[Modified Text of Proposed Regulations for Affordable Sales Program with Added Text Indicated by Double Underline and Deleted Text Indicated by Double Strikethrough]

TITLE 21 PUBLIC WORKS
DIVISION 2. DEPARTMENT OF TRANSPORTATION
CHAPTER 9.5. AFFORDABLE SALES PROGRAM

§ 1475 Purpose and Scope

(a) In 1979, the Legislature passed and the Governor did sign Senate Bill 86, subsequently amended, most recently by Senate Bill 416, and collectively known as the "Roberti Act," which added Sections 54235 through 54238.7 to the Government Code (the Act) wherein the Legislature has found and declared that the sale of certain surplus residential properties by the Department of Transportation (the Department) would directly serve an important public purpose. The Legislature intended by passage of the Act to dispose of such surplus residential properties in a manner that will preserve, upgrade and expand the supply of housing available to affected persons and families of low or moderate-income. The Legislature further intended the Act to mitigate the environmental effects, within the meaning of Article XIX of the California Constitution, caused by certain highway activities related to such surplus residential properties.

(b) This chapter sets forth the regulations used by the Department for the sale of surplus residential properties and nonresidential properties pursuant to the Act for State Route 710 (SR 710), in Los Angeles County. The regulations specified herein and the governing statutes are collectively known as the "Affordable Sales Program."

NOTE: Authority cited: Govt. Code §§ 54235, 54236, 54237, 54237.3, 54237.5, 54237.7, 54237.8, 54238, 54238.3, 54238.4, 54238.5, 54238.6, 54238.7. Reference cited: Cal. Const. art. XIX; Govt. Code §§ 54235, 54238.3 & 54238.4.

§1476 Definitions

(a) "Affordable housing cost" shall ~~have the same definitions as set forth in~~ be calculated in a manner consistent with the provisions of Health and Safety Code section 50052.5 as implemented by California Code of Regulation, title 25, section 6924. For purposes of this chapter, for households whose gross income is above low or moderate income but does not exceed 150 percent of the area median income, affordable housing cost shall not be less than 28 percent of the gross income of the household, nor exceed the product of 35 percent times 150 percent of area median income adjusted for family size appropriate for the unit in accordance with Health and Safety Code section 50052.5(b) (4).

(b) "Affordable price" means the maximum price at which the housing cost to be paid by the prospective purchaser would not exceed the affordable housing costs for such purchases while applying the market interest rate over a fully amortized 30-year term, but

under no circumstances shall it be more than the Department approved appraised fair market value nor less than the original acquisition price paid by the Department.

(c) "Affordable rent" means rent calculated in ~~accordance~~ a manner consistent with the provisions of Government Code section 54236 (g) and California Code of Regulation, title 25, section 6922.

(d) "Area median income" shall have the same definition as set forth in Health and Safety Code, section 50093.

(e) "CalHFA" means the California Housing Finance Agency, a public instrumentality and political subdivision of the State of California created by the Zenovich-Moscone-Chacon Housing and Home Finance Act, division 31 of the California Health and Safety Code.

(f) "Conditional Offer Prior to Sale" means the manner in which all surplus residential property is offered for sale in accordance with this chapter.

(g) "Designated housing-related public entity" means a housing-related public entity designated by the legislative body of the city in which a surplus residential property is located. Such designation shall be made by the legislative body pursuant to resolution and sent to the Department within the time frames set forth in this chapter.

(h) "Date the offer of sale is made" means the date stated in the Conditional Offer Prior to Sale or publication, as applicable.

(i) "Decent, Safe, and Sanitary" means the condition of a replacement dwelling as defined and described in California Code of Regulations, title 2, section 1872.

(j) "Department approved appraised fair market value" means the fair market value as determined by a licensed appraiser, and reviewed and accepted by the Department.

(k) "Displaced" means a condition when a person is subject to displacement pursuant to Government Code section 54236(e) or 54238.3(b).

(l) "Fair market value" means the most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

(1) The buyer and seller are typically motivated;

(2) Both parties are well informed or well advised, and each is acting in what they consider their best interest;

(3) A reasonable time is allowed for exposure in the open market;

(4) Payment is made in terms of cash in United States Dollars or in terms of a financial arrangement comparable thereto;

(5) The price represents the normal consideration for the property sold unaffected by special or creative financing, sales concessions, or the use and resale restrictions; and

(6) For transfer from the Department, the date of value is the date the offer of sale is made by the selling agency.

(m) "Forced to relocate" means a condition when a displaced person has vacated the surplus residential property not later than ninety (90) days after transfer from the Department to a new owner pursuant to a legal written notice to vacate, excluding notices for cause.

(n) "Former tenants in good standing" means tenants who were current in rent obligations, in full compliance with the terms and conditions of the lease or rental agreement at the time of vacancy, and whose tenancy was not terminated for cause.

(o) "Good cause" means circumstances beyond the control of the tenant, occupant, or prospective buyer.

(p) "Good standing" means a condition when tenants or occupants who are current in rent obligations, and in full compliance with the terms and conditions of the lease or rental agreement as of the date the tenant or occupant responds to the Conditional Offer Prior to Sale and at time of transfer from the Department.

(q) "Housing cost" of a prospective buyer purchasing a surplus residential property shall be calculated in accordance with the provisions of California Code of Regulation, title 25, section 6920.

