

JOINT RULES AND REGULATIONS

VIRGIN ISLANDS AFFORDABLE HOUSING PROGRAM

TITLE 29, CHAPTER 16, SECTIONS 930, et seq.

APPROVED:

11th day of June, 2014


JOHN P. DE JONGH, JR.
GOVERNOR


DEBRA E. GOTTLIEB
CHAIRPERSON
VIHFA BOARD OF DIRECTORS


ADRIENNE L. WILLIAMS
EXECUTIVE DIRECTOR
VIRGIN ISLANDS HOUSING
FINANCE AUTHORITY

Except as expressly provided herein, these Joint Rules and Regulations pertain to the acquisition, construction, rehabilitation, financing and tax incentives available for the production of affordable rental and owner-occupied housing under the Government's Low and Moderate Income Affordable Housing Program.

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SECTION I.

Article 1: General

29 VIC §940(b)(7)-100. Authority and Purpose

This chapter is adopted pursuant to the Low and Moderate Income Affordable Housing Act of 1990 (the "Act") in order to implement the Government's "Affordable Housing Program" as provided for in said Act. These rules and regulations are intended to implement the affordable housing development provisions of the Act, which contemplate the financing and/or the development of affordable housing in the United States Virgin Islands by the Government acting through the Public Finance Authority (the "Authority"), and the Housing Finance Authority (the "Agency") in partnership with the private sector, including private developers, contractors, financial institutions and others.

29 VIC §940(b)(7)--101. Definitions

(a) "Act" means The Low and Moderate Income Affordable Housing Act of 1990 (Act No. 5523, adopted March 19, 1990), as amended by Act. Act No. 5978, adopted April 14, 1994, and as it may hereafter be amended.

(b) "Affordable Housing Development Agreement" shall have that meaning provided at Section 932 (d) of Title 29 of the Virgin Islands Code, as amended.

(c) "Affordable Housing Development Plan" shall have that meaning provided at Section 932(e) of Title 29 of the Virgin Islands Code, as amended.

(d) "Affordable Housing Plan" shall have that meaning provided at Section 103a of Title 21 of the Virgin Islands Code, as amended.

(e) "Affordable housing units" means:

(1) With respect to living accommodations, a dwelling unit for which a household pays, with regard to a unit for sale, not more than the "applicable percentage" of gross income for mortgage payments, property taxes, insurance and homeowners' association fee, if any, with regard to a rental unit, not more than the "applicable percentage" of gross income for all shelter costs including utilities. The "applicable percentage" for purposes of this definition may be established by the Authority in a manner consistent with the various Federal housing programs designed to assist low- and moderate-income households. To be occupied by very low-income persons, such unit shall be deemed to be affordable if the monthly rent (including property taxes and insurance), does not exceed thirty percent (30%) of that amount which represents eighty percent (80%) of the median adjusted gross annual income for households within the area, divided by 12.

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(2) With respect to a dwelling unit to be occupied by very low-income persons, such unit shall be deemed to be affordable if the monthly rent (including utilities), or monthly mortgage payment for such unit (including taxes and insurance), does not exceed thirty percent (30%) of that amount which represents two hundred fifty percent (250%) of the median adjusted gross annual income for households within the area, divided by 12.

(3) With respect to a dwelling unit to be occupied by moderate-income persons, such unit shall be deemed to be affordable if the monthly rent (including utilities), or monthly mortgage payment for such unit (including taxes and insurance), does not exceed thirty percent (30%) of that amount which represents one hundred forty percent (140%) of the median adjusted gross annual income for households within the area, divided by 12.

(4) For purposes of paragraphs (b)-(1), (2) and (3), the applicable median area income for zero bedroom (studio) units shall be the median area income for one person, for one bedroom units it shall be the median area income for the two-person family, for two-bedroom units it shall be the median area income for a four-person family, and for three-bedroom units it shall be the median area income for a six-person family.

(5) For purposes of paragraphs (b)-(1), (2) and (3), if tenants are required to pay for their own utilities, and allowance for eligible utilities other than telephone and cable television shall be the same as that used by the Virgin Islands Housing Authority for Section 8 existing certificate holders under the Section 8 Housing Program in determining the utility allowance and shall be deducted from affordable rent to determine the actual rent to be charged to the tenants.

(6) For purposes of paragraphs (b)-(1), (2), (3) and (4), the applicable percentage of median area income and the applicable median area income may be decreased if necessary to comply with any applicable federal housing law or regulation with respect to the production or occupancy of affordable housing.

(f) "Agency" means the Virgin Islands Housing Finance Authority.

(g) "Applicant" shall have that meaning provided at Section 932 (f) of Title 29 of the Virgin Islands Code. Applicant means any person, firm, partnership, association, joint venture or corporation, or any other entity or combination of entities who at any time after March 19, 1990, submits to the Authority, the Legislature and the Zoning Administrator, pursuant to Title 29, Chapter 3, Section 232a, Virgin Islands Code, an Affordable Housing Development Plan and Agreement. An Applicant shall construct, acquire or rehabilitate an affordable housing development under the Program.

(h) "Authority" means the Virgin Islands Public Finance Authority of the Virgin Islands.

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(i) "Beneficiary" means an Applicant and any person who has been certified by an Applicant as providing labor, material or supplies as a contractor or subcontractor, or as a supplier or vendor of construction supplies and materials for use in affordable housing developments to be constructed, rehabilitated or improved pursuant to an Affordable Housing Development Agreement pursuant to which the Applicant has been issued Certificate by the Agency.

(j) "Benefits" means the tax exemptions described in Title 29 V.I.C., Chapter 12, Section 713e, in Section II of the Act, and Article 8 of these regulations. Benefits are provided to an Applicant and Beneficiaries upon issuance by the Agency of a Certificate to such Applicant and each Beneficiary in connection with the construction, rehabilitation or improvement of a housing development under an Affordable Housing Development Agreement.

(k) "Board" means the Board of Directors of the Agency.

(l) "C.F.R." means the United States Code of Federal Regulations.

(m) "Certificate" means the Certificate of Tax Exemption required by Section 713e of Title 29 of the Virgin Islands Code and issued by the Agency to Applicants and Beneficiaries under the provisions of Article 8 of these Rules and Regulations.

(n) "Governor" means the Governor of the United States Virgin Islands, or his or her designee.

(o) "Home Mortgage Program" means the Agency's program for providing mortgage loans to eligible persons and families pursuant to Title 21, Chapter 2, Virgin Islands Code, as amended.

(p) "Housing development" means a project comprised of affordable housing units to be constructed, rehabilitated or improved pursuant to an Affordable Housing Development Agreement, and may include such non-housing facilities as are approved by the Agency, as appropriate.

(q) "Housing Production Facilities" shall have that meaning provided at Section 932(i) of Title 29 of the Virgin Islands Code.

