

**San Francisco Mayor's Office of Housing
Policy on Subordination
of its Declaration of Restrictions
and Deed of Trust**

Background:

In general, the Mayor's Office of Housing ("MOH") will require recordation of a Declaration of Restrictions ("Declaration") and a Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing ("Deed") against a property when it provides any financing for the development of affordable housing. These documents may be recorded against the land or the leasehold interest if there is a ground lease in place.

The Declaration is recorded against the land or the leasehold interest typically concurrent with closing any MOH financing for the affordable housing development. The Declaration imposes regulatory obligations on the borrower of MOH financing, restricting the income limits to and rent payment standards allowed in housing units supported by MOH financing. The Declaration may also impose occupancy restrictions for certain target populations, such as Housing Opportunities for Persons With AIDS or persons with disabilities, if such restrictions are required by the funding source. The term of the Declaration may run concurrent with the Deed of Trust associated with the MOH financing, or may be longer. The typical term of the Declaration is 55 years.

The Deed is also recorded against the land or leasehold interest typically concurrent with closing any MOH financing for affordable housing development. The Deed secures MOH's financial interest in the affordable housing development by using the land, improvements, leases and personal property associated with the improvements as collateral for MOH's loan.

San Francisco Redevelopment Agency (SFRA) funded projects will also be included under this MOH policy subject to SFRA action approving this policy, if necessary.

Policy on Subordination of MOH's Declaration of Restrictions:

The Mayor's Office of Housing will subordinate its Declaration of Restrictions to a senior lender whose financing is being used to acquire or construct new housing on vacant land. MOH may subordinate its Declaration to a senior lender whose financing is being used to acquire or rehabilitate an existing building. This will depend on whether the unrestricted value of the building is significantly higher than the restricted value and if so, whether or not MOH chooses increased leveraging of its own financing over lower total development costs. MOH will not subordinate its Declaration to a permanent lender, unless that lender's recorded affordability restrictions are more stringent than MOH's affordability restrictions.

Policy on Subordination of MOH's Deed of Trust:

The Mayor's Office of Housing will subordinate its Deed of Trust to senior lenders for acquisition, predevelopment, construction or permanent financing if and only if MOH is permitted the right to cure any borrower's events of default.

General Conditions Related to All Subordinations:

Any subordination of MOH's Declaration of Restrictions or Deed of Trust will be subject to the following conditions:

- (a) All of the proceeds of the proposed senior financing, less any transaction costs, must be used to provide acquisition, construction and/or permanent financing for the Project.
- (b) The senior lender must be a state or federally chartered financial institution, a nonprofit corporation or a public entity that is not affiliated with Borrower or any of Borrower's affiliates, other than as a depositor or a lender.
- (c) Borrower must demonstrate to MOH's reasonable satisfaction that subordination of the Deed of Trust and/or Declaration of Restrictions is necessary to secure adequate acquisition, construction, rehabilitation and/or permanent financing to ensure the viability of the Project.