

Facilities Consolidation Fund
Loans for the Facilities Consolidation Initiative

Program Guidelines

Commonwealth of Massachusetts
Deval L. Patrick, Governor
Timothy P. Murray, Lt. Governor

Department of Housing and Community Development
Tina Brooks, Undersecretary

February 2004

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GUIDELINES FOR THE FACILITIES CONSOLIDATION FUND

These Guidelines, produced by the Department of Community Development (DHCD) in conjunction with the Community Economic Assistance Corporation (CEDAC), clarify and supplement the statutory and regulatory requirements of the Facilities Consolidation Fund (FCF) program. The purpose of the Guidelines is to help affordable housing developers understand the key requirements for the FCF program, the application and award process for securing FCF funds, and the loan closing and post-closing requirements for FCF borrowers. Since the Statute and Regulations are not definitive in all of the ways necessary to implement the FCF program, the Guidelines provide some interpretation of statutory and regulatory requirements. Such interpretations are not intended to have the force and effect of law and regulation, and they are subject to appeal to and waiver by the Director of DHCD.

FCF loans must be made through a Financial Intermediary as required by the statute. DHCD has designated the Community Economic Development Assistance Corporation (CEDAC) as the Financial Intermediary for the FCF program. CEDAC underwrites FCF loan applications for DHCD, closes the FCF loans, and holds the FCF notes, loans, and mortgages.

These Guidelines are intended to be helpful to potential FCF borrowers and contain as much information as reasonably possible. If you have a question that is not answered here, please contact CEDAC (617-727-5944) or DHCD (617-573-1100) directly.

I. Introduction and Program Summary

The Facilities Consolidation Loan Program was created by Chapter 52 of the Acts of 1993 to support facilities consolidation development activities. Chapter 52 established a \$50 million loan fund to provide deferred payment loans to non-profit developers for the creation and retention of community-based housing for the consumers of services of the Departments of Mental Health and Developmental Services. These guidelines implement Section 2 of Chapter 52 of the Acts of 1993, as amended in 2002, and are effective as of February 1, 2004.

FCF will provide **permanent, deferred payment loans for a term of 30 years**. Extensions of the loan term may be granted by DHCD for an unlimited number of successive periods, each period not to exceed ten years, upon DHCD's determination that there continues to be a need for the housing and funding for services. FCF funds may cover up to 50% of a project's Total Development Cost (TDC).

The principles of smart growth and sustainable development should be reflected in the project application, including:

1. Encouraging re-use and rehabilitation of existing infrastructure;
2. Concentrating development to conserve land, integrate uses and foster a sense of place;
3. Restoring and enhancing the environment;
4. Conserving natural resources;
5. Coordinating the provision of housing with jobs, transit and services;

6. Providing transportation choices such as public transport, walking and bicycling;
7. Supporting the growth of new and existing businesses;
8. Supporting the implementation of local and regional plans that are consistent with smart growth principals, including housing that has multi-community benefit.

Applicants for FCF loans should be aware that these loans come with the following long-term covenants:

- Loans are provided subject to recorded land-use restrictions.
- FCF loans may not be pre-paid without the expressed written consent of CEDAC and DHCD, which will only be granted in rare circumstances.
- Refinancing of a FCF project's first mortgage is only allowed where there is a clear financial benefit to the Commonwealth of Massachusetts from such refinancing.

Appendix A describes the special provisions of the legislation which relate to projects financed through long term leases with the Department of Capital Asset Management (DCAM).

II. Eligibility Requirements

1. Eligible Uses of FCF Funds

FCF funds may be used for:

- Acquisition of real property;
- Construction and renovation of residential buildings; and/or
- Soft costs directly related to development of residential units.

Acquisition

FCF funds may be used for the acquisition of property as part of a feasible and ready-to-proceed project to develop FCF-eligible units. The acquisition borrower will be required by the terms and conditions of the FCF loan documents to ensure timely completion of the project and its continued eligibility for FCF funds. FCF funds will not be awarded for acquisition loans unless all other critical financing commitments have been secured.