(r) "Housing-related private entity" means any individual, joint venture, partnership, limited partnership, trust, corporation, cooperative, or other legal entity, or any combination thereof, approved by the Department as qualified to either own, construct, acquire, or rehabilitate a housing development, or a residential structure other than an owner-occupied single unit whether for profit, non-profit, or limited profit.

(s) "Housing-related public entity" means any county, city, city and county, the duly constituted governing body of an Indian reservation or Rancheria, or housing authority organized pursuant to the Health and Safety Code, division 24, part 2, chapter 1, and also includes any state agency, public district or other political subdivision of the state, and any instrumentality thereof, which is authorized to engage in or assist in the development or operation of housing for persons or families of low or moderate income. Housing-related public entity also includes two or more housing-related public entities acting jointly.

(t) "Limited equity cooperative housing" means a corporation as defined in Civil Code section 817.

(u) "Minimum Property Standards" means meeting the following minimum acceptable criteria for existing surplus residential properties.

(1) Real Estate Entity. The property must comprise a single readily marketable real estate entity.

(2) Party or Lot Line Wall. A building constructed on or to a property line must be separated from the adjoining building, by a wall extending the full height of the building from the foundation to the ridge of the roof. The wall can separate row type townhouses or semi-detached units. There must be adequate space between buildings to permit maintenance of the exterior walls.

(3) Service and Facilities.

(i) Trespass. Each living unit must be able to be used and maintained individually without trespass upon adjoining properties. Any easement required must run with the land.

(ii) Utilities must be independent for each living unit except that common services, such as water, sewer, gas and electricity, may be provided for living units under a single mortgage or ownership. Separate utility service shut-off for each unit shall be provided. For living units under separate ownership, common utility services may be provided from the main to the building line when protected by easement or covenant and maintenance agreement acceptable to the Department. Individual utilities serving a living unit shall not pass over, under, or through another living unit, unless provision is made for repair and maintenance of utilities without trespass on adjoining properties or legal provision is made for permanent right of access for maintenance and repair of utilities.

(iii) Other facilities must be independent for each living unit, except that common services, such as laundry and storage space or heating, may be provided for in two-to-four living unit buildings under a single mortgage.

(4) Each living unit must contain the following:

(i) A continuing supply of safe and potable water.

(ii) Sanitary facilities and a safe method of sewage disposal.

(iii) Heating adequate for healthful and comfortable living conditions. The Department may determine that climatic conditions are such that mechanical heating is not required. Dwellings with wood burning stoves or solar systems used as a primary heat source must have permanently installed conventional heating systems that maintain at least 50 degrees Fahrenheit in areas containing plumbing systems.

(iv) Domestic hot water.

(v) Electricity for lighting and for equipment used in the living unit.

(5) Access.

(i) Each property must be provided with a safe and adequate pedestrian or vehicular access from a public or private street.

(ii) All streets must have an all-weather surface.

(iii) Access to the living unit must be provided without passing through any other living unit.

(iv) Access to the rear yard must be provided without passing through any other living unit. For a row-type dwelling, the access may be by means of alley, easement, passage through the dwelling, or other acceptable means.

(6) Defective Conditions. Defective construction, poor workmanship, evidence of continuing settlement, excessive dampness, leakage, decay, termites, or other

conditions impairing the safety, sanitation or structural soundness of the defects or conditions have been remedied and the probability of further damage eliminated.

(7) Space Requirements. Each living unit must be provided with space necessary to assure suitable living, sleeping, cooking and dining accommodations and sanitary facilities.

(8) Mechanical systems must be safe to operate, be protected from destructive elements, have reasonable future utility, durability and economy, and have adequate capacity and quality.

(9) Ventilation. Natural ventilation of structural space such as attics and crawl spaces, must be provided to reduce the effect of conditions of excess heat and moisture which are conducive to decay and deterioration of the structure.

(10) Roof covering must prevent entrance of moisture and provide reasonable future utility, durability and economy of maintenance. When reroofing is needed for a defective roof, already consisting of three layers of shingles, all old shingles must be removed prior to re-roofing.

(11) Hazards. The property must be free of hazards which may adversely affect the health and safety of the occupants or the structural soundness of the improvements, or which may impair the customary use and enjoyment of the property by the occupants. The hazards can be subsidence, flood, erosion, defective lead base paint (24 CFR Part 35) or the like.

(12) Crawl Space

(i) Must be adequate access to the crawl space.

(ii) The floor joists must be sufficiently above the highest level of the ground to provide access for maintenance and repair of ductwork and plumbing.

(iii) The crawl space must be clear of all debris and properly vented.

(iv) Any excessive dampness or ponding of water in the crawl space must be corrected.

(13) Drainage. The site must be graded so as to provide positive, rapid drainage away from the perimeter walls of the dwelling and prevent ponding of water on the site.

(v) "Multifamily property" means property that consists of two or more dwelling units.

(w) "Nonresidential Property" means property, whether improved or unimproved, that is used primarily for a nonresidential purpose that is fully compliant, properly permitted, and licensed under local ordinances and state licensing requirements as of the effective date of these regulations if applicable.

(x) "Occupant" notwithstanding any other provision of law, means a person or persons who lives in the surplus residential property as their principal place of residence, is of majority age, and is listed on the lease or rental agreement prior to the date a prospective buyer responds to a Conditional Offer Prior to Sale.

