



Rules of
Department of Economic
Development
Division 170—Missouri Housing Development
Commission
Chapter 4—Supervision of Mortgagors

Title	Page
4 CSR 170-4.010 Financial Reports and Limitations on Earnings (Rescinded January 30, 2011).....	3
4 CSR 170-4.100 Definitions	3
4 CSR 170-4.200 Rules and Limitations on Earnings, Dividends, and Other Distributions by Approved Mortgagors	3
4 CSR 170-4.300 Financial Reporting and Compliance Requirements for Approved Mortgagors	3



**Title 4—DEPARTMENT OF
ECONOMIC DEVELOPMENT**

**Division 170—Missouri Housing
Development Commission**

Chapter 4—Supervision of Mortgageors

**4 CSR 170-4.010 Financial Reports and
Limitations on Earnings**

(Rescinded January 30, 2011)

AUTHORITY: sections 215.030(12) and (19) and 215.090, RSMo Supp. 1989 and section 215.220, RSMo 1986. Original rule filed Nov. 18, 1971, effective Nov. 28, 1971. Amended: Filed Oct. 1, 1973, effective Oct. 11, 1973. Amended: Filed Dec. 22, 1975, effective Jan. 1, 1976. Amended: Filed Dec. 16, 1985, effective March 24, 1986. Amended: Filed Dec. 30, 1987, effective March 25, 1988. Amended: Filed Dec. 30, 1987, effective March 25, 1988. Amended: Filed Feb. 5, 1993, effective July 8, 1993. Rescinded: Filed May 24, 2010, effective Jan. 30, 2011.

4 CSR 170-4.100 Definitions

PURPOSE: This rule defines the terms used in this chapter.

(1) As used in this chapter, all terms not otherwise defined herein shall have the meanings set forth in the state housing act and/or in 4 CSR 170-1.100. For purposes of this chapter, the following terms shall have the following meanings:

(A) Approved mortgageor. Any individual or entity noted in section 215.010(1), RSMo (as the same may be amended from time-to-time), and further meeting the qualifications set forth in 4 CSR 170-3;

(B) HUD. The U.S. Department of Housing and Urban Development;

(C) Mortgage(s). The mortgage loan made to an approved mortgageor by the Missouri Housing Development Commission (commission), as well as all other mortgage loans an approved mortgageor has received in relation to its development and which the commission has approved;

(D) Partnership. Any general partnership, as well as any non-incorporated legal entity, formed under the laws of the state of Missouri;

(E) Regulatory agreement or land use restriction agreement. Any agreement(s) which the commission shall require to be executed and recorded on a property for which the commission has provided a mortgage as a condition of providing such mortgage and which restricts the use and transfer of a property for which the mortgage is provided; and

(F) Surplus cash. The equivalent of the amount calculated utilizing the formula set forth in 4 CSR 170-4.200(4).

AUTHORITY: section 215.030(5), (12), and (19), RSMo 2000. Original rule filed May 24, 2010, effective Jan. 30, 2011.*

**Original authority: 215.030, RSMo 1969, amended 1974, 1982, 1985, 1989, 1993, 1995, 1998.*

**4 CSR 170-4.200 Rules and Limitations on
Earnings, Dividends, and Other Distribu-
tions by Approved Mortgageors**

PURPOSE: This rule provides regulatory control by the Missouri Housing Development Commission (commission) over approved mortgageors. It restricts the distribution of earnings and dividends on housing developments financed in whole or in part by the commission to a maximum of eight percent (8%) per year of the equity in the development, subject to the discretion of the commission, and prohibits any distributions except out of surplus cash, as defined in this rule.

(1) Net earnings, dividends, or other distributions, as defined in the state housing act, these regulations, or in the Missouri Housing Development Commission (commission) regulatory agreement, may be declared or made only as of or after the end of an annual, semi-annual, or quarterly fiscal period.

(2) The amount of any allowable net earnings, distributions, or disbursements from surplus cash of the development shall not exceed, in any one (1) fiscal year, eight percent (8%) per annum of the equity in a development.

(3) The equity in a development shall consist of the difference between the mortgage(s) as reduced by the payment(s) to principal and development costs. With respect to every development, the commission shall establish equity at the time of cost certification, as approved and determined by the commission on all residential housing developments originated and funded under the regulations and standards of the state housing act. Equity may be increased with the written approval of the commission in the event of improvements to the development deemed essential. The commission's determination of equity should not be identified with the U.S. Department of Housing and Urban Development (HUD) determination of equity.

(4) No net earnings, dividends, distributions, or other disbursements of any kind whatsoever shall be declared or made except out of

surplus cash. Surplus cash shall be the amount of funds available and remaining after—

(A) The payment of development expenses which may include:

1. All sums due or required to be paid under the terms of any deed of trust note or regulatory agreement;

2. All amounts required to be deposited in any reserve accounts required or otherwise approved by the commission, including, but not limited to, the reserve fund for replacements; and

3. All obligations of the development (other than the deed of trust held by the commission) including, but not by limitation of, all costs and expenses of maintenance and operation, and all amounts paid for taxes, assessments, insurance premiums, and other similar charges, unless funds for payment are set aside, or deferment of payment has been approved by the commission; and

(B) The segregation of—

1. An amount equal to the aggregate of all reserves required or otherwise approved by the commission and/or any other special funds required to be maintained by the development; and

2. All tenants' security deposits held.

(5) The right to any allowable net earnings, distributions, or disbursements from surplus cash shall be cumulative. Surplus cash shall be segregated into a separate residual receipts account which the commission may require be held jointly by the development and the commission. No disbursements may be made from this account for any purpose other than approved development expenses and permitted distributions of dividends, and no such distributions shall occur without the commission's consent.