Construction

FCF funds may be used for new construction or rehabilitation, and may be drawn down by the borrower, as required, during the construction period. CEDAC will monitor construction to confirm, prior to disbursement of each loan draw, that the work has been completed as represented. CEDAC may elect to accept the monitoring reports of a senior lender, either private or public. Alternatively, CEDAC may engage its own construction inspector, and charge the cost to the Borrower.

Soft Costs

FCF loans may be used for soft costs, within reasonable limits, associated with the acquisition, rehabilitation and construction of FCF eligible projects. Soft costs may include the types of General Development Costs listed in the "One Stop" Application (Section 3. Sources and Uses of Funds, lines 59-85 as well as capitalized reserves, developer overhead and developer fees.

Capitalized reserves may be limited by statutory FCF requirements; consult with DHCD or CEDAC.) Developer overhead and fees are limited to amounts delineated in the Qualified Allocation Plan (QAP) for Low-Income Housing Tax Credit program, issued annually by DHCD.

2. Eligible Developers of FCF Projects

FCF projects must be developed by:

- A non-profit developer organized under Chapter 180 of Massachusetts General Laws (MGL); or
- A limited equity cooperative corporation, (organized under Chapter 157B of MGL); or
- A single purpose owner corporation affiliated with and controlled by a non-profit (e.g. a tax credit partnership).

The non-profit developer corporation will be required to show documentation of 501(c)3 status from the US Internal Revenue Service (IRS) prior to closing of a FCF loan.

Partnerships

A for-profit developer may act in a joint venture with a non-profit developer if the non-profit has at least 51% controlling interest in the joint venture. In all cases, the non-profit developer will be required to certify the following:

- No member, shareholder, officer or employee of such corporation or its board of directors may profit directly, or indirectly, from the FCF assistance or from the eligible project;
- The board of directors receives no compensation;
- No earnings of the non-profit inure to the benefit of any individual, corporation or other entity.

Applicants are encouraged to review *The Attorney General's Guide for Board Members of Charitable Organizations* for additional guidance regarding the responsibilities and obligations of members of the Board of Directors of non-profit and charitable organizations.

Developer Capacity

CEDAC will review the capacity of a developer to successfully undertake development, ownership and management of a proposed project. The track record of the developer in completing similar projects, record of service in the community, current financial statements, net worth, and compatibility of mission will be taken into consideration in reviewing the qualifications of the developer.

3. Eligible Populations to be Served

FCF loans are intended to support development which serves individuals affected by the facilities consolidation\community expansion and restructuring initiatives of DDS and DMH. DDS and DMH have identified the following populations to served:

- Current and former residents of DMH or DDS institutions affected by the Facilities Consolidation Initiative through closure, consolidation and\or restructuring of resources;

- Individuals eligible for DMH or DDS services who are either awaiting community-based residential services, or are living in a community program but are under-served; and
- People with mental illness who are living in the streets, shelters or in institutions with no other place to go.

4. Types of Housing

FCF funds present an opportunity to create a range of housing options in the community for the consumers of DMH or DDS services. In general, the following types of housing units may be funded through the program:

- Existing single or multi-family homes in typical neighborhoods with 2 to 6 bedrooms;
- Newly constructed homes in community settings;
- Accessible homes, either new or existing, including specialized unit types to serve the medical needs of consumers. The "medical model" should not take the place of a hospital or nursing home unit, but rather address specialized medical needs in a homelike environment;
- Single room occupancy units;
- Group homes; or
- Units within larger developments in which the DMH or DDS consumers are integrated.