(r) "Housing Trust Fund" means the fund by that name established pursuant to Title 33 Chapter 111 Section 3074 Virgin Islands Code, maintained by the Commissioner of Finance and administered at the direction of the Authority for the exclusive benefit of persons and households of low- and moderate-income within the meaning of the Act and these regulations. Upon the recommendation of the Authority and with the concurrence of the Governor the Legislature shall authorize to be appropriated and deposited in the Housing Trust Fund each year, sums from the Treasury of the United States Virgin Islands to facilitate the construction

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financing of housing units for low- and moderate-income residents of the Territory. Except as provided for the establishment and administration of the Housing Trust Fund and the administration of affordable housing permits, monies shall be disbursed from the Housing Trust Fund by the Commissioner of Finance, upon authorization of the Authority exclusively to finance or facilitate financing of the construction or rehabilitation of housing units for low and moderate residents of the Territory. No monies for programs or projects shall be disbursed from the Housing Trust Fund unless prior approval for such program or project is obtained from the Legislature of the Virgin Islands. The Housing Trust Fund shall consist of funds raised by issuance of bonds or other instruments for the financing of low- and moderate-income affordable housing; transfers of monies appropriated to the Agency by the Legislature for low, affordable, or moderate-income housing related projects and approved by the Director of Management and Budget, and such other amounts as may from time to time be appropriated by the Legislature for such purposes.

(s) "HUD" means the United States Department of Housing and Urban Development, its successor or its designee.

(t) "Legislature" means the Legislature of the United States Virgin Islands.

(u) "Median adjusted gross annual income for the area" or "median area income" shall have that meaning provided in the applicable rules and regulations of the HUD Section 8 assisted-housing programs and as provided in the Rules and Regulations of the Agency.

(v) "Owner-occupied housing development" means a housing development consisting of dwelling units intended for sale to low- and moderate-income persons and families and shall not include rental housing or vacation homes.

(w) "Person" means an individual, family, corporation, proprietorship, partnership, joint venture, association or any other entity.

(x) "Persons and families of low- or moderate-income" include any of the following:

(1) A "very low-income person or family" is a person or family whose income does not exceed eighty percent (80%) of the median adjusted gross annual income for the area, as determine by HUD, with adjustments for smaller and larger families.

(2) A "low-income person or family" is a person or family whose income does not exceed one hundred forty percent (140%) of the median adjusted gross annual income for the area, as determined by HUD with adjustments for smaller or larger families, except that income limits higher or lower than 140% percent may be established on the basis of Agency findings that such variations are necessary because of the prevailing levels of construction costs, unusually high or low incomes, or other factors or because of higher or lower requirements under any applicable federal housing law or regulation.

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(3) A "moderate-income person or family" is a person or family whose income does not exceed two hundred fifty percent (250%) of the median income for the area, as determined by HUD, with adjustments for smaller and larger families, except that income limits higher or lower than 250% may be established on the basis of Agency findings that such variations are necessary because of the prevailing levels of construction costs, unusually high or low incomes, or other factors or because of higher or lower requirements under any applicable federal housing law or regulation.

(y) "Program" means the United States Virgin Islands Affordable Housing Program established pursuant to the Act and these rules and regulations.

(aa) "Project Manager" means the person selected by the Governor to manage on behalf of the Authority, the day-to-day operation of the Affordable Housing Program.

(bb) "Rental housing development" means a housing development intended for occupancy by tenants and which shall not include owner-occupied housing units.

(cc) "Resident of the Virgin Islands" or "Resident" means (1) any United States citizen domiciled in the United States Virgin Islands or (2) the holder of an alien registration card and domiciled in the United States Virgin islands or (3) a corporation licensed to do business in the United States Virgin Islands.

(dd) "Rules and Regulations of the Agency" means the unpublished rules and regulations of the Virgin Islands Housing Finance Authority adopted by the Board on February 13, 1992, amended on December 5, 2013, which rules and regulations govern the internal operation and administration of Agency programs, including the Home Mortgage Program.

(ee) "Section 8 Housing Program" means the Section 8 Housing Program authorized pursuant to Section 8 of the United States Housing Act of 1937, as amended, and the regulations thereunder at 124 C.F.R., parts 880 through 884.

(ff) "Section 8 assisted-housing development" means a housing development or that part of a housing development, containing units subject to an "Annual Contributions contract" as defined by 24 C.F.R. §883.202.

29 VIC §940(b)(7)-102. Delegation

Any act, duty, consent or approval required to be given by the Authority may be performed by the Agency, pursuant to any appropriate memorandum of understanding, agreement, resolution or other act of the Authority confirmed in writing, including but not limited to, the approval of loans, advances or grants under Article 2 hereof.

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Any act required or permitted by this chapter to be performed by any particular official of the Agency may to the extent permitted by law, be performed by an individual duly designated in writing by such official. Where actions or approvals are required of or by the Agency under this chapter and no officer or employee of the Agency is specifically designated herein to take such actions or make such approvals, such actions or approvals may be made by the Executive Director of the Agency.

Article 2: 29 VIC §941-§944

**Affordable Housing Financing; Construction and Mortgage Loans;
Housing Development Plans and Agreements**

29 VIC §940(b)(7)-200. Qualification of Applicant for Affordable Housing Development.

Before any person may be approved as a provider of affordable housing or receive a commitment for a construction or mortgage loan or advance or other program assistance for a housing development to be constructed or rehabilitated, said person must first apply for and obtain certification that said person is qualified to be the Applicant for such housing development. Each person applying to be so certified shall submit to the Agency such information, including but not limited to, financial statements, contractors qualification statement, business license, certificate of good standing, operating history, record of compliance with federal and Virgin Islands "Equal Opportunity," "Employment of Project area Residents and Contractors" and "Affirmative Fair Housing Marketing" guidelines, and details concerning the proposed housing development, as shall be promulgated and required by the Agency, to make the determinations required in this section. Application for such certification may be made as part of the application of the person for approval of an Affordable Housing Development Plan and execution of an Affordable Housing Development Agreement.

Before the Agency may make or approve a commitment to any Applicant for delivery of an Affordable Housing Development Agreement or a construction loan and/or mortgage loan or advance, as the case may be, the Agency shall determine, taking into account the nature of the housing development and the Person, that said person:

- (a) Is creditworthy,
- (b) Is financially responsible,
- (c) Is (if not a natural person) duly organized, in good standing and qualified to do business in the United States Virgin Islands.
- (d) Is capable of proceeding promptly to construct and complete the affordable housing development,

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(e) Has the ability to operate or market the affordable housing development as demonstrated by experience in other similar projects,

(f) Has a commitment to construct and operate or market, as the case may be, the affordable housing development in accordance with all applicable federal and Virgin Islands "Equal Opportunity," "Employment of the Project Area Residents and Contractors" and "Affirmative Fair Housing Marketing" guidelines.

(g) Satisfies the requirements of an eligible developer under the Rules and Regulations of the Agency.

29 VIC §940(b)(7)-201. Criteria for Affordable Housing Development under the Program

In order to obtain financing and Program assistance in the form of a construction loan or mortgage loan and/or advance, from the Housing Trust Fund, or subsidy in the nature of tax benefits, or any other assistance under the Program in connection with an affordable housing development to be constructed or rehabilitated by an Applicant pursuant to an approved Affordable Housing Development Plan and Agreement, a person applying to be certified as an Applicant pursuant to Section 200 of this Article shall submit to the Agency such information as is required by the Agency to enable the Agency to make the determinations required by this Section.

(a) **Mandatory Requirements.** No Affordable Housing Development Plan, requesting a construction loan or mortgage loan and/or advance or other Program assistance shall be approved unless the Agency is assured:

(1) That the proposed affordable housing development will be economically feasible;

(2) That the proposed affordable housing development is consistent with the current housing objectives of the Government;

(3) That the proposed affordable housing development has or will have sufficient access to support schools, employment, retail merchants and all necessary utilities and infrastructure improvements;

(4) That the location of the proposed affordable housing development is consistent with the Government's policy or dispersing housing developments throughout communities and avoiding undue concentrations of persons and families of low-income and rental housing, except where overriding considerations of economic need necessitate modifying these requirements in order to accomplish the housing objectives of the Government;

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(5) That the proposed affordable housing development will provide safe, sanitary and decent housing meeting environmental standards; and

(6) That the proposed affordable housing development meets the requirements of the Rules and Regulations of the Agency, and construction guidelines promulgated thereunder.