(6) No distribution of any kind may be made from borrowed funds. The development shall not borrow any funds for any purposes without prior written approval of the commission.

AUTHORITY: section 215.030(5), (12), and (19), RSMo 2000. Original rule filed May 24, 2010, effective Jan. 30, 2011.*

**Original authority: 215.030, RSMo 1969, amended 1974, 1982, 1985, 1989, 1993, 1995, 1998.*

**4 CSR 170-4.300 Financial Reporting and
Compliance Requirements for Approved
Mortgageors**

PURPOSE: This rule provides regulatory control by the Missouri Housing Development



Commission (commission) over approved mortgagors. It requires approved mortgagors to furnish reports and financial information, allows the commission to perform on-site inspections of developments, and restricts the ability of approved mortgagors to change rents or ownership without the consent of the commission.

(1) All developments financed in whole or in part by the Missouri Housing Development Commission (commission) must remain available to low- and moderate-income persons at the lowest possible costs throughout the life of the loan, or until such later time as the commission may require. To help insure the achievement of these goals, for all developments financed by the commission, the following procedures shall be established to monitor compliance with the requirements of the state housing act, these regulations, and the requirements of any regulatory agreement or land use restriction agreement governing the use of the development:

(A) Within ninety (90) days following the end of each fiscal year, all approved mortgagors operating developments consisting of twenty-four (24) or more units shall furnish the commission with a complete annual financial report based upon an examination of the books and records of the development prepared in accordance with the requirements of the commission by a certified public accountant or other person acceptable to the commission and certified by an authorized agent of the mortgagor. For any development containing less than twenty-four (24) units, the commission may, where deemed appropriate to protect the interests of the state of Missouri, require approved mortgagors of such developments to provide the commission with similar annual financial reports;

(B) The staff of the commission shall perform an annual performance audit of each development unless other applicable federal or state laws or regulations require more restrictive audit rules, in which case the more restrictive rules shall dictate the frequency with which audits are performed. Notwithstanding the previous sentence, the commission staff may, in the absence of more restrictive federal or state laws or regulations, perform such audits less frequently than once per year for developments meeting such criteria as the commission staff may establish from time-to-time;

(C) The staff of the commission shall perform an annual on-site inspection of each development unless other applicable federal or state laws or regulations require more restrictive inspection rules, in which case the more restrictive rules shall dictate the fre-

quency with which inspections are performed. Notwithstanding the previous sentence, the commission staff may, in the absence of more restrictive federal or state laws or regulations, perform such on-site inspections less frequently than once per year for developments meeting such criteria as the commission staff may establish from time-to-time;

(D) The approved mortgagor for each development shall, on an annual basis, provide the commission staff with a verification of income of each of the tenants in its development. This requirement shall apply to all tenants, regardless of whether they occupy a market rate unit or a unit for which reduced affordable housing rents are being charged. For developments not receiving financing from the commission, the only initial verification of income for each tenant will be required unless any other federal or state laws applicable to the development shall require more frequent income verification of tenants, in which case the more restrictive requirements shall prevail; and

(E) Upon the request of the commission, its agents, employees, or attorneys, approved mortgagors shall submit monthly occupancy reports to the commission staff, as well as give specific answers to questions upon which information is desired from time-to-time relative to the operation and condition of any development.

(2) No rents or charges to tenants in any development financed by the commission shall be increased without the prior written approval of the commission staff.

(3) Transfer of Ownership. The basic documents of the commission severely restrict the transfer of legal or beneficial interest in any development, and no such transfer may occur without the prior written consent of the commission. No monies paid for either the legal or beneficial interest of a development financed by the commission shall be deemed to increase the equity for the purposes of determining allowable distribution of dividends, except for those funds approved as development costs.

(A) Any intent to utilize secondary financing secured by the development shall be specifically identified.

(B) The consent of the U.S. Department of Housing and Urban Development (HUD) shall not be deemed adequate for commission approval of transfer of ownership.

(4) The approved mortgagor shall provide the commission with the following information:

(A) In the case of an individual approved

mortgagor, the name and address of the mortgagor;

(B) In the case of an approved mortgagor that is a partnership, the names and addresses of all persons or entities having an ownership interest in the partnership; and

(C) In the case of an approved mortgagor that is a corporation, the names and addresses of the officers, directors, and shareholders and any amendments or substitutions which may occur from time-to-time in the organization of the approved mortgagor.

(5) Until the later of i) the repayment of the commission's loan on the development, ii) the expiration of any applicable compliance period set forth in the commission's loan documents, or iii) any longer period otherwise prescribed by the commission, an approved mortgagor shall notify the commission regarding any of the following changes:

(A) Any change in the approved mortgagor's address;

(B) Any change in the management agent managing the development;

(C) Any amendments or substitutions in the organization of the approved mortgagor (which notice shall also be provided to the management agent of the development); and

(D) Any other events for which notice may be required under the commission's loan documents.

AUTHORITY: section 215.030(5), (12), and (19), RSMo 2000. Original rule filed May 24, 2010, effective Jan. 30, 2011.*

**Original authority: 215.030, RSMo 1969, amended 1974, 1982, 1985, 1989, 1993, 1995, 1998.*