In cases in which the residential portion of the development is less than 80% of the total space of the development, FCF will pro-rate the total development cost calculations to reflect the residential portion, plus the percentage, to be determined in consultation with the user agency, of such space required to meet the reasonable program needs of the consumers while providing a primarily residential and homelike environment. The goal is to provide non-institutional settings which respond to the needs and desires of the service consumers.

5. DMH/DDS Agency Certification

DMH and DDS, after consultation with CEDAC, will advise the sponsor of initial determination of eligibility, based on review of the pre-application, and will then provide a letter of certification and invite the sponsor to submit a full application. CEDAC will then review the full application, underwrite the loan based on project feasibility, and make a recommendation for funding to DHCD.

DDS or DMH shall certify, in connection with each project, the following:

- a) Such agency will be responsible for maintaining its obligation for funding to an eligible project during the term of the Chapter 52 loan, which shall include funding of an appropriate level of support services to any individual placed in the eligible project for as long as the individual lives in the project and needs such services;
- b) Such agency will be responsible for making placements into an eligible project funded under the Chapter 52 program that are appropriate to such eligible project;

c) Such agency's financial commitment in support of a particular community-based housing site shall continue unless an alternate financial arrangement acceptable to DHCD is provided;

d) If the housing is used as a site for residential treatment, DMH of DDS will provide at all times the appropriate level of support needed by the individual residents for such treatment; and

e) Such agency has reviewed the pre-application and has determined that the proposed community-based housing will provide a "quality housing product" intended by the Report of the Special Commission.

III. Loan Terms

FCF funds are provided as deferred payment loans (DPLs). The loan constitutes a debt that is documented by a note and secured by a mortgage on the real property. The borrower must also comply with a Development Loan Agreement that delineates various terms and conditions of the loan. Finally, a Land Use Restriction (LUR) ensures the continuing use of the property for the intended public purpose.

1. Amount of Assistance

Loans may be made for up to 50% of the Total Development Cost of a project. In a project in which only a portion of the units are eligible under the Facilities Consolidation Initiative, the 50% will be calculated on the TDC of the units eligible for FCF. The TDC may include all hard and soft costs of the project including developer fees and capitalized reserves.

Projects may initially use a formula approach to determine the amount of FCF funding for which their project is eligible. However, in underwriting the project, CEDAC will evaluate whether the project is making maximum use of federal and other resources for which it may qualify, and that the FCF award is the least amount necessary to achieve a feasible project. For example, projects utilizing a program such as HUD 811 financing may not qualify for the maximum amount of FCF that the formula approach would allow.

2. Loan Terms and Repayment

The term of the loan will be for a period of 30 years. If on the maturity date of the loan, the loan has not been repaid in full, and if the Director of DHCD in consultation with the Executive Office of Health and Human Services, determines that there still exists a need for such housing, and that there is continued funding available for the provision of services to the development, DHCD may extend the term of the loan for additional periods, each period not to extend beyond 10 years. No repayment is due before the loan maturity date unless the development's gross cash receipts, in any year fiscal year, exceed the gross cash expenditures by 105%. The FCF borrower must provide annual audited financial statements to CEDAC certifying annual cash receipts and expenditures.

3. Interest Rate and Terms

The interest rate on FCF loans is determined by the Director of DHCD in consultation with the Treasurer of the Commonwealth. Interest is deferred but accrues for the initial 20 years of the 30-year FCF loan term, except in any year that gross cash receipts exceed gross cash expenditures by 105%. The amount by which gross cash receipts exceeds 105% of gross cash expenditures must be paid to CEDAC and it is applied first to reduce accrued interest and then to the principal balance. After the 20th year of the loan, interest does not continue to accrue as long as the loan is not in default.

4. Land Use Restriction

FCF projects are subject to a recorded Land Use Restriction requiring that the land be used for the purpose of providing community-based housing for the mentally ill, or mentally retarded, and related uses. The land use restriction has a number of provisions unique to the FCF program. Developers should direct their attorneys to review the form of restriction by requesting a copy of a sample land use restriction from CEDAC. This restriction can be released only under the following circumstances:

- Upon payment in full of all amounts due under the FCF loan.
- Upon recording of a foreclosure deed by the holder of a mortgage senior to the FCF loan.

