

MHDC Application Site Control Memorandum

A key component of the application process is establishing appropriate site control. MHDC requires evidence of buyer site control, evidence that the seller has ownership of the site, and, in certain contractual situations, documentation of the sales price. MHDC has requested site control documentation with two types of land and/or building purchase/lease transactions in mind: Arm's Length and Identity of Interest.

Arm's length transactions are those for which the current owner contemplates selling, leasing or donating the site(s) to an entity in which they have no legal business (other than the transactions itself) or other affiliation that creates, in MHDC's sole and absolute discretion, an identity of interest between the parties.

Identity of Interest transactions are those in which the current owner of the site(s) has, in MHDC's sole opinion, a relationship with the applicant and/or proposed ownership entity which disqualifies the transaction from being considered Arm's Length.

Arm's Length Transactions

Buyer/Applicant

Applicants that already own the ground as evidenced by a vesting deed need only provide a copy of that deed for the applicant site control. You will also need to provide the identity of interest transaction information in the seller site control section. Due to certain restrictions, collectively called "Choice Limiting Actions" imposed by HUD on all developments requesting HOME Funds or other HUD financing, all applications requesting MHDC HOME Funds, HOME-ARP Funds, National Housing Trust Fund, or MHDC/HUD Risk Share Funds must have 100 percent site control of sites listed in the application and the form of site control document must be a purchase option agreement and not a real estate contract and must meet the requirements of 24 CFR 58.22(d).¹

For all other financing, the buyer/applicant must evidence that they have control of at least 75 percent of the sites listed in the application through at least 30 days beyond the expected commission approval date; buyer/applicant must provide a description of the method and timing of obtaining site control of the remaining sites.

It is highly recommended that the site control extend through a reasonable time period beyond the commission approval date. MHDC requires the acquisition closing to take place simultaneously with construction loan and partnership closings.

The practice of purchasing sites or buildings by any participant in the development process after approval, but prior to construction and partnership closings, is discouraged and may impact future funding decisions. This practice is a serious violation of the HUD imposed "Choice Limiting Actions" if the

¹ See also HUD's Guidance on Options and Conditional Contracts for Purchase of Real Property for Environmental Reviews Conducted by a Responsible Entity under 24 CFR 58, August 26, 2011, *available at* <https://www.hud.gov/sites/dfiles/CPD/documents/HUD-Memo-Guidance-on-Options-and-Conditional-Contracts-for-Purchase-of-Real-Property-for-Environmental-Reviews-Conducted.pdf>

development is requesting any financing from a source of HUD funding.

For the purposes of the application, the ownership entity, any general partner of the ownership entity, the developer or any individual of each that is listed as a principal may enter into the agreements listed below to show valid buyer/applicant site control:

- a. Executed Purchase Option Agreement (required if requesting HOME Funds or other HUD financing);
- b. Executed Long-Term Land Lease or Option on a Long-Term Land Lease; or
- c. Other Commitments/Agreements approved by staff prior to application.

To be considered valid, all options and agreements must be fully executed and include all pages and exhibits referenced in the document. Only the items described above, or an alternative form of documentation approved by staff prior to the application deadline will satisfy the buyer/applicant site control requirement for Arm's Length transactions.

If a buyer has valid site control as defined above for less than 100 percent of the sites listed in the application, the applicant must provide a thorough description of the process and timing for acquisition of the remaining sites.

Seller

The applicant must provide evidence that the seller who has entered into one of the approved forms of buyer/applicant site control is the current owner of the site(s) in question.

There are two and only two acceptable forms of seller site control:

- a. A warranty deed, quit claim deed, sheriff's deed or like recorded vesting document with the seller listed as grantee;
- b. A title commitment or title policy dated within 30 days of application that states who the current owner is.

Deeds of trust, developer agreements, website printouts, etc., do not qualify as either buyer and/or seller site control. Applicants must provide one of the two forms of seller controls listed above with the application to satisfy the seller site control requirement for Arm's Length transactions. MHDC may request additional verification of current owner periodically, such as a pro forma title policy.

Identity of Interest Transactions

Buyer/Applicant

The buyer/applicant must evidence that they have control of at least 75 percent of the sites listed in the application through at least 30 days after the expected commission approval date. For the purposes of the application, the ownership entity, any general partner of the ownership entity, the developer or any individual of each that is listed as a principal may enter into the agreements listed below to show valid buyer/applicant site control:

- a. Executed Purchase Option Agreement;
- b. Executed Long-Term Land Lease or Option on a Long-Term Land Lease;

- c. Recorded Warranty Deed, Quit Claim Deed, Sheriff's Deed or like recorded vesting document;
or
- d. Other Commitments/Agreements approved by staff prior to application.

To be considered valid, all options and other agreements must be fully executed and include all pages and exhibits referenced in the document. Only the items described above, or an alternative form of documentation approved by staff prior to the application deadline will satisfy the buyer/applicant site control requirement for Identity of Interest transactions.

If a buyer has valid site control as defined above for less than 100 percent of the sites listed in the application, the applicant must provide a thorough description of the process and timing of acquisition for the remaining sites.

Seller

The applicant must provide evidence that the seller who has entered into one of the approved forms of buyer/applicant site control is the current owner of the site(s) in question.

There are two and only two acceptable forms of seller site control:

- a. A warranty deed, quit claim deed, sheriff's deed or like recorded vesting document with the seller listed as grantee or;
- b. A title commitment or title policy that states who the current owner is.

If the buyer/applicant already has a warranty deed (or like instrument), it has demonstrated both buyer/applicant and seller site control. Regardless of whom the grantor is on the deed, MHDC will consider this type of situation an identity of interest transaction and the identity of interest documentation below is required.

As part of seller site control for identity of interest transactions, the documentation listed below is required for each transfer of the property from the time the seller acquired it back to the last arm's length transaction:

- a. Copy of the executed contract; or
- b. Settlement statement for the transaction.

To be considered valid, all buyer/applicant, seller and identity of interest documents must be executed and must include all exhibits referenced in the document and all pages from the body of the document.

There are two exceptions for providing the identity of interest documentation with seller site control in identity of interest transactions:

1. When the last arm's length transaction took place prior to December 31, 1966
2. When the total purchase price or annual lease payment, as evidenced in the documents and the application, is less than \$100.

Any questions, comments, or concerns regarding site control and/or site control documentation should be directed to MHDC staff prior to the application deadline.