

*Regulations of Connecticut State Agencies*

TITLE 8. Zoning, Planning, Housing, Economic and Community Development and Human Resources

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*Agency*

**Department of Housing**

*Subject*

**Surplus Property Program**

*Inclusive Sections*

**§§ 8-37y-1—8-37y-13**

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**Surplus Property Program**

**Sec. 8-37y-1. Definitions**

The following Definitions apply to Section 8-37y-1 through 8-37y-13 of the Regulations of Connecticut State Agencies.

- (1) “Commissioner” means the Commissioner of Housing.
- (2) “Department” means the Connecticut Department of Housing.
- (3) “Eligible developer” or “developer” means:

(A) a housing authority established in accordance with the requirements of section 8-40 of the Connecticut General Statutes; or

(B) a nonprofit corporation incorporated pursuant to Chapter 600 of the Connecticut General Statutes, having as one of its purposes the construction, rehabilitation, ownership or operation of housing and having articles of incorporation approved by the Commissioner; or

(C) a municipal developer, which means a municipality which has not declared by resolution a need for a housing authority pursuant to Section 8-40 of the Connecticut General Statutes, acting by and through its legislative body, except that in any town in which a town meeting or representative town meeting is the legislative body, “municipal developer” means the Board of Selectmen if such board is authorized to act as a municipal developer by the town meeting or representative town meeting; or

(D) a community housing development organization (CHDO) which means a nonprofit corporation as defined pursuant to the National Affordable Housing Act of 1990; or

(E) a community housing development corporation (CHDC) incorporated and organized pursuant to the requirements of Section 8-217 of the Connecticut General Statutes, having as one of its purposes the financing, acquisition, construction or rehabilitation of housing, and having articles of incorporation approved by the Commissioner.

(4) “Exchange” means the mutual transfer of interests in real property, simultaneously and each in consideration of the other.

(5) “Family” means a household consisting of one or more persons.

(6) “Federal property” means any property owned by the federal government that is made available to the Department, including but not limited to excess real property acquired by the federal government for highway construction.

(7) “Housing development” or “development” means any work or undertaking, which may include acquisition of property, to provide decent, safe and sanitary dwelling units for families of low and moderate income.

(8) “Low income family” means persons and families whose income does not exceed eighty percent (80%) of the area median income, adjusted for family size, as determined, from time to time, by the United States Department of Housing and Urban Development.

(9) “Land trust” means a property ownership arrangement whereby the developer, as trustee, holds legal and equitable title to surplus real property subject to an obligation to keep or use the property for the benefit of homeless persons, or persons or families of low and moderate income.

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(10) “Moderate income family” means persons and families whose income does not exceed one hundred percent (100%) of the area median income, adjusted for family size, as determined, from time to time, by the United States Department of Housing and Urban Development. However, homeownership income limits shall be determined in accordance with the Connecticut Housing Finance Authority’s guidelines.

(11) “Municipal approval” means approval by the governing body of the municipality where the property is located.

(12) “Property” or “Real property” means any real property as defined in Section 8-39 (n) of the Connecticut General Statutes, which is under the custody and control of the Department of Housing, pursuant to the requirements of Section 4b-21 and Section 8-37y of the Connecticut General Statutes or which is exchanged for property under the custody and control of the Department of Housing.

(Effective November 26, 1993)

**Sec. 8-37y-2. Program description**

The program purpose is to permit a developer to acquire state or federal surplus property suitable for development and preservation of emergency shelters and transitional living facilities for homeless persons, and housing for low and moderate income persons and families which shall remain permanently affordable.

(Effective November 26, 1993)

**Sec. 8-37y-3. Program requirements**

(a) Upon the transfer of state surplus property pursuant to Section 4b-21 of the General Statutes, the Commissioner, with the approval of the Commissioner of Public Works, the Secretary of the Office of Policy and Management, and the State Properties Review Board may sell or lease such property to an eligible developer, exchange the property for a suitable piece of property, or enter into an agreement regarding such property with an eligible developer.

(b) The Commissioner, with the approval of the Commissioner of Public Works, the Secretary of the Office of Policy and Management and the State Properties Review Board may also enter into a contract to purchase, lease, or hold any surplus real property made available by the federal government if the Commissioner determines that such property can be utilized for the construction, rehabilitation or renovation of housing for persons and families of low and moderate income. Upon such transfer, the Commissioner may sell or lease such property, exchange the property for a suitable piece of property, or enter into an agreement regarding such property with an eligible developer.