FCF loans may not be pre-paid, except by waiver of the Director of DHCD. Among other conditions, waivers are approved only if the affordable units will be replaced at another site, and an acceptable relocation plan is proposed.

5. Loan Position

FCF loans are typically subordinate to a senior private- or quasi-public sector loan, sharing a second position with comparable (typically public) funding sources. However, more junior loan positions may be negotiated if it is absolutely necessary in order to provide security for other lenders. A waiver from the Director of DHCD is required for FCF loans in lower than third position.

6. Refinancing FCF Projects

Borrowers must obtain the written approval of CEDAC and DHCD in order to refinance a FCF project. DHCD will approve refinancing only if it is clearly in the interest of the Commonwealth and the residents of the FCF development. Examples of acceptable refinancing proposals include:

- Refinancing to reduce interest or other payments on primary debt, with the added revenue enabling the project to remain solvent, increase contributions to replacement reserve, or reduce costs to a state agency that pays some or all of operating costs.
- Refinancing to reduce interest or other payments or to permit an increase in debt to make essential improvements such as life-safety systems or accessibility. Such improvements must enhance safety and quality of life for the residents.

Since financial stability is critical to the long-term viability of FCF projects, refinanced debt with a repayment term of at least 15 years duration, at a fixed rate of interest, is preferred. Under no circumstances will CEDAC approve the use of a FCF property as collateral for non-FCF debt such as an organizational credit line, or for financing of a non-FCF property.

Borrowers considering refinancing should contact CEDAC, at the earliest opportunity, to discuss the proposal.

7. Waiver for Federally Funded Projects

The FCF legislation contains a provision to avoid having the terms and conditions of the FCF program preclude the use of federal funds on a FCF project. Developers working on federally funded project should assess how the FCF requirements interact with federal requirements. If there are conflicts, contact DHCD. DHCD may be able to provide assistance in resolving conflicts federal authorities, and may provide the specific waivers needed to allow the use of federal funds.

IV. Underwriting Standards

CEDAC will coordinate its review of applications for FCF loans with other public entities participating in the Facilities Consolidation Initiative. DDS and DMH will be responsible for enforcing and monitoring applicable licensing and safety standards. CEDAC will rely on DDS and DMH to certify compliance with applicable codes as they apply to client well-being and safety.

Although DHCD has the final authority to make FCF awards, CEDAC carries out an underwriting review of all FCF applications. CEDAC considers the following factors in underwriting FCF loans:

1. Project Feasibility

The terms of the other financing commitments, the security and length of the income stream, and the costs of the project are evaluated. To insure the long-term financial stability of the project, first mortgage loans should have long term fixed rates. Terms of at least 15 years are preferable. Projects should incorporate appropriate debt and rate structure assumptions into their initial proformas. The DCAM lease-purchase option provides the most secure income stream. However, where five year purchase of service contracts or other shorter term income streams are used, CEDAC will evaluate their acceptability on a case by case basis. In general, CEDAC will accept the five year income stream from either purchase of service contracts, or MRVP certificates (through DMH), so long as the income stream is structured to stay with the property in the circumstance of a change in service provider, program or client, and so long as the appraised value of the property is reasonably close to the actual TDC.

2. Site Considerations

DDS and DMH will approve sites based on consumer choice and the best interests of their service consumers. The site of a proposed project should meet the following criteria:

- It should be appropriate for the residents and their needs.
- It should be environmentally sound without extraordinary cost for remediation.
- The cost of acquiring should be reasonable based on current market conditions. A recent appraisal may be required. In most cases, appraisals produced for other lenders will be accepted.
- The acquisition must be an arms-length transaction.

