

Guidance on Holding Lotteries for Chapter 40B New England Fund Homeownership Developments

**Prepared by Citizens' Housing and Planning Association
Updated October 2005**

The purpose of this document is to provide guidance and offer standards for best practices when conducting a lottery under Chapter 40B for affordable homeownership properties. While we believe it is important to not be overly prescriptive, and to allow communities to fashion a plan that suits their specific needs, the following guidance is consistent with the New England Fund guidelines issued in February 2003.

WHAT IS THE ROLE OF THE MONITORING AGENT IN THE LOTTERY PROCESS?

Before the lottery process commences, the developer or its subcontractor must submit a lottery and affirmative marketing plan to the monitoring agent for approval, which must include a mechanism for selecting affordable households from among the set of affordable applicants. The selection mechanism is for use in the typical situation where the number of affordable applicants exceeds the number of available affordable units in development. The monitoring agent will review the plan to ensure that it meets basic threshold requirements of Chapter 40B guidelines and regulations, provisions of the comprehensive permit for the development, and conforms to best practices as contained in this document.

Specifically, the monitoring agent will review:

- Sale prices of the affordable units
- Maximum income and asset eligibility and size of households applying for the affordable units
- Marketing and outreach plan to ensure affirmative fair marketing is being undertaken
- Deed riders used to ensure continued affordability
- Sample advertisements to be used and list of publications where ads will be placed

Once the monitoring agent approves the plan, a written letter of approval will be sent to the developer and the municipality.

WHO SHOULD CONDUCT THE LOTTERY?

The lottery should be done in collaboration between the Zoning Board of Appeals (ZBA), or another municipal entity designated by the Board, and the developer of the affordable

homes. The developer should be responsible to pay for all of the costs of administering the lottery. In most cases, the developer will administer the lottery process (including the marketing and buyer selection), but the developer should consult with the ZBA throughout the process. In many cases the developer will decide to hire an experienced consultant or non-profit agency to conduct the marketing and lottery.

We recommend that the ZBA review and approve the affirmative fair marketing plan for the lottery prior to the developer submitting it to the monitoring agent for final approval. In addition, it is appropriate for the ZBA to address the lottery plan in its Comprehensive Permit decision, such as who will be conducting the lottery, who will approve the lottery plan, categories of local preferences, and required outreach.

WHEN SHOULD THE LOTTERY BE CONDUCTED?

The lottery should be conducted after the expiration of all appeals of the Comprehensive Permit and other required permits, such as but not limited to:

- Zoning Board of Appeals
- Conservation Commission
- Sewer extension permits
- MEPA
- Water permits
- Title V permits

Because of the need to obtain various municipality/agency approvals of the lottery plan, it is recommended that the plan be submitted to the appropriate entity, at a minimum of nine months prior to the date of occupancy of the affordable homes.

Implementation of the lottery activities should be scheduled approximately six months prior to the anticipated date of occupancy of the first affordable home. Time is needed for special outreach, advertising, and conducting homebuyer workshops, review of homebuyer applications, and completion of the mortgage approval process. The mortgage application process should only be conducted after the lottery. Only those families with a successful lottery position should be put through that process.

Larger developments (50 or more units) may require more than one lottery. If a development is being built in phases over a period of two years or more, sales prices and income guidelines may have to be adjusted for the second phase of the project to reflect changes in interest rates and HUD income limits. Should this occur, the monitoring agency must approve the adjusted sale prices and any other modifications to the plan.

HOW SHOULD PREFERENCE CATEGORIES BE DETERMINED?

The ZBA may establish a local preference for up to 70% of the affordable units. The ZBA in consultation with the local housing partnership or housing committee, the local housing authority, or other town boards should determine the types of local preference.

At times, the ZBA delegates the determination of local preference to these other local agencies, such as the local housing partnership.

