

**THE DEPUTY MAYOR FOR PLANNING
AND ECONOMIC DEVELOPMENT**

NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

The Deputy Mayor for Planning and Economic Development (“Deputy Mayor”), pursuant to the authority set forth in section 102(g) of the Workforce Housing Production Program Approval Act of 2006 (“Act”), effective March 14, 2007 (D.C. Law 16-278; to be codified at D.C. Official Code §§ 6-1061.01 *et seq.*) and Mayor’s Order 2007-180, dated August 3, 2007, hereby gives notice of the adoption of the following emergency rules, adding a new Chapter 35 (Workforce Housing Land Trust Program) to Title 14 (Housing) of the District of Columbia Municipal Regulations (“DCMR”).

The emergency rules set forth the general policies, guidelines, and requirements for the development and implementation of a land trust program to assist in the development and financing of one thousand (1,000) units of workforce housing within three (3) years after the effective date of the Act. If the emergency rules are not adopted during the summer, it is likely that the District will be unable to fully leverage the anticipated private investment in the land trust and the District will be unable to assist a significant number of affordable housing units. Thus, adoption of the emergency rules is necessary for the immediate preservation of the health, safety, and welfare of District residents.

Action was taken on August 17, 2007, to adopt these rules on an emergency basis, and the emergency rules became effective on that date. The emergency rules will remain in effect for up to one hundred twenty (120) days after the date of adoption, unless earlier superseded by another rulemaking notice or by publication of a Notice of Final Rulemaking in the *D.C. Register*, whichever occurs first.

The Deputy Mayor also gives notice of his intent to adopt these proposed rules as final rules in not less than thirty (30) days from the date of publication of this Notice in the *D.C. Register*.

Title 14 (Housing) DCMR is amended by adding a new Chapter 35 (Workforce Housing Land Trust Program) to read as follows:

CHAPTER 35 WORKFORCE HOUSING LAND TRUST PROGRAM

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3500 GENERAL PURPOSES

3500.1 The Workforce Housing Production Program Approval Act of 2006, effective March 14, 2007 (D.C. Law 16-278; D.C. Official Code §§ 6-1061.01 *et seq.*) authorizes the development and implementation of a land trust program that will:

- (1) Create housing units that are permanently affordable to, and occupied by, households with annual incomes at or below one hundred twenty percent (120%) of the area median income; and
- (2) Maintain a portfolio average of housing unit purchase prices that is affordable to households with annual incomes at or below eighty percent (80%) of the area median income.

3500.2 The goals of the land trust program shall include the development of an administrative and financial structure by which an allocation of ten million dollars (\$10,000,000) of District funds leverages approximately sixty-five million dollars (\$65,000,000) of private debt and equity investment, providing an average of seventy-five thousand dollars (\$75,000) per eligible household in land trust financing, and assisting in the development and purchase of one thousand (1,000) permanently affordable housing units occupied by eligible households within three (3) years after the effective date of the Act.

3501 FORMATION AND ADMINISTRATION

3501.1 The Mayor's delegee shall select a land trust through a competitive bid process.

3501.2 The Mayor's delegee and the land trust shall enter into a contractual agreement which shall set forth duties and responsibilities of the land trust in implementing the land trust program and handling District funds.

- 3501.3 The land trust shall be governed by a non-paid board of directors. The board of directors shall include one non-voting member selected by the Deputy Mayor.
- 3501.4 The land trust shall develop, administer, and implement the land trust program in accordance with the Act, the Plan, the land trust agreement, and the requirements of this chapter.
- 3501.5 The Mayor's delegee shall monitor whether the land trust is developing, administering, and implementing the land trust program in accordance with the Act, the Plan, the land trust agreement, and the requirements of this chapter.
- 3501.6 The land trust shall collaborate with the Mayor, Deputy Mayor, District departments, agencies, and instrumentalities, including the Department of Housing and Community Development and Housing Finance Agency, and non-profit organizations to maximize the efficient and effective use of their homeownership counseling and home purchase assistance programs and products.
- 3501.7 The Mayor's delegee shall periodically provide the land trust with written housing policies relevant to the land trust program, such as the District's policy to seek the creation and preservation of mixed-income housing and to deconcentrate housing serving low-income households. To the extent possible without threatening the viability of the land trust or the land trust program, the land trust shall adopt policies and procedures that align with the District's policies. If the land trust determines that it is unable to achieve or maintain complete alignment with the District's policies without threatening the viability of the land trust or the land trust program, the land trust shall provide to the Mayor's delegee written documentation of the circumstances that create the inability to achieve or maintain such alignment and threaten the viability of the land trust or land trust program.
- 3501.8 No officer, employee, or agent of the District government or the land trust who exercises responsibility in connection with the administration of the land trust program shall obtain any interest, direct or indirect, in the proceeds of land trust financing or a contract entered into by an applicant for or recipient of land trust financing; provided, that an officer, employee, or agent of the District government or the land trust who is otherwise eligible may receive land trust financing in accordance with the rules, procedures, and regulations of the land trust program. A member of an advisory board to the land trust shall not be considered an officer, employee, or agent of the land trust if the advisory board does not have administrative or legal responsibilities.
- 3501.9 The land trust shall establish policies requiring that a land trust homeowner recuse himself or herself from decisions, whether operational or board-related, that directly impact the financial interest of the land trust homeowner.

