES ☐ NO ☐
If YES, are persons with disabilities and/or 62 years of age or older that live in the community given the benefit of the preference? YES ☐ NO ☐

Are there durational requirements for living or working in the community? YES ☐ NO ☐ [NOTE: Not permitted]

Are local preference units subject to different or more beneficial terms (e.g., reduced prices) than other affordable units? YES ☐ NO ☐
If YES, explain: _____

Are household size restrictions and preferences consistent with the Guidelines? YES ☐ NO ☐

Does the AFHMP provide persons with disabilities in need of accessible units first preference for such units? YES ☐ NO ☐
Does the AFHMP address adaptable units consistent with the Guidelines? YES ☐ NO ☐

Does the AFHMP provide for criminal background checks consistent with the Guidelines (e.g., not imposed prior to the lottery and consistent with EOHLC model CORI policy)? YES ☐ NO ☐

Does the AFHMP require any deposits or fees to be paid? YES ☐ NO ☐

If YES, are they consistent with the Guidelines? YES ☐ NO ☐

WAIT LISTS

After the lottery, are households that are not awarded a unit placed on a wait list in the order that they were drawn from the *general* pool? YES ☐ NO ☐

Does the AFHMP include a method for ensuring continued compliance w/ the Guidelines upon resale?
YES ☐ NO ☐

OVERALL COMMENTS

REQUIRED

Monitoring Agent Certification - AFHMP Review and Recommendation for Approval*

I _____ (Monitoring Agent) have reviewed the AFMHP for _____ (project name) located at _____ (project address) and dated _____ (date of Plan). I certify that I have completed the attached AFHMP checklist and reviewed the Plan in a manner sufficient to attest that the Plan complies with the EOHLC AFHMP Guidelines. Therefore, I recommend approval of the Plan and have attached the AFHMP Checklist as supporting documentation.

_____ _____

Signature Date

_____

Name

A completed AFHMP Checklist for the Project must accompany this certification *for acceptance by MassHousing.*

Income Certification Checklist

Documents Required for Income Certification

		Received	N/A
1	**Copy of Lottery Application**		
2	**Federal tax returns:** Latest year filed and 2 years prior		
3	**W2 and 1099-R Forms:** Latest year issued		
4	**Statements for all assets[1]:** Within one month of application date (e.g. bank statements, retirement accounts, revocable trusts, stocks, bonds, treasury bills, certificates of deposit, mutual funds, and money market accounts, cash value of life insurance policy[2] before death, personal property held as an investment[3], lump-sum / one-time receipts[4], mortgage or deed of trust help by applicant).		
5	**For regular employment:** Five consecutive statements ending within one month of application date for all jobs (check/direct deposit stubs). For unemployment, copies of unemployment checks or verification from DOR stating the benefits received.		
6	**For social security:** Official statement of monthly amount received for year in review and statement of total amount received for latest tax year.		
7	**For pension:** statements indicating amount received for year in review and statement of total amount received for latest tax year.		
8	**For IRA or other income derived from assets:** statements indicating regular amounts received and total amount received for latest tax year.		
9	**For child support and alimony:** documents indicating the payment amount.		
10	**For dependents over 18 that are full-time student:** Proof of student status for dependent household members over age of 18 and full-time students.		
11	**For households over 55 selling property:** evidence of value of real estate, such as comparative market analysis, or evidence of MLS listing and any mortgage debts owed on property.		
12	P**re-approval letter from a bank or mortgage company:** Indicating household qualifies for a mortgage to purchase home (not > than 97%) with a fixed rate, 30-year term (followed by review and approval of loan commitment and closing package).		

[1] https://www.hud.gov/sites/documents/DOC_35701.PDF

[2] The surrender value of a whole life polity or universal life policy. This would not include a value for term insurance.

[3] Include gems, jewelry, coin collections, or antique cars, held as an investment. Personal jewelry is NOT considered an asset.

[4] Include inheritances, capital gains, one-time lottery winnings, victim's restitutions, settlements on insurance claims and any other amounts not intended as periodic payments.

Eligibility for Purchase Certification - Income and Asset Verification –to Lottery Agent and Developer

DATE

To: LOTTERY AGENT
Re: Affordable Housing Lottery for PROJECT NAME

Property Address: ADDRESS
Purchaser: LOTTERY WINNER NAME

Income and Asset Verification
I have reviewed the information for the above-named Purchaser and have established that her/his household income is below the maximum limit of [$XX,000], 80% of median income, adjusted for a household of [X] for the area of [MUNICIPALITY WHERE UNIT IS LOCATED], and that the household's assets are within the established limit. It is a condition of this Certificate that the deed for the approved purchaser has the Affordable Housing Restriction attached to it and made part of that deed.

The signature below represents evidence that I, serving as the monitoring agent for PROJECT NAME, have reviewed and certified that this purchaser is eligible based on program and income guidelines and information submitted. If more than ninety (90) days elapses between the execution of this Certificate and the final purchase of the unit, a new Certificate must be issued, and the Purchaser's income and assets verified again.

Closing Instructions
No earlier than 60 days prior to closing, the Lottery Agent [NAME] will need to request a Resale Price Certificate from MassHousing. In this request, the Lottery Agent should provide 1) the unit sales price, 2) address and unit number, 3) number of bedrooms, and 3) recording information for the Regulatory Agreement. MassHousing will send the Resale Price Certificate to the Lottery Agent (with a copy to the Monitoring Agent). The Resale Price Certificate will be used to complete the required fields in the Deed Rider.

When the Purchaser is ready to close on their mortgage loan (and at least two weeks prior to the closing date), please submit the following closing documents to me for review and approval:

- A copy of the signed Purchase and Sale Agreement
- A copy of the loan commitment letter
- A copy of the completed Deed Rider
- A copy of the completed Resale Price Certificate
- Contact information for the closing attorney

Following review of these documents, I will send a Certificate of Compliance to LOTTERY AGENT, MassHousing, and the closing attorney who is responsible for ensuring that it gets recorded along with the Deed, Deed Rider, and Resale Price Certificate.

If you have any questions, please contact me at EMAIL ADDRESS or (XXX) XXX-XXXX.

Sincerely,

YOUR NAME
Monitoring Agent

cc: MassHousing
LOTTERY WINNER NAME

Approval of Buyer Financing to Developer, Lottery Agent and Buyer

I _____ (Monitoring Agent) have reviewed the eligibility of the below referenced loan for

_____ (buyer) to be used in the purchase of

_____(40B unit address).

_____ (lender) is providing the loan in the amount of _____ dollars.

I have determined that the loan complies with EOHLC Guidelines and meets the following standards:

- Down payment is at least 3% of the purchase price, at least half of which is from the buyer's funds
- The Loan is from an institutional lender
- The Loan has a fixed interest rate through the full term of the mortgage that is a current fair market interest rate
- The loan is no more than two points;
- Monthly housing costs (inclusive of principal, interest, property taxes, hazard insurance, private mortgage insurance and condominium or homeowner association fees) does not exceed 38% of monthly income for a household earning 80% of area median income, adjusted for household size
- No non-household member(s) serve as co-signer(s) of the mortgage.

_____ _____

Signature Date

_____

Name

Certificate of Compliance - Initial Sale*

Property Address and Unit #: _____ (as more fully described in the Purchaser Deed)
Development Name_____
Seller:_____
Buyer:_____

Pursuant to the terms of the Regulatory Agreement among Mass Housing Finance Agency, as Subsidizing Agency, and [Name of Developer] dated _____, and recorded with the _____ Registry of Deeds (the "Registry") in Book _____, Page_____ (the "Regulatory Agreement," with capitalized terms used but not defined herein having the same definition as set forth in the Regulatory Agreement and Affordable Housing Restriction) the undersigned Monitoring Agent hereby certifies that the sale of the above-referenced Property in the above-referenced Development to the Purchaser is in compliance with the Comprehensive Permit Rules and the Affordability Requirement as set forth in the Regulatory Agreement, including:

1. Calculation of the Maximum Initial Sale Price;
2. Compliance with the Approved Marketing Plan and lottery process;
3. Selection of the Eligible Purchaser, including determination of compliance with Program Guidelines relative to income and asset limits and first-time homebuyer verification;
4. Review of the Buyer's closing statement;
5. The Purchaser's execution of an Affordable Housing Restriction as specified in the Regulatory Agreement attached to and forming a part of the Purchaser's Deed; and
6. Mortgage Commitment in accordance with Program Guidelines.

Executed under seal this ___day of _____, 20__

_____
Monitoring Agent Name/Title

Commonwealth of Massachusetts

County of _____

On this ____ day of_____, 20__, before me, the undersigned notary public, personally appeared_____ proved to me through satisfactory evidence of identification, which was _____ to be the person whose name is signed on the preceding instrument, and acknowledged the foregoing instrument to be his/her free act and deed, in such capacity.

_____
Name:
My Commission Expires:

Memo Regarding Initial Sale Documents to Closing Attorney*

Date: DATE

To: CLOSING ATTORNEY

From: MONITORING AGENT

Re: 40B Documents for UNIT ADDRESS closing

Please find attached (1) the Resale Price Certificate, (2) the Affordable Housing Restriction, (3) the Affordable Housing Restriction Mortgage, and (4) an executed Certificate of Compliance relative to the sale of the property located at UNIT ADDRESS. The certificate has been issued following the review and approval of the closing documents provided to me by LOTTERY AGENT on DATE.

All attached documents must be recorded at the time of sale along with the Deed. Please provide me with recorded information no more than 10 days after recording.

Sincerely,

Monitoring Agent

Enclosures (4)
cc: Lottery Agent/Developer

Initial Sales Affordability Completion Report to MassHousing, Developer, and Municipality*

Monitoring Agent Name: _____

Contact Information: _____

Project Name: _____

Project Address: _____

Developer Contact Name and Info: _____

Lottery Agent Contact Name and Info:

Affirmative Fair Housing Marketing Plan Approval Date:			
Total # Units:		# Affordable Units:	

INITIAL SALES DATA - add additional page(s) if needed

Unit Address	Sales Price	AFHMP Compliance (Y/N)	Date Certificate of Buyer Eligibility Issued	Date Certificate of Compliance Issued

I certify that I have reviewed the Initial Sales Data for the project identified above and have determined substantive compliance of this project with the Affordability Requirement in accordance with program requirements, including substantive compliance with the approved Affirmative Fair Housing and Marketing Plan.

_____ _____

Signature Date

_____

Monitoring Agent Name

RESALES

Resale Policy and Guidance on Procedure

DOCUMENT TYPE: Policy and Guidance	**EFFECTIVE DATE**: XX/XX/2021 LAST REVISION: XX/XX/2021 REVISION HISTORY: N/A
REFERENCE(S): 40B Guidelines; Regulatory Agreement; Affordable Housing Restriction	
REQUIRED FORM(S) AND LETTER(S): 1. Resale Price Certificate* 2. Certificate of Compliance - Resales or Foreclosure* 3. Closing Instructions Letter to Closing Attorney*	
OPTIONAL FORM(S) AND LETTER(S): 1. Resale Process Letter to Owner 2. Property Resale Price Form 3. Property Information Form 4. Letter to External Real Estate Broker 5. Buyer Approval and Next Steps Letter to Buyer 6. Buyer Approval and Next Steps Letter to Owner 7. Municipality Notice - Resale	

OBJECTIVE: To clarify the requirements that must be met during a resale and to assist Monitoring Agents in managing the Resale process, an important supplemental monitoring duty that does not require MassHousing approval or review.

POLICY:

The Monitoring Agent is responsible for ensuring that Affordable Units are conveyed in accordance with the 40B Rules and the terms of the Affordable Housing Restriction for the property. The following outlines the key stages of a resale.

1. Owner provides Municipality and Monitoring Agent with Conveyance Notice indicating that they are intending to sell the property.

2. Monitoring Agent calculates Maximum Resale Price, and issues Resale Price Certificate (if requested/required).

3. Monitoring Agent markets the unit (with cooperation from Owner) and locates an Eligible Buyer in accordance with the AFHMP guidelines.

4. Monitoring Agent confirms buyer eligibility, reviews Buyer's closing statement, prepares and reviews Affordable Housing Restriction.

5. Monitoring Agent works with the Buyer to secure a signed Homebuyer Disclosure Statement from the Buyer. The Statement is not recorded at closing and should be filed as part of the Monitoring Agent's records for that unit.

6. Monitoring Agent provides Owner and closing attorney with a Certificate of Compliance.

7. Monitoring Agent prepares and provides the Closing Attorney with the Universal Deed Rider (Affordable Housing Restriction), Resale Price Certificate (if required), Affordable Housing Restriction Mortgage (MassHousing Mortgage), the Closing Instructions Letter to Closing Attorney*, Resale Fee Invoice, and Certificate of Compliance. The Closing attorney records the appropriate documents, along with the deed and mortgage. The Attorney provides Monitoring Agent with copies of all materials within 10 days of closing.

OWNER COMMUNICATION[1]

After an Owner notifies the Monitoring Agent of plans to sell his/her unit, the Monitoring Agent is to instruct the Owner to prepare and send a Conveyance Notice to the Monitoring Agent and any other contacts listed in the deed restriction, particularly the Municipality, in order to start the Resale process. The Notice should include

- a copy of the unit deed
- the Owner's name and contact information for the person responsible for showing and answering questions about the home.

The Monitoring Agent should inform the Owner of the following responsibilities:

- To provide necessary documents and information to determine the resale price;
- To provide reasonable up-front costs for marketing the unit, including listing it on MLS or working with another broker*.
- To repair damage to the home;
- To provide access to the home to potential buyers, appraisers and inspectors;
- To prepare the Purchase and Sale Agreement (P&S). It is strongly recommended that the owner hire a lawyer to prepare the P&S.
- To keep the Monitoring Agent informed about the time and date of the closing, and provide the Monitoring Agent with copies of documents after the closing.

CONVEYANCE NOTICE AND RESALE PERIOD[2]

The Monitoring Agent has up to 90 days after receipt of the Conveyance Notice to close on a sale to an Eligible Buyer, the Monitoring Agent or the Municipality. This period can be extended as provided in the Affordable Housing Restriction, to arrange for details of the closing, to locate an Eligible Purchaser, or for lack of cooperation on the part of the seller.

The Affordable Housing Restriction used by MassHousing requires that the Homeowner cooperate with the Monitoring Agent in finding an Eligible Buyer for the property. If the owner does NOT act cooperatively, including a failure to agree to reasonable terms in the Purchase and Sale agreement, the Monitoring Agent may extend the 90-day period for a period commensurate with the time the

[1] Affordable Housing Restriction - Section 4; 40B Guidelines – Section 3 (a)
[2] Affordable Housing Restriction - Section 4(b); 40B Guidelines - Section VI-E (3) f (3)
* A broker fee shall be permitted provided that the broker holds a valid license and the sales price remains within the approved affordable limits.

lack of cooperation continues. If the Monitoring Agent determines that the Owner is not acting cooperatively, the Agent must notify the Owner in writing of the length of the extension needed.

The following table provides a summary of possible resale outcomes according to Owner cooperation and Buyer eligibility conditions.

Resale Condition	Expected Outcome	"In Lieu of Eligible Buyer" Provision Can Be Exercised	If no Eligible Buyer found during the Resale Period and "In Lieu of Eligible Buyer" is not exercised.
Owner is FULLY cooperative	Sale to an Eligible Buyer at the Max Resale price must be completed within 90 Days (Resale Period) of receiving a Conveyance Notice	1. Monitoring Agent / Municipality / or designee has the right to purchase the property at Max Resale Price within the 90-day period. 2. Unit remains under Affordability Restriction. 3. Unit to be sold or rented to an Eligible Buyer as set forth in the Regulatory Agreement.	1. Owner may sell the unit at Max Resale Price to an Ineligible Buyer no earlier than 30 days after the Resale Period. 2. Unit remains under the same Affordability Restrictions. 3. If there is more than one Ineligible Buyer, preference is given to Appropriate Sized Households earning 80% - 120% AMI as determined by the Monitoring Agent.
Eligible Buyer is unable to secure mortgage financing	Resale period is extended an additional 60 Days to find another Eligible Buyer		
Owner is NOT cooperative (e.g. refuses reasonable terms in a purchase and sale agreement)	The Resale Period may be extended by the number of Days commensurate with the period that the owner fails to cooperate.		