The following illustrate some possible local preferences:

(The following three categories are equal in priority)

1. Current residents

- A household in which one or more members is living in the community at the time of application. Documentation of residency should be provided, such as rent receipts, utility bills, census listing or voter registration listing.

3. Family of Current Residents

- Close relatives, including children or parents, of a current resident of the community.

3. Municipal and/or Community Employees

- Employees of the municipality, such as teachers, firefighters, police officers, librarians, or town hall employees.

4. Employees of businesses located in the community.

The developer and the municipality may negotiate other preference categories and variations of the above categories. However, to ensure that these preferences do not violate applicable fair housing laws, the following procedure should be followed:

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 municipality should determine the number of local resident minority households in the municipality and the percentage of minority applicants in the local preference pool. If the percentage of minorities in the local preference pool is less than the percentage of minorities in the surrounding HUD-defined area, the municipality should make the following adjustments to the local preference pool:

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

Minorities should be identified in accordance with the regulatory classifications established by HUD, which are: Native American or

Alaskan Native; Asian or Pacific Islander; African-American; Hispanic/Latino; or Cape Verdean.

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

If the project includes units accessible or adaptable for occupancy by physically disabled persons in conformity with requirements of G.L. c.22 13A and the Architectural Access Board, preference for those units shall be given to such physically disabled persons.

HOW SHOULD SALES PRICES BE DETERMINED?

The following methodology is used to determine the maximum sales prices of the affordable units:

1. To determine appropriate households size: for one bedroom units, use household of 2; for two bedroom units, use household of 3; for three bedroom units, use household of 4.
2. Initial prices should be established so that appropriately sized households earning 70% of area median income are not required to spend more than 30% of gross income toward debt service on a mortgage.

For example, in 2005 in the Lawrence metropolitan area, 70% of area median income for a three-person household is \$46,980.

3. Calculate 30% of gross income for housing expenses, which includes mortgage payments, real estate taxes, homeowners insurance, condo fees (if applicable), and private mortgage insurance.
4. Subtract the estimated taxes (based on locality's tax rate), insurance, condo fees, and private mortgage insurance (PMI) to determine how much is available to support mortgage payments. (PMI amount is .078% of the loan amount).
5. Use the prevailing interest rate, then add ¼% above current rates and a 30-year term to determine mortgage amount.
6. Assume 5% down payment to arrive at the maximum sales prices.

WHAT ARE THE STEPS OF THE LOTTERY PROCESS?

Step 1: Determining Basic Qualifications

Below are minimum thresholds for lottery qualifications:

- a. Total household gross income cannot exceed 80% of the area median income as defined by the U.S. Department of Housing and Urban Development. Annual income shall be determined in the manner set forth in 24 C.F.R. 5.609 (or any successor regulations).
- b. The household shall not have owned a home within three years preceding the application, with the exception of displaced homemakers and elderly households (where at least one household member is 55 or over).
- c. The household shall have sufficient funds for a down payment and closing costs, as determined by the developer and the participating lender(s).
- d. Household size should be appropriate for the number of bedrooms in the home. It is appropriate to set a minimum and maximum household size for the units. For example, it may be appropriate for two bedroom homes to set a minimum household size of two persons.
- e. Household income should be able to support at least 50% of the price of the home. No more than 50% of the purchase price should be cash.
- f. Household assets shall not exceed \$50,000 in value, except in the case of 55 or over households or age restricted units where the household may additionally own a dwelling (to be sold) in which the household has no more than \$150,000 in equity. Household assets shall be defined in the manner in which HUD determines assets for the purposes of attribution of income.
- g. Non-household members should not be permitted as co-signers of the mortgage.
- h. Individuals who have a financial interest in the development and their families shall not be eligible to participate in the lottery.

Step 2: Developing Application Materials

The developer should prepare complete application materials, including an application form, application certification form, authorization for consent to release information, description of the use restriction, a description of the eligibility requirements, a clear description of the preference categories being used, and how the lottery winners will be chosen.