3502 FUNDING, FEES, AND COSTS OF ADMINISTRATION

- 3502.1 The land trust shall maintain in a separate account all District funds that are allocated to the land trust and shall release such funds only to assist eligible households. All Housing Production Trust Fund funds that are allocated to the land trust shall be released only to assist eligible households with annual incomes at or below eighty percent (80%) of the area median income.
- 3502.2 The land trust may receive and expend, to further the purposes of the land trust program, fees, revenues, interest earnings derived from the activities of the land trust, returns on equity investments, repayments of principal and interest on loans or other financing provided by the land trust, and proceeds realized from the liquidation of security interests held by the land trust under the terms of any equity, loan, or financing agreement or any other security instrument.
- 3502.3 The land trust may charge reasonable fees for leases of real property and improvements, processing the evaluation of applications, providing loans, equity, or other financing, monitoring compliance with provisions of the Act, the Plan, and this chapter, and for other purposes related to the land trust program. The fees and earnings thereon shall be used by the land trust to pay the costs of administering and accomplishing the purposes of the land trust program.
- 3502.4 The land trust shall establish a schedule of fees and expenses to be charged under the land trust program.

3503 AFFORDABILITY AND INCOME STANDARDS

- 3503.1 For the purposes of determining affordability in accordance with the requirements of the Act and this chapter, affordability shall be measured based on a front end ratio of thirty-five percent (35%) or less.
- 3503.2 For the purposes of determining the income of a household, the land trust shall use the methods and procedures set forth in 24 C.F.R. § 92.203(b) (a subsection of the regulations promulgated by the United States Department of Housing and Urban Development to implement the HOME Investment Partnerships Program).
- 3503.3 For the purposes of determining household income limits, the land trust shall use the area median income standards applicable to the Housing Production Trust Fund under section 2 of the Housing Production Trust Fund Act of 1988, effective March 16, 1989 (D.C. Law 7-202; D.C. Official Code § 42-2801).

3504 LAND TRUST FINANCING: GENERAL

- 3504.1 The land trust may provide financial assistance for the purchase, construction, or acquisition of housing units that are permanently affordable to households with annual incomes at or below one hundred twenty percent (120%) of the area median income through the provision of land trust financing, which shall consist of individual financing and development financing.
- 3504.2 Individual financing shall be provided to assist eligible households in the purchase of qualified housing units or land trust housing units.
- 3504.3 Development financing shall be provided to assist in the financing of the construction or acquisition of qualified housing units or land trust housing units.
- 3504.4 No land trust financing shall be provided for housing units outside the District.
- 3504.5 Another District-administered subsidy may be combined with land trust financing only if:
- (a) The housing units assisted with the land trust financing would meet the requirements of the land trust program, including affordability level and permanent affordability, without the other District-administered subsidy; and
 - (b) The combination of the land trust financing and other District subsidy achieves greater affordability of housing units that are subject to a use restriction that permanently requires occupancy by low income households.
- 3504.6 If another District subsidy is combined with land trust financing, the calculation of the portfolio average of household incomes and the portfolio average of housing unit purchase prices achieved by the land trust financing shall exclude the other District subsidies; provided, that the lower purchase price and/or lower purchaser household income achieved through the combination may be included in the calculation if the land trust financing achieves permanent affordability of housing units that are not subject to a use restriction, previously imposed by a District-administered program, that permanently requires occupancy by low-income households.
- 3504.7 The land trust may request, in writing, a written waiver from the Mayor's delegee for the limitations on calculating the portfolio averages set forth in subsection 3504.6.

3505 FINANCING DOCUMENTS

- 3505.1 The land trust shall submit for the approval of the Mayor's delegee template loan agreements and loan documents and template equity agreements and equity documents to be used in the provision of land trust financing ("template documents"). The template documents to be approved by the Mayor's delegee shall include promissory notes, loan agreements, equity agreements, deeds of trust, ground leases,

declarations of covenants, financing statements, assignments of leases, and any other legal documents that secure the land trust financing or enforce affordability or resale restrictions on land trust housing units.

3505.2 Each template document required to be submitted for the approval of the Mayor's delegee under subsection 3505.1 shall include provisions that grant the land trust:

- (a) A security interest in the land trust housing unit; and
- (b) The right to enforce affordability and resale restrictions on the land trust housing unit.