MAXIMUM RESALE PRICE[3]

The Monitoring Agent is to calculate the Resale Price soon after receiving the Conveyance Notice from the Owner. The allowable sale price is defined as the "Maximum Resale Price" in the Deed Rider. It is calculated by multiplying the current AMI by the Resale Price Multiplier identified in the Affordable Housing Restriction. The Maximum Resale Price can never be more than the amount that is affordable to an Eligible Purchaser earning 80% of the area median income, or an alternate amount set forth in the Affordable Housing Restriction. **The sale price should generally not be less than the purchase price paid for the unit, unless the seller agrees to accept a lower price.**

Capital Improvements previously approved by the Monitoring Agent may be added to the Resale Price, subject to depreciation. The depreciation method to be used should be indicated in the Monitoring Agent's written approval of the capital improvement. Beginning in 2021, Approval of Capital Improvement to Owner* was adopted as the standard form that Monitoring Agents must use to document a qualified Capital Improvement for resale consideration.

[3] Affordable Housing Restriction - Definitions; 40B Guidelines – Section VI-E (3)

If the purchase price paid by the Eligible Buyer includes an adjustment for Capital Improvements (or other appropriate correction), a new Resale Price Multiplier must be calculated and a new Resale Price Certificate* must be issued reflecting the new Resale Price Multiplier as part of the resale closing. In all resale events, **the Maximum Resale Price must be approved by the Monitoring Agent before the unit is put on the market**

MARKETING THE UNIT/LOCATING AN ELIGIBLE BUYER

Marketing for resale of the unit should be done in accordance with the Affordable Fair Housing Marketing Plan (AFHMP) that was approved for the Project.

At a minimum, units must be listed on both:

- CHAPA's MyMassHome site
- MAHA's homeownership lottery sites.

The process for determining the eligibility of the buyer is the same as during Initial Sales. If the marketing process locates more than three Eligible Buyers, the Monitoring Agent should conduct a lottery. If three Eligible Buyers complete application is received or no complete applications are received during the initial collection period (e.g. first 10 days), review applications on first-come, first-served basis for the remainder of the affordable marketing period, which should be clearly advertised so that prospective buyers are aware of the process.

FINAL SALE AND CLOSING[4]

The Monitoring Agent must prepare and deliver to the closing attorney the following:

1. The Certificate of Compliance - Resales or Foreclosure* stating that the sale of the Property was in compliance terms of the Affordable Housing Restriction
2. An updated Affordable Housing Restriction
3. Affordable Housing Restriction Mortgage (MassHousing Mortgage)
4. Resale Fee Invoice from the Monitoring Agent
5. The Closing Instructions Letter to Closing Attorney*
6. The Resale Price Certificate, if applicable.

All relevant 40B documents must be recorded at closing and ***within ten (10) days after the closing*** the Attorney should provide the Monitoring Agent with copies of all documents and evidence that all deeds and deed riders have been recorded. The Monitoring Agent is responsible for verifying that the Resale Price Certificate, the Affordable Housing Restriction, the Affordable Housing Restriction Mortgage, and the Certificate of Compliance are all recorded with the Registry.

[4] Affordable Housing Restriction - Section 6; 40B Guidelines – Section III (G) 2 (b)

REQUIRED

Resale Fee

The standard Affordable Housing Restriction required by MassHousing since 2007 (also known as the Universal Deed Rider (UDR), or Fannie Mae Deed Rider) limits the Resale Fee to "no more than 2.5% of the Base Income Number (at the time of resale) multiplied by the Resale Price Multiplier". Some older Monitoring Agreements may specify a different (generally lower) amount.

PROCEDURE[5]:

Step 1 – Gather Information

- When owners request information about selling their unit, gather the necessary information to prepare the Resale Process Letter to Owner
    - Name
    - Address
    - Contact information
    - Number of bedrooms in the unit
    - Current amount of condo/HOA fee
    - Type of structure
- Review your files on the unit and retrieve the deed rider from MassLandRecords, if necessary
- Create a resale tracking spreadsheet and track each step / file each document appropriately throughout the Resale. This is particularly helpful if you are managing several resales at the same time.

Step 2 – Resale Process Information

- Draft the Resale Process Letter to Owner
    - Determine Price according to the Deed Rider and the Resale Price Certificate
        - Check Deed Rider for applicable method and affordability level
        - Verify the Resale Price Multiplier is correct by dividing the Owner's purchase price by the Base Income Number at the time of purchase
        - If the calculation results in a value less than the purchase price, set the price at the Owner's purchase price.
        - The property should be in the same condition as when it was purchased; if there is damage beyond normal wear and tear, the homeowner will need to fix the damage, or the price must be reduced accordingly
        - Check your files for any approved Capital Improvements, calculate the depreciation amount on those Improvements, determine whether any Improvement can be added to Maximum Resale Price without exceeding affordability threshold
        - Any parking or storage spaces that were purchased separately must be sold separately and cannot be added to the Maximum Resale Price.
    - Resale Fee: Calculate Resale Fee amount based on formula and percentage in the Deed Rider

[5] 40B Guidelines - Sections III (G) and VI (E) 3; Regulatory Agreement - Section 1 (a) (ii); Affordable Housing Restriction - Section 4

  - Affordable Advertising Period: check length of affordable advertising period and options for Owner after affordable marketing period has ended.
  - Populate the Property Resale Price Form. This information helps the Owner understand how the resale price is calculated.
  - Include a blank Property Information Form. This form assists with marketing the unit.
- Send the Resale Process Letter to Owner, with both the completed Property Resale Price Form and a blank Property Information Form.
- The Owner may hire a broker to help identify an Eligible Buyer. However, the broker fee shall be paid by the Owner separately, in addition to the resale fee. The Monitoring Agent may choose to share the resale fee with the owner-selected broker but is not obligated and should not feel compelled to do this. The Monitoring Agent may also request that the Owner hire a broker or consultant selected by the Monitoring Agent to assist with locating an Eligible Buyer. In this case, the Monitoring Agent is responsible for determining how the resale fee will be shared with the broker or consultant. If an external real estate broker is engaged by the Owner, the Monitoring Agent may opt to use the Letter to External Real Estate Broker to assist with communicating relevant 40B program requirements.

Step 3 – Municipality Notice

- The municipality must be notified that the unit is up for resale. You can opt to have the Owner send a copy of her/his Letter of Intent to sell ("Conveyance Notice") to the municipality directly OR you can notify the municipality on behalf of the Owner OR you can have the Owner send a copy of her/his letter and follow up with a letter to the municipality.
  - If you opt to send a letter to the municipality, refer to Municipality Notice - Resale for guidance.
  - Confirm the contact(s) listed in the deed rider with the Owner so that the letter is addressed to the correct contact(s). Letters should be sent by certified mail to ensure that the municipality and other contact(s) named received notice.
  - If you are sending the letter on behalf of the Owner, send to the Owner via email or regular mail documentation (e.g. a copy of the letter and certified mail receipt) that the letter(s) were sent.

Step 4 – Advertising Process

- Advertising can begin as soon as municipality's notice has been sent.
- If the Owner is using a realtor / housing consultant recommended by you (Monitoring Agent), work with the realtor / housing consultant on marketing the unit in accordance with the AFHMP.
  - Coordinate introductions with the seller
- If the seller wishes to use their own agent to market the property, send necessary documents and information so they can market the property according to the deed riders and Affirmative Fair Housing Marketing Plan.
- Generally, marketing includes:
  - Placing ads in the newspaper and/or online, and conducting outreach in a manner consistent with the AFHMP
  - Distributing, collecting, and screening applications
  - Answering questions from prospective applicants
  - Notifying applicants of their status
  - Posting the unit on MyMassHome and MAHA's homeownership lottery sites

  - Placing newspaper advertising if required by deed rider
  - Distributing information to the municipality
  - Checking if the municipality or other local organizations maintain a "ready-buyer" list as discussed in the AFHMP
- Posting the unit on MLS will increase visibility of the unit and has proven to be helpful for monitoring agents in the past. You may want to discuss this with the Owner because it will include an extra fee and you must have access to the system. It is likely that a realtor / housing consultant will also discuss posting in MLS as part of his/her marketing efforts.
- Clearly advertise the Initial Collection Period (e.g. 10 days) so prospective buyers are aware of the timeline and selection process if their application submissions are delayed.

Step 5 – Buyer Selection and Approval Process

- Establish a comprehensive Resale Application Form. This will facilitate the selection process and ensure that critical information is collected in a timely manner. This is also an opportunity for prospective buyers to better understand the conditions of being a 40B homeowner. The Applications should include:
  - Eligibility Criteria (AMI Requirements and first-time homebuyer status and exceptions)
  - Applicant and Household Information
  - Real Estate Agent Contact Info, if applicable
  - Demographics
  - Bank pre-approval information
  - Income and employment information
  - Asset information, including large gifts
  - Certification that information is true and complete
  - Disclosure certifying application information, authorizing Monitoring Agent to verify information, and understanding the terms and obligations of applying for a 40B homeownership unit and conditions of participation if selected as an Eligible Buyer.
  - Document checklist – additional documents to accompany the application
  - Submission Instructions (where to send the application, who to address it to, the application deadline, and contact information should the applicant have any questions)
  - Information about the application process
  - Information about the 40B homeownership program
- If more than three complete Application is received during the initial collection period (e.g. within the first ten days of marketing), conduct a lottery to determine the order in which applications will be reviewed and approved. See Resale Buyer Selection Guidance.
  - Selection is random and no preference should be given to any eligibility criteria.
  - Review first selected Application to verify that the applicant meets all eligibility criteria.
    - If the applicant is ineligible or decides not to move forward with purchase, review the next-highest ranked application
- If only one complete application is received or no complete applications are received during the initial collection period (e.g. first 10 days), review applications on first-come, first-served basis for the remainder of the affordable marketing period.
- When an Eligible Buyer has been selected:

  - Inform parties (Consultant, real estate agents, applicants, approved buyer, etc.) of the buyer approval and, if applicable, lottery results.
  - Facilitate next steps:
    - The offer letter, inspection, Purchase & Sale Agreement, etc.
    - Send Buyer Approval and Next Steps Letter to Buyer, copy of the unit's deed rider, and 40B Program information to the approved Eligible Buyer
    - Send Buyer Approval and Next Steps Letter to Owner to the Owner
  - Review the Buyer's closing statement.
- If no Eligible Buyer is found within the Affordable Marketing Period, the Owner may request to make the unit available to an Ineligible Buyer as described in the Affordable Housing Restriction.

> *It is highly recommended that you practice the same buyer selection process for units with higher buyer demand (e.g. lottery vs first-come).*

Step 6 – Closing

- Collect the signed Purchase & Sale Agreement, Eligible Buyer commitment letter and Homebuyer Disclosure Statement from the Buyer.
- Between two and three weeks before scheduled closing date, prepare and send closing documents to parties' attorneys.
  - Prepare unit deed rider, Affordable Housing Restriction and Certificate of Compliance - Resales or Foreclosure*. Update the Resale Price Certificate*, if applicable.
  - Verify parties' names as they will appear on deed.
  - Calculate new Resale Price Multiplier by dividing resale price by current Area Base Income Number.
  - Verify municipality's contact information to be included for notification.
  - Check book and page number with the Registry of Deeds for correct reference to deed rider, Regulatory Agreement, and Comprehensive Permit.
  - Draft Closing Instructions Letter to Closing Attorney*.
  - Verify correct Resale Fee to seller, noting any deposits that were collected from the seller as part the resale process.
  - Collect Mortgage Commitment Letter from the Eligible Buyer.
  - Prepare the Affordable Housing Restriction Mortgage (MassHousing Mortgage), the Closing Instructions Letter to Closing Attorney*, and a Resale Fee Invoice
  - Deliver all the relevant 40B closing documents and the Closing Instructions Letter to Closing Attorney* to the closing attorney.
- After the closing, document receipt of the Resale Fee and recorded deed rider from the closing attorney.

Step 7 – Document

- Complete your resale tracking sheet
- Update and organize your files to include new buyer's documents and the tracking sheet.
- Document the refinance event in the next Annual Compliance Report noting the type of refinancing that occurred and date of closing.

Resale Process Letter to Owner

DATE

OWNER
STREET ADDRESS
TOWN/CITY, MA ZIPCODE

Dear OWNER:

Thank you for inquiring about the process for selling the affordable home you purchased under Chapter 40B. As your monitoring agent, I will be coordinating the resale of your property and this letter outlines the general process.

The following outlines the steps you must take to sell your property, as described in the Deed Rider that you signed when you purchased your home:

1. Maximum Resale Price: As stated in the Deed Rider, the Maximum Resale Price is an amount affordable to a household earning at or below 70% of the Area Median Income in TOWN. This is currently equal to $XXX,XXX (RESALE PRICE). This is the *maximum* price at which you can sell your property; please be aware there is no guarantee that you will receive this price. *Like any home sale, the price will depend on many factors, including the market and the ability of prospective buyers to obtain financing.*

2. Resale Fee: The Deed Rider attached to your unit establishes the resale fee that the Monitoring Agent, receives for coordinating your resale process. The resale fee for your property is 2.5% or $X,XXX. The resale fee is paid by you to the monitoring agent at the closing and is included in the price.

3. Letter of Intent: You must send to me, the Monitoring Agent, a Letter of Intent stating that you would like to sell your home. In addition, the Municipality and any other contacts listed in the deed rider must also receive notice. It is recommended that you send the letter by certified mail to ensure that your notice is received. The letter should include (a) a copy of the unit deed and (b) contact information for the person who will be responsible for showing and answering any questions regarding the resale of your home. In addition, please include the number of bedrooms in your home, as well as the amount you pay for property taxes, homeowners insurance, and condo or association dues. Once I receive your Letter of Intent, the resale clock will officially start the 90-day marketing period.

4. Property Form [and Deposit, if applicable]: When you are ready to sell your property, please provide the Property Information Form (enclosed). The information will assist in marketing your property. [If seeking a deposit, include deposit language The Monitoring Agent may want to request a small deposit, which is part of the resale fee that will be deducted from the amount that the homeowner owes at Closing].

5. Affordable Marketing Period: As stated in the deed rider, as your monitoring agent, I will assist you to locate a new eligible purchaser within 90 days, provided that I have your cooperation in conforming to 40B program requirements.

6. Advertising the Property: As your monitoring agent, I will coordinate the following aspects of the resale process on your behalf: marketing the affordable unit, including placing ads in the newspaper and/or on-line; distributing, collecting, and screening applications; answering questions from prospective applicants; and notifying new eligible buyers of their status. Please note that advertising on the Multiple Listing Service (MLS) is a common method of locating homebuyers but not required under the 40B program. Therefore, I recommend listing your unit on MLS to facilitate the search for an eligible buyer but you would need to pay the MLS fee in order for me to access the system.

You may opt to hire a real estate agent of your choosing to advertise the property. I will work with your agent to market the property according to the requirements of the deed rider. However, you would be responsible for paying any commission charged by the agent. Please let me know as soon as possible if you will be working with a real estate agent. You should also be prepared for showings or an open house to let interested buyers see the property. Buyers will either be approved on a first come first served basis or a random selection lottery will be held. When an Eligible Purchaser has been approved for purchase, you will be informed about the next steps.

7. Responsibilities as a Seller: You will be required to give access to the home inspector and the appraiser, as well as provide additional information to the buyer, such as condominium documents and smoke alarm certificates. You must also provide a Purchase and Sales Agreement, which is a binding contract between you and the buyer.

8. Hiring a Real Estate Attorney: It is strongly recommended that you hire a real estate attorney to represent you in this transaction. An attorney will assist you with drafting the Purchase and Sales Agreement to present to the new buyer. I will provide the necessary deed rider and buyer certificates; however, an attorney would be able to draft the deed that transfers ownership of the property. Selling your home is a large financial transaction and it would be advisable that you work with an attorney to make sure your interests are protected. You will be responsible for any costs associated with the real estate attorney.

9. Selling After the Affordable Marketing Period Expires: If the 90-day Affordable Marketing period passes and an eligible buyer is not located, you may sell your home for the Maximum Resale Price to any third party with the deed restrictions in place. However, preference must go to someone earning 80% to 120% of the area median income.

When you are ready to sell, please send: a) your Letter of Intent and b) a completed Property Information Form. [if applicable, c) a check made out to XXXX]

Feel free to contact me with any questions you may have about starting the process. I can be reached at (XXX) XXX-XXX or EMAIL ADDRESS.

Sincerely,

NAME

Monitoring Agent

Attachment: 40B Property Information Form

Property Resale Price Form

POPULATE or select dropdown IN BLUE CELLS ONLY.
The remaining cells auto-populate.