(b) **Priorities in Selection of Developments for Financing and Assistance.** Various sections of the Act designate housing priorities to be reflected in the administration of the Program. Necessarily, the emphasis on particular priorities, as reflected in the Government's current housing objectives, will change over time due to circumstances and conditions. Within these parameters, the Agency will give priority consideration in approving Program commitments to affordable housing developments which or in which:

(1) assist the Agency in making full use of available federal housing subsidies;

(2) at least ten percent (10%) of the units are to be rented to very low-income persons or families, unless an economic analysis of a particular affordable housing development demonstrates that it is not feasible to achieve;

(3) at least a specified number of housing units, representing that percentage of units in the total development which is equivalent to the percentage of financing and other total development, are to be rented or sold to low-income person or families. For rental housing developments, the specified rental mix must continue throughout the term of the Affordable Housing Development Agreement;

(4) assist the Agency in meeting the requirement under the Act that at least five percent (5%) of all affordable housing units developed under the Program be designed to accommodate and meet the needs of disabled persons as defined in Title 34 V.I.C., Section 452;

(5) assist the Government in balancing its program activities among St. Thomas, St. Croix and St. John Islands in general proportions to the relative needs for housing assistance in those areas identified in the Agency's Housing Assistance Plan (or any similar government plan) and any applicable emergency housing assistance plan. In the absence of such an adopted plan, the Agency will consider data relating to such needs developed by the Agency or other governmental body; and

(6) reflect the housing needs of identifiable groups or persons such as (but not limited to) the elderly, the disabled, two person households comprised of an adult and child, large households, and persons displaced from housing by governmental actions or natural disasters, as those needs are identified. In the absence of such adopted plan, the Agency will

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consider data relating to such needs developed by the Legislature, the Governor and any other federal or local agency.

(c) **Additional Objectives.** In addition to the foregoing mandatory requirements and priorities in selecting affordable housing developments for approval, the Agency shall also review the following factors in determining whether a program commitment shall be approved:

(1) Whether the affordable housing development is of sufficient quality in terms of amenities, scale of development, architectural treatment, landscaping, recreational facilities and aesthetic impact on the surrounding community;

(2) Whether the affordable housing development will contribute to employment opportunities; is located in an area with low vacancy rates; and will promote the recovery and growth of economically depressed businesses; and

(3) Whether the affordable housing development will increase the range of housing choices for very low-income and low-income persons rather than increasing the concentration or isolation of such income groups.

29 VIC §940(b)(7)-202. Construction Standards, Access for Physically Disabled

At least five percent (5%) of all new affordable housing units within each affordable housing development for which Program commitments are made shall:

(a) Be free of architectural barriers in common areas and allow access to the grounds on which the affordable housing development is located;

(b) Provide barrier free entrances and entry thresholds to all units in any building with an elevator, and in any building with units constructed specifically for the disabled;

(c) For units specifically constructed for disabled persons, all bathrooms shall allow access and usability by person in wheelchairs; and shall meet design criteria established by the Agency in consultation with professionals skilled in the design of such facilities.

29 VIC §940(b)(7)-203. Non-housing Facilities

(a) Affordable housing developments may include such streets, sewers, utilities, site preparation, open space, and landscaping as may be required by law and as the Agency determines are necessary or appropriate in connection with the housing development.

(b) Affordable housing developments may include other non-housing facilities such as administrative, community, health, recreational, educational, commercial, dining, and

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childcare facilities. The Agency shall exercise reasonable judgment in encouraging and approving applications for Program assistance for affordable housing developments containing such non-housing facilities, taking into account the following factors:

- (1) Whether said facilities will directly benefit the occupants of the development;
 - (2) Whether said facilities will be compatible with a suitable living environment for the occupants;
 - (3) The nature of the intended occupants of the development, whether families with children, the elderly, the disabled, or others;
 - (4) The needs of occupants and whether such facilities are or will be otherwise provided within the community for occupants of the affordable housing development;
 - (5) The prior availability of such facilities in the community;
 - (6) The economic feasibility of including such facilities and the potential impact on housing affordability;
 - (7) The availability of and feasibility of using other sources of financing for such facilities; and
 - (8) The availability of federal subsidies for affordable housing developments containing such facilities.
- (c) In reviewing the factors enumerated in (b) above, for the inclusion of non-housing facilities within any request for Program assistance, the Agency shall be guided by the policies of:
- (1) Encouraging common areas, play areas and childcare facilities in family housing developments, and congregate dining facilities in housing projects primarily for elderly persons;
 - (2) Requiring all such commercial facilities financed with a below-market-interest rate loan, to the extent of any benefit from such rate, to contribute to the support of the residential units in the affordable housing development;
 - (3) Avoiding duplication of services or functions existing within the community in areas convenient to the housing development which are provided at reasonable cost to the occupants of the housing development; and

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(4) Complying with all applicable requirements of the Internal Revenue Code of 1986, as amended, and the Treasury Regulations and other authority promulgated thereunder, as applied to the United States Virgin Islands.

29 VIC §940(b)(7)-204. Bond financing to Applicants of Affordable Housing; Terms and Conditions of Loans and Advances

Construction and/or mortgage loans or advances to Applicants shall be made pursuant to authority conferred under the Act. The Agency shall have primary responsibility for approving any financing of the acquisition and development of owner-occupied housing developments under the Program and under the Agency's "Home Mortgage Program" undertaken pursuant to Title 21 and rental housing developments under the Program through the Agency or the Authority. To the maximum extent feasible, affordable housing initiatives undertaken pursuant to the Act and the Program shall be coordinated with the Agency's "Home Mortgage Program" in order to maximize the production of affordable housing in the United States Virgin Islands.

Rental and owner-occupied housing developments can also be financed by the Authority and developed by the Agency pursuant to construction and development agreements with Applicants under which advances of funds for housing development shall be made. Rental and owner-occupied housing developments may be owned by the Government, acting through the Agency.

Each construction and/or mortgage loan or advance to an Applicant for an affordable housing development shall be made on such terms and conditions as the Agency or the Authority shall determine are necessary or appropriate to provide sufficient security for obligations to the Agency or the Authority to ensure that the construction loan and/or mortgage loan or advance comply with any other applicable Program requirements. Said terms and conditions shall include, but are not limited to, the following:

(a) That unless subordination to a prior lien is agreed to by the Agency or the Authority, the mortgage securing said loan or advance shall create a first priority lien on the housing development with respect to which said loan or advance is made and shall be executed and recorded in accordance with existing applicable laws;

(b) That the mortgage shall provide, among other things, that the Agency or the Authority, upon default by the Applicant under the terms of the mortgage and in the Agency's or the Authority's discretion, either may declare all sums secured thereby immediately due and payable by executing and recording or causing to be executed and recorded a notice of default and election of sale or by commencing an appropriate foreclosure action. In addition, upon the occurrence of a default, the Agency or the Authority may, in person, by agent or by receiver appointed by a court enter upon and take possession of the housing development, collect all rents, and perform any acts necessary to maintain or operate it, all in such manner as to not cause the cessation of any federal subsidies;

