

PUBLIC NOTICE OF PROPOSED RULEMAKING

AGENCY: Rhode Island Housing and Mortgage Finance Corporation

DIVISION: None

RULE IDENTIFIER: ERLID #1125

REGULATION TITLE: [Repeal] Fifth Amendment to and Restatement of the Land Bank Program

RULEMAKING ACTION: Direct Final

DIRECT FINAL: If no formal objection is received on or before June 19, 2017, Agency will file the repeal without further opportunity for public comment.

TYPE OF FILING: Repeal

DATES: Public Notice Date: May 18, 2017; End of Comment Period Date: June 19, 2017; Hearing Date, if any: To Be Determined

SUMMARY OF PROPOSED RULE:

The purpose of this repeal is to eliminate an unnecessary rule. The above-captioned rule describes a program through which Rhode Island Housing assists eligible developers to acquire and/or hold real estate for the purpose of future affordable housing development. Rhode Island Housing's criteria for participation in the program are set forth in a program bulletin dated August 19, 2016.

This is an agency-sponsored program, for which funding has historically fluctuated and is currently under review. To the extent that Rhode Island Housing chooses to continue financing the program, an amended or supplementary program bulletin or term sheet would provide a more streamlined and flexible method of publishing program-related criteria, which change from time to time depending on the availability of funds and development priorities. Such flexibility would give Rhode Island Housing the opportunity to better and more creatively serve the needs of developers likely to participate in the program.

COMMENTS INVITED:

All interested parties are invited to submit written or oral comments concerning the proposed repeal by June 19, 2017, to the address listed below.

ADDRESS FOR PUBLIC COMMENT SUBMISSIONS:

Corinne Myers, Deputy General Counsel
Rhode Island Housing and Mortgage Finance Corporation
44 Washington Street, Providence, Rhode Island 02903
cmyers@rihousing.com

PUBLIC HEARING:

In accordance with RIGL § 42-35-2.8, an oral hearing will be granted if requested by twenty-five (25) persons, by an agency or by an association having at least twenty-five (25) members. A request for an oral hearing must be made within thirty (30) days of this notice.

FOR FURTHER INFORMATION CONTACT:

Corinne Myers, Deputy General Counsel
Rhode Island Housing and Mortgage Finance Corporation
44 Washington Street
Providence, Rhode Island 02903
(401) 277-1552
cmyers@rihousing.com

SUPPLEMENTARY INFORMATION:

Regulatory Analysis Summary and Supporting Documentation:

No economic impact was identified in connection with this repeal. By this action, Rhode Island Housing proposes to repeal an unnecessary rule, and does not (a) impose any compliance or reporting obligations; (b) require adherence to schedules or deadlines; (c) establish performance, design or operational standards; or (d) establish any other requirements, which may be consolidated or simplified or from which small businesses could be exempt. This repeal is intended to further the objectives of the Office of Regulatory Reform by eliminating an unnecessary rule.

Authority for This Rulemaking: R.I. General Laws § 42-55-5(5)

Regulatory Findings:

In the development of the proposed repeal consideration was given to: (1) alternative approaches; (2) overlap or duplication with other statutory and regulatory provisions; and (3) significant economic impact on small business. No alternative approach, duplication, or overlap was identified based upon available information.

The Proposed Action:

Rhode Island Housing and Mortgage Finance Corporation proposes to repeal ERLID #1125 in its entirety:

~~**RHODE ISLAND HOUSING AND MORTGAGE FINANCE CORPORATION**~~

~~**FIFTH AMENDMENT TO AND RESTATEMENT
OF THE LAND BANK PROGRAM**~~

~~Section 1. PROGRAM PURPOSES~~

~~Rhode Island Housing and Mortgage Finance Corporation (the “Corporation”) hereby promulgates rules and regulations (the “Regulations”) governing the Land Bank Program. The primary purpose of the Land Bank Program is to reduce barriers to the production of affordable housing by authorizing the Corporation to acquire and hold, on behalf of eligible developers, properties intended for development as housing affordable to low and moderate income residents of the State of Rhode Island.~~

