Equity Sharing Agreement versus Resale Restriction Agreement

Question: What is the difference between an Equity Sharing Agreement and a Resale Restriction Agreement?

Answer: When a buyer purchases a below market rate (BMR) home, they must sign several documents including an agreement regarding the sale of a BMR home. The type of document they sign depends on the program under which the BMR home was obtained.

Resale Restriction: The City currently uses the Resale Restriction Agreement model for Inclusionary BMR units. Under the resale restriction model, the City has the first right to restrict the sale of the home to another BMR buyer. If a qualified BMR buyer is not found within a certain timeframe (e.g., 60 days), then the home is sold at market rate and the City gains the excess sales proceeds between the restricted sales price and the market rate sales price. Under the resale restriction model, the homebuyer gains little to no price appreciation until the home has been held onto for several years. In some cases, the owner may owe the City money to process the sale. However, at the end of the affordability period, the home can be sold at full market value for a windfall profit (with no money returning to the City for its affordable programs).

Formula	***Normal Resale (Sold to Eligible Buyer)***	***Sale at Market Rate; Paying City Excess Proceeds***
Original Market Rate or Value (-) Original BMR Price (BMR) = Excess Proceeds Example: $700,000 Original Market Value (-)$400,000 Original Restricted Price = $300,000 Original Excess Proceeds	$800,000 Fair Market Value $500,000 Price Eligible Buyer Pays based on Max Restricted Resale Price Calculation (-) $400,000 Original Purchase Price = $100,000 Excess Proceeds due Owner	$800,000 Fair Market Value $500,000 Max Restricted Resale Price If owner cannot find an Eligible Buyer to purchase for $500,000 then Owner can sell at fair market value. If owner sells for $800,000 instead of $500,000 the Excess Proceeds go to the City. $800,000 - $500,000 = $300,000 Retained for the Housing Program

Equity Sharing: Under current Density Bonus Law, BMR units that qualify a developer for a density bonus are subject to an Equity Sharing Agreement, rather than a Resale Restriction Agreement. Under the equity sharing model, the owner can sell the home immediately and capture a portion of the equity gained on the property after deducting the affordable subsidy (the difference between the affordable rate and the market rate). The City would acquire the subsidized difference as well as a share of the appreciation equal to the ratio of the city's initial subsidy to the fair market value of the home at the time of initial sale. In this regard, the affordable unit would be lost but the City would apply the funds to another affordable housing project. The City will generally be required to apply the funds within five years towards the construction, rehabilitation, or preservation of affordable housing.

Formula	***Example (sold immediately)***	***Example (sold when price increases)***
Original Market Rate (MR) (-) Original BMR price (BMR) = Subsidy (S) S/MR = City's share Subsidy + share paid to City	$800,000 (market rate at time of initial sale) (-)$475,000 (original BMR price) =$325,000 (subsidy) $325,000 /$800,000 = 41% (City's share) $800,000 (new sales price same as original) $325,000 + 0 = $325,000 (paid to City) $0 (owner's equity)	$800,000 (market rate at time of initial sale) (-)$475,000 (original BMR price) =$325,000 (subsidy) $325,000/$800,000 = 41% (City's share) $1,000,000 (new market rate sales price) $1,000,000 – $800,000 = $200,000 (appreciation) $200,000*41% = $82,000 (City's equity share) $325,000 + 82,000 = $407,000 (paid to City) $108,000 (owner's equity share)

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