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(c) That the amount of said construction loan and/or mortgage loan or advance shall be within all limitations prescribed by law;

(d) That the scheduled construction loan and/or mortgage loan repayment or recoupment of advances, including fees and charges together with interest accumulated on undisbursed funds shall be estimated to be sufficient in amount to enable the Agency or Authority to meet on a timely basis its administrative expenses and debt service on any notes or bonds issued or to be issued in connection with said construction loan and/or mortgage loan or advance;

(e) That the Applicant, Agency or the Government (in the case of advances), as the case may be, shall have or acquire title to the site of the affordable housing development free and clear of all liens or encumbrances which would materially affect the value of said site as a site for the housing development or a leasehold interest in the site of duration and terms found acceptable by the Agency or Authority;

(f) That the affordable housing development should have been approved by the Agency pursuant to Section 201 and Section 209 of this Article;

(g) That any contract for the construction of the housing development shall be approved by the Agency pursuant to Article 4 of this Chapter; and

(h) That disbursements of proceeds from the Agency or Authority to the Applicant for progress payments for construction work shall be pursuant to procedures as provided in Section 206 of this Article.

29 VIC §940(b)(7)-205. Loan Interest Rate Limitations

The yield to the Agency or the Authority with respect to any construction loan or mortgage loan on an affordable housing development, which loan is made by the Agency or the Authority to an Applicant (taking into consideration any fees and charges imposed by the Agency or the Authority) shall be such that any bonds or notes issued by the Agency or Authority shall not be "arbitrage bonds" within the meaning of 26 U.S.C. Section 148 of the Internal Revenue Code of 1986, as amended.

29 VIC §940(b)(7)-206. Construction Progress Payment Disbursements

(a) **Schedule of Disbursements.** The proceeds of a construction loan or advance to an Applicant shall be disbursed pursuant to a construction loan agreement or a construction disbursement agreement. Disbursements shall be applied to the payment of invoice for labor performed, materials used or costs incurred in connection with the construction and development of the affordable housing development excepting that payments authorized pursuant to Section

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206 (b) may be for labor to be performed, materials to be used, or costs to be incurred. Disbursements shall be made only after presentation of satisfactory evidence that such claims are being so paid.

(b) The Agency or Authority shall not be obligated to make any disbursement of proceeds to an Applicant until each of the following conditions has been satisfied:

(1) The Applicant shall have executed and/or submitted to the Agency or Authority all such documents or other forms of evidence as are required by and in such form as is satisfactory to the Agency or Authority evidencing and securing the loan or advance;

(2) There exists no condition, event or act which would constitute an event of default under the construction loan agreement or construction disbursement agreement;

(3) No representation or warranty of the Applicant has been found to be false or inaccurate;

(4) With respect to disbursements subsequent to the initial disbursement, the remaining undisbursed proceeds have not been determined by the Agency or Authority to be less or likely to be less than the amount required to pay expenses incurred or to be incurred in connection with the completion of the affordable housing development and the fulfillment of the Applicant's obligations under the construction loan agreement or construction disbursement agreement, and there are no unreleased mechanic's liens or stop notices in connection with the affordable housing development; and

(5) Such other conditions as are required by the Agency or Authority.

29 VIC §940(b)(7)-207. Affordable Housing Development Plans; Application Procedure; Preferences

(a) **Content of Plans.** Persons desiring to construct or rehabilitate affordable housing under the Act shall apply to the Agency for approval of Affordable Housing Development Plans in response to Requests for proposals published from time to time by the Agency or during application periods from time to time established by the Agency. Five (5) copies of the proposed Plan, including responses to each of the items hereinafter prescribed shall be submitted to the Agency (or the Project Manager):

(1) A description of the affordable housing development (including non-housing facilities), citing the number of units and the size of the units.

(2) Complete plans and specifications for the units to be constructed.

(3) A copy of all information, maps, data and other items submitted to of

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Planning and Natural Resources pursuant to the Virgin Islands Code, Title 29, Chapter 3, Section 232(a) in connection with an application for a planned area development affordable housing development permit.

(4) A schedule of sale prices or rents for the dwelling units to be constructed, and the proposed number of units to be targeted to very low, low-income and moderate-income persons.

(5) The proposed sources of federal and local governmental and private funding available for financing and the approximate percentage of such funds to be applied to the estimated final development costs.

(6) A description of the proposed site and its purchase price, and if the site is Government-owned, the proposed acquisition cost of the site to be paid to the Government.

(7) A map indicating the location of the proposed housing development in relation to shopping centers, schools, recreation, transportation and other facilities and services.

(8) A written statement of the site's usability, including information on current zoning, access, and availability, of utilities and other infrastructure, and a description of adjoining property.

(9) A statement regarding any project subsidies sought from a Government agency, authority or department.

(10) The projected timetable for completion of the housing development and related non-housing improvements, if any.

(11) A property management and maintenance plan which shall include a provision for a periodic inspection of rental housing developments.

(12) A statement regarding the direct benefits of Program assistance to very low-income, low-income and moderate-income persons and families to reside in the housing to be constructed or rehabilitated.

(13) The projected amount of administrative expenses expected to be incurred.

(14) A cash flow analysis showing the benefits to be derived from the Program, including an analysis of the cash flow impacts of the tax benefits and subsidies from the Housing Trust Fund.

(15) A specific request for an explanation of need for subsidies from the Housing Trust fund.

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(16) Sources of construction financing, if any, and sources of collateral for such financing.

(17) Any other information requested by the Agency in its Request for Proposal or as may be required in the Rules and Regulations of the Agency.

Unless otherwise provided pursuant to an appropriate agreement, memorandum of understanding, executive order or other official act, Affordable Housing Development Plans with respect to rental housing developments and Affordable Housing Development Plans for owner-occupied housing shall be reviewed and approved by the Agency.

(b) **Selection of Developments.** The Agency shall competitively rank each Affordable Housing Development Plan in accordance with criteria to be established by the Agency, which shall be based upon the following factors:

- (1) The proposed cost of the housing to be constructed or rehabilitated;
- (2) The direct benefits of Program assistance to very low-income, low-income and moderate-income persons and families proposed to reside in the housing units;
- (3) The demonstrated capacity of the Applicant to carry out the proposal;
- (4) The economic feasibility and cost of the proposal as determined by the Agency and the Authority;
- (5) The extent to which the Applicant demonstrates potential cost savings by combining the benefits afforded by the different types of assistance created under the Act, together with the operation of federal and private initiatives and incentives; and
- (6) The extent to which the proposal would further the purposes of the Act.

The Agency shall have the right to reject any and all applications.

(c) **Preferences.** Preference shall be given to builders, developers, contractors and subcontractors licensed to do business in the United States Virgin Islands for a period of at least one (1) year. In addition, in order to assist small businesses, including specifically, local builders, contractors and developers who each have significant construction industry experience, the Agency shall encourage and facilitate joint ventures between such small businesses and larger, more experienced construction firms.

For purposes of this paragraph "small businesses" shall have the meaning ascribed to it under the Programs administered by the United States Small Business Administration.

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In addition, the Agency shall give preference to housing developments that accommodate and meet the housing needs of disabled persons, as defined in Title 34 V.I.C., Section 452.