Owner		
Address		
Town		
Development		
Date		

Purchase Price		
Resale Price Multiplier		
Resale Fee		
Include Resale Fee in RPM Price?		
Family Median Income		
RPM Resale Price	$	-
Resale Fee	$	-
Total RPM Resale Price	**$**	**-**

Unit Bedrooms		
Household Size		
80% AMI for Household Size		
70% AMI for Household Size	$	-
Affordability Level		
Target Monthly Housing Cost	$	-

Tax Rate		
Monthly Property Tax	$	-
Condo or Townhouse?		
Monthly Hazard Insurance	$	-
PMI	$	-
Condo/HOA Fees		
Principle & Interest	$	-
Interest Rate		
Term in Months		
Mortgage Amount		$0.00
Affordable Price		**$0.00**

Must Be Affordable?		
Maximum Resale Price	**$**	**-**
Capital Improvements	**$**	**-**
Price Increase from Previous Sale		-

Notes:

Property Information Form

Seller/Owner: _____

Property Address: _____ City/State/Zip: _____

Phone: _____ Email: _____

Primary Contact (if different from seller): _____

Phone: _____ Email: _____

Seller's Attorney (if currently working with one): _____

Phone: _____ Email: _____

Condo Assoc., HOA, Management Co. Contact (if applicable) _____

Phone: _____ Email: _____

Reason for selling: _____

Name of Development: _____ **Size of Home**: _____ sq. ft. **Year Built**: _____

Type of Property: ☐ Single Family ☐ Townhouse ☐ Condominium Building ☐ Other _____

Condominium/Association Fee, if applicable: $_____ per month (submit current invoice)

Annual Taxes: $_____ per year **Homeowners' Insurance, if applicable**: $_____ per year

# of Bedrooms: ☐ One ☐ Two ☐ Three

# of Bathrooms: ☐ 1 ☐ 1½ ☐ 2 ☐ 2 ½

Garage: ☐ No ☐ Yes, # of cars_____

Off-Street Parking: ☐ No ☐ Yes, # of cars_____

Appliances Included in Sale:

Refrigerator	☐ Yes	☐ No
Stove/Oven/Range	☐ Yes	☐ No
Microwave	☐ Yes	☐ No
Dishwasher	☐ Yes	☐ No
Garbage Disposal	☐ Yes	☐ No
Washer/Dryer	☐ Yes	☐ No

Basement: ☐ Yes ☐ No

Additional Storage: ☐ Attic ☐ Storage Unit/Space

Heat: ☐ Gas ☐ Electric ☐ Oil ☐ Forced Hot Air ☐ Forced Hot Water ☐ Other _____

Central Air Conditioning: ☐ Yes ☐ No

Type(s) of Flooring: _____

_____

Pets Allowed:

☐ Yes, any restrictions: _____

☐ No

Is your sale subject to or contingent on finding other suitable housing? ☐ Yes ☐ No

If yes, please explain _____

Any notable wear and tear or repairs the unit may require: _____

_____

Any other important information about the unit: _____

_____

All owners must sign and date this form. By signing, you are attesting that the form is accurate and has been filled out to the best of your knowledge.

_____ _____

Signature Date

_____ _____

Signature Date

Adapted from CHAPA

Resale Buyer Selection Guidance

DOCUMENT TYPE: Guidance	**EFFECTIVE DATE**: XX/XX/2021 LAST REVISION: XX/XX/2021 REVISION HISTORY: N/A
REFERENCE(S): AFHMP Guidelines	
REQUIRED FORM(S) AND LETTER(S): N/A	
OPTIONAL FORM(S) AND LETTER(S): 1. Buyer Approval and Next Steps Letter to Buyer 2. Buyer Approval and Next Steps Letter to Owner	

OBJECTIVE: To understand the qualifications of a Lottery Agent and clarify, to the extent possible, the roles of the Lottery Agent and the Monitoring Agent during the Initial Sales Period. The process serves as guidance only and the Monitoring Agent may institute his/her Buyer Selection process as long as it conforms to the AHFMP.

PROCESS:

1. Monitoring Agent and his/her Resale Team, if applicable, establishes a Resale Application for prospective Eligible Buyers (interested households). The application should include clear instructions on
    (1) The 40B program
    (2) The lottery and buyer selection process and what will happen if application is incomplete
    (3) Applicant information needed
    (4) Supporting documents needed
    (5) Application deadline to qualify for the lottery (initial collection period)
    (6) Location of where to submit the application
    (7) Contact information
    (8) Disclosure Form certifying application information and contents
    (9) Applicant expectations (e.g. turnaround window in which the applicant must respond to additional requests for information, decision to proceed with purchase if unit is offered, etc.)
2. Advertise the property as described in Resale Policy and Guidance on Procedure.
3. Conduct a lottery to determine the order in which applications will be reviewed and approved. If more than three complete Resale Application is received within the first ten days of marketing, conduct a lottery to determine the order in which applications will be reviewed.

4. If only one complete application is received or no complete applications are received during the initial collection period, applications are then treated on a first-come, first-served basis for the remainder of the affordable marketing period.
5. Notify applicants if you find that their applications are incomplete, and the lottery is at least 2 days away.
6. Once the initial collection period has ended, assign an identification number for all complete applications. Conduct a lottery with all applications being ranked by the order in which they are drawn. No preference is given to any eligibility criteria; the selection is random. Applicants should be notified of their ranking.
7. Review the first randomly drawn application first for eligibility. If the applicant meets all eligibility criteria, contact the household to convey that they have been approved to purchase the property and will be notified of next steps. See Buyer Approval and Next Steps Letter to Buyer. Include information about the 40B program and a blank copy of the deed rider for informational purposes. If the applicant is ineligible or decides not to move forward with purchase, review the next application in the lottery ranking.
8. Selected Applicants have 48 hours to respond to requests for additional information. Otherwise, move on to the next applicant in the lottery ranking.
9. If no Eligible Buyer is found during the lottery process, review applications on a first-come, first-served basis.
10. Notify the property owner when an Eligible Buyer has been approved and would like to move forward with the purchase. See Buyer Approval and Next Steps Letter to Owner. Proceed with the Closing Process in the Resale Policy and Guidance on Procedure

Letter to External Real Estate Broker

DATE

EXTERNAL REAL ESTATE BROKER NAME
STREET ADDRESS
TOWN/CITY, MA ZIPCODE

Dear EXTERNAL REAL ESTATE BROKER NAME,

I am the Monitoring Agent that is assigned to the 40B unit located at UNIT ADDRESS. I understand that you have been engaged by the Owner to assist in marketing his/her home for resale. As you may be aware, this home carries a deed rider that indicates its regulation by the Commonwealth of Massachusetts' 40B program, which **limits its resale price and places income-based eligibility restrictions on who can purchase the home**.

Additionally, please note that **the eventual buyer will be selected by the Monitoring Agent, rather than by the home seller**, after review of the income-eligibility of any prospective buyers. When an eligible purchaser has been approved for purchase, you will be informed about the next steps.

The maximum allowable resale price for this home is: [Max Resale Price]. This price may not be exceeded, irrespective of a prospective buyer's willingness to pay more. Additional payment, compensation, or benefits to the homeowner paid outside the sale transaction (e.g. added fees, reimbursements, chargebacks) are expressly prohibited and may constitute fraud.

In addition, the sale of this property **must be marketed through a lottery process. We will advertise the home for 10-14 days.** If there are more than three qualified applicants, we will conduct a lottery.

I will provide the relevant deed rider and buyer certificates for review by prospective buyers and for eventual recordation at resale, but our organization will not draft any Purchase & Sale Agreement, nor will we create the new deed transferring ownership to the homebuyer. We encourage you and/or a real estate attorney to create these documents.

Please also note that, contrary to what may be conventional on other home sales, **the 40B home seller is not permitted to deduct any agent or attorney commission from the transaction proceeds**; you and any other advisors or service providers must be paid directly and exclusively from the seller's profits or other resources (either in advance of or after the sale).

Please do not hesitate to contact me at EMAIL ADDRESS or (XXX) XXX-XXXX with any questions you may have about this resale process.

Sincerely,

YOUR NAME
Monitoring Agent

Buyer Approval and Next Steps Letter to Buyer

DATE

BUYER
STREET ADDRESS
TOWN, MA ZIP CODE

Re: Resale of UNIT ADDRESS

Dear BUYER,

This letter is to notify you that I, YOUR NAME, the Monitoring Agent for the affordable unit for resale at UNIT ADDRESS, have reviewed and approved your application to purchase the unit.

I will issue an "Eligibility for Purchase Certificate" that will be recorded with the Deed Rider at your closing. This certificate states that I have reviewed your income documentation and established that you are eligible to purchase the unit.

I will forward the certificate to the closing attorney along with the prepared Deed Rider to be signed and recorded.

For your and your lender's review, I have attached a blank copy of the Deed Rider. This document explains the use and resale restrictions associated with purchasing an affordable property.

I have also included an information packet for affordable unit homeowners. The packet contains information on owning a 40B unit. Please review and let me know if you have any questions.

Finally, I will need a copy of your mortgage commitment letter and buyer closing statement when they become available. If you have any questions, please contact me at EMAIL ADDRESS or (XXX) XXX-XXXX.

Sincerely,

YOUR NAME
Monitoring Agent

Enclosures (2)
cc: NAME, Owner

Populate Items in BLUE and include a copy of the Buyer Approval and Next Steps Letter to Buyer that was sent to the Buyer.

OPTIONAL

Buyer Approval and Next Steps Letter to Owner

DATE

OWNER
STREET ADDRESS
TOWN, MA ZIP CODE

Re: Resale of UNIT ADDRESS

Dear OWNER,

I am pleased to share that a Buyer has been selected to purchase your home. Please see the enclosed approval letter to BUYER NAME. If you have not already done so, you should contact a real estate attorney to prepare a Purchase and Sale Agreement. Please send a copy of the signed Purchase and Sale Agreement along with the contact information of the closing attorney to me by email. This will allow me to prepare the necessary closing documents for the sale of your home.

While the sale of your home is a transaction between you and the Buyer, the following are some suggestions on how to handle certain aspects of the sale of your home.

- You may use a standard Offer to Purchase in addition to the Purchase and Sale Agreement. Typically, the Offer outlines the dates when other steps in the transaction must occur, such as the signing of the Purchase and Sale Agreement and inspections. You may also require that a small amount of money be put down as a deposit.
- You may also require that the Buyer put a certain amount of money down when signing the Purchase and Sale Agreement. It is common practice among Chapter 40B developments to not require more than $1,000 as a deposit.
- You should obtain a copy of your condominium documents to give to the buyer. The buyer will need these documents to review and to obtain financing. Your condominium association should be able to give you a copy, although this may require a fee.
- You may be responsible for providing a 6(d) Certificate to the buyer. This is provided by your condominium association. You must also comply with other requests to facilitate the transaction such as obtaining a Smoke Detector certification from the local fire department and having a condominium questionnaire for the buyer's lender filled out.

Populate Items in BLUE and include a copy of the Buyer Approval and Next Steps Letter to Buyer that was sent to the Buyer.

OPTIONAL

As your monitoring agent, I will prepare the new Deed Rider and other required closing documents. These will be sent directly to the closing attorney.

If we receive any additional applications for your home, I will review them and place qualified applicants on a waiting list so that, should the current buyer be unable to purchase the unit, I can immediately notify the next approved applicant.

If you have any questions, please contact me at EMAIL ADDRESS or (XXX) XXX-XXXX.

Sincerely,

YOUR NAME
Monitoring Agent

Populate Items in BLUE. This form can serve as the Conveyance Notice/Notice of Intent to Sell to the Municipality, if you are sending it on behalf of the homeowner *OPTIONAL*

Municipality Notice – Resale

DATE

TOWN CONTACT NAME
TOWN POSITION
TOWN NAME
STREET ADDRESS TOWN/CIY, MA
ZIPCODE

Dear TOWN CONTACT:

This letter is sent to the TOWN NAME on behalf of HOMEOWNER NAME, the current owner of an affordable property under Chapter 40B, to inform you of the owner's intent to sell her affordable unit. The unit is located at UNIT ADDRESS.

Based on the affordable housing deed rider for the property, the Maximum Resale Price for the above-referenced unit is $XXX,XXX. As explained in the deed rider, the monitoring agent and the homeowner have 90 days to locate an Eligible Purchaser for this unit. This 90-day marketing period will begin on DATE and end on DATE.

During this time, the TOWN NAME can elect to purchase the unit for the Maximum Resale Price. If an Eligible Purchaser buys the affordable unit, a new deed restriction is signed and recorded and the unit remains on the Town's subsidized housing inventory (SHI).

If an Eligible Purchaser fails to buy the unit during the 90-day period (plus the option for a 60-day extension), the current owner of the property can sell the unit to an Ineligible Purchaser, subject to the deed rider restrictions.

I welcome any efforts the TOWN/CITY wishes to make in assisting us to locate a new Eligible Buyer for this affordable housing opportunity. Please feel free to contact me at (XXX) XXX-XXXX or EMAIL with any questions.

Sincerely,

YOUR NAME
Monitoring Agent

cc: OWNER NAME, Current Owner

Resale Price Certificate*

Resale Price Certificate

Project Name: _____

Project Address: _____

Unit Number/Property Address: _____

_____

Initial Sales Price: $_____

Base Income Number: $_____

Resale Price Multiplier: $_____

This Resale Price Certificate has been issued by the Monitoring Agent for the above Project.

By: _____
Monitoring Agent

Notary Block

Populate Items in BLUE
REQUIRED

Closing Instructions Letter to Closing Attorney*

DATE

ATTORNEY NAME
STREET ADDRESS
TOWN/CIY, MA ZIPCODE

Re: Resale of UNIT ADDRESS

Dear Attorney NAME,

This letter is to clarify the closing and resale process for UNIT ADDRESS, an affordable unit from the seller, SELLER NAME, to the buyer, BUYER NAME.

The unit is part of a project developed under the Chapter 40B affordable housing statute. The statute requires that at least 25% of units within the project to be sold at restricted prices to income eligible households. I serve as the Monitoring Agent for the unit and oversee its resale when the homeowner notifies me of his/her intent to sell the unit.

The resale of this unit is governed by restrictions contained in the Deed Rider that was signed when the original owner purchased the unit. The Deed Rider sets the method to determine the resale price and requires that an eligible household purchase the unit.

1. **Resale Price.** I have certified that the unit's resale price is $XXX,XXX.

2. **Resale Fee to Monitoring Agent.** The recording of the Eligibility Certificate is contingent upon the delivery of the resale fee of $X,XXX to the Monitoring Agent. This resale fee is paid by the seller at the time of sale. The resale fee should be included on the Closing Disclosure under the section for "Reductions in Amount Due to Seller." This fee can be attached to the property if it is not paid at the closing. I have enclosed a Resale Fee Invoice.

3. **Deed Rider.** I have enclosed the deed rider. Please execute this document and record the deed rider with the unit's deed. Once the deed and deed rider are recorded, please send a copy to my attention.

4. **Resale Price Certificate.** I have also enclosed the Resale Price Certificate for the unit. This should be recorded along with the new deed and deed rider.

5. **Compliance Certificate.** I have enclosed the Compliance Certificate for BUYER NAME, confirming that the buyer is eligible to purchase the affordable unit. This should be recorded as a separate certificate.

6. **Affordable Housing Restriction Mortgage**. I have enclosed the Mortgage that should be recorded with the new deed, deed rider, and compliance certificate.

Please send a recorded copy of the documents to my attention within 10 days of the closing. If you have any questions, please contact me at (XXX) XXX-XXXX or EMAIL ADDRESS.

Sincerely,

YOUR NAME
Monitoring Agent

Enclosures (5)
cc: BUYER'S ATTORNEY

Populate Items as indicated.
REQUIRED

Certificate of Compliance-Resales or Foreclosure*

Re: [PROPERTY ADDRESS]

The undersigned Monitoring Agent hereby certifies as follows with respect to a certain Affordable Housing Restriction annexed to and made part of that certain Deed, dated _____, recorded with the _____Registry of Deeds in Book_____, Page_____ with respect to the Property having an address of [PROPERTY ADDRESS] (The "Seller's Affordable Housing Restriction"):

1. The Property referred to herein is the Property described in the Seller's Affordable Housing Restriction.
2. [Name of Purchaser] is the (check one) Eligible Purchaser _____, Ineligible Purchaser_____ of the Property.
3. The Maximum Resale Price for the Property is $_____. The consideration to the paid by the Purchaser to the Grantee for the purchase of the Property is $_____.
4. The Resale Price Multiplier is _____.
5. The conveyance of the Property by the Seller to the Purchaser is in compliance with the rights, restrictions, covenants, and agreements contained in the Affordable Housing Restriction.
6. The Purchaser of the Property has executed an Affordable Housing Restriction with respect to the Property, which is identical in form and substance to the Seller's Affordable Housing Restriction.
7. Upon conveyance of the Property by the Grantee to the Purchaser, the recording of the Affordable Housing Restriction executed by the Purchaser, and the recording of this Certificate of Compliance, the rights, restrictions, agreements, and covenants contained in the Seller's Affordable Housing Restriction shall be null and void.
8. All defined terms used herein shall have the definition set forth in the Seller's Affordable Housing Restriction unless otherwise defined herein.