3505.3 The land trust shall not execute a loan agreement or loan document or equity agreement or equity document that does not conform to a template document previously approved by the Mayor's delegee.

3505.4 The land trust shall request approval from the Mayor's delegee when making a substantive change to a previously approved template document. Unless and until the substantive change is approved by the Mayor's delegee, the land trust shall use the previously approved template document.

3506 PROCEDURES FOR REVIEWING, APPROVING, AND PROVIDING FINANCING

3506.1 The land trust shall establish and implement written procedures, instructions, guidelines, forms, standards, requirements, and criteria for the solicitation, receipt, processing, evaluation, and approval of applications for, and for providing or closing on, development financing commitments, development financing, and individual financing.

3506.2 The application for development financing shall include the requirements set forth in section 3510.3.

3506.3 The standards and criteria for approving individual financing and development financing shall include the following:

- (a) The property to be assisted by the land trust shall be in compliance with the Zoning Regulations of the District of Columbia (as such term is defined in 11 DCMR § 100.5), the Housing Code (chapters 1 through 15 of Title 14, DCMR), and the Construction Codes (as such term is defined in 12A DCMR § 101.2), at the time of closing on the land trust financing; provided, that if the land trust is providing land trust financing to correct a current or imminent major system failure or other substantial defect, the property may be in non-compliance with the foregoing regulations and codes at the time of closing but shall be in compliance with the foregoing regulations and codes when the housing units assisted by the land trust financing are offered for sale;

- (b) Land trust financing shall not be concentrated in poverty census tracts or high poverty census tracts;
- (c) The land trust shall not provide financing, either through development financing, individual financing, or a combination of development and/or individual financing, for more than fifty percent (50%) of the housing units in a development consisting of over twenty (20) housing units in a poverty census tract, nor for more than twenty-five percent (25%) of the housing units in a development consisting of over twenty (20) housing units in a high poverty census. This provision shall not apply to tenant rental-to-ownership conversions and may be waived in writing by the Mayor's delegee for good cause shown; and
- (d) The standards and criteria for individual financing set forth in section 3507 or the standards and criteria for development financing set forth in section 3510.

3506.4 The standards and criteria for closing on a development financing shall include a requirement that a minimum level of equity has been or will be invested by the developer in the development.

3506.5 The land trust shall submit for approval by the Mayor's delegee the applications, procedures, instructions, guidelines, forms, standards, requirements, and criteria required to be established under subsection 3506.1, including the standards, criteria, and requirements referenced in subsections 3506.2, 3506.3(d), and 3506.4 and those set forth in sections 3507 and 3510 .

3506.6 The land trust shall not provide land trust financing until the initial applications, procedures, instructions, guidelines, forms, standards, requirements, and criteria of the land trust have been approved by the Mayor's delegee under subsection 3506.5.

3506.7 The land trust shall submit for approval by the Mayor's delegee any substantive change to a previously approved procedure, instruction, guideline, form, standard, requirement, or criterion. Unless and until the change is approved by the Mayor's delegee, the land trust shall use the previously approved procedure, instruction, guideline, form, standard, requirement, or criterion.

3506.8 The land trust shall not review, approve, reject, provide, or close on land trust financing in a manner that is inconsistent with the applications, procedures, instructions, guidelines, forms, standards, requirements, and criteria of the land trust that have been approved by the Mayor's delegee under subsection 3506.5.

3506.9 The Mayor's delegee shall not unreasonably withhold or delay approval of an application procedure, instruction, guideline, form, standard, requirement, or criterion, or a substantive change to an application procedure, instruction, guideline, form, standard, requirement, or criterion, submitted for approval ("approval request").

The Mayor's delegee may reject or approve an approval request in whole or in part. An approval request shall be deemed approved if the Mayor's delegee does not reject the approval request, in writing, with a reasonably detailed rationale for the rejection, within thirty (30) calendar days after the Mayor's delegee receives the approval request. If the Mayor's delegee rejects an approval request, in whole or in part, the Mayor's delegee shall, upon the request of the land trust, undertake good faith negotiations with the land trust to resolve the issues that led to the rejection. Unless and until the issues are resolved and the approval request is approved, the land trust shall operate under previously approved procedures, instructions, guidelines, forms, standards, requirements, and criteria.

- 3506.10 The land trust shall approve and provide land trust financing, consistent with the standards and criteria approved by the Mayor's delegee pursuant to section 3506.5, so that the geographic distribution of, unit distribution of, and development criteria for land trust housing units align with the District's housing policies, consistent with subsection 3501.7. If the land trust determines that it is unable to achieve or maintain such an alignment without threatening the viability of the land trust or the land trust program, the land trust shall provide to the Mayor's delegee written documentation of the circumstances that create the inability to achieve or maintain such alignment and threaten the viability of the land trust or land trust program. The Mayor's delegee may waive the requirement of this subsection in whole or in part.