(d) **Advertisement and Solicitation of Proposals.** The Agency shall advertise the availability of the Program and shall solicit proposals for specific housing developments from public entities and from private non-profit and for-profit housing sponsors and developers who wish to construct, rehabilitate, develop, or aid in the development of affordable housing for very low-income, low-income, and moderate-income persons. Notice shall be published in a newspaper of general circulation in the United States Virgin Islands. In addition, the Agency, shall solicit builders, contractors and others pursuant to Requests for Proposals, which may be in the form attached as Exhibit A hereto or such other form as may be approved by the Agency.

29 VIC §940(b)(7)-208. Affordable Housing Development Agreements

Applicants shall be required to execute Affordable Housing Development Agreements as required by the Act. Such agreements shall incorporate the requirements of the Act and these Rules and Regulations. The Agreements may be in the form attached as Exhibit B hereto or such other form as may be approved by the Agency.

29 VIC §940(b)(7)-209. Coordination between Government Agencies

The Agency shall have primary responsibility for the implementation of rental housing development aspects and the implementation of the owner-occupied housing development aspects of the Program consistent with the Agency's "Home Mortgage Program" and the Rules of Regulations of the Agency. The Agency shall finance the development of rental housing developments and owner-occupied housing developments consistent with the purpose of the Act and these regulations. The Authority shall cooperate with the Agency and in the disbursement of funds to the Agency from the Housing Trust Fund and the entering of loan agreements, disbursement agreements or funding agreements with such entities requiring proceeds from the Housing Trust Fund.

29 VIC §940(b)(7)-210. Administration of Housing Trust Fund

Moneys credited to the Housing Trust Fund shall be used by the Authority to carry out and effectuate the public purposes of the Act and these regulations, including, without limitation, to secure credit enhancement from financial institutions as necessary to secure bonds and notes issued by the Authority for affordable housing developments, to provide or induce the provision of mortgage insurance for housing developed under the Program, to make cistern and house foundation loans, to make subordinated mortgage loans to very low-income, low-income and moderate-income persons, to provide down-payment assistance with respect to the purchase of owner-occupied housing units by low-income and moderate-income families, to provide

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assistance for low-income rental housing developments, to pay closing costs with respect to housing units purchased by low-income persons and moderate-income persons, to provide other appropriate assistance to persons pursuant to Affordable Housing Development Agreements, including, but not limited to loans to Applicants, to pay Program expenses, to make construction loans for the construction of both rental and owner-occupied units, to pay expenses of training for tenants and homeowners of housing developments, to pay financing costs associated with Section 943 of the Act, to purchase land, to plan, design and construct or have constructed, affordable housing units and required associated infrastructure, to plan and design non-housing facilities which improve the quality of life of the residents, such as recreation facilities, commercial facilities, fire houses, police substations, and other facilities included at Section 203 of these Regulations, and such other purposes as shall be determined by the Authority, the Agency, the Governor and the Legislature.

29 VIC §945

29 VIC §940(b)(7)-211. Limitations on Sale or Rental of Affordable Housing Units

(a) **Sale or Rental.** Subject to the provisions of this Section and in consideration of the incentives provided directly by the Program, every affordable housing unit provided directly by the Agency and financed by the Agency or the Authority, or provided by any Applicant pursuant to an approved Affordable Housing Development Plan and Agreement shall be offered for sale or rental, as the case may be, to eligible very low-, low- and moderate-income persons and families.

The Agency, with respect to units to be sold to eligible purchasers, and with respect to rental housing units, shall maintain a list of eligible persons of very low-, low- and moderate-income and shall notify such eligible persons of the proposed offering of housing units for sale or rental, as the case may be, and shall furnish such other assistance and information as may be appropriate.

Affordable housing units provided pursuant to an approved Affordable Housing Development Agreement shall be made available exclusively for persons identified on the lists maintained by the Agency, with respect to owner-occupied units and rental units, for a control period of one-hundred and eighty (180) days from the date such units are first made available for occupancy, after which time such units may be offered to the general public after giving written notice to the general public through the news media. Applicants shall make a good faith effort to enter into sales contracts or leases with persons identified by the Agency. The eligibility lists maintained by the Agency shall be supplemented and amended from time to time in order to maintain a current list of persons eligible for housing assistance under the Program. The eligibility of purchasers on the list maintained by the Agency shall be determined in accordance with Rules and Regulations of the Agency.

(b) **Purchase or Lease of Affordable Housing Units by the Agency.** In view of the

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critical need for housing for very low-, low- and moderate-income persons and families, the Agency shall have, with the agreement of Applicants, the option to purchase or lease, as the case may be, from Applicants, affordable housing units provided pursuant to an Affordable Housing Development Agreement. This option may be assigned to eligible persons of very low-, low- and moderate-income.

If the Agency chooses to exercise its option, it shall do so by submitting to the Applicant a notice of intent to exercise its option for a specified number of affordable units covered by the option. Such notice shall be delivered prior to the lapse of the exclusive offering period specified above. Any affordable housing unit so purchased or leased by the Agency, shall be sold or rented only to very low-, low- or moderate-income persons and families.

(c) Control of Subsequent Sale or Rental of Affordable Housing Units. Affordable housing units constructed or offered for sale under this Section shall not be sold during a control period of twenty (20) years from the date of the original sale for a price greater than a sales price which equals the original selling price plus a percentage of the unit's original selling price equal to the increase in the cost of living, as determined by the United States Department of Labor's Consumer Price Index, plus the fair market value of improvements made to the unit between the date of original sale and the date of resale, plus an allowance for payment of closing costs. The aforesaid sale price formula may be amended or modified from time to time by the Agency.

Any affordable housing unit offered for resale during the aforesaid twenty (20) year control period shall be first offered for sale exclusively for a priority period of one hundred and twenty (120) days by the Agency to persons determined by the Agency to be of eligible very low-, low- or moderate-income. After expiration of the one hundred and twenty (120) day priority period, such unit may be offered for sale to the general public after giving written notice to the Agency of such proposed offering to the general public and notice to the general public through the news media.

Affordable housing units constructed or offered for rent under this Section shall not be rented during a control period of twenty (20) years from the date of original rental at a rental rate greater than that determined in accordance with the related Affordable Housing Development Agreement. Whenever any affordable housing rental unit is offered for rent during the aforesaid twenty (20) year control period, it shall be offered exclusively for thirty (30) days to the Agency and to persons of very low-, low- and moderate-income, as defined in these Regulations and as determined eligible by the Agency. The Agency may assign its right to rent such units only to persons of very low-, low- or moderate-income who are eligible for assistance under any federal, state or local housing program.

(d) Recapture of Program Subsidies. Affordable housing units sold to eligible persons and families under the Program and subsequently offered for resale to the general public by the original purchaser during the twenty (20) year control period in contravention of

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paragraph (c) of this Section 212 shall be subject to the following recapture rule:

Affordable housing units shall not be sold, transferred or otherwise disposed of within two hundred forty (240) months from the date of the original purchase thereof under the Program unless (i) the transferee of the affordable housing unit satisfies the eligibility requirements under the Program in effect on the date of sale and transfer or (ii) the original purchaser or his transferee agrees to pay a recapture penalty based on a percentage of the amount of the selling price in excess of the original purchase price ("excess profits") of the unit as follows:

Months after Closing Date	Percentage Penalty of Excess Profits
Up to 12	100%
13-24	95%
25-36	90%
37-48	85%
49-60	80%
61-72	70%
85-96	65%
97-108	60%
109-120	55%
121-132	50%
133-144	45%
145-156	40%
157-168	35%
169-180	30%
181-192	25%
193-204	20%
205-216	15%
217-228	10%
229-240	5%

The above restriction and recapture provision shall be set forth in the Deed of Conveyance or other document of conveyance and shall further be disclosed to the original purchaser of the affordable housing unit at the time of sale thereof. Additional recapture provisions may be applicable pursuant to federal requirements governing the issuance of tax exempt bonds.

