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**Subject:** Housing Recapture Policy  
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**Attachments:** [housing policy - recapture policy\(2559638.3\).docx](#)

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Shawna, I am working on the closing documents for Delta Luxury Townhomes LLC. As you know, financial assistance to this housing project is limited to sales tax and mortgage recording tax. I checked the IDA's website to pull the IDA's recapture policy for housing projects, and the Housing Policy is posted there with the form of project certification.

You do have an official recapture policy that was adopted in 2015. Below is an excerpt of your November 2015 minutes:

A request to consider a resolution to amend the IDA's Uniform Tax Exemption Policy to include a housing recapture policy. The IDA sent notice to all affected taxing jurisdictions on September 29, 2015 requesting comments. The policy will be attached to the Uniform Tax Exemption Policy and distributed to affected jurisdictions. A motion to approve a resolution to amend the IDA's Uniform Tax Exemption Policy to include the housing recapture policy was made by N. Brown and seconded by M.F. Messenger. Motion passed unanimously 6-0

Attached is the document that is saved in our system, which is dated September 21, 2015 and marked "DRAFT." I presume this is what you sent to the tax jurisdictions but perhaps you should confirm you didn't make further revisions after we sent to you.

Once you confirm the final policy, please replace the document that is currently posted as "housing recapture policy" and replace it with the policy.

Also I note your housing policy is scheduled to sunset in June 2023, so let's keep an eye on that.

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## Housing Recapture Policy

1. **Project Obligation**. The financial assistance granted by the Agency is conditioned upon the Applicant constructing its Project as represented in its Application, within two years from the date the Project is induced (the "Project Obligation"). Each Project receives financial assistance based upon how the Project scored using the criteria described in the Housing Policy (the "Initial Score"). If, after two years or upon completion of the Project, the Final Project is not completed in accordance with the Project Obligation, it may subject the Applicant to recapture of financial assistance.
2. **Reporting to the IDA**. An Applicant will be required to submit one Final Project Report within ten days of receiving a Certificate of Occupancy for all units, or at least ten days before the end of the lease term, whichever is soonest. The Final Project Report will certify completion of the facility in compliance with the Project Obligation, and will provide copies of all Certificates of Occupancy.
3. **Final Project Review**. Upon receipt of the Final Project Report, the Agency will score the Project again using the same criteria contained in the Housing Policy as when the Project was induced (the "Final Score"). In the event the Applicant fails to meet the criteria upon which the project received its Initial Score and the Final Score would have resulted in less financial assistance, the Applicant may be subject to recapture and/or a reduction of financial assistance. If the scoring results in a higher score, the Applicant will not be entitled to additional financial assistance.
4. **PILOT Amendments**.
  - a. If a Project's Initial Score is for Tier 1 Benefits and the Final Score is for Tier 2 Benefits, the PILOT Agreement will be revised to reflect the PILOT Exemption Schedule for Tier 2 Benefits.
  - b. If a Project's Initial Score is for Tier 1 Benefits or Tier 2 Benefits and the Final Score is for Tier 3 Benefits or lower, the PILOT Agreement will be terminated.
5. **Major Shortfall**. If a Project's Final Score is lower than Tier 3 Benefits, the Agency will notify the Company in writing of its intention to recapture benefits and the Company will have thirty (30) days to respond to the letter citing the reason or reasons the Company failed to achieve its Project Obligation, including any request to appear before the Agency. If the Agency then determines that the Company's reasons for failing to achieve the Project Obligation are not acceptable to the Agency, the Agency, at its sole discretion, may:
  - a. Take no action if it is determined that the reason or reasons for failing to achieve the Project Obligation are temporary or, in the sole opinion of the Agency, it is in the best interest of economic development of Oneida County;
  - b. Reduce the benefits granted to the Company in an amount proportionate to the percentage of the Project Obligation that was achieved (i.e., if the Company meets 75% of its projections, 25% of benefits are recaptured); or
  - c. Terminate the Leaseback Agreement and the PILOT Agreement and require the Company to repay 100% of the benefits received to date.

6. **Mandatory Recapture**. The Agency is mandated to recapture New York State sales tax benefits where:
  - a. The Project is not entitled to receive those benefits.
  - b. The exemptions exceed the amount authorized, or are claimed for unauthorized property or services.
  - c. The Company fails to use property or services in the manner required by the Leaseback Agreement.
  
7. **Miscellaneous**.
  - a. The Agency in granting benefits retains all rights to impose, delay or waive penalties and the right to deviate from these recapture provisions.
  - b. No violation of these provisions will, in and of itself, constitute a default of any financing debt instrument.