3507 INDIVIDUAL FINANCING TO ELIGIBLE HOUSEHOLDS

- 3507.1 The land trust may provide individual financing to eligible households to assist in the purchase of qualified housing units that are or will be permanently affordable to households with incomes at or below one hundred twenty percent (120%) of the area median income.
- 3507.2 In determining whether to provide individual financing to an eligible household, the land trust shall apply, in addition to the standards and criteria required by section 3506, the following standards and criteria:
- (a) Generally accepted standards that are not considered to be predatory when reviewing the credit worthiness of applicants for land trust financing. Loans that are described in section 202 of the Home Loan Protection Act of 2002 ("HPLA"), effective May 7, 2002 (D.C. Law 14-132; D.C. Code § 26-1152.02), regardless of the lender, shall be considered predatory.
 - (b) The first mortgage loan for the qualified housing unit shall not be a loan described in section 202 of HPLA (D.C. Official Code § 26-1152.06).
 - (c) No first mortgage loan shall be deemed acceptable by the land trust unless it is supported by:

- (1) A hazard insurance policy and a title insurance policy, both of which shall conform to industry standards;
 - (2) A property appraisal report, which shall conform to industry standards; and
 - (3) A written property inspection report, prepared by a licensed inspector acceptable to the land trust, which shows no current or imminent major system failure or other substantial defect, except in an acquisition or financing where the land trust is providing a loan to correct the current or imminent major system failure or other substantial defect.
- (e) A household consisting entirely of full-time students shall not be eligible for a land trust financing with the exception of:
- (1) Students who are married or in a domestic partnership and file a joint tax return;
 - (2) Students who receive assistance under title IV of the Social Security Act, approved August 22, 1996 (88 Stat. 2351; 42 U.S.C. §§ 601 *et seq.*);
 - (3) Students enrolled in a job training program; or
 - (4) Students who are single parents with children who are their dependents (as such term is defined in section 152 of the Internal Revenue Code of 1986, approved August 16, 1954 (68A Stat. 43; 26 U.S.C. § 152)).
- (f) In selecting the eligible household to be provided individual financing for a specific land trust housing unit, priority shall be given to the eligible household, otherwise qualified to purchase the land trust housing unit, with the lowest household income.

3507.3 The terms of each individual financing to an eligible household shall include:

- (a) Terms consistent with a template document approved under subsection 3505.1;
- (b) A provision prohibiting a modification to the first mortgage loan that would make the first mortgage loan a loan described in section 202 of HPLA (D.C. Official Code § 26-1152.02);
- (c) A provision granting the land trust the first right to purchase the land trust housing unit, or to arrange for the purchase of the land trust housing unit by another eligible household, if the eligible household offers the land trust housing unit for sale;

- (d) A requirement that the recipient of the individual financing provide written notice to the land trust of his or her intent to sell the land trust housing unit;
- (e) The terms, conditions, and procedures by which the land trust may exercise its option to acquire or arrange for the purchase by an eligible household of the land trust housing unit for which it has received notice of intent to sell by the recipient of the individual financing;
- (f) A requirement that the proceeds of the sale or refinancing of the land trust housing unit shall be apportioned between the eligible household and the land trust under circumstances set forth in the individual financing;
- (g) The formula for the apportionment of proceeds from the sale or refinancing of the land trust housing unit;
- (h) A provision requiring that if the land trust housing unit is transferred through devise, intestacy, gift, or any other type of transfer, the subsequent owner shall be subject to the provisions of this chapter; provided, that this requirement shall not be construed to limit mortgagee rights under foreclosure or similar proceedings;
- (i) A requirement that the eligible household maintain the land trust housing unit in compliance with the Housing Code (chapters 1 through 15 of Title 14, DCMR); and
- (j) Normal and customary provisions and any other terms the land trust deems useful and in furtherance of the purposes of the Act, the Plan, or this chapter.

3507.4 Any promissory note, loan agreement, equity agreement, deed of trust, ground lease, declaration of covenants, financing statement, assignment of lease, or other legal document used in conjunction with individual financing shall not differ substantially from the template documents approved under section 3501.5.

3507.5 The land trust shall place or cause to be placed deed restrictions related to the resale and continuing affordability of each land trust housing unit assisted by individual financing.

3508 DEVELOPMENT FINANCING COMMITMENTS AND DEVELOPMENT FINANCING: GENERAL PROVISIONS

3508.1 The land trust may provide development financing to developers to provide financial assistance for the construction or acquisition of housing units that are or will be permanently affordable to households with incomes at or below one hundred twenty percent (120%) of the area median income.

3508.2 The land trust may provide a written development financing commitment to a developer prior to providing development financing.