Name: _____

Commonwealth of Massachusetts

County of _____

On this ____ day of_____, 20__, before me, the undersigned notary public, personally appeared_____ proved to me through satisfactory evidence of identification, which was _____ to be the person whose name is signed on the preceding instrument, and acknowledged the foregoing instrument to be his/her free act and deed, in such capacity.

Notary Signature: _____

Name: _____

My Commission Expires: _____

FORECLOSURES

Foreclosure Policy

DOCUMENT TYPE: Policy	**EFFECTIVE DATE**: XX/XX/2021 LAST REVISION: XX/XX/2021 REVISION HISTORY: N/A
REFERENCE(S): The Affordable Housing Restriction	
REQUIRED FORM(S) AND LETTER(S): 1. Municipality Notice - Foreclosure* 2. Certificate of Compliance - Resale or Foreclosure* 3. Resale Price Certificate* (if applicable) 4. Notice of Foreclosure Auction (if applicable)	
OPTIONAL FORM(S) AND LETTER(S): 1. Notice of Foreclosure to Owner	

OBJECTIVE: The purpose of this policy is to assist Monitoring Agents in supporting an Owner that is at risk of foreclosure in understanding and navigating through foreclosure options under the 40B program.

POLICY: The process for handling foreclosures is described in the Affordable Housing Restriction. *For properties **not** subject to the uniform Affordable Housing Restriction, the foreclosure process is handled on a case-by-case basis depending on the provisions of the deed and associated restrictions.*

In the past, MassHousing learned that it was not notified of foreclosures despite being listed in Section 9 of the Affordable Housing Restriction. To reinforce that key parties are adequately notified of important events such as a foreclosure, *MassHousing is requiring that Monitoring Agents send out a Municipality Notice - Foreclosure* communication to both the affected Town/City and MassHousing.*

Many of the Affordable Units created prior to 2006 do not have provisions that require affordability to survive foreclosure.

Unit Completion Year	**Impact on Affordability**
Units WITH the uniform Affordable Housing Restriction required by MassHousing since 2006	Affordability survives foreclosure
Units WITHOUT uniform Affordable Housing Restriction developed before 2006	Affordability MAY or MAY NOT survive foreclosure. Depends on the terms of the Affordable Housing Restriction.

IF AFFORDABILITY DOES NOT SURVIVE FORECLOSURE

In instances where affordability does not survive foreclosure, the Monitoring Agent must document the foreclosure event (include foreclosure outcome and unit address) in the upcoming Annual

Monitoring Report to MassHousing. Thereafter, the Agent's monitoring duties with respect to that 40B unit is discontinued and MassHousing will adjust the aggregate annual monitoring fee paid to the Agent accordingly beginning the following year.

IF AFFORDABILITY IS RETAINED AND THE UNIT IS NOT OWNER-OCCUPIED

In instances where the unit is conveyed to a municipality, mortgagee, or ineligible buyer and the unit is not owner-occupied, the Monitoring Agent must document the rental event (include foreclosure outcome and unit address) in the next Annual Monitoring Report to MassHousing. Beginning in the following year, the Monitoring Agent is not expected to collect a Homeowner Yearly Certification form from the renter household living in the unit. MassHousing recommends that the Monitoring Agent continue annual communications if the Owner is a mortgagee or ineligible buyer to remind the Owner of the affordability restrictions attached to the unit. At some point, the Owner will need to contact the Monitoring Agent when contemplating a resale in order to confirm the resale price and secure a Certificate of Compliance at closing. During the rental period, MassHousing will continue to compensate the Monitoring Agent with an annual monitoring fee for the rented unit.

IF A FORECLOSURE NOTICE IS DELIVERED AFTER THE DELIVERY OF A CONVEYANCE NOTICE

Foreclosure provisions supersede Resale provisions.

IF APPLICABLE FORECLOSURE PRICE IS HIGHER THAN THE MAX RESALE PRICE

In instances where the applicable foreclosure price is higher than the maximum resale price, the Resale Price Multiplier must be recalculated, and a new Resale Price Certificate must be prepared and recorded at closing.

TIMELINE AND OPTIONS FOR ADDRESSING A FORECLOSURE AND MONITORING AGENT'S ROLE

	Timeline	
Foreclosure Notice	At least 120 days prior to a foreclosure, sale, or acceptance of a deed in lieu of foreclosure	The holder of record of any mortgage on a property (the Mortgagee), typically a bank, must send a copy of the Foreclosure Notice to the Monitoring Agent, the Municipality and any senior Mortgagees.
Monitoring Agent Communication	Upon receipt of Foreclosure Notice	1. Monitoring Agent communicates to the Owner as soon as possible that the lender has provided notice of possible foreclosure. The Monitoring Agent will guide the Owner towards resources designed to avoid foreclosure: • Refinancing • Negotiating with the lender on the terms of the loan • Working with the lender to secure approval for a short sale. • Owner's eligibility to receive HAFA (Home Affordable Foreclosure Alternative Program) assistance, depending on the loan source. • Availability of Housing Trust or Community Preservation funds to purchase the home or assist the owner See Notice of Foreclosure to Owner 2. MassHousing requires that Monitoring Agent also notify both the Municipality and MassHousing about the foreclosure using the Municipality Notice – Foreclosure* template.

The following summarizes options for addressing foreclosure:

Foreclosure Options	**Timeline (120 Day period)**	**Price and Affordability Conditions**	**Monitoring Agent's Responsibilities**
Municipal Option	WITHIN 120 days of receipt	The price (the "Applicable Foreclosure Price") must be equal to the greater of	None.

	of the Foreclosure Notice. The Municipality or its designee exercises its first right to purchase the property.	(i) the sum of the outstanding principal balance of all of the money owed by the Owner on all mortgages on the property, plus all future advances, accrued interest and reasonable cost and expenses of foreclosure owed to the holders of such mortgages (referred to as the "Mortgage Satisfaction Amount"). In no event shall the aggregate amount be greater than 100% of the Maximum Resale Price at the time of the granting of the mortgage. (ii) the Maximum Resale Price. In this case, the price may be less than the purchase price paid by the Owner. The Municipality agrees to buy the property in its "as-is" condition AND the Affordable Housing Restriction remains identical in form and substance as at the time of foreclosure, with <u>two important exceptions</u>. (i) Under the Municipality's term of ownership the property does not have to be owner-occupied. (ii) The Maximum Resale Price included in the Deed shall be recalculated based on the price that the Municipality paid for the property but not greater than the Applicable Foreclosure Price.	The Monitoring Agent is expected to cooperate with the Municipality and respond to any requests for information that would facilitate transfer of ownership to the municipality.
Mortgagee Accepts Deed in Lieu of Foreclosure	<u>120 days AFTER</u> receipt of the Foreclosure Notice	Unit is conveyed subject to an Affordable Housing Restriction identical in form and substance to the one that applied to the property at the time of foreclosure.	Upon satisfaction of the requirements:

	The Mortgagee (typically a bank) acquires the property.	Unit is subject to the same exceptions applicable if the Municipality acquires the property within the 120 day period: (i) During term of ownership by the Mortgagee the property does not have to be owner-occupied, (ii) the Maximum Resale Price included in the Deed shall be recalculated based on the Applicable Foreclosure Price.	• Issues a Certificate of Compliance - Resale or Foreclosure* to the foreclosing Mortgagee that is to be recorded in the Registry of Deeds.
Mortgagee Sells Property to "Ineligible Purchaser"	120 days AFTER receipt of the Foreclosure Notice AND an Eligible Buyer fails to purchase the property within the period specified in the Affordable Housing Restriction (typically 90 days) Unit is sold to an Ineligible Purchaser.	Unit is conveyed subject to an Affordable Housing Restriction identical to the one that applied to the property at the time of foreclosure, with the exception that, (i) During the period in which it is owned by an Ineligible Purchaser the unit does not have to be owner-occupied, and (ii) The Maximum Resale Price shall be calculated based on the price paid for the property by such Mortgage at the foreclosure sale, but not greater than the Applicable Foreclosure Price. In the event the price is greater than the Maximum Resale Price and the Mortgage Satisfaction Amount, the excess amount shall be paid to the Municipality for its Affordable Housing Fund after (i) judicial determination or (ii) written agreement of all parties. The legal cost of obtaining the judicial determination is to be deducted from the excess amount.	This event qualifies as a resale (per communications with MassHousing) and the Monitoring Agent is entitled to collect a Resale Fee from the Mortgagee so long as the Agent performs the following in accordance with a resale: • Issues a Certificate of Compliance - Resale or Foreclosure* to the foreclosing Mortgagee that is to be recorded in the Registry of Deeds. • Makes determination, in the same manner as during a Resale, of the buyer's status as "Ineligible" or "Eligible". • An updated universal deed rider (Affordable Housing Restriction) • *If the Applicable Foreclosure Price is higher than the Maximum Sales Price*, an updated Resale Price Certificate* must be issued based on a *recalculated resale price multiplier*. • Works with the closing attorney to ensure that any necessary 40B documentation is properly recorded in the Registry.

			REQUIRED
Mortgagee Sells Property to Eligible Buyer	120 days AFTER receipt of the Foreclosure Notice Unit is sold to an Eligible Buyer.	Unit is conveyed subject to an Affordable Housing Restriction identical in form and substance to the one in place at the time of foreclosure.	This event qualifies as a resale (per communications with MassHousing) and the Monitoring Agent is entitled to collect a Resale Fee from the Mortgagee so long as the Agent performs the following in accordance with a Resale: • Issues a Certificate of Compliance - Resale or Foreclosure* to the foreclosing Mortgagee that is to be recorded in the Registry of Deeds. • Makes determination, in the same manner as during a Resale, of the buyer's status as "Ineligible" or "Eligible". • An updated universal deed rider (Affordable Housing Restriction) • *If the Applicable Foreclosure Price is higher than the Maximum Sales Price*, an updated Resale Price Certificate* must be issued based on a *recalculated resale price multiplier*. • Works with the closing attorney to ensure that any necessary 40B documentation is properly recorded in the Registry.

In the event that MassHousing receives a Notice of Mortgagee's Sale of Real Estate, MassHousing will send the corresponding Notice of Foreclosure Auction to the bank/ mortgagee.

Notice of Foreclosure to Owner

DATE

HOMEOWNER
STREET ADDRESS
TOWN, MA ZIP CODE

Dear HOMEOWNER:

As the Monitoring Agent for your property located at UNIT ADDRESS, I am listed as a party of interest in your Affordable Housing Restriction. I recently received a notice of foreclosure from BANK/LENDER. If you do not take any action, you will likely lose your home. I am writing to offer assistance on this matter.

Depending on your situation, I may be able to refer you to a foreclosure prevention specialist who can try to help you. Or, if you cannot remain in your home, I can work with you to try to sell the property to a new eligible purchaser. As difficult as it is, if you must leave your home it will be better for you in the long run than to lose it to foreclosure. This process, however, takes time.

It is important that you respond as soon as possible in order to allow me enough time to assist you. Please contact me at EMAIL or (XXX) XXX-XXXX right away so that we can discuss any available options.

Sincerely,

YOUR NAME
Monitoring Agent

Municipality Notice – Foreclosure*

DATE

TOWN CONTACT NAME
TOWN POSITION
TOWN NAME
STREET ADDRESS TOWN/CITY, MA
ZIPCODE

RE: UNIT ADDRESS

Dear TOWN CONTACT:

In my role as the monitoring agent for UNIT ADDRESS, I am writing to confirm that I received a foreclosure notice from BANK on DATE for the unit. The unit is currently owned by HOMEOWNER NAME.

I have communicated with the homeowner and am assisting HIM/HER in identifying resources and options to avoid a foreclosure. Please let me know if the CITY / TOWN has funds available through its Housing Trust, Community Preservation Fund, or other sources that could assist the homeowner at this time.

Under the affordable housing restriction placed on this unit, the unit WILL/WILL NOT remain on the Town's subsidized housing inventory (SHI) should a foreclosure occur. The TOWN/CITY may exercise its first right to purchase the property within 120 days of receipt of the Foreclosure Notice. It would be much appreciated if you let me know if the TOWN/CITY intends to take this path should a foreclosure appear imminent. After 120 days, the mortgagee may opt to (a) accept the deed in lieu of foreclosure; b) sell the unit to an ineligible buyer or c) sell the unit to an eligible buyer.

I welcome any assistance or resources the TOWN/CITY can provide during this unfortunate time. Please feel free to contact me at (XXX) XXX-XXXX or EMAIL with any questions.

Sincerely,

YOUR NAME
Monitoring Agent

cc: OWNER NAME, Current Owner
MassHousing

Notice of Foreclosure Auction

Date

Via Email – [address]

[Contact]
[Company]
[Street]
[City, State Zip]

Re: Notice of Foreclosure Auction: [Property Address]

Dear [Contact]:

The Massachusetts Housing Finance Agency ("MassHousing") has received a copy of your [date] letter enclosing a *Notice Of Mortgagee's Sale of Real Estate* [confirm title] (the "Foreclosure Notice"). The Foreclosure Notice, sent on behalf of [bank / mortgagee Name] (the "Mortgagee") provides notice of a potential foreclosure auction of [Property street address] in [municipality], Massachusetts (the "Property" and "Municipality," respectively), scheduled for [foreclosure date] (the "Foreclosure").

The Property was developed pursuant to a Comprehensive Permit and designated as an affordable unit. As such, the Property is encumbered by a Regulatory Agreement and an Affordable Housing Restriction For Projects in Which Affordability Restrictions Survive Foreclosure (the "Deed Rider"). [confirm that language matches content of this letter] As a party to the Regulatory Agreement, MassHousing has an interest in the affordable housing restrictions encumbering the Property. We appreciate that the Mortgagee recognizes in the Foreclosure Notice its obligations to convey the Property subject to the Regulatory Agreement and Deed Rider [confirm]. We write to highlight and remind the Mortgagee of certain provisions of the Deed Rider that may impact the Foreclosure.

Section 7 of the Deed Rider governs the rights and obligations of the Mortgagee in the event of foreclosure. Section 7(a) of the Deed Rider provides, in relevant part:

> The holder of record of any mortgage on the Property (each, a "Mortgagee") shall notify the Monitoring Agent, the Municipality and any senior Mortgagee(s) in the event of any default for which the Mortgagee intends to commence foreclosure proceedings or similar remedial action pursuant to its mortgage (the "Foreclosure Notice"), which notice shall be sent to the Monitoring Agent and the Municipality as set forth in this Restriction, and to the senior Mortgagee(s) as set forth in such senior Mortgagee's mortgage, not less than one hundred twenty (120) days prior to the foreclosure sale or the acceptance of a deed in lieu of foreclosure… .

Additionally, Section 7(c) of the Deed Rider provides that "[n]ot earlier than one hundred twenty (120) days following the delivery of the Foreclosure Notice to the Monitoring Agent, the Municipality and any senior Mortgagee(s) pursuant to subsection (a) above, the foreclosing Mortgagee may conduct the foreclosure sale or accept a deed in lieu of foreclosure." Accordingly, pursuant to Sections 7(a) & (c) of the Deed Rider, the Mortgagee must provide at least 120 days prior notice of its intent to commence foreclosure proceedings to both the Municipality and the Monitoring Agent (here, [name of Monitoring Agent]) prior to conducting the Foreclosure or accepting a deed in lieu of foreclosure.

The Deed Rider also grants the Municipality the right and option to purchase the Property within 120 days of receiving the Foreclosure Notice. Section 7(b) of the Deed Rider provides, in relevant part:

> The Owner grants to the Municipality or its designee the right and option to purchase the Property upon receipt by the Municipality of the Foreclosure Notice. In the event that the Municipality intends to exercise its option, the Municipality or its designee shall purchase the Property within one hundred twenty (120) days of receipt of such notice… The Property shall be sold and conveyed… subject to a Restriction identical in form and substance to this Restriction which the Owner hereby agrees to execute, to secure execution by the Municipality or its designee, and to record with the deed… **Said deed shall clearly state that it is made subject to the Restriction which is made part of the deed**… .