(c) The Commissioner shall require, as a condition of any sale, exchange, lease or agreement entered into, regarding federal surplus property that such real property be used only for the construction, rehabilitation or renovation of housing for persons and families of low and moderate income.

(d) Prior to any sale, exchange, lease or agreement, the Commissioner shall notify the

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chief executive officer or officers of the municipality or municipalities in which such property is located. No property may be sold, exchanged or leased by the Commissioner without approval of the municipality or municipalities in which the property is located.

(e) Any use of the property shall be subject to the planning, zoning, sanitary and building laws, ordinances and regulations applicable to the locality in which the real property is located.

(f) Developers shall ensure that any and all property, and interests therein, acquired under this program, shall be permanently made affordable to low and moderate income persons or families. Developers may use deed restrictions, restrictive covenants, or place the property in a land trust to achieve the long term affordability goal.

(g) Any subsequent transfer of the property, including any improvements thereon, by the developer, shall meet the following criteria:

(1) subsequent developers shall be subject to the same restrictions as the initial developer and shall be subject to the laws and regulations governing the Surplus Property Program; and

(2) the sales price and conditions of sale shall be approved by the Commissioner.

(h) Prior to the transfer of the property by the Commissioner, the developer shall provide a commitment for project financing necessary to develop housing from a government or private financial institution;

(i) If the development is not completed within the planning and development timetable approved by the Commissioner, the property shall revert to the Department unless an extension is granted by the Commissioner in writing based upon conditions beyond the developer's control;

(j) At initial occupancy and upon subsequent transfers, an affidavit shall be filed with the Commissioner to verify that the persons and families occupying the property meet the low and moderate income limit requirement.

(k) All development projects shall be competitively bid, unless the governmental financing program being utilized does not establish such a requirement.

(l) To be eligible for this program, a nonprofit corporation:

(1) shall maintain accountability to community residents by providing a formal process for program beneficiaries and the community to advise the organization in its decisions regarding the design, siting, development and management of affordable housing;

(2) shall neither be controlled by, nor be under the direction of, individuals or entities seeking to derive profit or gain from the organization. A nonprofit organization may be sponsored in part by a for-profit entity, but the for-profit entity may not have the right to appoint more than one-third of the membership of the organization's governing body, and the organization shall be free to contract for goods and services from vendors of its own choosing;

(3) shall have a history of serving the state's low or moderate income community; and

(4) shall be able to demonstrate a successfully completed housing development, and demonstrate administrative capacity, including experienced personnel.

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(m) Developers shall be required to comply with all rules and orders that may be promulgated, from time to time, by the Commissioner and consistent with the Connecticut General Statutes for the development and management of projects.

(n) The Commissioner may waive any nonstatutory requirements imposed by 8-37y-1 to 8-37y-13, inclusive, of these regulations. Requests for a waiver shall be in writing, addressed to the Commissioner. Such waiver may only be granted with sufficient evidence that:

(1) the literal enforcement of such provisions provide for exceptional difficulty or unusual hardship not caused by the recipient;

(2) the benefit to be gained by waiver of the provisions is clearly outweighed by the detriment which shall result from enforcement;

(3) the waiver is in harmony with conserving public health, safety and welfare; and

(4) the waiver is in the best interest of the state.

(Effective November 26, 1993)

**Sec. 8-37y-4. Eligible activities**

(a) An eligible developer may enter into an agreement with the Department to lease or purchase real property for an emergency shelter or transitional living facility for homeless persons, or for the construction, rehabilitation or renovation of housing for persons and families of low and moderate income.

(b) Any person, entity or eligible developer may enter into an agreement with the Department to exchange, for surplus property, real property which can be utilized for an emergency shelter, transitional living facility for homeless persons or for the construction, rehabilitation or renovation of housing for persons and families of low and moderate income.

(c) Upon transfer of the property, an eligible developer may undertake construction, rehabilitation or renovation of housing to be used for homeless persons or persons and families of low and moderate income.

(d) Types of housing that may be developed include but are not limited to emergency shelters, transitional living facilities, multi-family housing, single family housing and cooperatives.