3508.3 At least once each year, the land trust shall publish in a newspaper of general circulation within the District a notice of the availability of development financing and development financing commitments. The notice shall include the procedures, standards, and criteria used to evaluate and approve applications for development financing commitments and development financing, as have been approved by the Mayor's delegee under subsection 3506.

3509 DEVELOPMENT FINANCING COMMITMENTS

3509.1 In determining whether to provide a development financing commitment, the land trust shall use the applicable procedures, standards, and criteria approved by the Mayor's delegee under subsection 3506.

3509.2 Upon the occurrence of the conditions set forth in the development financing commitment, the land trust may provide development financing to the developer that received the development financing commitment.

3510 DEVELOPMENT FINANCING

3510.1 The land trust may provide development financing to a developer notwithstanding whether the land trust previously issued a development financing commitment to the developer.

3510.2 Any promissory note, loan agreement, equity agreement, deed of trust, ground lease, declaration of covenants, financing statement, assignment of lease, or other legal document used in conjunction with a development financing shall not differ substantially from the template documents approved under section 3506.

3510.3 The application for development financing established under section 3506 shall include requirements that developers:

- (a) Submit pro formas that detail project costs with and without assistance from the land trust;
- (b) Certify that assisted units are or will be of equal quality to comparable market-rate units;
- (c) Certify that the developer will comply with all applicable provisions of section 3511; and
- (d) Specify the proposed number of land trust housing units, and the proposed sizes, types, quality, and prices or levels of affordability of the units.

3510.4 In determining whether to provide development financing to a developer, the land trust shall apply, in addition to the standards and criteria set forth in section 3506, the following standards and criteria:

- (a) Geographic distribution, unit distribution, and development criteria goals;
- (b) Developer experience, development team members, and the developer's equity contribution to the project;
- (c) Site control and project readiness;
- (d) The extent to which developer submissions meet or exceed the criteria described in paragraphs (a), (b), and (c) of this subsection;
- (e) Marketing strategies;
- (f) Plans and mechanisms to attain and maintain affordability; and
- (g) The requirement that total construction or permanent financing shall not exceed the available security interest.

3510.5 The terms of each development financing shall include:

- (a) A requirement that any promissory note, loan agreement, equity agreement, deed of trust, ground lease, declaration of covenants, financing statement, assignment of lease, or other legal document used in conjunction with the construction loan shall secure the loan and shall contain such other provisions as are normal and customary if the provisions do not conflict with this chapter or any other District law or regulation;
- (b) The specific number of land trust housing units and the sizes, types, quality, and price or level of affordability of each unit; and
- (c) A limit on developer profit, if fifty percent (50%) or more of the housing units are assisted by the development financing.

3510.6 The land trust shall not close on a development loan unless:

- (a) The required minimum percentage of presales have been made and the required minimum level of developer equity has been or will be invested in the applicable project; and
- (b) The developer has received all required zoning approvals, permits, and additional financing sources.

3510.7 The land trust shall place or cause to be placed deed restrictions related to the resale and continuing affordability of each land trust housing unit assisted by development financing.

3510.8 The land trust shall determine and make available to the public information on the terms of each development financing.

3510.9 Each development financing that is in the form of a loan shall be a recourse loan.

3511 PURCHASE PRICE

3511.1 The purchase price of a qualified housing unit or land trust housing unit shall not exceed by more than five percent (5%) the value of the qualified housing unit or land trust housing unit as established by a licensed independent appraiser.

3511.2 In the case of a cooperative housing unit, the share price or other investment required shall not exceed by more than five percent (5%) the proportional value of the unit, calculated on a square foot basis, relative to the value of the entire cooperative as established by a licensed independent appraiser.

3511.3 If more than one appraisal is made on the qualified housing unit or land trust housing unit, the purchase price or, in the case of a cooperative housing unit, the share price or other investment required shall not exceed by more than five percent (5%) the average of all appraisals by licensed independent appraisers within the six (6) months prior to the proposed sale. The board of directors of the land trust may waive the requirement of this subsection, on an individual basis, for good cause.

3511.4 In developments where substantial rehabilitation or conversion activities are to occur, the purchase price or cooperative unit cost shall not exceed by more than five percent (5%) the as-improved value of the property as established by a licensed independent appraiser.

3512 SUBSEQUENT TRANSFERS

3512.1 A property appraisal shall be conducted prior to the sale of a land trust housing unit.

3512.2 The land trust shall establish terms, conditions, and procedures by which the land trust shall exercise its option to acquire or arrange for the purchase by an eligible household of a land trust housing unit for which it has received notice of intent to sell.

3512.3 The land trust shall establish a formula for the apportionment of proceeds from the resale or refinancing of a land trust housing unit. The formula shall be designed and applied in a manner consistent with the Act.

3512.4 Upon the resale of a land trust housing unit, the land trust may set a new permanent affordability formula or mechanism for the unit if the new formula or mechanism, complies with the Act and this chapter.

