

NEW HAMPSHIRE HOUSING FINANCE AUTHORITY

Occupancy, Rental, and Assumption for Loans Financed by Mortgage Revenue Bonds HFA 322

Table of Contents

HFA 322 PART ONE: Overview, Purpose, Applicability, and General Standard

- 322.01 Overview and Purpose
- 322.02 Applicability
- 322.03 General Standard

HFA 322 PART TWO: Definitions

- 322.04 Definitions

HFA 322 PART THREE: Occupancy Requirement and Applying for an Exception to the Occupancy Requirement

- 322.05 Occupancy Requirement
- 322.06 Applying for an Exception to Occupancy Requirement
- 322.07 Authority Decision on Exception to Occupancy Requirement

HFA 322 PART FOUR: Rental Prohibition and Applying for Permission to Rent the Home

- 322.08 Renting the Home
- 322.09 Applying for Permission to Rent a Home
- 322.10 Authority Decision on Permission to Rent
- 322.11 Requirement if Permission to Rent is Granted
- 322.12 Renewal of Permission to Rent

HFA 322 PART FIVE: Assumption

- 322.13 Assumption Overview
- 322.14 Assumption Eligibility
- 322.15 Applying for an Assumption and/or Release
- 322.16 Fees and Costs
- 322.17 Assumption Criteria: General
- 322.18 Assumption Criteria: Loan Underwriting
- 322.19 Assumption Criteria: Mortgage Insurance/Guarantee
- 322.20 Release Requirements
- 322.21 Authority Decision on Application for Assumption and/or Release
- 322.22 Effect of Approval

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HFA 322

HFA 322 PART ONE: Overview, Purpose, Applicability, and General Standard

HFA 322.01 Overview and Purpose

- (a) At times, the Authority finances home mortgages under the MRB Program. The MRB Program includes certain requirements related to:
 - (1) The Occupancy Requirement, which prohibits renting the Home without the Authority's permission to rent; and
 - (2) The Assumption of an MRB Loan and the Release from liability on an MRB Loan.
- (b) These rules outline how to apply for and obtain:
 - (1) An exception to the Occupancy Requirement;
 - (2) Permission to rent the Home; and
 - (3) An Assumption and/or Release.

HFA 322.02 Applicability

- (a) These rules only apply to MRB Loans.
- (b) The provisions of HFA 301 are incorporated in these HFA 322 rules.

HFA 322.03 General Standard

- (a) The decision to grant or to deny an exception to the Occupancy Requirement; permission to rent; or an Assumption and/or Release is based on several factors, including:
 - (1) The terms of the original mortgage documents and other such factors such as mortgage insurance;
 - (2) Applicable laws and regulations;
 - (3) The applicant's financial situation, including credit underwriting; and
 - (4) Program requirements and policy considerations.

- (b) Nothing in these rules or in any Authority communication or action creates any right in the applicant or requires the Authority to grant requests for:
 - (1) An Occupancy exception;
 - (2) Rental permission; or
 - (3) An Assumption/Release.
- (c) The Authority retains its discretion and judgment when deciding on such requests.

HFA 322 PART TWO: Definitions

HFA 322.04 Definitions

In addition to terms defined in HFA 301, the following words or terms shall have the following meanings in these HFA 322 rules:

“Authority” is defined in HFA 301.

“Assume” or “Assumption” means a New Borrower taking over the liability under an existing note and mortgage, including all representations and obligations, as if that New Borrower had signed the original note and mortgage; or

An existing Borrower taking over the liability under an existing note and mortgage, including all representations and obligations, as if that existing Borrower were the only party that had signed the original note and mortgage.

“Borrower” means the original individual(s) who executed the note and the mortgage for the MRB Loan.

"Code" means the Internal Revenue Code of 1986 and all regulations thereunder, as amended.

“Eligible Borrower” means a person who meets the MRB Program requirements.

“Home” means the house purchased by the Borrower with an MRB Loan, which is required to be the borrower’s Principal Residence.

“MRB Loan” means a mortgage financed under the MRB Program.

“MRB Program” means a single-family home mortgage program that is funded using tax exempt mortgage revenue bonds under Internal Revenue Code §143 (26 U.S. Code §143) and the applicable IRS rules and regulations, including 26 CFR 1.103 A-2 and 6a.103 A-1, -2 and -3. This term includes all IRS requirements and all Authority requirements.