(y) "Persons or families of low or moderate income" shall have the same meaning as set forth in Health and Safety Code section 50093. ~~For purposes of this chapter, "persons or families of low or moderate income" also means persons or families whose income does not exceed 150 percent of the area median income adjusted for family size.~~

(z) "Principal place of residence" means the place where one actually lives for the greater part of time, or the place where one remains when not called elsewhere for some special or temporary purpose and to which one returns frequently and periodically, as from work or vacation. There may be only one principal place of residence for any individual. Evidence that a location is the individual's "principal place of residence" includes, but is not limited to, the following elements, a compilation of which lends greater credibility to the determination that a particular place is the principal place of residence, whereas the presence of only one element may not support such a determination:

(1) The subject premises are listed as the individual's place of residence on any motor vehicle registration, driver's license, voter registration, or with any other public agency, including federal, state and local taxing authorities.

(2) Utilities are billed to and paid by the individual at the subject premises.

(3) All of the individual's personal possessions have been moved into the subject premises.

(4) A homeowner's tax exemption for the individual has not been filed for a different property.

(5) The subject premises are the place the individual normally returns to as his/her home, exclusive of military service, hospitalization, vacation, family emergency, travel necessitated by employment or education, or other reasonable temporary periods of absence.

(aa) "Prospective buyer" means an occupant who lives in the surplus residential property as their principal place of residence for at least ninety (90) days prior to the date the property was declared surplus and who shall occupy the surplus residential property as their principal place of residence after transfer by the Department.

(bb) "Reasonable price" means the price which is best suited to the economically feasible use of the property as decent, safe, and sanitary housing at affordable rents and affordable prices established by the entity in accordance with section 1478(c).

(cc) "Surplus residential property" means land and structures owned by the Department determined to be excess pursuant to Streets and Highways Code section 118.6, and determined to be no longer necessary for the Department's use, and that are developed as single-family or multifamily housing, but does not include property being held by the Department for the purpose of exchange.

(dd) "Transfer" means any sale, assignment, or conveyance, voluntary or involuntary, of any interest in the property. Without limiting the generality of the foregoing, transfer shall include (i) a transfer by devise, inheritance or intestacy to a party who does not meet the definition of persons or families of low or moderate income, (ii) a lease or occupancy

agreement of all or any portion of the property unless due to hardship or otherwise approved by the Department, (iii) creation of a life estate, (iv) creation of a joint tenancy interest, (v) execution of a land sale contract by which possession of the property is transferred to another party and title remain in the transferor, (vi) a gift of all or any portion of the property, or (vii) any voluntary conveyance of the property. Transfer shall not include conveyance by devise, inheritance, or intestacy to a spouse, a conveyance to a spouse pursuant to the right of survivorship under a joint tenancy, conveyance to a revocable trust, or a conveyance to a spouse in a dissolution proceeding, however, any subsequent conveyance shall be subject to the use and resale restrictions.

(ee) "Tenure" means the longest uninterrupted term of occupancy attributable to each prospective buyer.

(ff) "Use and resale restrictions" means any and all terms, conditions and restrictions recorded against the surplus residential property or otherwise made pursuant to this chapter and which shall be enforceable pursuant to the Act and this chapter.

NOTE: Authority cited: Govt. Code §§ 54235, 54236, 54237, 54237.3, 54237.5, 54237.7, 54237.8, 54238, 54238.3, 54238.4, 54238.5, 54238.6, 54238.7, 25 CFR 700.55. Reference cited: Govt. Code §§ 54236, ~~&~~ 54237, 54238; Sts. & Hy. Code § 118.6; 25 C.F.R. § 7303; 24 C.F.R. § 5.100; Health & Saf. Code § 50076.5; 25 CFR 700.55; Health & Saf. Code divs. 24 & 31; Health & Saf. Code §§ 50052.5 ~~to seq.~~, 50079.5 & 50093; Cal. Code Regs., tit. 2, §1872; Cal Code Regs., tit. 25 §§ 6910, 6912, 6914, 6916, 6918, 6920, 6922, 6924, 6926, 6928, 6930, 6932; Civ. Code § 817.

§1477 Conditional Offer Prior to Sale

(a) In making offers to sell surplus residential property, the Department shall determine the order of priority and condition such offers as follows:

(1) All single-family residences presently occupied by their former owners shall be offered to those former owners at the Department approved appraised fair market value on condition they are tenants in good standing.

(2) All single-family residences shall be offered at an affordable price or Department approved appraised fair market value at each prospective buyer's option to the occupants, on condition occupants are: (i) tenants in good standing (ii) have occupied the surplus residential property as their principal place of residence two years or more, (iii) are persons or families of low or moderate income, and (iv) have not had an ownership interest in real property in the last three years as of the date as of notice per section 1485(a).

(3) All single-family residences shall be offered at an affordable price or Department approved appraised fair market value at each prospective buyer's option to the

occupants, on condition occupants are: (i) tenants in good standing, (ii) have occupied the surplus residential property as their principal place of residence five years or more, (iii) have household gross income that is above ~~low or~~ moderate income but does not exceed 150 percent of the area median income adjusted for family size, and (iv) have not had an ownership interest in real property in the last three years as of the date as of notice per section 1485(a).