3513 INITIAL REPORT; NOTIFICATION OF FISCAL YEAR

3513.1 By September 30, 2007, the land trust shall submit to the Mayor's delegee its business plan, which shall include the following information:

- (a) An estimate of the annual cost of administering the land trust program;
- (b) An annual operating budget;
- (c) A staffing plan;
- (d) A schedule of all fees and expenses to be charged under the land trust program;
- (e) A formula governing the allocation of proceeds from the sale of a land trust housing unit;
- (f) Sample underwriting standards, applicant evaluation procedures, and other criteria for approval of land trust financing;
- (g) Investments of all types in the land trust and by the land trust;
- (h) Marketing strategies;
- (i) Standards for providing development financing to developers, including development team experience, site control, project readiness, and the developer's equity contribution to the project;
- (j) Priorities and methodologies to assure geographic distribution of development financing and individual financing;
- (k) Priorities and methodologies to assure distribution of development financing and individual financing to enable mixed-income developments;
- (l) A method for evaluating developer submissions;
- (m) Planned acquisitions and dispositions of properties and assets;
- (n) Plans to attain and maintain affordability;

- (o) Priorities and methodologies to assure that land trust financing meet or exceed the household income and land trust portfolio affordability criteria required under the Act and this chapter;
- (p) Draft promissory notes, loan agreements, equity agreements, deeds of trust, ground leases, declarations of covenants, financing statements, assignments of leases, and other legal documents that secure land trust financing or enforce affordability or resale restrictions on land trust housing units; and
- (q) Such additional information as may be reasonably requested by the Mayor's delegee.

3513.2 The Land Trust shall determine and notify the Mayor's delegee of its fiscal year within sixty (60) days after its selection by the Mayor's delegee.

3514 QUARTERLY REPORTS

On or before December 31, 2007, and every three (3) months thereafter for the duration of the land trust program, the land trust shall submit a report that provides the following information with respect to land trust activity during the reporting period:

- (a) The number, dollar value, and geographic distribution of new individual financings to eligible households;
- (b) Information regarding each individual financing provided and each land trust housing unit assisted by an individual financing during the reporting period, including:
 - (1) The asking sales price and actual purchase price of each land trust housing unit;
 - (2) The date of origination of each land trust financing;
 - (3) The amount of each land trust financing;
 - (4) The name or unique identifying number of each household that received a land trust financing;
 - (5) The number of household members occupying each land trust housing unit;
 - (6) The certified income of each household receiving a land trust financing;
 - (7) The square footage of each land trust housing unit;

- (8) The number of bedrooms of each land trust housing unit; and
- (9) The address of each land trust housing unit;
- (c) The number, dollar value, and geographic distribution of development financing commitments and development financing provided to developers during the reporting period;
- (d) Information regarding each development provided a development financing commitment or development financing during the reporting period, including:
 - (1) The name of the developer;
 - (2) The location of the development;
 - (3) The asking sales price and actual purchase price of each land trust housing unit in the development;
 - (4) The status of the development; and
 - (5) The amount of the development financing; and
- (e) Copies of any compliance reports or other regulatory correspondence relating to loans, grants, or equity investments provided to the land trust, including New Markets Tax Credits reporting and other regulatory correspondence with the Community Development Financial Institutions Fund.

3515 ANNUAL REPORTS; ANNUAL AUDITED FINANCIAL STATEMENTS

3515.1 Within sixty (60) days after the close of each fiscal year of the land trust, the land trust shall submit to the Mayor's delegee and the Council an annual report on the status of the land trust program. The report shall include:

- (a) Any change in the land trust's business plan;
- (b) An evaluation of the current compliance and projection of future compliance with the Act's requirements that:
 - (1) Land trust housing units be permanently affordable to and occupied by households with annual incomes at or below one hundred twenty percent (120%) of the area median income; and
 - (2) The portfolio average of housing unit purchase prices be affordable to households with annual incomes at or below eighty percent (80%) of the area median income;

- (c) The amount of money expended from the land trust during the fiscal year, including all land trust financings and other programmatic expenses;
- (d) The number of land trust financings made during the fiscal year;
- (e) The number, amount, and geographic distribution of land trust financings made to very low income, low income, and moderate income households;
- (f) Information on each land trust financing made during the fiscal year and on each land trust housing unit assisted during the fiscal year, including:
 - (1) The asking sales price and actual purchase price of each land trust housing unit;
 - (2) The date of origination of each land trust financing;
 - (3) The amount of each land trust financing;
 - (4) The number of household members occupying each land trust housing unit;
 - (5) The certified income of each household receiving a land trust financing;
 - (6) The square footage of each land trust housing unit;
 - (7) The number of bedrooms of each land trust housing unit; and
 - (8) The address of each land trust housing unit;
- (g) Information on each development provided a development financing commitment or development financing made during the fiscal year, including:
 - (1) The name of the developer;
 - (2) The location of the development;
 - (3) The asking sales price and actual purchase price of each land trust housing unit in the development;
 - (4) The status of the development; and
 - (5) The amount of the development financing;

- (h) Any substantive changes to promissory notes, loan agreements, equity agreements, deeds of trust, ground leases, declarations of covenants, financing statements, assignments of leases, or other legal documents that secure the land trust financing or enforce affordability or resale restrictions on land trust housing units;
- (i) A determination of affordability for each land trust housing unit; and
- (j) Such additional information as may be requested by the Mayor's delegee.