“New Borrower” means the individual(s) who seeks permission to Assume an existing MRB loan and is then approved to Assume that MRB Loan. Depending on the context, it can mean: (1) A new borrower who was not liable on the existing MRB Loan; or (2) An existing Authority borrower who has been liable on the existing MRB Loan.

“Occupancy Requirement” means the requirement imposed by the MRB Program that the Borrower reside in the Home as the Borrower’s Principal Residence.

“Principal Residence” means an Eligible Borrower’s permanent place of living. An Eligible Borrower can have only one Principal Residence at any time.

“Release” means an existing Borrower, who was liable under a note and mortgage, is removed from liability and is thus no longer liable under the note and mortgage.

“Return Date” means, under the rules for exception to the Occupancy Requirement, the date the Borrower must move back into the Home. The Return Date may be expressed as an exact date or a length of time as defined by the Authority.

HFA 322 PART THREE: Occupancy Requirement and Applying for an Exception to the Occupancy Requirement

HFA 322.05 Occupancy Requirement

Borrowers who financed their Home using an MRB Loan must continue to occupy the Home as their Principal Residence until the MRB Loan is paid off. Failure to so occupy the Home violates Authority and IRS requirements and can constitute a default under the MRB Loan. In certain circumstances, the Authority and the IRS allow exceptions to this Occupancy Requirement.

HFA 322.06 Applying for an Exception to Occupancy Requirement

- (a) The Authority shall create and provide an application packet that will include:
 - (1) The application;
 - (2) Program information;
 - (3) A list of eligibility requirements;
 - (4) A list of all required information and documents; and
 - (5) A statement of all fees and potential costs.
- (b) A Borrower seeking an exception to the Occupancy Requirement shall apply to the Authority before moving out of the Home. If the Borrower has moved out of the Home

before applying for the exception, the Borrower shall explain why the Borrower moved out before applying for the exception.

- (c) The Authority may grant an exception to the Occupancy Requirement under the following circumstances:
 - (1) The Borrower's change in employment necessitating permanent or temporary relocation;
 - (2) The Borrower's change in marital or family status;
 - (3) Illness or death of the Borrower or a family member;
 - (4) Reduction in Borrower's income or the Borrower's family income, which impacts the funds available for housing expenses; or
 - (5) Other good cause.
- (d) To apply for an exception to the Occupancy Requirement, the Borrower shall file with the Authority a request that includes the following:
 - (1) A letter stating:
 - (A) The Borrower has complied with the Authority's Occupancy Requirement in good faith;
 - (B) The reason(s) for the request;
 - (C) The Borrower intends to move out due to circumstances that were unforeseen at the time of initial occupancy;
 - (D) The mortgage payments, taxes, common charges, or other required expenses and required insurance are and will remain current; and
 - (E) The Home will not be rented without the Authority's approval.
 - (2) A financial statement, using the Authority's form, that shall include the Borrower's income, expenses, assets, and other financial information.
- (e) The Borrower shall pay the fee established by the Authority and any costs associated with the request.
- (f) The Borrower may include a request for permission to rent with the request for an exception to the Occupancy Requirement.

HFA 322.07 Authority Decision on Exception to Occupancy Requirement

- (a) The Authority shall send the Borrower a written letter of denial or approval.
- (b) If the Authority grants the request, such approval shall:
 - (1) State a specific Return Date; and
 - (2) State any other conditions for the exception.
- (c) If the Authority grants an exception, the exception shall be reviewed by the Return Date. In this review process, the Borrower shall provide the Authority with all required information and documents. The Authority shall then determine if:
 - (1) The exception should be continued for another specified period of time; or
 - (2) If the exception should be terminated.
- (d) The Authority may revoke a granted exception any time it determines that such revocation is warranted based on program requirements, Borrower's failure to comply, or other good cause.

HFA 322 PART FOUR: Rental Prohibition and Applying for Permission to Rent the Home

HFA 322.08 Renting the Home

- (a) Given the Occupancy Requirement, MRB Loan Borrowers are not allowed to rent the Home without the Authority's prior-written permission.
- (b) Renting the Home without the Authority's prior-written permission can constitute a default under the MRB Loan.

