

Rules of
Department of Economic
Development
Division 170—Missouri Housing
Development Commission
Chapter 4—Supervision of Mortgagors
and Sponsors

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Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT

Division 170—Missouri Housing Development Commission Chapter 4—Supervision of Mortgagors and Sponsors

4 CSR 170-4.010 Financial Reports and Limitations on Earnings

PURPOSE: This rule provides further regulatory control by the commission over the approved mortgagors of multi-unit housing developments. It restricts the distribution of earnings and dividends on housing projects 100% financed by the commission to a maximum of 8% per year of the equity in the project, except as set forth in 4 CSR 170-3.010(1)(C), prohibits any distributions except out of surplus cash as defined in this rule and requires approved mortgagors to furnish reports and financial information.

Editor's Note: The secretary of state has determined that the publication of this rule in its entirety would be unduly cumbersome or expensive. The entire text of the material referenced has been filed with the secretary of state. This material may be found at the Office of the Secretary of State or at the headquarters of the agency and is available to any interested person at a cost established by state law.

(1) Except as provided in 4 CSR 170-3.010(1)(C)—i) net earnings, dividends or other distributions as defined in the State Housing Law of Missouri or in the Missouri Housing Development Commission Regulatory Agreement, may be declared or made only as of or after the end of an annual, semi-annual or quarterly fiscal period; ii) the amount of any allowable net earnings, distributions or disbursements from surplus cash of the project shall not exceed, in any one (1) fiscal year, eight percent (8%) per annum of the equity in a development; iii) the equity in a development shall consist of the difference between the mortgage as reduced by the payment to principal and project costs; and iv) with respect to every development, the commission shall establish equity at the time of making the final mortgage advance, as approved and determined by the Missouri Housing Development Commission (MHDC) on all residential housing projects originated and funded under the regulations and standards of the State Housing Law of Missouri.

(2) No net earnings, dividends, distributions or other disbursements of any kind whatsoever shall be declared or made except out of surplus cash available and remaining after—

(A) The payment of project expenses which may include:

1. All sums due or required to be paid under the terms of any deed of trust or regulatory agreement;

2. All amounts required to be deposited in the reserve fund for replacements; and

3. All obligations of the project (other than the deed of trust held by MHDC) including, but not by limitation of, all costs and expenses of maintenance and operation, and all amounts paid for taxes, assessments, insurance premiums and other similar charges, unless funds for payment are set aside, or deferment of payment has been approved by MHDC; and

(B) The segregation of—

1. An amount equal to the aggregate of all special funds required to be maintained by the project; and

2. All tenants' security deposits held.

(3) The right to any allowable net earnings, distributions or disbursements from surplus cash shall be cumulative. Surplus cash shall be segregated and MHDC shall concur in any distribution.

(4) No distribution of any kind may be made from borrowed funds. The project shall not borrow any funds for any purposes without prior written approval of MHDC.

(5) All approved mortgagors shall furnish upon request of MHDC, its agents, employees or attorneys, monthly occupancy reports and shall give specific answer to questions upon which information is desired from time-to-time relative to the occupancy, net earnings, income, assets, liabilities, distributions, disbursements, contracts, operation and condition of any project.

(6) Within ninety (90) days following the end of each fiscal year, all approved mortgagors, shall furnish MHDC with a complete annual financial report based upon an examination of the books and records of the project prepared in accordance with the requirements of MHDC by a certified public accountant or other person acceptable to the commission and certified by an authorized agent of the mortgagor.

(7) Transfer of Ownership. The basic documents of the commission severely restrict the transfer of legal or beneficial interest in any development. No monies paid for either the legal or beneficial interest of an MHDC-financed development shall be deemed to increase the equity for the purposes of determining allowable distribution of dividends,

except for those funds approved as project costs.

(A) All transfers of ownership require the prior written approval of the commission. Any intent to utilize secondary financing secured by the development shall be specifically identified.

(B) The consent of the Department of Housing and Urban Development shall not be deemed adequate for MHDC approval of transfer of ownership.

(8) The approved mortgagor shall provide the commission with the name and address of an individual approved mortgagor and all limited or general partners of a partnership approved mortgagor and the officers, directors and shareholders of a corporate approved mortgagor and any amendments or substitutions which may occur from time-to-time in the organization of the approved mortgagor at the request of the commission.

(9) With respect to any project which was financed, in whole or in part, with the proceeds of tax-exempt bonds and which was subject to a financing adjustment factor (FAF) by the Department of Housing and Urban Development, if the project or the tax-exempt bonds associated with the project is refinanced, each approved mortgagor shall maintain not less than twenty percent (20%) of the total units (exclusive of units occupied by any resident manager) for occupancy by persons of low or moderate income for the qualified project period as defined in Treas. Reg. Section 1.103-8(b)(7). For purposes of this section, the phrase low or moderate income does not exceed whose adjusted income means persons eighty percent (80%) of the median gross income for the area in which the project is located.

*Auth: sections 215.030(12) and (19), 215.090 (Cum. Supp. 1989) and 215.220, RSMo (1986). *Original rule filed Nov. 18, 1971, effective Nov. 28, 1971. Amended: Filed Oct. 1, 1973, effective Oct. 11, 1973. Amended: Filed Dec. 22, 1975, effective Jan. 1, 1976. Amended: Filed Dec. 16, 1985, effective March 24, 1986. Amended: Filed Dec. 30, 1987, effective March 25, 1988. Amended: Filed Dec. 30, 1987, effective March 25, 1988. Amended: Filed Feb. 5, 1993, effective July 8, 1993.*

**Original authority: 215.030 (12) and (14), RSMo (1986), amended 1974, 1982, 1985, 1989 215.090, RSMo (1969), amended 1974, 1985, 1989 215.220, RSMo (1969).*