Step 3: Advertising and Outreach

Chapter 40B requires “affirmative fair marketing” of all the affordable units to provide maximum opportunity for minority households to apply for the lottery. Typically, ads are placed in local and regional newspapers that serve the targeted minority groups. Notices should be sent to area churches, local and regional housing agencies, local housing

authorities, civic groups, lending institutions, social service agencies, and other non-profit organizations.

The entity responsible for the lottery process should offer one or more information meetings for the public to educate them about the lottery process and the development. These meetings may include local officials, lottery administrators, developers, and local bank or finance officials. The date, time, and location of these meetings should be published in ads or flyers that publicize the availability of lottery applications. The meetings are usually held in a town building, school, library, or public meeting room. Meetings are usually held in the evening and at least one weekend day in order to reach as many potential applicants as possible. Attendance at a meeting should not have any effect on the approval of a lottery application.

The purpose of the meeting is to answer questions that are commonly asked by lottery applicants. Sometimes a town official will welcome the participants and describe the town's role in the affordable housing project. The lottery administrator can 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. Lastly, it is helpful to have a local banker or financial representative present to answer questions about qualifications for the financing of affordable units. The number of meetings needed is usually determined by the interest in the development throughout the community.

At the meetings and through general outreach, the lottery administrator should provide application materials to lottery applicants, which outline income qualifications for the lottery, the sales prices of the affordable units, the deed rider (s), and the process one must follow to be eligible for the lottery.

Sales prices must be "locked-in" at the time of the initial marketing of the affordable units. Therefore, the prices of the homes should not be increased once the lottery process begins, even if interest rates and HUD income guidelines change during this period.

Step 4: Developing and Distributing Applications

The application period should be at least 60 days. The lottery applicants should submit all of the required materials by a specified deadline. The level of documentation the developer requires from the applicant may vary. Some developers simply allow the applicant to "self-qualify" based on information obtained from the meeting and materials.

Other developers require that applicants obtain a "pre-qualification" letter from a lender and submit income tax returns to be eligible for the lottery. Whatever method is chosen, only applicants that are income eligible and who submit all required information, should be entered into the lottery.

Step 5: Lottery Selection

Once all required information has been received, each qualified applicant should be assigned a registration number. Ballots with the registration number for applicant households are placed in each and all lottery pools in which they qualify. If a project has units with different numbers of bedrooms, the various unit types should be distributed proportionately between the two lottery pools.

Additionally, household preference sizes should be used within both the local preference and general pools. For example, a project with two-bedroom units could have a preference for households with two or more persons. For the lottery, all the applicants with two or more persons would be separated for both the local and general pools. At the lottery, all the two+ households would be drawn first, followed by all the single households in both pools. The ballots are randomly drawn for both of the pools and placed in the order drawn.

Step 6: Loan Application

Once the lottery has been completed, applicants should be given a reasonable pre-specified time period in which they must secure financing. Lottery winners should be free to choose the lender of their choice. A formal loan application is made to the lender within the time limit prescribed at the meeting. The lender should determine eligibility based on the qualifications outlined in step 1 above as well as credit worthiness of the applicant.

The lender should also review the deed rider, which contains the long-term affordability restrictions.

The lender will send a preliminary approval, at which time the applicant contacts the developer and enters into a Purchase and Sale Agreement. The executed Purchase and Sale Agreement is submitted to the lender who then will issue a firm financing commitment.

Step 7: Final Qualification and Closing

Once a Purchase and Sale Agreement has been signed, the developer or lender should submit income and asset documentation of the applicant to the monitoring agent. Income verification should include verified tax returns from the past three years, five of the most recent pay stubs, and reliable documentation as to other sources of income and assets. The monitoring agent will then verify that the household's income does not exceed 80% of the area median income and that the household assets do not exceed the maximum allowable amount.

After closing on the sale of the unit, the developer should provide the monitoring agent or project administrator with a copy of the deed and use restriction and evidence of recording.