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29 VIC §940

**Article 3: Equal Opportunity; Participation of Project Area Residents,
Small Business and Minorities**

29 VIC §940(b)(7)-300. Equal Employment and Business Opportunity

(a) Any person applying for approval of a construction and/or mortgage loan or other Program assistance for an affordable housing development pursuant to an Affordable Housing Development Plan shall submit at the time of application for said approval, and any contractor or subcontractor to be engaged in the construction of an affordable housing development shall submit at or prior to the time that the construction contract is submitted pursuant to Section 201 hereof, an "Affirmative Equal Opportunity Action Plan" under this Section. The Agency shall review each such plan and shall require amendments to such plan as are necessary to bring it into compliance with the requirements of this Section.

Such plan shall contain such provisions as the Agency shall deem necessary and appropriate to further the Government's policy of equal opportunity for business and employment without regard to race, sex, marital status, color, handicap, religion, national origin, sexual orientation, or ancestry. The plan shall also contain provisions which further the objective of assisting small Virgin Islands businesses, including builders, contractors, subcontractors and others who have demonstrated proficiency in their respective field but who lack sufficient construction industry experience as to qualify independently for participation in the Program. The Agency may recommend joint venture relationships between small businesses and larger, more experienced construction firms, to achieve the objectives of this Section. Unless waived, such plan at a minimum shall include:

- (1) A written compliance program, which includes the following:
 - (A) A company equal opportunity policy endorsed by the Applicant's chief executive officer or managing partner;
 - (B) A description of the affirmative action effort for the involvement of small subcontractors and businessmen;
 - (C) Description of a self-monitoring system which will analyze and measure equal opportunity efforts on a regular basis; and
 - (D) Identification of a corporate officer as an equal opportunity officer responsible for enforcement of this plan.

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29 VIC §940(b)(7)-301. Employment of Project Area Residents and Contractors

(a) Unless waived by the Agency, as appropriate for good cause shown, an Affordable Housing Development Agreement with an Applicant in connection with a "Section 3 covered project" (as defined by 24 C.F.R. §135.5(m)) shall contain a "Section 3 clause" as defined by 24 C.F.R. §135.5 (m).

(b) Upon application by an Applicant in the performance of its duties under a "Section 3 clause" as defined by 24 C.F.R. §135.5(m), the Agency and the Authority may approve payments in advance to the contractor or subcontractor qualifying as a "business concern located within the Section 3 covered project area" as defined by 24 C.F.R. §135.5(B) as it may from time to time be amended, for work to be performed by said contractor or subcontractor upon an affordable housing development if the Agency determines, on the basis of such information as the Agency may require, that said contractor or subcontractor would otherwise not be able to participate in said housing development by performance of said work; that contractor or subcontractor possesses the necessary skills to satisfactorily complete said work, and that said advance payment will not in any respect impair the security for any obligation to the Agency or the Authority.

29 VIC §940(b)(7)-302. Equal Housing Opportunity

Any housing development assisted under the Program, shall be open for occupancy by all, regardless of race, sex, marital status, color, religion, national origin, sexual orientation, ancestry, or handicap.

29 VIC §940(b)(7)-303. Affirmative Marketing Program

It shall be the policy of the Agency to achieve greater access to housing opportunities created by the programs assisted by the Agency or the Authority for all persons regardless of race, sex, marital status, color, religion, ancestry, sexual orientation, national origin or handicap. An Affirmative Fair Housing Marketing Plan (the "Plan") furthering this policy shall be submitted to the Agency by any Applicant who seeks participation in the Program.

Such plan shall satisfy the following requirements:

(a) It shall contain an undertaking by the Applicant to rent or sell the units in the development in a manner consistent with giving notice of the availability of such units to all eligible persons in the housing market of the community irrespective of race, sex, marital status, color, religion, ancestry, national origin, sexual orientation, or handicap.

(b) All advertising shall state "Financed by the Government of the United States Virgin Islands" and "Equal Housing Opportunity."

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The Agency may from time to time review the Plan and the Applicant's activities pursuant to the Plan and may require amendments to the Plan if it does not fully comply with the requirements of this section.

Article 4: Construction Contract Review

29 VIC §940(b)(7)-400. Procedure

Prior to its execution, each contract between an Applicant and a program contractor for the construction or rehabilitation of housing financed or otherwise assisted under the Program shall be submitted by the Applicant to the Agency for review and approval.

29 VIC §940(b)(7)-401. Employment of Apprentices

(a) Applicants of affordable housing developments the construction of which is financed or otherwise assisted under the Program shall agree to hire and train, on a part-time basis for the duration of the construction of the project, no fewer than eight (8) students enrolled in vocational education programs of the Virgin Islands; provided that at least two (2) students shall be chosen from each of the fields of plumbing, electrical work, carpentry and masonry. Applicants shall also participate in the Pre-Apprenticeship Construction Program sponsored by the Virgin Islands Department of Labor and the Agency.

(b) The employment and training of each apprentice shall be in accordance with the provisions of any locally applicable apprenticeship standards and apprentice agreement under which the apprentice is training. Upon completion of construction of the project, the students will be issued certificates of participation in the Pre-Apprentice Construction Program.

29 VIC §945

Article 5: Rental Housing Standards and Procedures

29 VIC §940(b)(7)-500. Selection of Tenants

Each Applicant receiving a construction or mortgage loan commitment or other Program assistance for a rental housing development under the Act and these regulations shall include in the Affordable Housing Development Plan required under Section 208 hereof a "Resident Selection Plan." The Plan shall be submitted to and approved by the Agency.

The Plan shall:

(a) Establish income limits for the rental of the designated affordable housing units within the rental housing development.

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(b) Detail the manner in which the Applicant will give preference in the renting of such units to eligible tenants:

- (1) Displaced from housing by this affordable housing development;
- (2) Who are persons or families of low- and moderate-income and identified on lists prepared and maintained by the Agency under Section 212 hereof;
- (3) Who are disabled; and
- (4) Who have served in the Armed Forces of the United States, who are domiciled in the Virgin Islands and who were born in the Virgin Islands or who entered the Armed Forces from the Virgin Islands.

(c) Within the classifications set forth in (b) above provide, unless this requirement is waived in writing by the Agency that not less than the percentage described in Section (201)(b) hereof of the units in the affordable housing development shall be rented to persons of very low-income, low-income or moderate-income, as applicable.

(d) Shall provide that the Applicant will notify each person making an application to rent a unit within the rental housing development within ten (10) days from the date of such application, in writing of:

- (1) Whether the tenant is eligible to rent such unit;
- (2) Whether, based upon turnover history, if any, a dwelling unit for which the tenant is eligible will be available within six (6) months;
- (3) If the tenant is not eligible, a statement of the reasons for such lack of eligibility; and
- (4) The applicant's right to be placed on a waiting list for vacancies occurring in the affordable housing development, and notified by the Applicant of vacancies for which the applicant is an eligible tenant, subject to the rental priorities for the housing development approved by the Agency.

(e) Require that a list of all applicants for tenancy within the affordable housing development be kept for a period of two years from the date the application is filed with the Applicant.