(4) All other surplus residential properties and all properties described in paragraphs (1), (2), or (3) of this subparagraph (a) that are not purchased by the former owners or the occupants, shall then be offered at a reasonable price to and in the following order of priority: (i) if it is feasible, then the surplus residential property shall be offered to prospective housing-related private and public entities on condition that the purchasing entity cause the surplus residential property to be rehabilitated and developed as a limited equity cooperative housing cooperative or cooperatives in accordance with Civil Code section 817, with first right of occupancy to current tenants, (ii) if it is not feasible to sell the surplus residential property to prospective housing-related private or public entities on condition that the purchasing entity cause the surplus residential property to be rehabilitated and developed as a limited equity cooperative housing cooperative or cooperatives in accordance with Civil Code section 817, then the surplus residential property shall be offered to a housing-related public entity as designated by the legislative body of the city in which the surplus residential property is located (the "designated housing-related public entity"), with first right of occupancy to current tenants, (iii) to any housing-related private or public entity on condition the purchasing entity shall cause the surplus residential property to be used for low and moderate income rental or owner-occupied housing in accordance with this chapter, with first right of occupancy to the current tenants. Feasible, as used in this section, means the ability or capacity to form a cooperative or cooperatives based on a commercially reasonable market analysis paid for by the prospective housing-related private or public entity. Factors considered shall include, but not be limited to, the geographic location, number of units, tenant interest, available resources for continued operation, and availability of financing as determined by the Department.

(5) Any surplus residential properties not sold pursuant to subparagraphs (1) to (4), inclusive, shall then be sold at fair market value to and in the following order of priority: (i) to current tenants in good standing who intend to be owner occupants, (ii) to former tenants in good standing who intend to be owner occupants, with priority given to the most recent tenants first, (iii) pursuant to Streets and Highways Code section 118, with preference given to the highest responsive bidder who will be an owner occupant.

(b) All surplus residential properties offered to current tenants in good standing shall be made to such current tenants shown on the existing lease or rental agreement for purchase in the entirety. No offers shall be made that exclude any qualified tenant(s).

(c) All surplus residential properties offered to former tenants in good standing, such offers shall be made to such former tenants in good standing shown on the most recent lease, rental agreement or other documentation reasonably approved by the Department for purchase in the entirety. No offers shall be made that exclude any qualified former tenant(s).

(d) The Department may solicit bids and proposals from housing-related private and public entities for such prospective sales described in this section.

(e) All nonresidential property shall be offered at fair market value to current tenants in good standing, then to any other buyer pursuant to Streets and Highways Code section 118.

(f) Purchase funds must come from sources other than the Department; the Department will not lend or otherwise finance purchases of the surplus property.

(g) All surplus residential and nonresidential properties sold are without warranty.

NOTE: Authority cited: Govt. Code §§ 54235, 54236, 54237, 54237.3, 54237.5, 54237.7, 54237.8, 54238, 54238.3, 54238.4, 54238.5, 54238.6, 54238.7. Reference cited: Govt. Code §§ 54237 & 54237.3, Civ. Code § 817; Sts. & Hy. Code § 118.

§1478 Conditions of Conditional Offer Prior to Sale

(a) For all surplus residential property offered at fair market value, the following conditions shall apply:

(1) The sales price shall be determined by a Department approved appraisal of fair market value.

(b) For all single-family surplus residential property offered at an affordable price, the following conditions shall apply:

(1) The sales price shall be determined in an amount and under such terms that results in an affordable housing cost to the prospective buyer.

(2) The Department shall verify tenure, income, real property ownership interest, and household size for prospective buyers.

(3) Pursuant to subdivision (b) of section 54237 of the Government Code, the Department shall provide necessary repairs limited to the Minimum Property Standards and reasonable lender required repairs identified pursuant to a written inspection report prepared in accordance with Section 1996, title 16, of the California Code of Regulations provided however the Department may offer a single-family surplus residential property in an "as is" condition at the request of a prospective buyer given priority to purchase such surplus residential property at an affordable price.

(4) Notwithstanding the requirement to provide repairs in subdivision (b) of section 54237 of the Government Code, the Department may elect to offer a replacement dwelling in lieu of the property that would have otherwise been offered to a prospective buyer, pursuant to Government Code section 54237.5. In such event, the sales price for the replacement dwelling shall be determined under the same terms and conditions set forth in this section, including the recordation of the use and resale restrictions, and the surplus residential property shall then be sold at an affordable price.

(5) There shall be use and resale restrictions commencing from the date of transfer from the Department ~~limiting occupancy to persons or families of low or moderate income and the subsequent sale of the surplus residential property~~ in accordance with Government Code section 54237(b). Such restrictions shall include, but are not limited to, a prohibition against renting the subject property, with the exception that a buyer purchasing at an affordable price may rent to a qualified tenant at an affordable rent, not to exceed buyer's affordable housing cost at the time of purchase if the buyer is forced to relocate temporarily because of hardship beyond the control of the buyer, subject to approval by the Department. In no case shall rental of the property exceed a total of twelve (12) months measured over any consecutive sixty (60) month period for the time the property is considered affordable.

(6) Any transfer of the surplus residential property within the first year after transfer shall give rise to the presumption that the buyer did not intend to make the surplus residential property the individual's principal place of residence. In the event the buyer cannot overcome such presumption, then such transfer shall be deemed a default under the use and resale restrictions and the Department may take such action to enforce its rights including those under section 1488.

(7) In no event shall the affordable sales price be less than the original acquisition price paid by the Department.