~~Under the Land Bank Program the Corporation will acquire and hold for a limited period of time, or provide bridge financing for acquisition by the Eligible Developer of, undeveloped real estate, vacant lots, developed properties, or a combination thereof, for Eligible Developers that submit approved Proposals for the acquisition and development of said properties for affordable housing. Eligible Developers seeking to develop housing on property acquired through the Land Bank Program may apply for financing under any program of the Corporation, to the extent funds are available under such programs, provided the requirements of such programs are satisfied. These Rules and Regulations set forth criteria established by the Corporation for the Land Bank Program.~~

~~Section 2. DEFINITIONS~~

~~2.1 As used in these Rules and Regulations:~~

~~2.1.1. “Act” means the Housing and Mortgage Finance Corporation Act set forth in Chapter 55 of Title 42 of the Rhode Island General Laws of 1956, as amended.~~

~~2.1.2. “Carrying Costs” means any costs incurred by the Corporation in the acquisition, maintenance and holding of an Eligible Property under the Land Bank Program including but not limited to the costs of an appraisal, title search, purchase price, closing costs, maintenance and stabilization, taxes, insurance, relocation costs, and lead paint abatement. The Corporation also retains the right to charge a reasonable interest on Carrying Costs at a rate determined by the Corporation.~~

- ~~2.1.3. "Holding Period" means the period of time over which the Corporation will retain ownership of an Eligible Property as specified in an approved proposal. Generally, the Holding Period will not exceed twelve (12) months.~~
- ~~2.1.4. "Budget" means the Development budget submitted with a Proposal by an Eligible Developer. The Budget shall set forth in reasonable detail to the satisfaction of the Corporation all estimated costs and expenses of the Development through final sale of Development units to qualified purchasers or lease of rental units, as applicable, as well as all sources of funds to be used in connection with the Development.~~
- ~~2.1.5. "Executive Director" means the Executive Director of the Corporation or his designee.~~
- ~~2.1.6. "Corporation" means the Rhode Island Housing and Mortgage Finance Corporation, a public corporation organized and existing under the Act.~~
- ~~2.1.7. "Development" means construction and/or rehabilitation, possibly in combination with demolition, of affordable housing as specified in an approved Proposal.~~
- ~~2.1.8. "Eligible Developer" means (i) any state, municipal or local government located in the State of Rhode Island; (ii) any state, municipal or local public housing authority or redevelopment authority, agency, or corporation lawfully created and located in the State of Rhode Island; (iii) any organization exempt from state and federal income taxation which has as one of its organizational purposes the providing of housing and related facilities and services to persons and families of low and moderate income which organization has not been incorporated or otherwise formed for the purpose of participating in the Land Bank Program; or (iv) any partnership or joint venture consisting of at least one of the entities described in subsection (i), (ii) and (iii) of this Section 2.1.8.~~
- ~~2.1.9. "Eligible Property" means any (i) undeveloped real estate or vacant lot; (ii) developed lots containing one or more vacant buildings; (iii) developed lots containing one or more occupied but blighted buildings; or any combination of properties described in subsection (i), (ii), and (iii) of this Section 2.1.9.~~
- ~~2.1.10. "Proposal" means a proposal submitted to the Corporation by an Eligible Developer for participation in the Land Bank Program.~~

~~Section 3. APPLICATION PROCESS~~

~~3.1 Threshold Requirements.~~

- ~~3.1.1. Applicant must be an Eligible Developer as defined in Section 2, subsection 2.1.8 of these Rules and Regulations.~~
- ~~3.1.2 All land or properties identified for acquisition and development in the Proposal must be Eligible Properties as defined in Section 2, subsection 2.1.9 of these Rules and Regulations.~~
- ~~3.1.3 All land or properties identified for acquisition and development in the Proposal must be served by public water and sewer systems or have an approved Individual Sewage Disposal System (ISDS) and documentation of adequate water supply.~~
- ~~3.1.4 Applicants must be able to demonstrate to the satisfaction of the Corporation their ability to proceed with the purchase and development of properties specified in the Proposal within the Holding Period.~~
- ~~3.1.5 Proposed development must be consistent with zoning for the site or sites, or require no more than a dimensional variance to receive necessary permits.~~
- ~~3.1.6 Applicants must demonstrate that no other proposed sources of funding are immediately available to secure the property specified in the Proposal.~~
- ~~3.1.7 Applicants must identify all proposed sources of financing for the acquisition and ultimate use of the property and demonstrate to the satisfaction of the Corporation eligibility for said financing.~~
- ~~3.1.8 If any properties identified for acquisition and development in the Proposal are currently occupied, the applicant must provide a relocation plan that includes all applicable costs and proposed financing.~~
- ~~3.2 Submission of Proposals for Funding~~