3. Development Team Capacity

The development team must have a demonstrated ability to develop the project in all respects, including capacity to complete the FCF firm commitment process in a timely manner, conduct community review and approval processes, resolve permitting and zoning requirements, complete planning, design and engineering activities, oversee bidding and construction management, coordinate loan closing and other legal transactions, and manage the property upon completion and provide relevant supportive services. It is highly recommended that applicants assemble an experienced and capable team, including if needed, an affordable housing development consultant to coordinate development activities, respond to DHCD and CEDAC's requests for additional information and documentation, and generally ensure that project development stays on the "critical path".

The following criteria will be considered in evaluating the development team:

- The developer's track record in developing housing, especially in developing affordable housing.
- The developer's record of service to the community in which the project is located or to the constituency that the project serves. References may be sought.
- The compatibility of the project with the developer's mission.
- The financial soundness of the lead development entity. Audited financial statements for at least two previous years must be submitted.
- The demonstrated competence and experience of the project consultants. Consultants should have directly applicable experience.
- The developer's record of performance and standing in DHCD and other public programs. Developers not in compliance with the requirements of any program funded by DHCD should not apply for FCF funds until all outstanding issues are resolved.

4. Development Costs

Limits on Costs

The Total Development Costs should include all hard and soft costs including developer fees and capitalized reserves. Projects with total costs in excess of limits established by DHCD for the Low Income Housing Tax Credit program will be considered high cost projects and will be required to justify costs. There are several ways that sponsors can attempt to justify costs:

- Demonstrate specific project features are essential for the resident population.
- Show that special design features are necessary such as handicapped accessibility.

- Demonstrate that the resident population requires proximity to nearby services or facilities.

The choice of an inappropriate site requiring extensive reconfiguration to meet program or client needs or a higher than appraised value acquisition will not be considered justification of higher costs. Developers are encouraged to choose sites which are residential in nature and do not require extensive modifications to serve the needs of the target population. DHCD amends cost guidelines from time to time based on updated market analysis.

Developer Fees

Total development fees, defined as the total of developer fee plus developer overhead plus development consulting fees, must meet the following standard:

- Total fees must not exceed 15% of the first \$3 million of the TDC (excluding development fees).
- Total fees must not exceed 12.5% of the portion of the TDC (excluding development fees) from \$3 million to \$5 million.
- Total fees may not exceed 10% of the portion of the TDC (excluding development fees) above \$5 million.

For projects with TDCs in excess of \$5 million, total development fees may be capped. For all projects, developer's fees must be demonstrably reasonable. DHCD and CEDAC may request and review a detailed breakdown of developer's fees showing the scope of the consultant work by task, and the amount of fee attributable to each task.

Development Services Procurement

In procuring and contracting for all housing development services including, but not limited to architectural, engineering, legal, development consulting, and construction, FCF applicants must demonstrate sound business practice and fiduciary responsibility which gain the benefits of the competitive market and achieve a fair value. DHCD reserves the right to require any FCF applicant to conduct a formal bid process, including at least three competitive bids obtained in a free, fair and open process for any development related service. Further, DHCD expects:

- For construction services, bids are based on plans and specifications of sufficient detail that an accurate fixed price could be obtained.
- Transactions to be "at arm's length".
- Contracted prices to be within standard market parameters. DHCD reserves the right to require re-bidding of high cost projects, with costs in excess of 10% of comparable market situations.
- Proposed providers to be well qualified.
- The bid process to include effective outreach to minority-owned and women-owned businesses.

If formal competitive bids have not been obtained, CEDAC may require other evidence of a fair market value such as a cost estimate by a professional, third party cost estimator. However, in all cases, DHCD reserves the right to require a competitive bidding process.

