



## Release of Collateral Policy

### I Introduction: Statement of Policy

It shall be the policy of MassHousing to encourage the efficient use of land and other natural resources by clearly articulating the requirements that must be met and the process that must be followed by developers seeking the release of collateral that is encumbered by a MassHousing loan.

The Release of Collateral Policy has been established to outline the procedures for Borrowers to follow when requesting releases of real property that has been pledged as security for MassHousing loans. MassHousing loan documents provide that an owner must obtain the prior written approval of MassHousing to convey, transfer or encumber any of the mortgaged property. This policy will establish the standards that will be applied to MassHousing's evaluation of requests for releases of collateral.

Since loans from MassHousing and from subordinate lenders are used to finance the acquisition and development of real property, the policy outlines the specific purposes for which the sale proceeds from any release of collateral may be applied including, in some circumstances, the repayment or partial repayment of subordinate loans. The policy also sets forth a schedule of fees that will be required for processing applications.

### II. Eligibility

Borrowers are eligible to apply for a release of collateral if they are current on all MassHousing obligations, or if not, if the request is part of a workout to bring the project current on its obligations. Applications for the following purposes may be eligible:

- Release of land for development, either affordable or commercial, or both, that will enhance both the proposed and the existing developments
- Release of land for a public purpose
- Granting of easements

### III. Policy Goals

In furtherance of the policy statement contained in Section I of this document, the goals of the Agency will be to ensure that: (1) the existing MassHousing loans are secure and continue to meet established underwriting standards; (2) no covenants of funding bond indentures are violated; (3) re-development plans are reviewed for consistency with MassHousing's affordable housing policies and objectives; (4) processing fees are assessed in accordance with the complexity and level of review required; (5) allowable uses of sales proceeds are delineated; (6) information that must be submitted by Borrowers for processing applications is set forth, (7) where appropriate, tenants are given adequate advance notice, and (8) required Agency approvals are obtained.

### IV. Borrower Submission

A partial release of collateral for land currently encumbered by a MassHousing mortgage, regulatory agreement, or other use restriction agreement may be requested by a Borrower for the purposes listed above and as set forth in this Policy.

Applications for a partial release of collateral will be subject to review under the requirements set forth herein for three categories:

**Category One:** Release of collateral for the purpose of developing housing with an affordable component or for an adjoining mixed use or commercial development that will enhance both locales

**Category Two:** Release of collateral for a public purpose

**Category Three:** Subordination of MassHousing mortgage loans to easements

All applicants will be required to submit a preliminary application, Part 1, Exhibit A, which shall provide basic information about the partial release or subordination. Within two weeks of receipt of an application, and after an initial review by Agency staff, MassHousing will notify the Borrower if the application will be considered for processing. Applications to be considered may then proceed to the next step in the process.

Borrowers may complete Exhibit A in its entirety (Parts 1 and 2) to expedite processing. MassHousing reserves the right to require additional information for applications that are more complex or unique. MassHousing also reserves the right to determine that an application submitted under one category may require review under another category. Borrowers will be notified of any change in category.

## **V. Exhibit A, Part 1**

To make an initial determination, MassHousing will require that the Borrower submit a preliminary letter of interest containing the following information as outlined in Exhibit A, Part 1:

1. The reason for the application
2. Proposed future use of the portion of the property that is to be released
3. A Site Plan indicating property lines, location of all buildings and easements and the location and legal description of the property to be released or the easement to which the mortgage will be subordinated
4. All cash or other consideration to be received as a result of the transaction
5. A brief statement regarding any expected tenant impact, if applicable

## **VI. Exhibit A, Part 2**

If an application has been accepted for processing, Borrowers will be notified in writing and will be required to submit the following information outlined in Exhibit A, Part 2, as required by MassHousing. In certain instances, such as for routine easements, some or all of the submission requirements listed in Exhibit A, Part 2 may be waived and applicant shall be notified of such waiver in the notification letter.

1. Legal description of the mortgaged property and either the legal description of the property to be severed and released from the existing development or a description of the easement, and for releases a description of the mortgaged property after the proposed release
2. Current and applicable zoning regulations and analysis of how the mortgaged property will continue to comply
3. Current subsidy contracts
4. Current insurance contracts
5. The parties responsible for the operation and maintenance of the released collateral
6. Any impact on the existing utilities or any arrangements for sharing utilities and/or mechanical systems or parking
7. Any restrictions to be imposed upon the released property
8. Taxes now due and payable, any judgments or other liens against the property other than the MassHousing mortgage and any other relevant legal documents
9. A relocation plan for tenants, if applicable
10. Proposed form of deed whereby the property is to be conveyed or the proposed form of the easement
11. A letter from the title insurance company which issued the existing mortgagee's title policy to the effect that the release of a portion of the mortgage security will not adversely affect the policy or title insurance and the validity or priority of the lien of the insured mortgage on the remaining property (other than in the case of an easement, the addition of the easement as a senior encumbrance)
12. Any other documents required by MassHousing in its preliminary review

## **VII. MassHousing Procedure**

All applications for a partial release of collateral shall be directed to the attention of the Director of Rental Management. Category 1 applications will be forwarded to the Director of Rental Lending or the Director of Rental Management, as appropriate, for processing. Category 2 and 3 applications will be processed by MassHousing's Rental Management Division.