(c) For all surplus residential properties offered at a reasonable price, the following priorities and conditions shall apply:

(1) If to housing-related private and public entities on condition that the purchasing entity shall cause the surplus residential property to be rehabilitated and developed as a limited equity cooperative housing cooperative or cooperatives in accordance with Civil Code section 817, then the sales price shall be the price which is best suited to the economically feasible use of the surplus residential property as decent, safe, and sanitary housing at affordable rents and affordable prices as established by the entity, in accordance with this chapter, for persons or families of low or moderate income, and households whose gross income exceeds the maximum income for moderate income households but does not exceed 150

percent of area median income adjusted for family size, with first right of occupancy to current tenants.

(2) If to a housing-related private or public entity other than as described in (c)(1), then the sales price shall be the price which is best suited to the economically feasible use of the property as decent, safe, and sanitary housing at affordable rents and affordable prices as established by the entity, in accordance with this chapter, for persons or families of low or moderate income and households whose gross income exceeds the maximum income for moderate income households but does not exceed 150 percent of the area median income adjusted for family size, on condition said entity shall first offer to sell the surplus residential property within the same time frames imposed by this chapter for sales made by the Department, at fair market value to present tenants in good standing who intend to be owner occupants. In the event such tenants elect not to purchase the surplus residential property within such time frames, the entity shall cause the surplus residential property to be used as decent, safe, and sanitary housing at affordable rents for persons or families of low or moderate income, and households whose gross income exceeds the maximum income for moderate income households but does not exceed 150 percent of the area median income adjusted for family size with first right of occupancy to present tenants at (i) affordable rents in accordance with this section or (ii) fair market rents in the event such tenants do not qualify at affordable rents.

(3) In order to ensure that the surplus residential property will remain available to persons or families of low or moderate income, and households whose gross income exceeds the maximum income for moderate income households but does not exceed 150 percent of area median income adjusted for family size there shall be use and resale restrictions commencing from the date of transfer from the Department limiting occupancy to persons or families of low or moderate income, and households whose gross income exceeds the maximum income for moderate income households but does not exceed 150 percent of area median income adjusted for family size, and the subsequent sale of the surplus residential property in accordance with Government Code section 54237(d).

(4) Any transfer of the surplus residential property within the first year after transfer to a housing-related private or public entity shall give rise to the presumption that such entity did not intend to use the surplus residential property in accordance with either subsections (c) (1) or (c) (2) above. In the event such entity cannot overcome such presumption, then such transfer shall be deemed a default under the use and resale restrictions and the Department may take such action to enforce its rights including those under section 1488.

(5) In no event shall the reasonable sales price be less than the original acquisition price paid by the Department.

(d) Notwithstanding the restriction limiting occupancy and the subsequent sale of the surplus residential property in accordance with Government Code sections 54237(b) and (d), a buyer of surplus residential property may elect to resell the surplus residential property at fair market value during the term of the use and resale restrictions subject to the following:

(1) Upon subsequent sale, the seller shall pay the CalHFA, any net proceeds, which shall be equal to any net equity as defined in subdivision (d) (2) of this section, and the proportionate share of net appreciation, as defined in subdivision (d) (3) of this section; provided, however, in the event the seller is a private or public housing-related entity, such net proceeds shall be paid as follows:

(A) Any net equity as defined in subparagraph (2) shall be evenly divided and paid to the CalHFA and the entity.

(B) Any net appreciation as defined in subparagraph (3), shall be divided as set forth in subparagraph (4) and paid to the CalHFA and the entity.

(C) All net proceeds paid to housing-related entities shall be used to preserve, upgrade and expand the supply of affordable housing exclusively in the Pasadena, South Pasadena, Alhambra, La Canada Flintridge, and the 90032 ZIP code unless otherwise restricted to a particular city in accordance with state law. Housing-related private entities will be monitored at least annually to ensure compliance with this section.

(2) For purposes of this chapter, the net equity shall be equal to the Department approved appraised fair market value of the surplus residential property at the time of initial sale, minus the initial sale price to the buyer pursuant to Government Code section 54237. If upon resale, the appraised fair market value is lower than the Department approved appraised fair market value of the property without the use and resale restrictions, the value at the time of the resale shall be used as the Department approved appraised fair market value.

(3) For purposes of this chapter, "net appreciation" means the difference between the sales price upon resale and the sum of the following deductions:

(A) Any net equity as defined in subdivision (d) (2) of this section;

(B) The remaining principal loan balance on all financing previously approved by the Department on the property;

(C) All actual closing costs paid by the seller when the property is sold (i.e., escrow, title, broker's fee, real estate commissions);

(D) The owner's down payment, if any; and

(E) Any costs of improvements for which the Department determines, in its good faith discretion, that such costs of improvements were reasonable and resulted in a higher fair market value of the property.

(4) For purposes of this chapter, the CalHFA's proportionate share of net appreciation shall be equal to one hundred percent (100%) through the end of the first year.

Beginning in the second year, the CalHFA's proportionate share of net appreciation shall be reduced by twenty percent (20%) each year to zero percent (0%). At the completion of five (5) years, the CalHFA shall no longer be entitled to any net appreciation.

(5) The owner may refinance a loan on the surplus residential property subject to the prior written approval by the Department, provided any net cash proceeds derived from such refinancing shall be limited to an amount equal to the current appreciation, if any, over and above the net equity to which the CalHFA is entitled under this subparagraph (d). Such proceeds shall be further divided between the owner and the CalHFA based upon the current proportionate share of net appreciation as set forth in subparagraph (d) (4).