~~Proposals under the Land Bank Program will be accepted on a continual basis. Proposals may be submitted to the Corporation during regular business hours. A Proposal shall be deemed received as of the date the Corporation determines that the Proposal contains all the information required by Section 4 of these Rules and Regulations. Proposals shall be reviewed by the Corporation and considered for funding in the order in which received as long as funds are available.~~

~~3.3. Review of Applications~~

~~Completed Proposals containing all documentation required by the Corporation shall be reviewed within thirty (30) days of receipt. Proposals shall be reviewed by the Corporation staff to determine eligibility and conformance with the Threshold Requirements. All Proposals that comply~~

~~with the Threshold Requirements will thereupon be evaluated based on the review criteria specified in Section 3.4 of these Rules and Regulations. The Executive Director or his designee shall decide whether or not to approve the Proposal based on the results of that evaluation.~~

~~3.4 Proposal Evaluation Criteria~~

~~Corporation staff shall evaluate all Proposals that satisfy the Threshold Requirements based on the criteria described in this section.~~

~~3.4.1. Likelihood of Eligible Developer receiving permanent financing and proceeding to construction or rehabilitation within six (6) to twelve (12) months.~~

~~3.4.2. Eligible Developer's capacity to undertake the project.~~

~~3.4.3 Financial feasibility of the proposed Development.~~

~~3.4.4 Extent to which the Proposal is consistent with a comprehensive neighborhood revitalization strategy.~~

~~3.4.5 Extent to which the Proposal is consistent with planning practices to encourage smart growth.~~

~~3.4.6 Proposals involving properties that are not currently occupied.~~

~~3.4.7 Extent to which Development will produce affordable housing.~~

~~3.4.8 Environmental Impact of the Development on the surrounding area.~~

~~Section 4. CONTENTS OF THE PROPOSAL~~

~~Eligible Developers applying to the Land Bank program shall submit to the Corporation one (1) original Proposal together with three (3) copies thereof. Each Proposal shall contain the following information together with such other information as the Corporation may request:~~

~~4.1 The name, address, telephone number, fax number, email address and taxpayer identification number of the applicant.~~

~~4.2 A resolution of the Board of Directors or other governing body of non-profit entities or Public Housing Authorities, or resolution of the City or Town Council in the case of a municipal application, as applicable, authorizing submission of the Proposal.~~

~~4.3 A description of the property to be purchased and proposed development, including address of the site location, number and type of buildings~~

~~currently on the property where applicable, purchase price, proposed development cost and the number of low and very low income persons to be served.~~

- ~~4.4 If the property is occupied, plan for relocation including estimated costs and financing, or if applicable, description of how property condition will permit tenants to safely remain in the property during the Holding Period.~~
- ~~4.5 Identification and evidence of commitment where applicable of other funding proposed.~~
- ~~4.6 Evidence of compliance with local zoning and environmental regulations where applicable.~~
- ~~4.7 Evidence of water and sewer service to the proposed development site or Individual Sewage Disposal System and evidence of adequate water supply.~~
- ~~4.8 Projected date for commencement of rehabilitation or construction activities and a timetable for completion of the Development.~~
- ~~4.9 A description of the experience of the Eligible Developer including identification of key staff and their qualifications and experience, past projects undertaken and current housing projects underway.~~

~~Section 5. PROGRAM ADMINISTRATION~~

~~5.1 The Agreement:~~

- ~~5.1.1. If the Proposal is approved, the Corporation shall enter into an agreement (the "Agreement") with the Eligible Developer to purchase the Eligible Properties and to hold those properties for the Holding Period specified in the Proposal. The Agreement shall set forth, among other things, certain terms and conditions of participation in the Land Bank Program including but not limited to the requirements described in this Section, 5.1 of the Rules and Regulations.~~
- ~~5.1.2. The Eligible Developer shall reimburse the Corporation, at the time the Corporation acquires the Eligible Properties, for the costs of appraisals and title searches regarding the Eligible Properties.~~
- ~~5.1.3. The Eligible Developer shall reimburse the Corporation, at the time the Corporation conveys the Eligible Properties to the Eligible Developer, for all Carrying Costs incurred by the Corporation and not previously reimbursed with respect to the Eligible Property.~~