HFA 322.09 Applying for Permission to Rent a Home

- (a) A Borrower may apply to the Authority for permission to rent the Home to a third party.
- (b) The Authority shall create and provide an application packet that shall include:
 - (1) The application;
 - (2) Program information;
 - (3) A list of eligibility requirements;

- (4) A list of all required information and documents; and
- (5) A statement of all fees and potential costs.
- (c) The Authority shall not consider a request for permission to rent until the Borrower has been granted an exception to the Occupancy Requirement. The Borrower may apply simultaneously for both an exception to the Occupancy Requirement and for permission to rent.
- (d) A Borrower seeking permission to rent shall apply to the Authority before renting the Home. If the Borrower rented the Home before applying for the permission to rent, the Borrower shall explain why the Borrower rented the Home before obtaining the permission to rent.
- (e) To apply for permission to rent, the Borrower shall file a written request and shall provide the Authority with the following:
 - (1) All documents required under HFA 322.06 (Exception to Occupancy Requirement);
 - (2) A letter stating the reason(s) for the request;
 - (3) A borrower rental affidavit, using the Authority's form; and
 - (4) Pay the fee established by the Authority and any costs associated with the request.

HFA 322.10 Authority Decision on Permission to Rent

- (a) The Authority may grant the permission to rent for either:
 - (1) Short term with a Return Date;
 - (2) Long term with a Return Date; or
 - (3) Economic Hardship.
- (b) Short term: The Authority may grant permission to rent when the Borrower intends to rent the Home for a short period of time, which means one year or less, and the Borrower commits to a Return Date of one year or less.
- (c) Long term: The Authority may grant permission to rent when the Borrower intends to rent the Home for more than a year and the Borrower commits to a Return Date at the end of that period. Example: A person serving in the military will be away for a three-year deployment. The permission to rent may be for three years.

- (d) Economic Hardship: The Borrower does not intend to reoccupy the Home, and the Borrower demonstrates, and the Authority determines, that it is not possible to sell the Home without the Borrower incurring “economic hardship.” The Borrower shall demonstrate “economic hardship” by providing the Authority with information and documentation that shows:
- (1) The Home’s value;
 - (2) The existing mortgages and other liens on the Home;
 - (3) Other transaction costs in selling the Home such as fees charged by real estate professionals and transfer taxes;
 - (4) The Borrower’s income, assets, and other financial factors; and
 - (5) Such other information and documentation required by the Authority.

HFA 322.11 Requirement if Permission to Rent is Granted

- (a) If the Authority grants permission to rent, the following requirements shall apply:
- (1) The Borrower shall complete and execute a borrower rental affidavit;
 - (2) The Borrower shall provide the Authority with a copy of the executed lease that shall include all Authority-required terms; and
 - (3) The amount of any rent received from renting the Home shall not exceed the annual sum of mortgage debt service, taxes, common charges, and insurance premiums associated with the Home; if any excess rent is collected, the Borrower shall pay that excess rent to the Authority to reduce the principal balance of the mortgage loan.
- (b) If required by the Authority, the Borrower shall list for sale and actively market the Home for sale.
- (c) When the Authority is reviewing an application for permission to rent, the Borrower shall provide the Authority any information and documentation requested by the Authority. Borrower’s failure to comply with such request shall constitute grounds for the Authority to deny the request.
- (d) The Authority’s permission to rent a property will be for a specific period of time and will be subject to review at the end of such period.
- (e) The Authority may revoke a granted permission to rent if it determines that such revocation is warranted based on program requirements, Borrower’s failure to comply, or other good cause.

HFA 322.12 Renewal of Permission to Rent

If the Authority granted permission to rent, a Borrower who wishes to extend the permission to rent shall, before the current permission to rent expires, reapply by submitting or updating all of the requirements for applying for an initial permission to rent.

HFA 322 PART FIVE: Assumption

HFA 322.13 Assumption Overview

For existing MRB Loans and only in certain circumstances, the Authority and the IRS permit:

- (a) An existing Borrower to Assume full responsibility for an existing MRB Loan;
- (b) A New Borrower to Assume an existing MRB Loan; and/or
- (c) An existing Borrower to be Released from liability under an existing MRB Loan.