3515.2 The land trust shall prepare financial statements at the end of each of its fiscal years in conformity with generally accepted accounting principles. The financial statements shall be audited by an independent certified public accountant in accordance with generally accepted auditing standards. A copy of the unaudited financial statement of the land trust shall be provided to the Mayor's delegee within 90 days after the end of each fiscal year of the land trust. Copies of each audited financial statement and audit report shall be provided to the Mayor's delegee within one hundred eighty (180) days after the end of each fiscal year of the land trust and shall be open to public inspection.

3516 ACCESS TO LAND TRUST RECORDS

The land trust shall provide the Mayor's delegee, upon request, with access to any and all information and records within the possession or control of the land trust related to the land trust's operation and administration of the land trust program.

3517 REPORT ON LAND TRUST PROGRAM

3517.1 No later than sixty (60) days after the conclusion of the land trust program or three years and sixty (60) days after the effective date of the Act, whichever occurs first, the Mayor's delegee shall submit to the Council a report on the land trust program. The report shall include recommendations for a permanent workforce housing program.

3518 COMPLIANCE

3518.1 If the Mayor's delegee determines that the land trust is not in substantial compliance with the Act, the Plan, the land trust agreement, or this chapter, the Mayor's delegee shall provide written notice of such noncompliance to the land trust.

3518.2 If a federal entity or other investor defaults any portion of the loans, grants, or equity investments provided to the land trust, such default shall be considered substantial noncompliance with this chapter.

3518.3 Within thirty (30) days after receiving a written notice of noncompliance from the Mayor's delegee, the land trust shall submit a written plan ("corrective plan")

describing in detail the steps that will be taken to correct all events of noncompliance identified by the Mayor's delegee.

3518.4 Within thirty (30) days after the Mayor's delegee receives the corrective plan, the Mayor's delegee shall accept or reject the corrective plan.

3518.5 If the land trust fails to submit a corrective plan, the Mayor's delegee rejects the corrective plan, or the land trust fails to take the steps detailed in the corrective plan approved by the Mayor's delegee, the Mayor's delegee may require the land trust to:

- (a) Transfer to another 501(c)(3) organization all rights, including rights to first refusal and rights to enforce deed restrictions, for a percentage of land trust financings equal to the District proportion, as defined in paragraph (b) of this subsection ; and
- (b) Transfer to another 501(c)(3) organization assets with a value equal to the total assets of the land trust multiplied by the proportion of the outstanding financial investment made by the District to the outstanding audited financial investment, including debt and equity, by private lenders and investors (for example the ratio of the anticipated initial investment by the District of ten million dollars (\$10,000,000) to the anticipated initial investment by lenders and investors of sixty-five million dollars (\$65,000,000) would be 1 to 6.5) ("District proportion"), to the extent that the transfer shall not compromise the rights or legal interests of the New Markets Tax Credits investors and allocatees.

3599 DEFINITIONS

3599.1 When used in this chapter, the following words and phrases shall have the meanings ascribed below:

501(c)(3) organization – an organization that is tax-exempt under section 501(c)(3) of the Internal Revenue Code of 1986, approved August 6, 1954 (68A Stat. 163; 26 U.S.C. § 501 (c)(3)).

Act - the Workforce Housing Production Program Approval Act of 2006, effective March 14, 2007 (D.C. Law 16-278; D.C. Official Code §§ 6-1061.01 *et seq.*).

Affordable or affordability – with respect to the purchase price for a housing unit, a purchase price that has been established so that an eligible household's front end ratio will be no more than thirty-five percent (35%).

Area median income – the same meaning as set forth in section 2 of the Housing Production Trust Fund Act of 1988, effective March 16, 1989 (D.C. Law 7-202; D.C. Official Code § 42-2801).

Community Development Financial Institutions Fund – the fund established under section 104(a) of the Community Development Banking and Financial Institutions Act of 1994, approved September 23, 1994 (103 P.L. 325; 12 USCS § 4703).

Comprehensive Housing Task Force Fund – the Comprehensive Housing Task Force Fund established by section 2052(a) of the Deed Transfer and Recordation Amendment Act of 2006, effective March 2, 2007 (D.C. Law 16-192; D.C. Official Code § 42-2853.02(a)).