Category 1 and Category 2 applications will require the approval of the MassHousing Board of Directors (Agency Members). Completed applications will be circulated to Appraisal and Marketing, Finance and Accounting, Legal, Asset Management and Design and Technical departments for review and comment. Borrower will be notified if MassHousing is willing to review a detailed submission, and if so, the Borrower will be required to submit the information outlined on Part 2 of Exhibit A as well as any additional information required by MassHousing. Once all information from the Borrower has been received and evaluated, the application will be presented to the MassHousing Loan Committee for review.

Category 3 applications for easements will require the approval of the Director of Rental Management. In cases where an easement application is not considered routine, the Director of Rental Management will determine the appropriate level for processing and will notify the Borrower. The Director of Rental Management will also notify the applicant if any submission in addition to Exhibit A, Part 1, is required.

## **VIII. Fees**

### **Category 1**

Borrowers will be required, at the time of submission of Exhibit A, Part 2, to pay a minimum processing fee of \$10,000 for Category 1 releases and will reimburse MassHousing for the cost of an appraisal and any other reports that may be required. In cases of particular complexity, expenses of the Agency, including outside counsel or engineering fees, may be assessed. The processing fee will be waived in cases where MassHousing will provide construction or permanent financing for the new development.

### **Category 2**

Borrowers will be required, at the time of submission of Exhibit A, Part 2, to pay a minimum processing fee of \$5,000 for Category 2 releases and will reimburse MassHousing for the cost of an appraisal and any other reports that may be required. In cases of particular complexity, expenses of the Agency, including outside counsel or engineering fees, may be assessed.

### **Category 3**

Borrowers will be required, at the time of submission of Exhibit A, Part 2, to pay a processing fee of \$2,500 for Category 3 releases and will reimburse MassHousing for the cost of an appraisal and any other reports that may be required. The fee will be waived for utility easements that are for the exclusive use and benefit of the MassHousing collateral as determined by MassHousing at its discretion.

## **IX. MassHousing Evaluation**

MassHousing will take the following actions, as it deems necessary, to complete its evaluation:

- Contract for an appraisal at the Borrower's expense, to determine the:
  1. value of the entire property before the release
  2. value of the property after the release
  3. value of the property to be released considering current and proposed deed restrictions
- Determine if there shall or should be proceeds derived from the release of the collateral and, if any, determine how they should be applied. As a general rule proceeds may be applied as follows:
  1. To any delinquencies
  2. To any deficient reserves/escrows
  3. To the Agency, or for (i) the payment of principal to maintain an adequate loan-to-value ratio on the collateral remaining after the partial release, or (ii) other purposes required by the Agency which may include deposits to the replacement reserve or other escrows
  4. To any subordinate lender(s) to pay down subordinate loans provided that proceeds shall be distributed to all subordinate lenders on a pari passu basis unless otherwise required by the subordinate loan documents or unless any subordinate lender waives such payment in favor of another subordinate lender.

5. To the Borrower

In determining the distribution of proceeds and whether the Borrower may receive a portion (and, if so, how much that portion will be), the Agency shall examine a variety of factors, including, but not limited to, the following:

- a) the status of the property, including any amounts necessary to satisfy factors 1, 2 and 3 above;
  - b) the percent of the development's total development cost funded by public equity sources;
  - c) the provisions of subordinate loan documents securing any subsidy loans, including the timing and amounts of required repayments due upon the sale or release of loan collateral;
  - d) the percent of units receiving project-based rental subsidies;
  - e) the public benefit to be derived from the proposed release of collateral;
  - f) the number of years remaining until the Agency's mortgage matures or is eligible for pre-payment; and
  - g) the amount of any unpaid deferred developer fees or accrued dividend payments owed to the Borrower.
- Determine the tenant impact and/or need for a relocation plan
  - Review plans and specifications, as-built drawings, construction, legal, insurance and other documents to determine that the release will not impair any part of the project, common areas or infrastructure.

## **X. Approval**

For Category 1 and 2 applications, Borrowers will be notified in writing by the Executive Director or his or her designee of a conditional approval or the denial of their application. Conditional approvals may only be given after the Board has voted on the transaction.

For Category 3 applications, Borrowers will be notified in writing by the Director of Rental Management or his or her designee of a conditional approval or the denial of their application.

For all three categories, MassHousing shall execute such documents as are necessary to consummate the transaction upon fulfillment of the conditions set forth in the Conditional Letter of Approval, provided that the release of collateral shall only occur simultaneously with the approved transaction.

For developments affected by HUD mortgage insurance, the notification will be forwarded to the local HUD office for review. MassHousing will prepare a modification to the mortgage, if required and will coordinate with HUD Counsel on any HUD approval, oversight and/or execution of HUD-required documentation.