Rehabilitation\Construction Standards

Projects must be efficiently designed to meet the needs of the residents. They should be safe, attractive, durable and maintainable. The goal should be to design a project that can be readily maintained for its full use throughout the 30-year term of the FCF loan. For most FCF projects, operating budgets are constricted, and reserves do not prove sufficient over time to afford extensive capital replacement. For rehabilitation projects, a full scope of renovation, based on an assessment of capital needs over a 30-year period, is highly recommended. Most projects require substantial rehabilitation to ensure their full use over this extended period without further substantial capital replacement. FCF applicants should:

- Engage highly qualified architects, engineers and contractors with extensive and successful experience in affordable housing design and construction. Applicants must make have a substantial outreach effort to recruit such qualified firms.
- Emphasize to consultants the critical importance of adhering to all safety, accessibility, environmental, historical, building code and other regulatory requirements. Until these issues are fully investigated and resolved, the project cannot proceed to firm commitment and closing of a FCF loan.
- Emphasize to consultants the importance of a high quality, durable project. Do not assume that capital funding from FCF or other sources will be available in the future.

Applicants should expect that the qualifications of their consultants to be carefully reviewed, and DHCD reserves the right to require applicants to hire capable and experienced consultants. Further, consultants should expect an extensive and critical review of plans, specifications, and cost estimates by highly qualified and experienced reviewers hired by DHCD or CEDAC. As a result of design review, consultants may be asked by DHCD or CEDAC to consider alternative designs, materials, and systems. DHCD and CEDAC expect consultants to be highly responsive to design review recommendations, and make a conscientious effort to improve designs as requested.

Operating Costs

In the FCF application, a 20-year operating budget is required. Applicants should be prepared to verify their operating assumptions and projects based on historical data for similar projects. At a minimum, CEDAC requires projected operating costs to be based on verified prices for various goods and services, and to be comparable to other FCF or similar projects. DHCD reserves the right to require inexperienced operators to be assisted by more experienced management firms for the initial period of the FCF loan.

Reserves

In consultation with primary lenders, FCF applicants should determine an appropriate level of capital and operating reserves. Often, a primary lender requires operating or capital reserves. In this matter, DHCD and CEDAC usually defer to the primary lender. In any case, the developer must demonstrate that the reserves are adequate and agree that the reserves will remain available so that the property will be well maintained and upgraded when necessary. Particular attention should be paid to building reserves for replacement of major building systems at the end of useful life.

5. Service Program

A service program is an integral component of the facilities consolidation initiative. The user agencies, DDS and DMH, will monitor and certify as to the appropriate service program for facilities consolidation projects. DHCD will require evidence of coordination of the service component with the management and day-day operations of the project.

V. Application Process

Sponsors may only submit a Full Application for FCF funding, after either DMH or DDS have reviewed a Preliminary Application, and then provided the sponsor with a letter of certification and eligibility.

Both Preliminary Applications and Full Applications will be accepted on a rolling basis. However, if the Sponsor is also requesting other State sources of funding for the project, the application must come in during the State funding rounds which typically occur twice a year. Also, if necessary, DHCD may institute funding rounds for FCF by issuing an addendum to these guidelines. Sponsors may submit multiple applications at any time. However, the developer's capacity to undertake multiple projects will be evaluated as part of the application review.

The application process involves three principal steps: (1) Preliminary Application, (2) Full Application and Conditional Commitment and (3) Request for Firm Commitment and Loan Closing.

1. Preliminary Application

The Preliminary Application form may be found on CEDAC's website (www.cedac.org), or may be requested from DMH or DDS. To initiate the process, complete the form and submit it to DMH or DDS, with a copy to CEDAC. The completed Preliminary Application should provide basic information on the proposed project's location, type of development and financing. After application review and consultation with CEDAC and the Sponsor, DDS or DMH will decide whether the project is eligible to submit a full application. If the sponsor and project are found to be eligible, DDS or DMH will provide a letter of certification to the sponsor with copies to CEDAC and DHCD. The letter of certification will recite the material aspects of the project and invite the Sponsor / Applicant to submit a full application.