(f) Explicitly provide that the Applicant shall not utilize status criteria (e.g., sexual preferences, marital status, dress and grooming standards) in determining tenant eligibility under

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the Plan.

29 VIC §940(b)(7)-501. **Leases**

Each Applicant of a rental housing development shall submit to the Agency the form(s) of lease proposed by the Applicant to be used in renting all of the affordable housing units in the rental housing development. Such lease(s) shall be reviewed by the Agency, which shall require such modification in them prior to approval as may be necessary or appropriate in the circumstances, including modifications necessary to comply with applicable federal and local statutes or regulations. The Agency may develop a standard form of lease agreement which may be modified from time to time as appropriate.

In addition to the foregoing requirements any lease approved by the Agency shall:

(a) Contain an explicit statement of the tenant's rights under 28 V.I.C., Chapter 31, Subchapter III, Sec. 831, et seq.

(b) Provide that at least thirty (30) days before filing an application with the Agency for an increase in the maximum permissible rent or utility service charge to be paid by tenants occupying the designated percentage of affordable housing units in the rental housing development, the Applicant shall notify the tenants of the proposed rent and/or utility increases.

Copies of such notice shall be delivered personally or by mail to each tenant. The notice shall:

(1) State the proposed date of which the application for increases is to be filed with the Agency;

(2) Set forth the reasons for requesting the increases, the amount of the increases for each type of affordable housing unit in the rental housing development, and provide that any tenant or representative of the tenant may inspect any documents the Applicant intends to forward to the Agency in connection with its application at a designated place within the housing development during regular business hours of the Applicant; and

(3) Provide that the Applicant shall meet at a designated place within the housing development with all interested tenants and their representatives at least ten (10) but not more than fifteen (15) days prior to submitting the application for such increases to the Agency and shall further state that written comments on the proposed increases may be submitted to the Agency by the tenants at the physical address of the Agency.

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Article 6: Homeownership Programs: Standards and Procedures

29 VIC §940(b)(7)-600. **Homeownership Programs; Consistency with Agency "Home Mortgage Program."**

Owner-occupied housing development programs administered by the Agency may include single-family housing, single-family lease purchase program, condominium, town home units and homestead lot sales. To the maximum extent possible, such owner-occupied housing initiatives shall be consistent with the Agency's existing "Home Mortgage Program" authorized and implemented pursuant to Title 21 V.I.C. Chapter 2 and the Rules and Regulations of the Agency promulgated thereunder. Developers who participate in the Agency's "Home Mortgage Program" may submit Affordable Housing Development Plans to the Agency pursuant to and in accordance with Section 208 hereof.

29 VIC §940(b)(7)-600. **Homeownership Programs**

The Agency administers several programs to provide mortgages for the construction and purchase of homes to first-time home buyers. They are as follows:

1. Homestead

The Homestead Funding Source was established in 1953 by the Virgin Islands Government for the provision of a program for first-time home buyers to acquire homeownership. Funding of this Program is disbursed from appropriations made by the VI Legislature. The Homestead Loan Program provides residents with mortgage assistance to purchase or build a first home or to acquire land for the purpose of building a first home. The Program provides funding for existing home owners also to improve or repair their primary residence. Primary or secondary financing is available to qualified buyers.

HOMESTEAD LOAN PROGRAM				
Type	Number of Unit	Maximum	Term	Rate
Construction/ Purchase	1	\$220,000	30 years	Shall not exceed 4%
Home Improvement	1	\$40,000	10 years	Shall not exceed 4%

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2. Veterans

The Veterans Loan Program was established in 1965 by the Virgin Islands Government for the provision of homeownership to first-time home buyers who are Veterans. Funding of this Program would be appropriated annually from the Internal Revenue matching fund for five years to be spent exclusively for the Veterans Housing Loan Program. In 1984, the law was amended to reduce the appropriation to \$200,000.00 annually. Through this Program, the Agency provides a Home/Land Mortgage Program for Virgin Islands Veterans to purchase their first home.

VETERANS LOAN PROGRAM				
Type	Number of Unit	Maximum	Term	Rate
Construction/ Purchase	1	\$110,000	30 years	Shall not exceed 6%
Home Improvement	1	\$40,000	10 years	Shall not exceed 4%

3. Moderate-Income

Moderate-Income Funding Source was established in 1967 by the Virgin Islands Government for the provision of a mortgage program for first-time home buyers. These funds consist of monies appropriated by the Legislature, derived from proceeds of the gross receipts tax. Qualified applicants in the Territory are served through this Program.

MODERATE INCOME LOAN PROGRAM

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Type	Number of Unit	Maximum	Term	Rate
Construction/ Purchase	1	\$110,000	30 years	Shall not exceed 6%
Home Improvement	1	\$40,000	10 years	Shall not exceed 4%

FEDERAL PROGRAMS:

4. HOME Program

The HOME Program is a grant program under the U.S. Department of Housing & Urban Development (HUD) which provides funds to support state and local affordable housing programs. The Program helps to expand the supply of decent, safe, sanitary and affordable housing for low- and very low-income families by providing grants to States and local government referred to as participating jurisdictions or "PJ's". The Territory receives an annual funding allocation based on a formula which is derived by the federal government. The Agency's administration of the HOME Program has primarily focused on supplying financial assistance to first-time home buyers. The Program provides grants and deferred low-interest loans to bridge the gap between the client's affordability and the purchase price. Eligible families can qualify for these low-interest loans and grants to help purchase or build a home. HOME funding also assists with the rehabilitation of owner-occupied units.

HOME Loan Program				
Type	Number of Units	Maximum	Term	Rate
Construction/ Purchase	1	Equal to or less than primary lender with closing cost (as applicable)	Concurrent with term of primary lender	As low as 1%

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29 VIC §940(b)(7)-601. Agency Loans for Affordable Housing Development

The Agency may receive loans or advances from the Authority in order to finance loans or advances to Applicants as provided herein. Any loan or advance made to the Agency by the Authority shall be documented in intergovernmental loan agreements and secured as required by the Authority.

29 VIC §940(b)(7)-602. Sale of Owner-Occupied Housing Units

Affordable housing units which are intended to be owner-occupied shall be sold to "eligible persons and families" within the meaning of the Agency's "Home Mortgage Program" and the Rules and Regulations of the Agency promulgated thereunder. Any program to provide owner-occupied housing units shall be consistent with the objectives of the Act and these regulations and shall be offered for sale as provided in Section 212 hereof. To the maximum extent feasible, affordable owner-occupied housing units shall meet the priorities, requirements and objectives set forth in Section 201 hereof.

Each Affordable Housing Development Plan for an owner-occupied housing development shall include a marketing strategy which shall include the following (in addition to the other items set forth in Section 201 hereof, required to be submitted as part of Affordable Housing Development Plan under the Act and these regulations):

(a) Establish income limits for the sale of the applicable percentage of affordable housing units required to be set-aside within owner-occupied housing developments for occupancy by persons and families of very low-income, low-income and moderate-income;

(b) Incorporate an Agency-sponsored homeowner counseling and training program for prospective home buyers;

(c) Detail the manner in which the Applicant will give preference in the sale of the applicable percentage of affordable housing units to persons or families:

(1) Displaced from housing by this affordable housing development;

(2) Who are persons or families of low- and moderate-income and identified on lists prepared and maintained by the Agency under Section 212 hereof;

(3) Who are disabled; and

(4) Who have served in the Armed Forces of the United States, who are domiciled in the Virgin Islands and who were born in the Virgin Islands or who entered the Armed Forces from the Virgin Islands;

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(d) Provide for the sale of owner-occupied housing units to the applicable percentage of very low-income, low-income or moderate-income persons and families specified in Section 201(b) hereof, except that the Agency shall not require an Applicant to develop owner-occupied housing for very low-income or low-income persons and families if the Agency determines that it is not economically feasible to do so.