[If the Foreclosure Notice is not addressed to both the Municipality and the Monitoring Agent, or does not predate the Foreclosure by 120 days, add the following] **Please note that it does not appear that the Mortgagee has provided 120 days' prior written notice of its intention to foreclose to the Municipality or the Monitoring Agent. The Foreclosure Notice is dated [date], which is less than 120 days from the proposed date of the Foreclosure, [date]**.

Pursuant to Section 11(b) of the Deed Rider, the Municipality has a number of remedies in the event of any sale, conveyance or other transfer of the Property in violation of the terms of the Deed Rider, including, but not limited to, "the right to void any contract for sale or any sale, conveyance or other transfer of the Property in violation of the provisions of" the Deed Rider and monetary damages.

The Deed Rider dictates that the affordable housing restrictions encumbering the Property must survive foreclosure. Section 7(e) provides, in relevant part:

> If any Mortgagee shall acquire the Property by reason of foreclosure or upon conveyance of the Property in lieu of foreclosure, then the rights and restrictions contained herein shall apply to such Mortgagee upon such acquisition of the Property and to any purchaser of the Property from such Mortgagee, and the Property shall be conveyed subject to a Restriction identical in form and substance to this Restriction, which the Mortgagee that has so acquired the Property agrees to annex to the deed and to record with the deed, except that (i) during the term of ownership of the Property by such Mortgagee the owner-occupancy requirements of Section 2 hereof shall not apply, and (ii) the Maximum Resale Price shall be recalculated based on the price paid for the Property by such Mortgagee at the foreclosure sale, but not greater than the Applicable Foreclosure Price. **Said deed shall clearly state that it is made subject to the Restriction which is made part of the deed**… .

Should the Mortgagee seek to convey the Property after acquiring it via the Foreclosure, the Mortgagee must comply with the terms of the Deed Rider governing conveyance. These terms include, but are not limited to, the provisions found in Sections 4, 5 and 6 of the Deed Rider, which, among other things, require the Owner or any successor in title to (i) provide a Conveyance Notice to the Monitoring Agent and Municipality (*see* Section 4(a)); (ii) cooperate with the Monitoring Agent's efforts to locate an Eligible Purchaser (*see* Section 4(a)); (iii) if an Eligible Purchaser is identified, convey the Property to such Eligible Purchaser at a price not in excess of the Maximum Resale Price (*see* Section 4(c)); (iv) if no Eligible Purchaser is identified, convey the Property at a price not in excess of the Maximum Resale Price subject to the terms of Section 4(d) of the Deed Rider; (v) convey the Property subject to a Restriction identical in form and substance to the Deed Rider (*see* Section 5(a)); and (vi) obtain a Compliance Certificate signed and acknowledged by the Monitoring Agent as outlined in Section 6 of the Deed Rider.

Section 3 of the Deed Rider prohibits, among other things, any Owner or successor in title from renting, leasing or otherwise encumbering the Property without the consent of the Monitoring Agent.

Similarly to Section 7(e), Section 7(f) of the Deed Rider provides, in pertinent part:

> If any party other than a Mortgagee shall acquire the Property by reason of foreclosure or upon conveyance of the Property in lieu of foreclosure, the Property shall be conveyed subject to a Restriction identical in form and substance to this Restriction, which the foreclosing Mortgagee agrees to annex to the deed and to record with the deed… **Said deed shall clearly state that it is made subject to the Restriction which is made part of the deed**… .

Thus, whether the Property is acquired by the Mortgagee or conveyed to a party other than the Mortgagee via the Foreclosure, the affordability restrictions contained in the Deed Rider will survive the Foreclosure, and the Property must be conveyed subject to an affordable housing restriction identical in form and substance to the Deed Rider.

Lastly, the Deed Rider dictates that proceeds from any properly noticed foreclosure must be paid to the Municipality in certain circumstances. Section 7(d) of the Deed Rider provides:

> In the event that the foreclosing Mortgagee conducts a foreclosure sale or other proceeding enforcing its rights under its mortgage and the Property is sold for a price in excess of the greater of the Maximum Resale Price and the Mortgage Satisfaction Amount, such excess shall be paid to the Municipality for its Affordable Housing Fund after (i) a final judicial determination, or (ii) a written agreement of all parties who, as of such date hold (or have been duly authorized to act for other parties who hold) a record interest in the Property, that the Municipality is entitled to such excess. The legal costs of obtaining any such judicial determination or agreement shall be deducted from the excess prior to payment to the Municipality. To the extent that the Owner possesses any interest in any amount which would otherwise be payable to the Municipality under this paragraph, to the fullest extent permissible by law, the Owner hereby assigns its interest in such amount to the Mortgagee for payment to the Municipality.

Thus, to the extent the Property is sold at the Foreclosure for a prices in excess of the greater of the Mortgage Satisfaction Amount or the Maximum Resale Price (both as defined in the Deed Rider), such excess shall be paid to the Municipality after a final judicial determination or agreement that the Municipality is entitled to such excess.

Nothing herein shall be deemed to modify or limit the terms of the Deed Rider or any other instrument. Please refer to the Deed Rider for its full terms and conditions.

In the event you have any questions or concerns regarding the subjects of this letter, I am happy to discuss those with you and may be reached at EMAIL or (XXX) XXX-XXX.

Sincerely,

[SIGNATURE]

Senior Manager of Planning and Programs

cc: [Monitoring Agent] (via email to _____)
[Municipality] (via email to _____)

CAPITAL IMPROVEMENTS

Capital Improvements Policy and Guidance on Procedure

DOCUMENT TYPE: Policy and Guidance	**EFFECTIVE DATE**: XX/XX/2021 LAST REVISION: XX/XX/2021 REVISION HISTORY: N/A
REFERENCE(S): The Affordable Housing Restriction; Affordability Monitoring Services Agreement - Section 1(c)	
REQUIRED FORM(S): 1. Approval of Capital Improvement to Owner*	
OPTIONAL FORM(S):1. Capital Improvement Letter to Owner 2. Eligibility of Capital Improvement Request	

OBJECTIVE: The purpose of this policy is to clarify Monitoring Agents' roles and responsibilities in (1) informing Owners of what capital improvements qualify for consideration in future resale price under the 40B program, (2) processing Owner requests, and (3) providing the necessary documentation for future resale.

POLICY:
The Monitoring Agent must work with homeowners requesting consideration of adding capital improvement costs to the future resale price. The Monitoring Agent must ensure proper written documentation of such requests, including the delivery of the Agent's written determination of eligibility to the homeowner. *MassHousing is requiring that Monitoring Agents complete and file an Approval of Capital Improvement to Owner* for every approval to properly document and track capital improvements that may be added to the future resale price of an unit*. See **PROCEDURE** below for guidance on how a Monitoring Agent may want to process capital improvement requests.

KEY PROVISIONS

Must be in writing	Homeowner's capital improvement request and must include: • description of the work to be done • an estimate of the cost • an explanation why the work is a capital improvement
	Monitoring Agent's authorization of capital work prior to the initiation of work.
	Monitoring Agent's approval of actual costs paid after completion of work and the depreciation method to be used. The amount would be applied to future resale price.
Documentation of actual improvement costs	Owner must provide copies of all paid invoices and receipts to document the actual cost of the project.

Procedure section adapted from CHAPA

If the homeowner completes the capital work on her/his own.	Only the cost of materials that the homeowner paid for to complete the work will be considered in the capital improvement amount.
Depreciation	The original cost of all approved capital improvement must be discounted over the course of their useful life.
Special Assessments imposed by the condo or homeowner's association	Monitoring Agents are authorized to determine whether special assessments paid by the homeowner may be added to the resale fee at the time of resale, on a case-by-case basis.
Capital Improvement Requests AFTER work has been completed	Monitoring Agents may use their discretion to determine if the cost of the work may be factored into the resale price, as long as proper documentation is provided, the improvement is appropriately discounted, and the final resale price remains affordable to an Eligible Buyer.

Parameters of what qualifies as an approved capital improvement are described in the table below:

Affordable Housing Restriction (Section 1):	**Generally speaking:**
Approved Capital Improvements means the documented commercially reasonable cost of extraordinary capital improvements made to the Property by the Owner; provided that the Monitoring Agent shall have given written authorization for incurring such cost prior to the cost being incurred and that the original cost of such improvements shall be discounted over the course of their useful life.	Necessary maintenance improvements, not covered by a condominium or homeowner's association fee that, if not done, would compromise the structural integrity of the house.

The following is a list of qualified approved capital improvements and common capital improvement requests that do not qualify as approved capital improvement under the uniform Affordable Housing Restriction.

Qualify as Approved Capital Improvements	**Do not Qualify as Approved Capital Improvement**
• New roof • Replacement of windows due to wear and tear • The replacement of siding, shingles, or clapboard due to damage or wear and tear • Exterior painting due to deterioration • Heating or plumbing replacement	• Outdoor decks • Additions • Finishing of unfinished spaces • Garages • Landscaping

• Structural deficiencies such as termite or other pest damage, water damage, or other maintenance as required • Septic tank replacement • Appliance Replacement (stove, dishwasher, refrigerator) • Other improvements identified by the owner and approved by the Monitoring Agent • Installation of Central Air Conditioning • Solar Panels (Eligible homeowners are not obligated to assume subordinate financing/ and or contracts for solar)*	• Upgraded flooring (e.g. from carpet to hardwood) • Other items identified by the owner that could be considered upgrades or luxury improvements.

ANNUAL REMINDER: The Annual Letter to Owner and Important 40B Terms* includes a brief description of what qualifies as permitted and depreciable capital improvements for future resale price consideration. The Letter is intended to serve as a reminder that Owners need to reach out to Monitoring Agents before starting a project.

PROCEDURE:

1) STEP 1: When an Owner contacts the Monitoring Agent regarding a Capital Improvement Request.
   a) Monitoring Agent discusses the scope of the improvement with the homeowner and, if possible, provides guidance on whether the requested improvement is a qualified approved capital improvement. Agent should communicate that the homeowner must submit a written request for capital improvements in order to start the process. The letter must include:
      - a description of the work to be done
      - an estimate of the cost
      - an explanation why the work is a capital improvement
   b) Monitoring Agent follows up with information on approved capital improvements under the 40B program. Capital Improvement Letter to Owner may be used to serve this purpose.

2) STEP 2: When a Request for Capital Improvement is received.
   a) Monitoring Agent reviews the request according to the provisions and definition in the above **POLICY** section.
   b) Monitoring Agent sends to the homeowner a written determination of the request. If the request is approved, Eligibility of Capital Improvement Request may be used to serve this purpose.

*Subject to the approved cost from Monitoring Agent

c) If the capital improvement request is not approved, the Monitoring Agent should provide a written notification to the homeowner and maintain a copy of the communication in her/his records. It is important to note that an Owner is permitted to make out-of-pocket improvements even if her/his request is NOT approved by the Monitoring Agent as long as the improvements do not increase the building footprint and/or envelope (i.e. additions expanding up or outside the existing walls) and permitted under the local zoning ordinance.

3) STEP 3: If capital improvement request is approved and after the work is completed.

a) Homeowner must provide documentation of the work completed and invoices + receipts paid for the work.

- If the homeowner purchases materials and completes the project on her/his own, only the cost of materials will be considered.

b) Monitoring Agent reviews the documents and provides written approval of the completed capital improvements, including the approved value of the capital improvements and a schedule of depreciation that will be applied at resale. MassHousing requires that the Approval of Capital Improvement to Owner* be used to document approved capital improvements.

c) The Monitoring Agent should maintain a copy of the written approval in her/his records for reference when the property undergoes resale.

d) Monitoring Agent documents the capital improvement event in the next Annual Compliance Report submission to MassHousing.

4) Capital Improvement Requests AFTER work has been completed:

a) Monitoring Agents may, on a case-by-case basis use their discretion to determine if the cost of the work may be factored into the resale price.

- If the improvement qualifies as an "approved capital improvement", request documentation of the work completed and invoices + receipts paid for the work.
- Review the documents to determine the cost and depreciation schedule.
- If the unit is up for resale, calculate the discounted value and apply to the Resale Price while also ensuring that the Final Resale Price is still affordable to an Eligible Buyer under the affordable housing restriction.
- Documents the event accordingly in the next Annual Compliance Report submission to MassHousing.

5) Homeowner requests that the cost of a Special Assessment be factored into the Resale Price:

a) Monitoring Agents may, on a case-by-case basis use their discretion to determine if the Special Assessment imposed by the condo or homeowner's association may be factored into the resale price.

Procedure section adapted from CHAPA

- Request documentation regarding the assessment (i.e. the nature of the assessment, when it was paid, etc.)
- Determine a depreciation schedule, if applicable.
- Apply the value accordingly to the Resale Price while also ensuring that the Final Resale Price is still affordable to an Eligible Buyer under the affordable housing restriction.

Procedure section adapted from CHAPA

Capital Improvement Letter to Owner

DATE

OWNER
STREET ADDRESS
TOWN, MA ZIP CODE

RE: Permitted Capital Improvements under 40B

Dear OWNER:

To follow up on your inquiry regarding improvements to your property, this letter provides information on permitted capital improvements under the 40B homeownership program. As your Monitoring Agent, I must approve any capital improvements in order for the cost to be added to the resale price of your home.

Capital improvements must be "necessary maintenance improvements, not covered by a condominium or homeowner's association that if not done would compromise the structural integrity of the property. The following table provides a list of capital improvements commonly undertaken by homeowners and whether they qualify as acceptable improvements under the 40B program.

Qualify as Capital Improvements under 40B	**Do Not Qualify as Capital Improvement under 40B**
• New roof • Replacement of windows due to wear and tear • The replacement of siding, shingles, or clapboard due to damage or wear and tear • Exterior painting due to deterioration • Heating or plumbing replacement • Structural deficiencies such as termite or other pest damage, water damage, or other maintenance as required • Septic tank replacement • Appliance Replacement (stove, dishwasher, refrigerator) • Other improvements identified by the owner and approved by the Monitoring Agent • Installation of Central Air Conditioning	• Outdoor decks • Additions • Finishing of unfinished spaces • Garages • Landscaping • Upgraded flooring (e.g. from carpet to hardwood) • Other items identified by the owner that could be considered upgrades or luxury improvements.

• Solar Panels (Eligible homeowners are not obligated to assume subordinate financing/ and or contracts for solar)*	

Do-It-Yourself Improvements: Please note that if you plan to do the work on your own, only the cost of the materials that you purchased will be taken into consideration.

Special Assessments: Special assessments that you paid as a member of your condominium or homeowner's association may also be factored in the Resale Price. This will be reviewed on a case-by-case basis and will require that you provide additional documentation to your monitoring agent.

Depreciation: Please be advised that the time of resale your monitoring agent will take into consideration the current value of the improvement based on a depreciation schedule.

> **Depreciation Example**: if a new heating system is installed for $5,000, and the owner sells the property ten years later, the full $5,000 will not be added to the resale price.

Next Steps: If you would like to proceed with your capital improvement project and believe it to be a qualified improvement under the 40B program, you need to submit your request in writing to me *before* you begin the work. Your capital improvement request must include:

1. a description of the work to be done
2. an estimate of the cost
3. an explanation of why the work is a necessary capital improvement.

Upon receiving your request, I will review the information and follow up with a determination of the eligibility of your request. If the request is approved, you will be asked to submit a copy of the invoices and receipts paid to complete the work. This is necessary to confirm the amount and depreciation schedule that will be applied to the future resale price of your home.

Please feel free to contact me at (XXX) XXX-XXXX or EMAIL with any questions.

Sincerely,

YOUR NAME
Monitoring Agent

*Subject to the approved cost from Monitoring Agent

Eligibility of Capital Improvement Request

Date: _____

Name of Owner: _____

Address of 40B Unit: _____

I, as the Monitoring Agent for the above referenced 40B unit, have approved the Owner's request to consider the following proposed capital improvement as eligible for inclusion in the maximum resale price:

_____

_____

_____

_____

_____

Owner has estimated the cost of this work at $ _____

At the time of resale, the value of this work will be determined based on documentation of the actual costs paid to complete the improvement and depreciation.

_____
Signature

_____
Monitoring Agent Name

Approval of Capital Improvement to Owner*

Date: _____

Name of Owner: _____

Address of 40B Unit: _____

I, as the Monitoring Agent for the above referenced 40B unit, have approved the following capital improvement for inclusion in the maximum resale price:

_____

_____

_____

_____

_____

The cost of this work was $_____

At the time of resale the value of this work will be determined based the following depreciation schedule: _____

_____
Signature

_____
Monitoring Agent Name

Commonwealth of Massachusetts

County of _____

On this ____ day of_____, 20__, before me, the undersigned notary public, personally appeared_____ proved to me through satisfactory evidence of identification, which was _____ to be the person whose name is signed on the preceding instrument, and acknowledged the foregoing instrument to be his/her free act and deed, in such capacity.