2. Full Application and Conditional Commitment

Upon receipt of a letter of certification from DMH or DDS, the sponsor may then prepare and submit a full application seeking an FCF award. If the Sponsor is also submitting an application to another DHCD program or quasi-public agency of the Commonwealth which requires the use of the "One -Stop" application, the developer may submit the same application form to CEDAC and DHCD (one original to CEDAC and one copy to DHCD) with a cover letter summarizing the project and specifically requesting an FCF award. If no other funding source requires the use of a "One -Stop", then the developer will submit the Facilities Consolidation application which is available on the CEDAC website (www.cedac.org).

Upon receipt of a full FCF application, CEDAC will undertake a comprehensive review of the application and proposed housing development. Upon completion of its review, CEDAC will make a recommendation to DHCD that the requested award be granted, granted in part or denied. If DHCD agrees with CEDAC's recommendation that an award be granted, DHCD will issue a Conditional Commitment letter to the sponsor indicating an award amount. The Conditional Award letter contains standard and, if indicated, special conditions which must be satisfied within a specified timeframe in order for the Sponsor to apply for a Firm Commitment of FCF funds and loan closing.

3. Request for Firm Commitment and Loan Closing

The Request for Firm Commitment may be made at any time that the sponsor has satisfied the conditions outlined in the Conditional Award letter. Such conditions typically include completion of project permitting, architectural plans and specifications, financing and the contractor selection process. The firm commitment application material is submitted directly to CEDAC. Upon satisfactory completion of its review, CEDAC will make a recommendation to DHCD that a firm commitment of FCF funds should be issued and that a closing attorney should be assigned. If DHCD concurs, DHCD will issue the Firm Commitment letter to the sponsor, and an attorney will be assigned who will then generate a closing agenda and standard loan documents to be reviewed and executed by the Sponsor / Borrower. Normal fees for DHCD / CEDAC's closing attorney will not be charged to the borrower.

Once closing has occurred, CEDAC will monitor the project's development and disburse the funds in accordance with the terms of the loan.

Appendix A

DCAM LEASE-PURCHASE PROGRAM

The following special provisions of the Facilities Consolidation Fund program apply to projects which utilize the long term lease option, under which the Commonwealth, through the Department of Capital Asset Management (DCAM), enters into long-term leases on behalf of DDS or DMH and pays the mortgage and operating expenses of the property. The term of these leases may range from six to thirty years.

Loans issued on projects which utilize the long-term lease-purchase program of DCAM, and/or which use Commonwealth funds for debt service payments, will be subject to a title transfer agreement as well. The FCF legislation requires that a mechanism be in place so that the Commonwealth has the option to take ownership of the property at the end of the loan term. The rationale is that the Commonwealth has paid most of the expenses of the property over the life of the lease and is entitled to ownership at the end of the FCF term.

The loan documents secure the Commonwealth's interest through a Title Transfer Agreement and a Purchase Option. When the Commonwealth, through the Division of Capital Asset Management (DCAM) chooses to exercise its purchase option under the Title Transfer Agreement (below) then DHCD may deem that the transfer of title satisfies the loan obligation. No cash payment will be required in that case.

Option for the non-profit owner to retain title and obtain release of the title transfer agreement:

For developers using the lease-purchase provision, the Commonwealth may decide, upon the recommendation of DDS and DMH and upon consultation with DHCD, to allow the non-profit owner to retain the property. In that case, DCAM will not exercise its option and will release the Title Transfer Agreement. It is the expectation of EOHHS and DHCD that in most cases, they will recommend that the non-profit developer retain title to the property, subject to a land use agreement requiring that it continue to be used for housing for the mentally ill or mentally retarded, or for a related purpose. If the property is well maintained, not in default on the FCF or other loans, and the developer can demonstrate continued capacity to own and manage the property, then the Commonwealth, in most cases, will consider favorably the request of the developer to retain ownership.