(6) The provisions of this section shall be set forth in the use and resale restrictions and shall not be subject to subordination.

(e) Upon the occurrence of the earlier of the termination of the use and resale restrictions or resale at fair market value, the Department shall execute and record a full conveyance of its rights to the surplus residential property in the manner required pursuant to Civil Code section 2941.

NOTE: Authority cited: Govt. Code §§ 54235, 54236, 54237, 54237.3, 54237.5, 54237.7, 54237.8, 54238, 54238.3, 54238.4, 54238.5, 54238.6, 54238.7. Reference cited: 24 C.F.R. § 200.926; Govt. Code §§§ 54237 & 54237.3; Cal. Code Regs., tit. 16, § 1996, tit. 25, §§ 6910 et seq.; Civ. Code §§ 817, 2941; Sts. & Hy. Code §§ 104.5 & 118.

§1479 Notice of Conditional Offer Prior to Sale

(a) The Department shall give written notice of the Conditional Offer Prior to Sale by certified mail, to each occupant in good standing, and to each former tenant at the last address known to the Department for single-family surplus residential properties pursuant to section 1477.

(b) All other offers required by section 1477 shall be made by publishing the notice in at least one newspaper of general circulation within the city or county in which the surplus residential property is located, pursuant to Government Code section 6061.3.

NOTE: Authority cited: Govt. Code §§ 6061.3, 54235, 54236, 54237, 54237.3, 54237.5, 54237.7, 54237.8, 54238, 54238.3, 54238.4, 54238.5, 54238.6, 54238.7. Reference cited: Govt. Code §§ 6061.3, 54237 & 54237.3.

§1480 Term of Conditional Offer Prior to Sale

(a) The Conditional Offer Prior to Sale delivered by certified mail shall remain open for one hundred twenty (120) calendar days from the postmarked date of mailing. The Conditional Offer Prior to Sale made pursuant to published notice shall remain open for one hundred twenty (120) calendar days from the final date of publication pursuant to Government Code section 6061.3.

NOTE: Authority cited: Govt. Code §§ 6061.3, 54235, 54236, 54237, 54237.3, 54237.5, 54237.7, 54237.8, 54238, 54238.3, 54238.4, 54238.5, 54238.6, 54238.7. Reference cited: Govt. Code §§ 6061.3, 54237 & 54237.3.

§1481 Acceptance of Conditional Offer Prior to Sale

(a) Acceptance of the Conditional Offer Prior to Sale must be made in writing to the Department, mailed by certified mail, (return receipt requested), to the address identified in the Conditional Offer Prior to Sale and postmarked no later than one hundred twenty (120) calendar days from the postmarked date of mailing of the notice of Conditional Offer Prior to Sale or the final date of publication, as applicable.

NOTE: Authority cited: Govt. Code §§ 54235, 54236, 54237, 54237.3, 54237.5, 54237.7, 54237.8, 54238, 54238.3, 54238.4, 54238.5, 54238.6, 54238.7. Reference cited: Govt. Code §§ 54237 & 54237.3.

§1482 Acceptance Must Include Evidence of Eligibility to Purchase; Burden on Prospective Buyer

~~(a) Acceptance of the Conditional Offer Prior to Sale by the prospective buyer for purchase at an affordable price must include evidence of income, tenure, real property ownership interest, and household size.~~

~~(1) The prospective buyer shall provide documentation of household income. Income from all occupants 18 years of age or older as of the date of acceptance of Conditional Offer Prior to Sale shall be included as part of household income. Documentation may include but is not limited to Internal Revenue Service Form W-2, complete federal income tax returns and forms, pay stubs, and any other financial documentation relevant to income.~~

~~(2) The prospective buyer shall execute a notarized affidavit attesting to tenure, no ownership interest in real property, and occupancy. No power of attorney may be used with this document.~~

~~(3) For prospective buyers of surplus residential property who will be owner occupants, the prospective buyers must execute a notarized affidavit attesting to their intent to reside in the surplus residential property, and must declare their intention to maintain it as their principal place of residence. No power of attorney may be used with this document.~~

(a) The burden is on the prospective buyer to show eligibility for purchase at an affordable price.

~~(b) The burden is on the prospective buyer to show eligibility for purchase at an affordable price.~~

(b) Acceptance of the Conditional Offer Prior to Sale by the prospective buyer for purchase at an affordable price must include evidence of income, tenure, real property ownership interest, and household size.

(1) The prospective buyer shall provide documentation of household income. Income from all occupants 18 years of age or older as of the date of acceptance of Conditional Offer Prior to Sale shall be included as part of household income for the period of time stated in Government Code section 54237(a), paragraphs (2) and (3). Income documentation shall include federal income tax returns with schedules. Current tax year documentation must be sufficient to fully state household income as of the date of acceptance of the Conditional Offer Prior to Sale and shall include, but is not limited to: pay stubs; signed letters from employers; documents stating foreign income; profit and loss statements; bond and stock dividend statements; retirement, Survivors Disability Insurance, Social Security Retirement, and Social Security Disability Insurance benefits; pension and annuity income; unemployment compensation; education scholarships, awards, fellowship grants used for living expenses; gift income; alimony received and court awards; income from rental property, including room rental; and tips. Income documentation shall be provided for each and every occupant 18 years of age or older as of the date of acceptance of the Conditional Offer Prior to Sale. All documentation offered to show income is subject to verification by the Department.