(e) The eligible developer may:

(1) lease the real property to low and moderate income persons and families or other eligible developers or a housing partnership in which the general partner is an eligible developer;

(2) sell the real property to low and moderate income persons and families subject to deed restrictions approved by the Commissioner;

(3) retain the land in trust and lease or sell the building(s) or improvements to low and moderate income persons and families or other eligible developers or a housing partnership in which the general partner is an eligible developer.

(Effective November 26, 1993)

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**Sec. 8-37y-5. Eligible developers**

To be eligible for participation under this program:

(a) A housing authority shall, in addition to the requirements in subsection (d) below, submit a statement from the legal counsel of the housing authority that verifies that the housing authority is recognized and continues to be properly constituted by the municipality in accordance with Section 8-40 of the Connecticut General Statutes.

(b) A nonprofit corporation shall, in addition to the requirements in subsection (d) below:

(1) Submit documentation of tax exempt status, if applicable;

(2) Submit an endorsed certificate of incorporation, which includes the articles of incorporation that states housing as one of its purposes, certified by the Secretary of the State;

(3) Submit a certificate of good standing certified by the Secretary of the State; and

(4) Inform the Department, in writing, of the corporation's principal place of business.

(c) A Community Housing Development Corporation or Community Housing Development Organization shall, in addition to the requirements in subsection (d) below:

(1) Submit a statement, except for those corporations specially chartered by the general assembly and CHDO's, showing designation by the governing body of a municipality or by a joint resolution of the governing bodies of two or more municipalities to enter into contracts with the State as provided for in Section 8-218 of the Connecticut General Statutes;

(2) Submit documentation of tax exempt status, if applicable;

(3) Submit an endorsed certificate of incorporation, which includes the articles of incorporation, certified by the Secretary of the State;

(4) Submit a certificate of good standing certified by the Secretary of the State; and

(5) Inform the Department, in writing, of the corporation's principal place of business.

(d) All housing authorities, nonprofit corporations, community housing development corporations, or community housing development organizations, shall:

(1) Submit a list of any housing developments which they have developed, owned or managed;

(2) Submit a statement authorizing the Commissioner to apply for a credit report from any appropriate credit reporting agency covering the developer in determining the financial capability of the developer;

(3) Submit names, addresses and telephone numbers of its current commissioners, officers and/or members of the board of directors and statutory agent for service; and

(4) Be in good standing with the Department.

(e) A municipal developer shall submit a notarized copy of its legislative body's resolution designating its governing body as a municipal developer, as well as items (d)(1), (3) and (4) above.

(Effective November 26, 1993)

**Sec. 8-37y-6. Exchange process**

(a) Any person that enters into an agreement with the Department to exchange real

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property for surplus property, shall provide the following:

- (1) His social security number;
- (2) His principal place of business and the telephone number;
- (3) Any additional information which the Commissioner determines is necessary.

(b) Any entity that enters into an agreement with the Department to exchange real property for state surplus property, shall provide the following:

- (1) its principal place of business and the telephone number;
- (2) Name, address and telephone number of principals;
- (3) Proof of type of entity and certificate of good standing if a corporation;
- (4) Any additional information which the Commissioner determines is necessary;
- (5) Authorizing resolution, if applicable.

(c) In addition to the requirements above, a person or entity shall provide:

- (1) Proof of clear title to the property;
- (2) A-2 survey;
- (3) Legal Description;
- (4) Proof of all applicable local approvals;
- (5) A certified check for the cost of an independent appraisal secured by the Department;
- (6) A detailed description of:
  - (i) the reason for the exchange;
  - (ii) property to be exchanged and its estimated value;
  - (iii) proposed time frame for the exchange;
  - (iv) any other documentation required by the Commissioner.

(d) Evaluation for a proposed exchange shall be based on appraised value, number units, cost of development, completion of local approval process, and any other terms and conditions that the Commissioner may impose to insure that the exchange is in the State's best interest.

(e) An exchange shall include real property; however, the state may accept cash as part of the exchange agreement.

(f) An exchange is subject to the approval of the municipality, Commissioner of Public Works, Secretary of the Office of Policy and Management and the State Properties Review Board.

(g) Any statutory restrictions shall be released from the surplus property and be placed on the new property. Such restrictions shall run with the land and be binding on each subsequent owner of the property.