HFA 322.14 Assumption Eligibility

The following individual(s) may apply for an Assumption:

- (a) An existing Borrower seeking to Assume sole liability for an existing MRB Loan, which then includes the Release of the original co-Borrower; or
- (b) A New Borrower seeking to Assume an existing MRB Loan, either solely or jointly, which may include a Release.

HFA 322.15 Applying for an Assumption and/or Release

- (a) The Authority shall create and provide an application packet that shall include:
 - (1) The application;
 - (2) Program information;
 - (3) A list of eligibility requirements;
 - (4) A list of all required information and documents; and
 - (5) A statement of all fees and potential costs.
- (b) Before entering into any transaction related to the Home, the prospective New Borrower shall contact the Authority for an Assumption application.
- (c) A New Borrower shall submit a completed application packet to the Authority.

- (d) Once the full application packet is received, the Authority shall review the application packet and issue a decision.
- (e) A New Borrower shall not enter into any transaction related to the Home until the Authority issues its approval.

HFA 322.16 Fees and Costs

The Assumption applicant shall pay:

- (a) The fees established by the Authority; and
- (b) All transaction costs incurred by the Authority that are related to the Assumption and/or Release, including costs related to credit reports, appraisals, recording fees, and attorney's fees.

HFA 322.17 Assumption Criteria: General

- (a) The Authority may grant an Assumption and/or Release under the following conditions:
 - (1) Demonstrated economic hardship. The Borrower shall demonstrate "economic hardship" by providing the Authority with information and documentation that shows:
 - (A) The Home's value;
 - (B) The existing mortgages and other liens on the Home;
 - (C) Other transaction costs in selling the Home such as fees charged by real estate professionals and transfer taxes;
 - (D) The Borrower's income, assets and other financial factors; and
 - (E) Such other information and documentation required by the Authority.
 - (2) Loss of or disruption of income, resulting in an inability to meet mortgage payments or other mortgage-related financial obligations;
 - (3) Inability of the Borrower to continue to occupy the Home due to employment transfer, separation, divorce, or other valid reason;
 - (4) Inability of the Borrower, after a good faith effort, to successfully sell the Home; or
 - (5) Other good cause.

- (b) Assumption and/or Release shall not be granted solely for the Borrower's or the prospective New Borrower's convenience.

HFA 322.18 Assumption Criteria: Loan Underwriting

The prospective New Borrower shall meet:

- (a) The same criteria as would be required of an existing Borrower in the MRB Program; and
- (b) The credit/underwriting criteria established by the Authority and the primary mortgage insurer/guarantor.

HFA 322.19 Assumption Criteria: Mortgage Insurance/Guarantee

- (a) All MRB Loans for which an Assumption and/or Release are sought shall maintain the same mortgage insurance or loan guarantee as existing on the MRB Loan, e.g., private mortgage insurance, Federal Housing Administration, Rural Development, or Veterans Affairs.
- (b) An Assumption and/or Release shall not be granted without written approval from the existing mortgage insurer or loan guarantor.

HFA 322.20 Release Requirements

- (a) The Authority shall not Release a Borrower without first:
 - (1) Approving an Assumption request from an existing Borrower or New Borrower; and
 - (2) Having all of the documents to complete the approved Assumption.
- (b) An existing Borrower cannot apply for a Release without the Authority also having received an application for Assumption. The Authority, therefore, shall not review a Release until an Assumption application has been received.

HFA 322.21 Authority Decision on Application for Assumption and/or Release

- (a) Applicants are not entitled to an Assumption and/or Release.
- (b) The Authority has the sole discretion as to whether to grant an Assumption and/or Release.
- (c) Any decision on an Assumption shall ensure the Authority's financial interests have been protected. Specifically, while economic hardship can be a factor in granting an Assumption or Release, the Authority shall not grant an Assumption and/or Release solely because the Borrower is experiencing economic hardship.

HFA 322.22 Effect of Approval

- (a) If approved for the Assumption, the New Borrower shall sign all Authority-required documents. Once those documents are signed, the New Borrower shall be bound by all documents and requirements pertaining to the mortgage and by all prior account activity including any loss mitigation activity associated with the Assumed MRB Loan, as well as being bound by any additional Authority requirements.
- (b) If approved for Release, the original Borrower shall be fully released from liability under the MRB Loan. Thereafter, the New Borrower(s) shall be solely liable.