Council - the Council of the District of Columbia.

Deputy Mayor – the Deputy Mayor for Planning and Economic Development.

Developer – a business entity, either for-profit or not-for-profit, or an individual that constructs land trust housing units or acquires qualified housing units for conversion to land trust housing units, or proposes to engage in either activity.

Development financing - financing, including financing in the form of loans or equity, provided by the land trust to a developer for the purpose of constructing land trust housing units or acquiring qualified housing units for conversion into land trust housing units.

Development financing commitment - a commitment from the land trust that upon the performance by a developer of certain conditions set forth in the development financing commitment, the land trust will make development financing available to the developer.

District - the District of Columbia.

Domestic partnership – the same meaning as set forth in section 2(4) of the Health Care Benefits Expansion Act of 1992, effective June 11, 1992 (D.C. Law 9-114; D.C. Official Code § 32-701(4)).

Eligible household - a household, which at the time of purchase of a qualified housing unit or land trust housing unit, has a total annual income at or below one hundred twenty percent (120%) of the area median income, or, if the household receives land trust financing provided through an allocation of funds from the Housing Production Trust Fund, a household which at the time of purchase of a qualified housing unit or land trust housing unit, has a total annual income at or below eighty percent (80%) of the area median income, adjusted for family size.

Front end ratio - total housing expenses (principal, interest, taxes, and insurance) divided by household income.

Greater affordability - to reduce the purchase price of a qualified housing unit or land housing unit so that an eligible household at a lower income is able to purchase the qualified housing unit or land trust housing unit than would have been able to purchase the housing unit if the reduction of the purchase price had not occurred.

High poverty census tract - a census tract with a poverty rate of thirty percent (30%) or greater as defined by the United States Census Bureau.

Household - all persons who occupy a housing unit, which persons may be a single family, one (1) person living alone, two (2) or more families living together, or any other group of related or unrelated persons who share living arrangements.

Housing Production Trust Fund – the Housing Production Trust Fund established by the Housing Production Trust Fund Act of 1988, effective March 16, 1989 (D.C. Law 7-202; D.C. Official Code §§ 42-2801 *et seq.*).

Housing unit - a single family home, a fee simple unit in a condominium, or occupancy rights in a cooperative.

Individual financing – financing, including a second mortgage loan or the provision of equity, provided by the land trust to an eligible household to purchase a qualified housing unit or land trust housing unit.

Land trust - the organization selected by the Mayor's delegee to administer the program pursuant to section 102(g) of the Act (D.C. Official Code § 6-1061.02(g)).

Land trust agreement – the agreement required by subsection 3501.2.

Land trust financing – development financing or individual financing.

Land trust homeowner – a person that owns a land trust housing unit.

Land trust housing unit – a housing unit that has been assisted by land trust financing.

Land trust program - the operation and administration of a program to create a portfolio of housing units that are affordable to eligible households in perpetuity pursuant to the Workforce Housing Production Program Approval Act and to develop one thousand (1,000) units of workforce housing within three (3) years after the effective date of the Act.

Land trust portfolio – the portfolio consisting of all land trust housing units.

Low income – having an income at or below eighty percent (80%) of the area median income, adjusted for family size.

Mayor - the Mayor of the District of Columbia.

Mayor's delegee – the District government official to whom the Mayor has delegated the authority to perform any function authorized to be performed by the Mayor under title I of the Act

Moderate income - having an income at or below one hundred twenty percent (120%) of the area median income, adjusted by family size.

New Markets Tax Credit – the tax credit established under section 45D of the Internal Revenue Code of 1986, approved December 21, 2000 (106 P.L. 554; 26 USCS § 45D).

Permanent or permanently - in perpetuity.

Plan - the District of Columbia Workforce Housing Land Trust Design and Implementation Plan, as approved by the Council pursuant to section 103 the Act (D.C. Official Code § 6-1061.03).

Portfolio average of household incomes - the average of the household incomes established at the time of purchase for all of the households that own qualified housing units.

Portfolio average of housing unit purchase prices – the average of the most recent purchase price for each land trust housing unit in the land trust portfolio.

Poverty census tract - a census tract with a poverty rate of twenty (20%) percent or greater as defined by the United States Census Bureau.

Qualified housing unit - a housing unit affordable to a household with an income of 120% or less of the area median income.

Very low income - having an annual income at or below fifty percent (50%) of the area median income, adjusted for family size.

Persons desiring to comment on these proposed rules should submit comments in writing to the Office of the Deputy Mayor for Planning and Economic Development, 1350 Pennsylvania Avenue, NW, Suite 317, Washington, DC 20004, no later than thirty (30) days after the date of publication of this notice in the D.C. Register. Copies of these proposed rules and related information may be obtained between 9:00 a.m. and 3:30 p.m. at the address stated above.