(h) The property received in the exchange shall be used for an emergency shelter, transitional living facility for homeless persons or for the construction, rehabilitation or renovation of housing for persons and families of low and moderate income.

(i) The following conditions shall be met prior to finalizing an exchange:

(1) The municipality shall approve the conveyance of the property to be developed to the selected developer; and

(2) the owner of the property to be exchanged shall secure all required local zoning

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approvals necessary to develop the property in the manner approved by the Commissioner and the municipality.

(Effective November 26, 1993)

**Sec. 8-37y-7. Application process**

(a) The Commissioner shall inform the municipality upon his acceptance of the surplus property.

(b) The Department shall discuss available options for the use and development of the property with the municipality.

(c) Upon mutual agreement between the Commissioner and the municipality, the Commissioner may issue a Request for Proposals from eligible developers for the use and development of the property, in accordance with such options. The Commissioner may waive the Request For Proposal process for properties which currently contain less than five (5) dwelling units and may convey such property to an eligible developer who has been approved by the Commissioner and the municipality or to an eligible low or moderate income person or family who shall occupy such property.

(d) If the municipality does not concur with the development options submitted to the municipality by the Department, the Commissioner may either bank the property for future consideration or transfer the property back to the applicable state agency.

(e) As part of the application process, the developer shall be required to furnish the following:

(1) A plan of development which describes the proposed use of the land, buildings and/or improvements, persons to be served, income mix and proposed rents and/or sales prices;

(2) Proposed site plan;

(3) Evidence that the land is properly zoned for the proposed use or a time frame for obtaining land use permits or variances;

(4) Identification of any governmental or private housing finance programs to be utilized for construction, rehabilitation or renovation of housing and evidence that the developer has an application for financial assistance under review;

(5) Financial information on the projected cost of development and management;

(6) Evidence of housing need and marketability;

(7) A description of the mechanism to be used by the developer which shall guarantee that the housing shall remain permanently affordable;

(8) An Affirmative Fair Housing Marketing Plan;

(9) Preliminary drawings and specifications;

(10) Insurance information; and

(11) A plan for the proposed use of any proceeds gained from the sale of any units constructed on the real property.

(f) If a developer intends to lease the property which it has acquired under this program or lease or sell the housing constructed on such property, it shall provide the following for approval:



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- (1) Identification of the proposed lessee, buyer, or marketing plan;
- (2) Description of the lessee's or buyer's proposed use of the land or building(s);
- (3) A copy of the proposed lease or contract for sale; and
- (4) Any other documentation which the Commissioner determines is necessary to ensure that the property is being used for homeless persons or persons and families of low and moderate income.

(g) The Commissioner may, from time to time, request additional information from the developer.

(h) Once a developer receives preliminary approval of its application, the Commissioner shall:

- (1) Inform the chief executive officer of the municipality of the selected developer;
- (2) Provide the chief executive officer with a copy of the developer's application; and
- (3) Request that the Chief Executive Officer secure the municipality's approval of the Department's conveyance of the site to the developer.

(A) If the municipality approves the conveyance of the property to the developer, the Commissioner shall initiate the state approval process, in accordance with the requirements of Section 8-37y of the Connecticut General Statutes and enter into a conditional sales agreement.

(B) If the municipality fails to approve the conveyance of the site to the developer, the Commissioner shall notify the developer in writing.

(C) If the municipality conditionally approves the conveyance, the Commissioner shall review the conditions and determine if they impact the proposal.

(i) If the Commissioner determines that the conditions imposed by the municipality shall impact the proposed housing, the Commissioner shall reconsider the proposal in light of the municipal conditions.

(ii) If the Commissioner determines that they do not significantly impact the proposed housing, he shall notify the developer, in writing, of his findings and request the developer's concurrence.

(iii) If the developer does not concur with the Commissioner's findings, it may withdraw its proposal without prejudice.

(iv) If the developer concurs with the Commissioner's findings, the developer shall amend the plans for the development of the proposed housing in accordance with such findings.