Notary Signature: _____

Name: _____

My Commission Expires: _____

REFINANCING

Refinancing Policy and Guidance on Procedure

DOCUMENT TYPE: Policy and Guidance	**EFFECTIVE DATE**: XX/XX/2021 LAST REVISION: XX/XX/2021 REVISION HISTORY: N/A
REFERENCE(S): The Affordable Housing Restriction - Section 2; Affordability Monitoring Services Agreement - Section 1(c); 40B Guidelines - Section VI (E)	
REQUIRED FORM(S) AND LETTER(S): 1. Eligible Refinance Certificate*	
OPTIONAL FORM(S) AND LETTER(S): 1. Refinancing Letter to Owner	

OBJECTIVE: The purpose of this policy is to clarify Monitoring Agents' roles and responsibilities when an Owner undertakes a refinancing of their 40B unit, including Monitoring Agent's approval of a refinancing request and providing the necessary documentation for future resale.

DEFINITION: Refinancing includes first mortgage refinancing (rate-and-term or cash out) or second mortgage financing (e.g. Home Equity Loans). HOME EQUITY LINES OF CREDIT (HELOCS) ARE NOT PERMITTED UNDER 40B BECAUSE THEY DO NOT MEET THE FIXED RATE INTEREST REQUIREMENT.

POLICY:
A 40B unit may not be refinanced without written consent from the Monitoring Agent. In turn, the Monitoring Agent must ensure proper documentation of refinancing requests, including the delivery of the Eligible Refinance Certificate*and "Amendment and Subordination of Mortgage[36]" that must be recorded with the new mortgage. See **PROCEDURE** section below for guidance on how to proceed with refinancing requests.

KEY PROVISIONS

UNDER 40B GUIDELINES (SECTION VI (E))	
Must be in writing	Homeowner's request must include: • Contact information (name, property, phone number, email) • Amount of the refinancing / second mortgage • Full name of the lending institution (include the name and contact information for the loan officer) • Name and contact information of the closing attorney • Appraisal no older than 120 days past completion date (required for units not under the Universal Affordable Housing Restriction). • Commitment Letter from lender that includes the amount of the refinancing / second mortgage, interest rate, points, and term of the loan (i.e. 15-yr, 30-yr)

[36] The Amendment replaces Exhibit B to the Affordability Restriction Mortgage and subordinates MassHousing's non-financial mortgage to the refinanced mortgage in first position.

Procedure is adapted from CHAPA.

	If the Monitoring Agent determines that the refinancing is permitted, the Agent must issue an Eligible Refinance Certificate* indicating approval of the refinancing and prepare an "Amendment and Subordination of Mortgage". The two documents must be recorded with the new loan.
Financing Requirements	• Fully amortizing fixed rate • From an institutional lender • Have a fixed interest rate through full term of mortgage at current fair market interest rate • No more than 2 points
	First Mortgage Refinancing Loan amount cannot exceed 97% of the Maximum Resale Price, as determined by the Monitoring Agent.
	Second Mortgage Financing The Combined amount of the first and second mortgages cannot exceed 97% of the Maximum Resale Price, as determined by the Monitoring Agent.
Mortgage co-signers	Non-household members are not permitted as co-signers of the mortgage.
ADDITIONAL PROVISIONS UNDER UNIVERSAL AFFORDABLE HOUSING RESTRICTION	
Proceeding without Monitoring Agent Consent (Rents, Profits, or Proceeds)	Any rents, profits, or proceeds received from an unapproved refinancing shall be paid by Owner to the Municipality for deposit to its Affordable Housing Fund. Municipal and Monitoring Agent costs resulting from instituting action to recover the above (e.g. collection fee and attorneys' fees) may be deducted before deposit to the Affordable Housing Fund.
Rents, Profits, Proceeds from Approved Refinancing	Any rents, profits, or proceeds exceeding the actual carrying cost of the unit, as determined by the Monitoring Agent, shall be paid to the Municipality's Affordable Housing Fund

ANNUAL REMINDER: The Annual Letter to Owner and Important 40B Terms* that Monitoring Agents send to Owners as part of their Annual Monitoring Report includes brief information about Refinancing. The Letter is also intended to serve as a reminder that Owners need to reach out to Monitoring Agents before proceeding with a first mortgage refinancing or second mortgage.

PROCEDURE

1) STEP 1: When an Owner contacts the Monitoring Agent regarding a Refinancing Request.

   a) Monitoring Agent discusses the scope of the Refinancing with the homeowner and, if possible, provides guidance on factors that may cause the Monitoring Agent to DENY a refinancing request (e.g. amount is greater than maximum resale price, loan product is a HELOC, closing cost is too high, etc.). Agent should communicate to the Owner that a written request must be submitted in order to start the process. The letter must include:

      - Contact information (name, property, phone number, email)

Procedure is adapted from CHAPA.

- Amount of the refinancing / second mortgage
- Full name of the lending institution (include the name and contact information for the loan officer)
- Name and contact information of the closing attorney
- Appraisal no older than 120 days past completion date (required for units not under the Universal Affordable Housing Restriction).
- Commitment Letter from lender that includes the amount of the refinancing / second mortgage, interest rate, points, and term of the loan (i.e. 15-yr, 30-yr)

The following additional items may also be requested to facilitate the Monitoring Agent's review:

- The reason for refinancing
- A copy of the complete loan application.
- Information on the monthly condominium fee (if applicable), the town's current tax rate per thousands and monthly homeowner's insurance amount.
- A copy of the Good Faith Estimate (The Good Faith Estimate is provided by the lender and should provide information on the estimated closing costs.)
- A copy of the Affordable Housing Restriction

b) Monitoring Agent follows up with information on Refinancing requirements under the 40B program. Refinancing Letter to Owner may be used to serve this purpose.

2) STEP 2: When a Request for Refinancing is received.

a) Monitoring Agent reviews the request according to the provisions and definition in the above **POLICY** section. Note that Owners may pull out equity and apply for a cash-out refinancing if there is a clear benefit to the Owner. For all requests, the following must be considered:
   - The monthly costs of the unit remain affordable as set forth in the Affordable Housing Restriction
   - The Owner can afford her/his monthly payments.
   - The product does not include high closing costs, a higher interest rate than on the existing loan, or loans that roll unsecured debt into the mortgage. Though, a higher interest rate may be permitted, at the Monitoring Agent's discretion, if there is a clear benefit to the Owner.

b) Monitoring Agent sends to the homeowner a written determination of the request.

   - If approved, the Agent must prepare and provide an Eligible Refinance Certificate* and an "Amendment and Subordination of Mortgage[37]". Both documents must be

[37] The Amendment replaces Exhibit B to the Affordability Restriction Mortgage and subordinates MassHousing's non-financial mortgage to the refinanced mortgage in first position.

recorded with the new mortgage. The Agent should coordinate with the Owner, loan officer, and/or closing attorney to confirm the method of delivery.

- If not approved, the Monitoring Agent should provide an explanation for why the request is denied.

3) STEP 3: Request documentation of the closing from the Owner or Closing Attorney to confirm that the Certificate and Amendment were recorded. The Monitoring Agent should maintain a copy of the two documents and closing confirmation in her/his records for reference when the property undergoes resale. See KEY PROVISIONS section above if any rents, profits, or proceeds were collected as a result of the refinancing.

4) STEP 4: Document the refinancing (transaction and unit address) in the upcoming Annual Monitoring Report to MassHousing.

IN THE EVENT OF A REFINANCING THAT OCCURRED WITHOUT THE MONITORING AGENT'S WRITTEN CONSENT: Monitoring Agent should use her/his discretion to determine the appropriate action and document the outcome appropriately in the upcoming Annual Monitoring Report to MassHousing. See KEY PROVISIONS section above if any rents, profits, or proceeds were collected as a result of an unapproved refinancing.

ADDING ANOTHER PARTY TO YOUR DEED: If the Owner plans to add or remove a household member from the deed as part of the refinancing, the Owner's attorney must prepare a new deed for the Monitoring Agent's review prior to recording. The new deed must reference the current recorded deed rider with the book and page numbers of the original deed rider.

Procedure is adapted from CHAPA.

Refinancing Letter to Owner

DATE

OWNER
STREET ADDRESS
TOWN, MA ZIP CODE

RE: Refinancing under 40B

Dear OWNER:

To follow up on your inquiry regarding refinancing your property, this letter provides information on what is permitted under the 40B homeownership program. As your Monitoring Agent, I must provide written consent of the refinancing of your property before you may close on a new loan.

Refinancing is permitted under the following requirements:

- The Loan product is refinancing your first loan or a home equity loan, but in either case has a fixed interest rate for the life of the loan. Please note that Home Equity Line of Credit (HELOC) products are NOT PERMITTED under the 40B homeownership program.
  - For first mortgage refinancing the loan amount cannot exceed 97% of the Maximum Resale Price, as determined by the Monitoring Agent.
  - For a second mortgage financing, the combined amount of the first and second mortgages may not exceed 97% of the Maximum Resale Price, as determined by the Monitoring Agent.
- The Loan is a fully-amortizing, fixed-rate mortgage from an institutional lender (i.e. a Bank and not an individual or other entity).
- The loan has a current fair market interest rate that is no more than 2 points below the current prevailing interest rate.
- If applicable, any change in co-signers (e.g. removing or adding a co-signer) from the recorded deed will require preparation a new deed. Please note that only household members may be added as co-signers and that at least one (1) co-signer from the recorded deed must continue to be named in the new deed.

Refinancing Request Process**:**
To begin the refinance request process, please send a letter requesting approval to refinance or obtain a second mortgage. The letter should include:

Adapted from CHAPA.

You will also need to submit the following:

1. Contact information (name, property, daytime phone number, email)
2. The reason for refinancing (e.g. lower monthly payment)
3. Full name of the lending institution (include the name and contact information for the loan officer)
4. A copy of the complete loan application - if this is not yet available, please provide the amount of the refinancing and Commitment Letter from lender that includes the amount of the refinancing / second mortgage, interest rate, points, and term of the loan (i.e. 15-yr, 30-yr)
5. A copy of the Good Faith Estimate, this will provide information on the estimated closing costs.
6. Name and contact information of the closing attorney
7. A copy of the Affordable Housing Restriction

Depending on the reason for refinancing (e.g. equity takeout, lower rate, lower monthly payment) and when your unit was added to the 40B inventory (e.g. before adoption of the universal affordable housing restriction), the following information may also be requested.

1. A complete copy of an appraisal for the property, completed by a certified residential appraiser within the last 120 days. The home should be appraised as a market-rate property.
2. Information on the monthly condominium fee, the town's current tax rate per thousands and monthly homeowner's insurance amount.

Once I receive your request, I will review the materials and provide a written decision of your request. Your request to refinance may be denied if the benefit of the loan is unclear. Examples of this may include loans with high closing costs, a higher interest rate than you currently hold, or loans that incorporate unsecured debt into your mortgage. Additionally, I strongly suggest that you compare rates and loan costs from several lenders. If you request is approved, I will work with you and your closing attorney to deliver a Certificate indicating refinancing approval and any other documentation as needed. The Certificate must be recorded with your new mortgage.

Please feel free to contact me at (XXX) XXX-XXXX or EMAIL with any questions.

Sincerely,

YOUR NAME
Monitoring Agent

Adapted from CHAPA.

Eligible Refinance Certificate*

Date: _____

Name of Owner: _____

Address of 40B Unit: _____

As the Monitoring Agent for the above-referenced 40B unit, I have reviewed the mortgage terms of the above-named Owner's request to refinance said unit with [NAME OF BANK/LENDER] and hereby approve said refinance for a loan amount no greater than _____, and with an interest rate no higher than _____%.

The signature below represents evidence that the Monitoring Agent for [UNIT ADDRESS] has provided consent to this refinance and found it in compliance with the terms of the Deed Rider, recorded at the [NAME OF COUNTY] Registry of Deeds in Book _____, Page ____.

Executed under seal on the _____day of_____, 20_____.

[ORGANIZATION NAME] by:

_____

[MONITORING AGENT NAME]

Commonwealth of Massachusetts

County of _____

On this ____ day of_____, 20__, before me, the undersigned notary public, personally appeared_____ proved to me through satisfactory evidence of identification, which was _____ to be the person whose name is signed on the preceding instrument, and acknowledged the foregoing instrument to be his/her free act and deed, in such capacity.

Notary Signature: _____

Name: _____

My Commission Expires: _____

Adapted from CHAPA.

ENFORCEMENT

Non-Compliance and Monitoring Agent Role in Enforcement

DOCUMENT TYPE: Policy	**EFFECTIVE DATE**: XX/XX/2021 LAST REVISION: XX/XX/2021 REVISION HISTORY: N/A
REFERENCE(S): INITIAL SALES - Regulatory Agreement - Section 10; Affordable Monitoring Services Agreement – Initial Agreement - Section 3 SUPPLEMENTAL MONITORING - Affordable Housing Restriction - Section 11; Affordable Monitoring Services Agreement - Established Project Agreement - Section 3	
REQUIRED FORM(S) AND LETTER(S): N/A	
OPTIONAL FORM(S) AND LETTER(S): 1. Enforcement Letter to Owner 2. Noncompliance Remedied Letter to Owner	

OBJECTIVE: To clarify, to the extent possible, the Monitoring Agent's role and responsibilities when a non-compliance event has occurred and when to reach out to MassHousing for support and/or assistance.

	Enforcement Roles and Responsibilities	Responsible Party	
		Monitoring Agent	Mass Housing
1	Primary point of contact when an Affordability Requirement violation is identified.	X	
2	Determines that a violation of compliance has occurred.	X	
3	Informs the Owner of the non-compliance. (Enforcement Letter to Owner may be used to serve this purpose)	X	
4	Informs MassHousing and Municipality of the non-compliance. (Enforcement Letter to Owner may be used to serve this purpose)	X	
5	Formulates enforcement action if Owner does not remedy / cure the violation within a reasonable period of time.	X	X
6	Determines if a violation has been cured and no enforcement action is necessary.	X	
7	Approves any enforcement action through written consent.		X
8	Determines who will pursue the enforcement action (Monitoring Agent vs MassHousing).		X
9	Assesses a Violation Fee on the Owner	Agreements are silent on a fee	
10	Pays for any retaining, supervising and compensating legal counsel		X

			REQUIRED
11	If necessary, pays for third-party consultants to represent the Agent and MassHousing.		X
12	Pay for any reasonable out-of-pocket expenses incurred by the Monitoring Agent as a result of participating in the enforcement action.		X
13	Decides whether to continue an enforcement action if the Monitoring Agent has exhausted her/his efforts to notify and work with the Owner		X
14	Determines if the violation has been remedied / cured after an enforcement action has been imposed.		X
15	Informs the Owner that the non-Compliance has been remedied / cured (Noncompliance Remedied Letter to Owner may be used to serve this purpose)	X	
16	Documents the enforcement action and status in the Annual Monitoring Report	X	

The following table outlines enforcement duties and permitted actions of the Monitoring Agent. This is not an exhaustive list and the Monitoring Agent should consult with MassHousing if s/he encounters an event not identified below.

INITIAL SALES PERIOD	SUPPLEMENTAL MONITORING PERIOD
ENFORCEMENT TRIGGERS	

• Developer defaults, violates, or breaches conditions of the affordability requirements
  ○ AFHMP
  ○ Initial sale process
	• Buyer does NOT qualify as Eligible (first-time homeowner, income eligible, approved financing) and sale to Ineligible Buyer was not permitted at the time.
	• Unit is NOT owner occupied (unless approved as a condition of foreclosure), including for temporary periods (e.g. as a short-term rental)
	• Capital Improvements were NOT pre-approved by the Monitoring Agent.
	• Refinancing was NOT pre-approved by Monitoring Agent.
	• Transfer or conveyance of unit occurred without consultation with Monitoring Agent and/or the nature of the transfer violates 40B program rules.
	• Any other Owner actions not permitted under the 40B program.