~~5.1.4. The Corporation has the sole discretion and responsibility for determining what steps are needed to (i) ensure the safety, stability and maintenance of properties purchased through the Land Bank Program and (ii) protect the health and safety of any tenants occupying said properties. The applicant agrees to reimburse the Corporation for whatever costs are incurred by the Corporation in taking these steps as part of the Carrying Costs for the properties.~~

~~5.1.5. The Eligible Developer may request a supplementary agreement (“Supplementary Agreement”) with the Corporation to begin proposed Development on an Eligible Property during the Holding Period. The Corporation shall have the sole discretion to determine whether to enter into a Supplementary Agreement. The Supplementary Agreement must be approved by the Corporation and include indemnification to the Corporation from liability arising from the work to be undertaken by the Eligible Developer during the Holding Period. Costs of improvements made to the Eligible Property by the applicant through the Supplementary Agreement will not be added to the Carrying Costs charged by the Corporation for the Eligible Property. All work done under a Supplemental Agreement shall be at the sole risk of the Eligible Developer. The Eligible Developer shall have no right to reimbursement for the costs of improvements made to the Eligible Property during the Holding Period in the event that an Eligible Developer fails to acquire the Eligible Property as set forth in the Agreement or Supplemental Agreement~~

~~5.1.6. If at any time the Corporation believes that for health, safety, or sanitary reasons it is necessary for tenants to vacate an Eligible Property, the Corporation has the right to use such remedies available to it under Rhode Island law to remove tenants on an expedited basis and include any costs incurred in so doing under the Carrying Costs for the Eligible Property~~

~~5.1.7. If the Eligible Developer fails to acquire the Eligible Property by the earlier of (i) the date specified in the Proposal or (ii) twelve (12) months from the date of the Corporation’s acquisition of the property, the Corporation may terminate the Agreement and/or Supplemental Agreement. The Corporation may thereafter sell the Eligible Property to any interested party or may incorporate it into any other Corporation program.~~

~~5.2 Acquisition Bridge Financing~~

~~5.2.1 In lieu of acquiring an Eligible Property, the Corporation, in its sole discretion, may choose to provide a loan to the Eligible Developer for the purchase of the Eligible Property.~~

~~5.2.2 The Corporation shall enter into an Agreement with the Eligible Developer as provided in Section 5.1. The Agreement shall, at a minimum, set forth the terms and conditions of the bridge financing and such other provisions that the Corporation shall require.~~

~~5.2.3 Only approved Proposals meeting the following criteria may be considered under Section 5.2 of the Rules and Regulations;~~

- ~~(i) The Eligible Property included in the Proposal is occupied;~~
- ~~(ii) The Eligible Developer has secured commitments for all financing for the Proposal;~~
- ~~(iii) The Eligible Developer has demonstrated an ability to repay the bridge financing by the date specified in the Proposal or six (6) months, whichever comes first.~~
- ~~(iv) The Eligible Developer has demonstrated the ability to manage the occupied property or provide for the relocation of the tenants in a manner satisfactory to the Corporation.~~

~~5.3 Administration~~

~~The Corporation shall have responsibility for day to day management, maintenance, stabilization, oversight and tenant relations and health and safety improvements if applicable for properties purchased by the Corporation through the Land Bank Program.~~

~~Section 6. MISCELLANEOUS~~

~~6.1. Advertisements, Promotions, etc.~~

~~The Corporation may from time to time make reference to and use information regarding approved Proposals in advertisements, brochures, newspaper articles, periodicals and in other promotional materials.~~

~~6.2. Right to Waive Regulations~~

~~Upon a determination and finding of Good Cause, the Corporation may waive any provision of the Regulations. Good Cause includes facts or circumstances where the granting of a waiver (i) is necessary to permit the Development to proceed, (ii) would not pose an undue financial risk to the Corporation, (iii) is necessary to carry out the purposes of the Land Bank Program, and (iv) is consistent with the mission of the Corporation. Each waiver must be in writing and must be supported by documentation of the pertinent facts and circumstances.~~