(Effective November 26, 1993)

**Sec. 8-37y-8. Evaluation**

Applications shall be evaluated and therefore approved or disapproved by the Commissioner based on the following:

- (1) Any priorities established in the State Comprehensive Housing Affordability Strategy, or any needs outlined in the Five Year Housing Advisory Plan adopted by the Department, if applicable;

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(2) Any governing policies identified in the Department's Description/Rules of Operations;

(3) Local housing assistance plans or Local Comprehensive Housing Affordability Strategy, if in existence;

(4) Any other statistical data on housing need and marketability;

(5) Whether the proposed financing for the development of the property includes leveraging of other funds;

(6) Compliance with DOH design standards for rental housing or those design standards established by the governmental program providing the construction financing;

(7) Compliance with Connecticut Housing Finance Authority's design standards for non-rental housing or those design standards established by the governmental program providing the construction financing;

(8) The ability of the proposed development to fit within the existing community design;

(9) Cost effectiveness including administrative costs;

(10) The developer's timetable for completion of the development;

(11) The number of units as determined by the Commissioner;

(12) The methods used to ensure long term affordability and the duration of affordability;

(13) The developer's evidence of preliminary or firm commitments for development financing from acceptable financial institutions; and

(14) Compliance with Department affirmative action requirements.

(Effective November 26, 1993)

**Sec. 8-37y-9. Contract provisions**

(a) Contracts shall include, but not be limited to the terms and conditions of the transfer, the rights and obligations of the parties under the contract(s), and any other special provisions agreed upon between the parties.

(b) The developer shall provide a deed restriction, restrictive covenant or land trust agreement, to run in favor of the state, in any legal documents to be filed on the land records to insure that the property remains permanently affordable and shall serve homeless persons or low and moderate income persons and families. This provision may be subordinated to a mortgage lender if the Commissioner determines that such subordination is in the State's best interest.

(Effective November 26, 1993)

**Sec. 8-37y-10. Restrictions on the sale or use of the property**

(a) In addition to whatever remedies exist in the contract, the developer shall, upon demand by the Commissioner, transfer title to the State or a receiver designated by the State for that property conveyed to it pursuant to Section 8-37y-6 of these regulations if the Commissioner determines that:

(1) reasonable progress in the development of the property as described in the developer's application, has not been made from the date of conveyance of the property;

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(2) the property has been developed or used for purposes other than for housing to benefit homeless persons or persons and families of low and moderate income; or

(3) the developer has amended its bylaws and/or articles of incorporation so that it no longer conforms with that originally submitted and approved by the Commissioner; or

(4) the developer has failed to maintained proper insurance or has otherwise failed to protect the state's interest.

(b) Restrictive covenants, as stated in Section 8-37y-9, shall be included in all deeds for property which the Department conveys to the developer. Developers shall have the responsibility for enforcement of all restrictions.

(c) In the event of a subsequent sale, the developer shall have the first option to purchase the property.

(d) If a developer dissolves its organization, the developer shall convey its interest in the property to the Department or the Department's designated receiver.

(Effective November 26, 1993)

**Sec. 8-37y-11. Income limits**

(a) Homeownership income limits shall not exceed those established and determined from time to time under the Connecticut Housing Finance Authority's Home Mortgage Program.

(b) For all others, income limits shall not exceed one hundred percent (100%) of the area median income as determined from time to time by the United States Department of Housing and Urban Development.

(c) Notwithstanding subsections (a) and (b) above, where a federal and/or state program is being utilized for construction, rehabilitation or renovation, income limits shall be determined according to that program.

(Effective November 26, 1993)

**Sec. 8-37y-12. Reporting and access to records**

(a) The developer shall maintain complete and accurate records, in accordance with the latest procedures approved by the Commissioner.

(b) The developer shall furnish the Commissioner with financial statements and other reports relating to the development and operation of the project as well as information regarding the families being served, in such detail, and at such times, as the Commissioner may require.

(c) The developer shall, annually, provide income and racial data on all households entering a housing development which results from the use of surplus real property. Such data shall cover the period through September thirtieth and shall be provided on all households entering a housing development and those occupying the development during the year.

(Effective November 26, 1993)

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**Sec. 8-37y-13. Fiscal compliance and examination**

A developer receiving property under this program shall be subject to examination of all books and records related to the project. Examinations shall be performed by independent public accountants registered to practice in the State of Connecticut, or by qualified department personnel. All examinations shall be performed in accordance with procedures established by the Department.

(Effective November 26, 1993)