(2) The prospective buyer shall provide documentation of tenure for the period of time stated in Government Code section 54237(a), paragraph (2) and (3). Such documentation must be of sufficient reliability, in its totality, to support a prospective buyer's claim of tenure. Such documentation may include, but is not limited to: rental or lease agreements; utility bills; school documents, medical documents, employment documents, faith-based documents that include the name and address of the issuing organization; federal and state tax returns; vehicle registrations; drivers licenses and identification cards; change of address confirmations by the United States Post Office; and federal government-issued

documents. All documentation offered to show tenure is subject to verification by the Department.

(3) The prospective buyer shall execute a notarized affidavit attesting to no interest in ownership in real property in accordance with Government Code section 54237 (a), paragraphs (2) and (3). No power of attorney may be used with this document. Prospective buyer's affidavit is subject to verification by the Department.

(4) The prospective buyers must execute a notarized affidavit attesting to their intent to reside in the surplus residential property, and must declare their intention to maintain it as their principal place of residence. No power of attorney may be used with this document. Prospective buyer's affidavit is subject to verification by the Department.

NOTE: Authority cited: Govt. Code §§ 54235, 54236, 54237, 54237.3, 54237.5, 54237.7, 54237.8, 54238, 54238.3, 54238.4, 54238.5, 54238.6, 54238.7. Reference cited: Govt. Code §§ 54237 & 54237.3.

§1483 Incomplete or Insufficient Documentation is Grounds for Denial

(a) Prospective buyers that submit initial responses to the Conditional Offer Prior to Sale in accordance with section 1482 that are deemed to be incomplete or insufficient shall be notified by certified mail of the incompleteness or insufficiency of the response within thirty (30) calendar days of the Department receiving such initial response however, failure to provide timely notification shall not be deemed to be a determination of completeness or sufficiency. Additional required documentation must be mailed, by certified mail, to the address identified in the notice and postmarked no later than sixty (60) calendar days from the date of mailing such notification of incompleteness or insufficient documentation. Failure of the prospective buyer to respond satisfactorily as determined by the Department and within the time period shall be deemed a rejection of the offer.

(b) Notwithstanding 1481(a), prospective buyers shall have a maximum of two hundred fifty (250) calendar days to respond with complete and sufficient documentation in accordance with section 1482 as determined by the Department. The Department may, however, at its sole discretion, and upon the prospective buyer showing good cause, grant an extension but in no case shall the maximum number of calendar days exceed two hundred fifty (250) for receipt of complete and sufficient documentation.

NOTE: Authority cited: Govt. Code §§ 54235, 54236, 54237, 54237.3, 54237.5, 54237.7, 54237.8, 54238, 54238.3, 54238.4, 54238.5, 54238.6, 54238.7. Reference cited: Govt. Code §§ 54237 & 54237.3.

§1484 Failure to Respond Within 120 Calendar Days of Mailing of Conditional Offer Prior to Sale Deemed Rejection.

(a) Failure to respond to the Conditional Offer Prior to Sale or an initial response received after one hundred twenty (120) calendar days from the postmarked date of mailing of the Conditional Offer Prior to Sale or date of final publication, as applicable, shall be deemed a rejection of the offer.

(b) The Department shall notify occupants who do not respond in a timely manner to the Conditional Offer Prior to Sale of the rejection of the offer. Such notice shall be mailed first class mail within thirty (30) calendar days of the final day of the initial one hundred twenty (120) calendar day response period.

NOTE: Authority cited: Govt. Code §§ 54235, 54236, 54237, 54237.3, 54237.5, 54237.7, 54237.8, 54238, 54238.3, 54238.4, 54238.5, 54238.6, 54238.7. Reference cited: Govt. Code §§ 54237 & 54237.3.

§1485 Determination of Eligibility and Qualifications; Qualified Prospective Buyers Ranked by Priority, Burden on the Prospective Buyer

(a) The Department shall review the documentation supplied by, and determine the eligibility of, each respondent for a particular surplus residential property in accordance with section 1477 within sixty (60) calendar days of receipt of documentation. Documentation supplied shall be sufficient for the Department to determine eligibility to meet qualifications. Respondent shall be notified by the Department when supplied documentation is deemed complete.

(b) When two or more respondents have equal eligibility for a particular surplus residential property, each respondent's relative priority for purchasing the surplus residential property will be ranked according to the postmarked date of the acceptance of the Conditional Offer Prior to Sale. Notwithstanding the foregoing sentence, one or more respondents with equal eligibility for a particular surplus residential property first offered to a housing-related private or public entity in accordance with section 1478 shall be ranked in a manner determined by the housing-related private or public entity.

NOTE: Authority cited: Govt. Code §§ 54235, 54236, 54237, 54237.3, 54237.5, 54237.7, 54237.8, 54238, 54238.3, 54238.4, 54238.5, 54238.6, 54238.7. Reference cited: Govt. Code §§ 54237 & 54237.3.

§1486 Contract for Sale

(a) Upon determining the respondent with the highest priority to purchase, the Department shall send the respondent a contract for sale via certified mail. To accept the contract for sale, the respondent shall sign and return the contract for sale via certified mail (return receipt requested) within thirty (30) calendar days from the postmarked date of the Department's mailing of the contract for sale.

