**Section 310.403 Equity and Distributions**

a) Right to Distributions. As provided in the Act, an Owner shall have the right, commencing on the Initial Closing Date, to make annual Distributions in an amount not to exceed 6% of its Equity in a Development, except as otherwise provided pursuant to Sections 310.801 through 310.805, except that, if a Distribution cannot be made as provided in subsections (b) and (c) of this Section, an Owner may cumulate the right to make a Distribution. An Owner's right to a Distribution shall begin to cumulate on the Initial Closing Date. In any partial fiscal year in which an Owner is entitled to make a Distribution, the amount of a Distribution shall be calculated pro rata based on the number of days since the closing of the Mortgage Loan.

b) Source of Distributions. An Owner may make Current and Cumulative Distributions out of Surplus Cash and/or Residual Receipts. If Surplus Cash or Residual Receipts are unavailable in a given fiscal year, an Owner shall make no Current Distribution, but the right to make a Distribution shall cumulate. If Surplus Cash and/or Residual Receipts are insufficient in a given fiscal year to make a Distribution in an amount equal to 6%, or as otherwise permitted in Sections 310.801 through 310.805, of an Owner's Equity in a Development, an Owner may distribute all available Surplus Cash and/or Residual Receipts and cumulate the right to make the rest of the Distribution in future years when and if Surplus Cash and/or Residual Receipts are available.

c) Timing of Distributions. No Distribution shall be made until after the Final Closing Date. Even if Surplus Cash and/or Residual Receipts are available, the initial and all subsequent Distributions, including Cumulative Distributions, may be made only after the Authority has approved the Development's annual financial report (see Section 310.306); the Development has an approved Development budget for the next fiscal year; the Owner has complied with all outstanding notices of requirements for proper maintenance and operation of the Development; the Owner has cured any defaults or breaches of applicable Rules, contracts and agreements; and the Authority has issued its written authorization of the Distribution.

d) Amount of Equity. As required by the Act, the Authority shall establish an Owner's Equity in a Development on or after the Final Closing Date. In no event shall the amount of the Equity be calculated to include any grants or other funds not originating with the Owner. Once established by the Authority, the amount of an Owner's Equity shall remain constant so long as the Mortgage Note and Mortgage are outstanding on the Development, unless adjusted by resolution of the Members based on the criteria set forth in subsection (e).

e) Increase in Amount of Equity

1) If an Owner agrees either to preserve the existing income and rental restrictions of a Development for a period not less than five years (starting from the later of the date on which the owner acquires the right to prepay its Mortgage Loan or the date on which the increase in Equity is granted) or create an equivalent number of additional units of housing with similar income and rental restrictions, the Authority, by resolution of its Members, may increase Owner's Equity to an amount not to exceed the difference between the unpaid balance of the Mortgage Loan and the Development's appraised value at the time of the request by the Owner for an Equity increase. The appraisal shall be based on the Development's highest and best use and be conducted by an appraiser acceptable to the Authority. For purposes of the increase in Owner's Equity, the Development's appraised value may be updated by the Owner no more frequently than every five years after an increase is granted under this subsection (e) and the amount of Owner's Equity may be adjusted to reflect the updated appraisal. The cost of the appraisal shall not be a Development expense.

2) It shall be a condition of the Authority increasing Owner's Equity that:

A) the Authority give its prior written consent to any increase in the rental charges for the Development; and

B) the Authority determine, in its sole discretion, that:

i) the Reserve Fund for Replacements for the Development is sufficient to pay the costs set forth in Section 310.405 for the five years (starting from the later of the date on which the owner acquires the right to prepay its Mortgage Loan or the date on which the increase in Equity is granted), as determined by a physical needs assessment performed by a company acceptable to the Authority; the cost of such physical needs assessment shall not be a Development expense; and

ii) the amount needed to complete any deferred maintenance on the Development is less than one year's funding requirement for the Reserve Fund for Replacements.

3) The Authority shall require the Owner to execute an agreement evidencing the increase in Equity and containing the Owner's agreement either to preserve the existing income and rental restrictions of the Development as affordable for low and moderate income for a period not less than five years (starting from the later of the date on which the owner acquires the right to prepay its Mortgage Loan or the date on which the increase in Equity is granted) or create an equivalent number of additional units of housing with similar income and rental restrictions.

4) Any increase in Owner's Equity approved pursuant to this Section shall conform to any relevant federal statutes, rules or regulations.

(Source: Amended at 31 Ill. Reg. 4392, effective February 28, 2007)