INITIAL SALES PERIOD	SUPPLEMENTAL MONITORING PERIOD
ENFORCEMENT ACTIONS AND PROCESS	
1. Monitoring Agent gives Notice to the Developer. 2. Agent notifies MassHousing as soon as practicable following discovery of violation. 3. Developer has 30 days to cure to the satisfaction of the Monitoring Agent / MassHousing 4. If not cured, Agent consults with MassHousing on an appropriate remedy. The remedy may involve legal action or draw upon the financial surety that the Developer provided as part of the 40B process. 1. MassHousing must provide written consent of any enforcement action before a Monitoring Agent may pursue remedy (e.g. legal action). 2. MassHousing may elect to pursue enforcement action instead of the Agent. 3. After MassHousing authorizes enforcement action, the Monitoring Agent shall provide all necessary assistance and follow the instructions of MassHousing and legal counsel in connection with the enforcement action.	1. Monitoring Agent notifies the Owner of the violation and a reasonable period of time to cure. 2. Agent notifies MassHousing as soon as practicable following discovery of violation. 3. If not cured, Agent consults with MassHousing on an appropriate remedy. a. MassHousing must provide written consent of any enforcement action before a Monitoring Agent may pursue remedy. Agents are entitled to the following remedies under the affordable housing restriction (Section 11(b)): • Specific performance of the provision • Money damages in excess of the Max Resale Price • If sale related, Agent may locate an Eligible Buyer. An Ineligible buyer may be judicially ordered to sell the unit. • The right to void any contract of sale, conveyance or transfer of unit in the absence of a Certificate of Compliance. • Money damages for the cost of creating or obtaining a comparable dwelling unit for an Eligible Buyer. b. MassHousing may elect to pursue enforcement action instead of the Agent. c. After MassHousing authorizes enforcement action, the Monitoring Agent shall provide all necessary assistance and follow the instructions of MassHousing and legal counsel in connection with the enforcement action.
ENFORCEMENT COSTS	
For any Enforcement actions authorized by MassHousing, when necessary MassHousing will be responsible for the cost and expense of retaining, supervising and compensating legal counsel and, if necessary, third-party consultants to represent the Agent and MassHousing. Monitoring Agent will be compensated for any reasonable out-of-pocket expenses incurred in her/his participation of the enforcement action.	

INITIAL SALES PERIOD	SUPPLEMENTAL MONITORING PERIOD
MassHousing and/or Agent may draw upon the financial surety that the Developer provided as part of the 40B process in the amount of all fees and expenses (including legal fees).	The Agent may place a lien junior to the first mortgage lender in the amount of all fees and expenses (including legal fees).

Enforcement Letter to Owner

DATE

OWNER
STREET ADDRESS
TOWN, MA ZIP CODE

RE: Compliance Violation under 40B - UNIT ADDRESS

Dear OWNER:

As your monitoring agent I am writing to inform you that you have violated an affordability compliance requirement under the 40B homeownership program.

Description of Violation:	DESCRIBE THE NATURE OF THE VIOLATION
40B Program Conditions Violated:	CITE APPROPRIATE AGREEMENT(S) SECTION(S)
Required Action(s):	EXPLAIN WHAT THE OWNER NEEDS TO PROVIDE
Deadline:	DATE

If I do not receive the documentation and/or confirmation of the required action by the above stated deadline, I am obligated to consult with MassHousing to determine an enforcement action plan to ensure that you remain in compliance during your participation in the 40B homeownership program.

Please feel free to contact me at (XXX) XXX-XXXX or EMAIL with any questions.

Sincerely,

YOUR NAME
Monitoring Agent

cc: STAFF NAME, MassHousing
MUNICIPALITY CONTACT, MUNICIPALITY

Noncompliance Remedied Letter to Owner

DATE

OWNER
STREET ADDRESS
TOWN, MA ZIP CODE

RE: Compliance Violation under 40B - UNIT ADDRESS

Dear OWNER:

As your monitoring agent I am writing to inform you that you have satisfactorily remedied the incident of noncompliance below.

Description of Violation:	DESCRIBE THE NATURE OF THE VIOLATION
40B Program Conditions Violated:	CITE APPROPRIATE AGREEMENT(S) SECTION(S)
Required Action(s):	EXPLAIN WHAT THE OWNER NEEDS TO PROVIDE
Deadline:	DATE

I will update the annual reporting status of your home in my next Annual Compliance Report submission to both MassHousing and the NAME OF TOWN/CITY confirming that your property is in compliance with 40B homeownership requirements. Thank you for cooperation.

Please feel free to contact me at (XXX) XXX-XXXX or EMAIL with any questions.

Sincerely,

YOUR NAME
Monitoring Agent

cc: MASSHOUSING CONTACT NAME, MassHousing
MUNICIPALITY CONTACT, MUNICIPALITY

ANNUAL MONITORING AND REPORTING

Annual Monitoring and Reporting Policy

DOCUMENT TYPE: Policy	**EFFECTIVE DATE**: XX/XX/2021 LAST REVISION: XX/XX/2021 REVISION HISTORY: N/A
REFERENCE(S): The Affordable Housing Restriction (Section 10); Affordability Monitoring Services Agreement - Section 1(B)	
REQUIRED FORM(S) AND LETTER(S): 1. Annual Letter to Owner and Important 40B Terms* 2. Annual Compliance Report* 3. Annual Certification Form to Owner*	
OPTIONAL FORM(S) AND LETTER(S): 1. Notice of Condominium Lien to Owner 2. Notice to Condominium/ Homeownership Association	

OBJECTIVE: The purpose of this policy is to clarify Monitoring Agents' roles and responsibilities in annual reporting under the 40B program. Submission of annual reports demonstrate that the Monitoring Agent is adequately monitoring units in compliance with the Affordable Housing Restriction and confirming the status of units that that are not in compliance.

POLICY:

Reporting Requirement:	Monitoring Agents must submit an Annual Compliance Report to the Municipality and MassHousing for each project in her/his 40B portfolio.
Reporting Schedule:	Reports must be received by MassHousing within 120 days of the end of the calendar year.
Annual Monitoring Service Fee	Invoices for annual monitoring fees must be submitted to MassHousing at the beginning of each calendar year, after January 1st.
Owner Obligation in Annual Reporting:	Owners are obligated to furnish information concerning their conformance with the program when such information is requested under the *Affordable Housing Restriction (Section 10).*
MassHousing Annual Communication:	MassHousing will reach out to Monitoring Agents each year to remind them of their Annual Compliance Report submissions. Monitoring Agents are required to submit a report for each project monitored.
Annual Compliance Report Format:	Monitoring Agents must submit their reports in the Annual Compliance Report* form.

Annual Letter to Owner:	Monitoring Agents must use the Annual Letter to Owner and Important 40B Terms* and Annual Certification Form to Owner* to meet their annual reporting requirements.

REPORTING EXPECTATIONS:

Monitoring Agents are expected to perform the following on an annual basis for each unit monitored under an Affordability Monitoring Contract executed in 2020 or later. The Annual Letter to Owner and Important 40B Terms* and Annual Certification Form to Owner* must be used to assist with the following:

1. Carry out annual Owner Certifications confirming owner occupancy status.
2. Collect and verify a copy of a utility bill from the unit with the owner named, for the most recent month.
3. Complete a title search through the Registry of Deeds or other means to identify any title changes or encumbrances that have occurred without notice to the Monitoring Agent and to follow up appropriately.
4. Respond to any reports of noncompliance from external stakeholders (e.g. abutters, town/city, etc.) and resolve as appropriate.

Additionally, Monitoring Agents are expected to report on the following in their Annual Compliance Report*:

1. Initial Sales
2. Occurrences and outcomes of:
    - Resales
    - Capital Improvements
    - Refinances
    - Foreclosures
    - Death of Owner Unit transfers
    - Other monitoring-related events
3. Instances of noncompliance and enforcement actions.
    - Inconsistencies found in title searches
    - Complaints from abutters and/or municipalities.
    - Description of noncompliance events, including:
        - Actions taken
        - Key dates
        - Status (resolved? ongoing?)
        - Projected timeline to cure, if still ongoing

Annual Letter to Owner and Important 40B Terms*

DATE

OWNER
STREET ADDRESS
TOWN, MA ZIP CODE

RE: Annual 40B Letter - UNIT ADDRESS

Dear OWNER:

As your Monitoring Agent, this letter is my annual communication to review and summarize your obligations from when you signed the Affordable Housing Restriction when you purchased your 40B unit. As part of this letter, I have included *Important Terms of 40B Homeownership* and the *Annual Certification Form to Owner* to facilitate your compliance status. As you may remember, like any homeowner you may choose to sell your home whenever you'd like, but the price you could sell your home for is restricted because of the 40B program.

If you sell your home this year, your estimated maximum sales price* would be approximately:	**$XXX,XXX**
Initial Sales Price:	$XXX,XXX
YEAR Base Income Number:	$XX,XXX
Resale Price Multiplier:	X.XX

*Does not include approved capital improvements or other factors that may affect actual price.

← The max resale price box is optional and highly recommended, but not a required and may be removed.

In brief, you must contact me for approval to sell, lease, or refinance your property, or make capital improvements. In addition, I encourage you to contact me if you are at risk of losing your home or have any questions regarding your participation in the 40B homeownership program.

Please **complete and return the attached Annual Certification Form to Owner along with a copy of your utility bill** from the most recent month either electronically via email or through the US Postal Service (USPS) **by DATE.** [If Monitoring Agent chooses to provide, include the following**:** A self-addressed, stamped return envelope has been provided for your convenience**.**]

Please feel free to contact me at (XXX) XXX-XXXX or EMAIL with any questions. Thank you in advance for your cooperation.

Sincerely,

YOUR NAME
Monitoring Agent

Enclosures (2)

MASSHOUSING

REQUIRED

IMPORTANT TERMS OF 40B HOMEOWNERSHIP		**Monitoring Agent Approval Required**
Owner-Occupancy	You must be living in your unit and it must serve as your primary residence.	
Renting Out A Room	Room/House mates are permitted if your household size has reduced since you purchased your home and adding a Room/House mate does not cause overcrowded conditions per HUD or EOHLC regulations. However, *you must remain living in your home as your primary residence* and any rent collected must be reasonable. You may not rent out all or part of your home for short-term rental.	
Running A Home Business	This is permitted as long as you are conforming with the local zoning.	
Refinancing	Home Equity Line of Credit (HELOC) is not permitted. Refinancing your first mortgage or seeking a second mortgage may be permitted, but Monitoring Agent approval is required to ensure that the loan products meet the financing requirements under the 40B program and that the refinancing provides a benefit to you the Owner.	**X**
Selling Your Home	You must notify your Monitoring Agent if you decide to sell your home. The Monitoring Agent will work with you to ensure that the affordability restrictions attached to your unit are preserved.	**X**
Capital Improvements	If you are considering making a substantial improvement to your home and you would like the cost to be added in the future sale price, you need to contact your Monitoring Agent and secure her/his written approval before getting started. ***Only necessary maintenance improvements qualify for future sale price consideration*.**	**X**
Risk of Foreclosure	Contact your Monitoring Agent as soon as possible so that s/he can assist you, to the extent possible, in preventing a foreclosure.	
Transfer of Ownership	Transfer of ownership to a trust or family member is not permitted. If you are considering adding or removing a household member as a co-signer, or ownership is affected by the death of an Owner, contact your Monitoring Agent to discuss next steps and if you will require documentation from your Monitoring Agent to complete the transaction.	

Populate Items in BLUE
REQUIRED

Annual Certification Form to Owner*

As owner(s) of the property at _____

the "Home") the undersigned hereby certifies as to the following:

1. The Home is my primary residence;
2. I/We have not leased, refinanced, put up for sale, made capital improvements to, or transferred ownership of the Home other than as follows, as approved by my Monitoring Agent:

_____

_____

_____

3. Our primary telephone number and e-mail contact information is as follows:

_____

_____

_____

_____

Signed under the pains and penalties of perjury, this _____ day of _____ 20 _____

By: _____
Signature

_____
Owner Name

Please return this Form along with a copy of a utility bill from the most recent month to:	AGENT NAME STREET ADDRESS TOWN, MA ZIP CODE	**OR**	EMAIL ADDRESS
The Completed Form and utility bill must be postmarked or received electronically by	**DATE**		
Should you have any questions:	**AGENT NAME** at **PHONE NUMBER** or **EMAIL**		

Annual Compliance Report*

Please Complete One Form per Project

Table rows may be dragged/pulled down to provide more space if needed.

Monitoring Agent Name			
Development Name		Total # of Units	
Development Address		# of Affordable Units	

Affirmative Fair Housing Marketing Plan Approved: Yes___ No___ if yes, Date: _____

Initial Sales Complete? Yes___ No___ if yes, date: _____20___

Initial Sales Compliance Report Submitted to MassHousing Yes___ No___ if yes, Date:_____

Projects in Period of Initial Sales Only:			
Developer Name		Contact Info	
Lottery Agent:		Contact Info	
Total Number of Affordable Units Sold To Date			
Construction Status *(number of market/affordable units built, estimated date of completion)*:			

Supplemental Monitoring Activity for this Project in the Past Year		
	Count	**Unit Numbers / Address if more than 1**
# of Units Currently for Resale		
# of Resales Completed		
Outcome of each affected unit • Closing date • New resale price certificate issued • Special assessment and/or capital improvements factored into price		
# of Capital Improvements		
Outcome of each affected unit • Status (work completed?) • Approved amount and depreciation schedule that will be used.		
# of Refinances		

MASSHOUSING

REQUIRED

Supplemental Monitoring Activity for this Project in the Past Year		
	Count	**Unit Numbers / Address if more than 1**
Outcome of each affected unit • Status (ongoing vs completed) • Type of Refinance (first, second) • Benefit/purpose of refi • Change in co-signers • Closing date		
# of Foreclosures		
Outcome of each affected unit • Status (ongoing vs completed) • Purchaser? • Affordability status preserved? • Rental permitted? • Closing date		
# of Death of Owner Unit Transfers		
Outcome of each affected unit • Closing date		
# of Other monitoring-related event		
Outcome of each affected unit • Briefly describe the event and status / outcome.		
Please describe any documented areas of non-compliance with project's Affordability Requirement, corresponding enforcement actions taken or required, and when actions were instituted (e.g. title search flags, reports from abutters or town/city). Please include dates and status of each event.		

I certify that in the past year I have ensured to the extent practicable the compliance of the owners of the Affordable Units in the project identified above with the requirements of the Affordable Housing Restriction.

Signature

Date

Name and Title

Notice of Condo Lien to Owner

DATE

HOMEOWNER

STREET ADDRESS

TOWN, MA ZIP CODE

Dear HOMEOWNER:

As the Monitoring Agent for your property located at UNIT ADDRESS, I am listed as a party of interest in your Affordable Housing Restriction. I recently received a notice of a condominium lien from CONDO ASSOCIATION. If you do not take any action, the CONDO ASSOCIATION may pursue foreclosure on your home. I am writing to offer assistance on this matter.

Depending on your situation, I may be able to provide you with legal resources that may help you. Or, if you cannot remain in your home, I can work with you to try to sell the property to a new eligible purchaser. As difficult as it is, if you must leave your home it will be better for you in the long run than to lose it to foreclosure. This process, however, takes time.

It is important that you respond as soon as possible in order to allow me enough time to assist you. Please contact me at EMAIL or (XXX) XXX-XXXX right away so that we can discuss any available options.

Sincerely,

YOUR NAME

Monitoring Agent

OPTIONAL

Notice to Condominium/ Homeownership Association

[Date]

[Contact]
[Homeowners Association/ Condominium Association Name]
[Street]
[City, State Zip]

Re: 40B Affordable Housing Compliance

Dear [Homeowners Association/ Condominium Association Name]:

MassHousing is responsible for administering development under the Commonwealth's regional planning law, MGL c. 40B. MassHousing is the Project Administrator and Subsidizing Agency of projects financed by the Federal Home Loan Bank of Boston ("FHLBank Boston), under the New England Fund (NEF) program.

We want to reaffirm that [40B Development Name] (the "Development") was built pursuant to MGL c. 40B, which is to increase the supply of affordable housing by enabling developers to construct projects that would otherwise be restricted by local regulations. Under this statute, a minimum of 20-25% of the units are required to meet long-term affordability. This provides the basis for the Development's approval and the requirement for ongoing compliance.

Any form of discrimination on the basis of a person because of race, color, religion, sex, disability, familial status, or national origin and all other protected classes directed toward residents of affordable housing units will not be tolerated. All residents are entitled to the same rights, privileges, and respectful treatment within this community.

As the Subsidizing Agency, we expect [Name of Homeowners Association/ Condominium Association] to fully uphold these standards and comply with all fair housing obligations. Compliance with these requirements is mandatory and will be closely monitored.

We appreciate your immediate attention to these matters. If you have any questions concerning this letter, please contact PLANNING AND PROGRAMS PERSONNEL at (XXX) XXX-XXX.