(b) Department shall pay the following closing costs:

(1) For affordable price buyers, the Department shall pay customary and reasonable seller's closing costs and buyer's reasonable non-recurring closing costs.

(2) For reasonable price buyers and fair market value buyers, the Department shall pay customary and reasonable seller's closing costs. A buyer will be responsible for customary and reasonable buyer's closing costs.

(c) The Department shall reimburse a prospective affordable price buyer up to a maximum of $3,000, at time of closing, in the event the buyer chooses to retain an agent to facilitate and advise on the purchase transaction. Such agent must be properly licensed by the California Bureau of Real Estate or The State Bar of California.

(d) Contracts for sale under this chapter are ~~may be~~ subject to CTC approval.

NOTE: Authority cited: Govt. Code §§ 54235, 54236, 54237, 54237.3, 54237.5, 54237.7, 54237.8, 54238, 54238.3, 54238.4, 54238.5, 54238.6, 54238.7, Sts.& Hy. Code §§ 118. Reference cited: Govt. Code §§ 54237 & 54237.3, Sts. & Hy. Code §§ 118.

§1487 Upon Acceptance, Buyer has 120 Days to Close Escrow

(a) Upon execution of a contract for sale, the buyer has one hundred twenty (120) calendar days to close escrow. The Department may, however, at its sole discretion, and upon the buyer showing good cause, grant a thirty (30) calendar day extension.

NOTE: Authority cited: Govt. Code §§ 54235, 54236, 54237, 54237.3, 54237.5, 54237.7, 54237.8, 54238, 54238.3, 54238.4, 54238.5, 54238.6, 54238.7. Reference cited: Govt. Code §§ 54237 & 54237.3.

§1488 Duty of Buyer Upon Noncompliance

(a) Pursuant to Government Code section 54238, in the event a buyer of surplus residential property does not comply with use and resale restrictions imposed pursuant to chapter, the Department may require that the buyer pay the Department the difference between the actual price paid by the buyer for the surplus residential property and the fair market value of such property, at the time of the Department's determination of noncompliance,

plus 6 percent interest on such amount for the period of time the surplus residential property has been held by the buyer. Such interest shall be compounded annually.

NOTE: Authority cited: Govt. Code §§ 54235, 54236, 54237, 54237.3, 54237.5, 54237.7, 54237.8, 54238, 54238.3, 54238.4, 54238.5, 54238.6, 54238.7. Reference cited: Govt. Code § 54238.

§1489 Monitoring

(a) All surplus residential properties sold at below the Department approved appraised fair market value shall be monitored at least annually for the duration of the use and resale restrictions to ensure compliance with the provisions therein.

NOTE: Authority cited: Govt. Code §§ 54235, 54236, 54237, 54237.3, 54237.5, 54237.7, 54237.8, 54238, 54238.3, 54238.4, 54238.5, 54238.6, 54238.7. Reference cited: Govt. Code § 54237.

§1490 Lender Limitation

(a) Except as otherwise provided in the regulations or the Act, no lender shall have or anticipate an interest in or stand to gain financially from the surplus residential property other than that of a mortgage lender.

NOTE: Authority cited: Govt. Code § 54237. Reference cited: Govt. Code§ 54237

§1491 Financing

(a) The California Housing Finance Agency is the State's affordable housing lender, with expertise in developing and administering real estate lending programs and products benefiting persons of low and moderate income. CalHFA is authorized to enter into contracts to administer housing and real estate lending programs for the benefit of other agencies of the State of California. The Department may enter into any agreements or arrangements with CalHFA or other private, local, or state agencies to repair, sell, and monitor surplus residential properties or to otherwise implement the activities of the Act.

(b) In the event CalHFA elects pursuant to adoption by its board of directors to purchase loans or otherwise provide financing to present occupants pursuant to paragraphs (2) or (3) of subdivision (a) of Government Code section 54237 to effectuate such sales by the Department and in accordance with Health and Safety Code section 50093, then the following shall apply:

(1) All proceeds to which the CalHFA is entitled pursuant to section 1478(d) from subsequent sales of all surplus residential property, or pursuant to a transfer, foreclosure, insurance claim or condemnation, related to such property, shall be paid on condition that CalHFA establish a designated account (the "Affordable Housing Trust Account") for such proceeds to be used as follows:

(A) To carry out any activity authorized under CalHFA's implementing statutes for the benefit of persons or families of low and moderate income residing exclusively in the Pasadena, South Pasadena, Alhambra, La Canada Flintridge, and the 90032 postal ZIP code, including any arrangement for the financing of multifamily developments or the purchase of loans made to effectuate the purpose of the Act.

(B) Reasonable fees and costs incurred by CalHFA derived from the origination, purchase, or servicing of any loan under the Affordable Sales Program.

(C) All costs, including outside legal fees, associated with enforcement of the use and resale restrictions.

(2) The use and resale restrictions shall provide that in the event of any transfer, then any outstanding loan balance, penalties, fees, interests and costs associated with collecting on such amounts owed to CalHFA shall be paid to CalHFA prior to the determination of any net proceeds due to the CalHFA.

(3) The use and resale restrictions may be enforceable by CalHFA.

NOTE: Authority cited: Govt. Code § 54237. Reference cited: Govt. Code § 54237.