Sincerely,

Planning and Programs
Authorized Signature

APPENDIX C: FACT SHEETS FOR OWNERS

SELLING YOUR 40B HOME 155

RENTING YOUR 40B HOME 156

40B DEED RESTRICTIONS AND MORTGAGE 157

MAKING IMPROVEMENTS TO YOUR 40B HOME 158

REFINANCING YOUR 40B HOME 160

THE EFFECTS OF SPECIAL ASSESSMENTS AND HOA FEES ON YOUR 40B HOME 161

RESOURCES AVAILABLE TO 40B OWNERS 162

40B DEED RIDER INFO SHEET 165

Selling Your 40B Home

Congratulations on your decision to sell your home!

As you know, selling a 40B unit works somewhat differently from other properties.

To sell your home, you'll need to ***notify your Monitoring Agent*** (this is the person or company that sends your annual compliance notification) with a Letter of Intent. The Monitoring Agent will let you know the maximum price you can sell for – remember, a 40B unit can't just be sold to the highest bidder. Your Monitoring Agent may request a deposit towards your "resale fee" to jump start advertising and other related tasks.

The city or town you live in will have to confirm with your Monitoring Agent that it doesn't want to buy the unit, and that you can proceed to sell to a new homeowner. If more than one eligible buyer offers to pay the same price (which might be the maximum allowed price, but could be lower), the Monitoring Agent will choose or conduct a lottery to decide who the new owner will be.

Prerequisite Documentation:

Letter of Intent with a brief description of the number of bedrooms, the monthly property tax, the monthly condominium fee and the monthly homeowner's insurance amount, if any. The letter should also include your contact phone number, email address, and signature.

You are responsible for preparing a ***Purchase & Sale (P&S) agreement***. It is strongly recommended that you hire an attorney to prepare the P&S agreement for you, as it is a legally binding contract between you and the buyer. Additionally, MassHousing recommends that you require no more than $1,000 as a deposit at the time of signing the P&S.

Renting Your 40B Home

Your property may not be rented out without prior written consent from your Monitoring Agent. Circumstances such as health and safety concerns, domestic violence, temporary job relocation, and military service will be considered. In addition, your Monitoring Agent will consult with your Town or City before rendering a decision. **Your Monitoring Agent may grant permission to rent out your unit on a temporary basis and not to exceed one (1) year.** Requests for a lease term extension must be made in writing to your Monitoring Agent.

If you would like to rent out your 40B unit, you must:

- ***Submit a written request*** to your Monitoring Agent for consideration stating the reason for the request, the length or term of the agreement and a summary of the monthly carrying costs (i.e. mortgage payment, utilities bills, condo/HOA fees)

- Find a ***tenant that is income-eligible***. You are responsible for submitting documentation about your prospective tenant to ensure that the tenant household income is no more than 80% of Area Median Income (AMI). Documentation should include last year's tax returns and W-2, 3-5 most recent paystubs for all household members earning income, statements for all assets and documentation of any other additional income (social security, child support, unemployment)

- Submit evidence to your Monitoring Agent that the proposed ***rent does not exceed carrying costs***, as well as a copy of the condominium association documents (if applicable)

- Submit any additional information requested by your Monitoring Agent such as a copy of the lease agreement and any advertising/marketing materials that you will be using.

If your Monitoring Agent consents to your renting out your home and your Monitoring Agent determines that you are collecting a rent amount that exceeds your carrying costs of the property (e.g. monthly mortgage payment + insurance + condo/HOA fees + taxes + utilities paid by you), that additional amount of rent will need to be paid to your Town's or City's Affordable Housing Fund.

40B Deed Restrictions and Mortgage

As the Owner of a 40B unit, you should be aware that there are three (3) legal documents that have been recorded on your property to ensure that your unit remains affordable in perpetuity. They are:

1. The ***40B Regulatory Agreement***
2. The 40B ***Affordable Housing Restriction*** (also known as the deed rider). If your unit was built after 2007, the Restriction is also known as the Universal Deed Rider (UDR) or the Fannie Mae Deed Rider.
3. The 40B ***Affordable Housing Restriction Mortgage***, in which MassHousing is the Mortgagee. This document was instituted in 2014.

The documents, collectively, authorize your Monitoring Agent and MassHousing to enforce the 40B Affordability Requirements and ensure that annual compliance is carried out.

It is important to recognize that the ***MassHousing Mortgage does not mean that you have a loan with or owe money to MassHousing***. Rather, this Mortgage reinforces the terms of the Affordability Restrictions and was instituted in 2014 as a deliberate mechanism to alert financial institutions of the unit's value under the 40B program. The mortgage was precipitated by numerous past instances where Owners secured financing that exceeded the maximum resale price of their home due to lack of due diligence from the lender/bank. For some Owners, this led to threat of foreclosure and for units with older Deed Riders, the unit's long-term affordability was at risk which in turn led to a potential reduction of the Municipality's Subsidized Housing Inventory (SHI) count.

The Affordable Housing Restriction Mortgage was put in place because financing institutions are sensitive to mortgages in contemplating their underwriting. ***The Affordable Housing Restriction Mortgage directs lenders to the restrictions in determining a loan amount that is consistent with the value restrictions on a 40B home.***

Making Improvements to Your 40B Home

Capital improvements must be "necessary maintenance improvements, not covered by a condominium or homeowner's association that if not done would compromise the structural integrity of the property. In other words, ***only necessary maintenance improvements qualify for future sale price consideration.***

Qualify as Capital Improvements under 40B	**Do Not Qualify as Capital Improvement under 40B**
• New roof • Replacement of windows due to wear and tear • The replacement of siding, shingles, or clapboard due to damage or wear and tear • Exterior painting due to deterioration • Heating or plumbing replacement • Structural deficiencies such as termite or other pest damage, water damage, or other maintenance as required • Septic tank replacement • Appliance Replacement (stove, dishwasher, refrigerator) • Other improvements identified by the owner and approved by the Monitoring Agent • Installation of Central Air Conditioning • Solar Panels (Eligible homeowners are not obligated to assume subordinate financing/ and or contracts for solar)*	• Outdoor decks • Additions • Finishing of unfinished spaces • Garages • Landscaping • Upgraded flooring (e.g. from carpet to hardwood) • Other items identified by the owner that could be considered upgrades or luxury improvements.

DO-IT-YOURSELF IMPROVEMENTS: Please note that if you plan to do the work on your own, only the cost of the materials that you purchased will be taken into consideration.

DEPRECIATION: Please be advised that the time of resale your monitoring agent will take into consideration the current value of the improvement based on a depreciation schedule.

Depreciation Example: if a new heating system is installed for $5,000, and the owner sells the property ten years later, the full $5,000 will not be added to the resale price.

*Subject to the approved cost from Monitoring Agent

NEXT STEPS: If you would like to proceed with your capital improvement project and believe it to be a qualified improvement under the 40B program, you need to ***submit your request in writing to your Monitoring Agent before you begin the work***. Your request must include (1) a description of the work to be done (2) an estimate of the cost and (3) an explanation of why the work is a necessary capital improvement. Your Monitoring Agent will then notify you of next steps.

Refinancing Your 40B Home

If you are considering refinancing your 40B unit, your new first or second mortgage must meet the following guidelines:

- Be a fully amortizing, fixed-rate mortgage with no prepayment penalty or balloon payment. Home Equity Line of Credit (HELOCS) ARE NOT PERMITTED
- Have a current fair market interest rate, no more than 2% above the currently prevailing interest rate.
- Have a loan amount no greater than 97% of your current Maximum Resale Price. For a second mortgage, the combined amounts of all mortgages may not exceed 97% of the Maximum Resale

Your Monitoring Agent must review and approve your request before you may close on a new loan. Your Agent will consider whether the monthly costs of the unit remain affordable as set forth in the Affordable Housing Restriction and that you can afford your monthly payments after the refinance.

To begin the process, you must contact your Monitoring Agent to confirm what documentation s/he would like to review. The following are commonly requested:

Request Letter: include property address, your contact information, type of loan requested, amount of the refinance/second mortgage, the reason for refinancing, lending institution name, and contact information of your loan officer.

Loan Application (1003 Form): completed and signed.

Loan Estimate: provided by your lender and containing information on the estimated closing costs.

Commitment Letter: providing information on the loan terms, including the interest rate, points, length of loan terms, APR (annual percentage rate), and any other pertinent information.

Your Monitoring Agent has the right to deny your request to refinance (e.g. due to high closing costs, a higher interest rate than your current rate, or loans that roll in unsecured debt, like credit card debt, into your mortgage). If approved, your Monitoring Agent will prepare and deliver to the Closing Attorney a Refinance Certificate that will need to be recorded with the new mortgage.

Please note that your Monitoring Agent may charge a refinance review fee.

MassHousing

The Effects of Special Assessments and HOA Fees on Your 40B Home

With your home purchase, you are now a member of a Homeowner's Association (HOA)/Condo Association because ***membership was a requirement of buying your home***.

Your ***HOA/condo association is an independent legal entity that makes and enforces rules and guidelines for the building or community that your home is in***. Associations are generally governed by a board of directors elected by the membership. The board enforces and oversees the rules and regulations in the Declaration of Covenants, Conditions and Restrictions (CC&R)/condo docs to promote a clean and cohesive atmosphere for all members. ***Your Monitoring Agent has no oversight authority of the association***.

Become familiar with and read your condo docs or CC&Rs!

Declaration of Covenants, Conditions and Restrictions (CC&Rs)/Condo Docs are legal documents that are recorded in the Registry of Deeds and sets conditions for the maintenance of your building/community. Conditions can include, but are not limited to structural restrictions (e.g. permitted fencing), aesthetic restrictions (e.g. color of paint on exterior walls), permitted uses (e.g. short-term rentals, home business), maintenance of common areas, parking, pets, and general standards of behavior (e.g. noise disturbances after hours). The document may also include penalties for violating the terms of the docs.

You are required to pay HOA/Condo dues while you own your home and they will go up as the cost of living goes up!

HOA/Condo dues pay for common area maintenance and upkeep of facilities and were factored in the financing of your home at the time of purchase. However, unlike your mortgage payments that are fixed over many years, Condo/HOA dues will increase as the cost of maintenance and upkeep increases. You are responsible for paying all increases in dues while you own your home.

From time to time, ***your association may impose a special assessment to collect funds from each homeowner to pay for a large and necessary expenditure*** (e.g. new roof) that the HOA/Condo fund cannot cover.

You are required to pay your portion of a special assessment while you own your home!

If you paid a special assessment within a year of when you decide to sell your home, you should consult with your Monitoring Agent about the possibility of factoring the special assessment cost into the resale price.

Resources Available to 40B Owners

1 **Housing Families Inc.**

Phone: 781-322-9119 ext 146

Website: https://housingfamilies.org/

Housing Families gives free civil (non criminal) legal services to low-income households in Malden, Medford, Everett, Wakefield, Melrose, and Revere. As part of our mission to end family homelessness, Housing Families also provides emergency shelter, subsidized housing, and support services for families

2 **Mass Legal Services**

Website: https://www.masslegalservices.org/findlegalaid

Mass Legal Services offers resources and information about legal issues facing lower income Massachusetts residents to legal services advocates and social services professionals. If you are not a lawyer or legal advocate, you will probably find Mass Legal Help more useful.

3 **Mass Legal Help**

Website: https://www.masslegalhelp.org/housing-homelessness

Massachusetts legal aid programs put together this website to help you find practical information about your legal rights in Massachusetts.

4 **Greater Boston Legal Services**

Phone: 617-371-1234

Website: https://www.gbls.org/

GBLS serves low income families and individuals (earning up to 125% of the poverty level, $32,750 for a family of 4 in 2020, or up to 200% in limited circumstances) in the 47 towns and cities in Greater Boston listed below. Certain services may be available without income limits or less strict limits for elders, victims of crimes and their survivors, persons with disabilities, and in limited assistance clinics. In addition to our regular service area below, Middlesex and Essex county residents seeking assistance with Medicare are also eligible without income restrictions. Applicants for services under the Civil Legal Aid for Victims of Crime (CLAVC) grant are not required to be income eligible

5 **Additional Legal Help**

Website: https://www.mass.gov/info-details/finding-legal-help

Contact the organizations listed in the above link to find a lawyer in your area or to see if you qualify for free legal services for low-income individuals

6 **Massachusetts Housing and Shelter Alliance**

Phone: 617-367-6447

Website: https://mhsa.net/

---

7 **Housing Help Hub**

Website: https://applyhousinghelp.mass.gov/s/?language=en_US&LanguageCode=en_US

---

8 **Homeownership Preservation Foundation**

Website: https://995hope.org/

For those who may have fallen behind in housing payments or face foreclosure.

---

9 **Home Improvement Loan Program**

Website: https://www.masshousing.com/en/home-ownership/homeowners/home-improvement

The Home Improvement Loan Program (HILP) provides affordable, fixed-rate loans to help homeowners improve and maintain their homes. Eligible improvements include, but are not limited to, enhancing basic living conditions; safety or energy efficiency; adding, altering renovating, or repairing a home; making a dwelling fully accessible for persons with physical disabilities; bringing a home up to standard state or local building codes.

---

10 **Residential Assistance for Families in Transition (RAFT)**

https://www.mass.gov/how-to/apply-for-raft-emergency-help-for-housing-costs

---

11 **Affordable Home Opportunities**

https://www.mymasshome.org/

---

12 **Housing Resources for People with Disabilities**

https://www.mass.gov/info-details/housing-resources-for-people-with-disabilities

---

13 **Down Payment Assistance**

https://www.masshousing.com/en/home-ownership/homebuyers/down-payment-assistance

---

40B Deed Rider Info Sheet

Your home subject to an Affordable Housing Restriction under M.G.L. c 40B.
Here are some important things to keep in mind while owning this home:

Village at Old Main, Falmouth

Principal Residence

- You must occupy the home as your primary residence.

Transfer

- Transferof the home to a Trust is generally prohibited.
- If you are considering adding or removing a household member as a co-signer to the deed, or ownership is affected by the death of an Owner, a new deed must be prepared for your Monitoring Agent's review prior to recording.

Resale

- If you plan to sell your home, you must notify your Monitoring Agent.
- Your home will remain affordable, and be sold at a price that is affordable to the new buyer (the "Maximum Resale Price"). The Maximum Resale Price will be calculated by your Monitoring Agent.
- The Maximum Resale Price is the allowable sale price as defined in your Affordable Housing Restriction. It is calculated by multiplying the current AMI by the Resale Price Multiplier identified in the Affordable Housing Restriction.

Capital Improvements

- You may make any desired improvements to your home. However, only Capital Improvements that are necessary maintenance improvements will be considered in the calculation of the Maximum Resale Price.
- Homeowners must request approval of Capital Improvement expenses in writing to their Monitoring Agent
  Examples included: new roof, replacement of windows due to wear & tear, replacement of siding, shingles, or clapboard due to damage or wear & tear, exterior painting due to deterioration, heating or plumbing replacement

Refinancing

- Mortgage refinancing can lower your housing costs.
- 40B homes may not be refinanced at a value above your Maximum Resale Price.

If you are considering refinancing:

- For 1st mortgage refinancing - loan amount cannot exceed 97% of the Maximum Resale Price.
- For 2nd mortgage financing - combined amount of the 1st & 2nd mortgages cannot exceed 97% of Maximum Resale Price.
- Home Equity Lines of Credit are generally not permitted.
- All interest rates must be fixed.

Contact your Monitoring Agent with questions or concerns about your 40B home.

MassHousing

Monitoring Agent Contact		Phone	
Name		E-Mail	

APPENDIX D: KEY 40B DOCUMENTS AND FEE SCHEDULE

| **MA** = Monitoring Agent | **OWN** = Owner | **MUN** = Town / City | **DEV** = Developer | **MH** = MassHousing |

	Key 40B Documents	Signatory					Notes
		MA	DEV	OWN	MH	MUN	
1	Regulatory Agreement		X		X		
2	Affordable Housing Restriction (Deed Rider)		X	X			Enforceable by **MUN** and **MA**
3	Affordable Housing Restriction Mortgage			X	X		
4	Monitoring Services Agreement (Initial)	X	X		X		
5	Monitoring Services Agreement (Established)	X			X		
6	Homebuyer Disclosure Statement			X			
7	Limited Dividend Monitoring Services Agreement	X	X				
8	Comprehensive Permit		X			X	
9	Amendment and Subordination of Mortgage			X	X		Required for all refinancings.

MOST RECENT 40B MONITORING FEE SCHEDULE: [MH weblink]