29 VIC §940(b)(7)-602.1. The Agency markets in the following manner to advertise its products and services to all first-time home buyers:

1. Advertisements in the local newspapers;
2. Video presentation on the local government access channel;
3. Press releases;
4. Newsletter to database of priority applicants;
5. Email correspondence to government agencies (including the National Guard and Veterans' Administration) and priority applicants on available units;
6. Mailings to other housing entities and other privately managed subsidized housing communities; and
7. Open houses for all subdivisions.

29 VIC §940(b)(7)-602.2. The Agency provides pre-purchase education, post purchase education and one-on-one counseling sessions to first-time home buyers and to existing homeowners. The following are the educational initiatives that are administered by the Authority.

The Home Buyers Education Program (HBEP) is an instructional guide for first-time home buyers to learn about the purchase process step-by-step. The HBEP provides 18 hours of structured training to first-time home buyers and involves classroom presentations by the Agency's staff and other community partners that are key players in the housing industry. The course is offered in modules and takes place over a nine-week period.

Financial Management Counseling is provided to all of the Agency's clients who are recipients of mortgage financing with the Agency. The objective of this counseling session is to give all new owners the necessary tools to maintain homes, manage present and future expenses and protect investments. This 1-2 hour session is conducted prior to loan closing with the goal being to ensure that the Borrower's homeownership experience is a successful one.

Community Education is a marketing and outreach activity designed to increase public awareness of the Agency's homeownership programs and opportunities, the Home Buyers Education Program and Housing Counseling Services.

Economic Education is a Financial Fitness Program that offers a variety of "hands-on" activities for participants. It is a critical piece of a comprehensive pre-and post-purchase Homeownership Education Program. This class provides the tools to help participants address

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the “ABC’s of Personal Finance” and other critical issues that would help achieve financial goals and maintain successful homeownership. These presentations are provided throughout the community and at the Authority’s offices.

The Housing Counseling Program provides one-on-one counseling to first-time home buyers and to existing homeowners. Counselors assist first-time home buyers through individual sessions to guide them in resolving problems that prevent affordable mortgage financing and to make informed decisions to assist in achieving homeownership. The Agency also provides foreclosure prevention counseling to help homeowners who are delinquent on their mortgage payments and are at risk of foreclosure. Through counseling, loss mitigation options are explored and offered to families to keep them in their homes and preserve the stability in our neighborhoods.

The Agency utilizes a Priority System, which is a numerical system, to maintain a database that identifies eligible and ineligible applicants. The main benefit of this system is to identify applicants by mortgage readiness (MR), near-ready (NR), and applicants who require counseling (RC). This allows the Agency to offer products and services based on an applicant’s eligibility.

- A mortgage-ready applicant is one who has successfully been prequalified for mortgage financing.
- A near-ready applicant is one who requires short term counseling (six months or less).
- An applicant who requires long-term counseling is one who is ineligible due to credit or budget concerns. Referred applicants can remain in counseling for six months or more. The duration of the counseling is based on the needs of the individual or family.

The Agency communicates quarterly with priority applicants who are mortgage-ready, semiannually for those that are near ready applicants, and annually with those who require long-term counseling. Mailings include newsletters, and post cards that encourage applicants to stay focused, continue saving, and maintain their readiness to purchase. All applicants receive the annual newsletter, that includes current information on the Agency; status of products and services; and financial management tips. Post cards are mailed to mortgage-ready and near ready applicants and they encourage the pursuit of homeownership and provides the opportunity to update contact information.

This listing is purged annually during the summer months. This will allow the Homeownership Division to maintain an updated pool of interested and eligible applicants. Letters are sent to all applicants soliciting updated contact information and confirming continuing interest in homeownership. Applicants will be given 30 days to update information

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by phone or mail. Applicants who fail to respond by phone or mail, will be withdrawn; however, files may be reactivated at anytime subject to a prequalification interview and reactivation fee.

The Agency provides a 25-percent set-aside for veterans in all home and land developments. The set-aside for land will be no more than 90 days after receipt of subdivision approval. The set-aside for homes will be for no more than 45 days after the receipt of a Certificate of Use and Occupancy. Outreach for all the Agency's available products are provided through communication with all the Veterans organizations in the Territory, through the Agency's priority listing and the local media. The Agency requires a fee for all applicants to obtain a priority number. This priority number affords an applicant an initial pre-qualification interview and registration to the Agency's Home Buyer Education Class. Veterans receive a 25 percent discount on this fee. The Agency requires that applicants have the capability of making an earnest money deposit for the purchase of homes and a 10 percent down-payment for the purchase of land. There is no required earnest deposit for veterans, for the purchase of land or homes through the Agency. Additionally, the Agency provides veterans with an additional 10 percent discount on the established price of land sold by the Agency.

29 VIC §940(b)(7)-603. Compliance with Applicable Law

Affordable housing units which are intended to be owner-occupied shall be offered for sale to eligible families subject to and in compliance with all applicable federal and United States Virgin Islands laws, including, without limitation, all applicable federal income tax laws and regulations as applied to the United States Virgin Islands.

Article 7: Legislative Approval of Affordable Housing Developments

29 VIC §940(b)(7)-700. Approval of Affordable Housing Plans

The Agency shall submit, at a minimum of every three (3) years, an Affordable Housing Plan to the Committee on Government Services & Housing of the Legislature, pursuant to the requirements of Section 103a of Title 21 of the Virgin Islands Code. The Committee shall review the Affordable Housing Plan which shall include, but not be limited to, rental housing and single-family affordable housing and shall approve or disapprove each specific project addressed therein. The Plan shall be deemed approved on the 45th day after the date of submission of the Plan to the Committee, unless the Agency receives written notification of any disapproval by the Committee prior to the expiration of the forty-five (45) day period. Once approved as provided herein, a housing development shall not be included in subsequent Affordable Housing Plans.

29 VIC §940(b)(7)-701. Contents of Affordable Housing Plans

The Affordable Housing Plan to be submitted by the Agency shall describe each housing development approved by the Board for development on real property owned by the Agency.

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The information to be provided for each project shall include:

- (a) Location of the housing development;
- (b) Acreage involved;
- (c) Number of dwelling units to be constructed, improved or rehabilitated;
- (d) Target family income of the future tenants or purchasers of affordable housing units;
- (e) Estimated cost of construction of the affordable housing units and associated infrastructure;
- (f) Required government subsidies;
- (g) Estimated date of commencement of construction; and incorporated as part of the housing development; and
- (h) Ancillary non-housing facilities to be planned or incorporated as part of the housing developments.

29 VIC §940(b)(7)-702. Modification; Supplemental Affordable Housing Plans

(a) The Agency shall submit modifications to the Affordable Housing Plan to the Committee on Government Services & Housing of the Legislature, when a material modification, change, alteration or substitution has been made to any housing development contained in a previously approved Affordable Housing Plan. The Agency shall determine what constitutes a material modification, change, alteration or substitution for purposes of this Section.

(b) The Agency shall submit Supplemental Affordable Housing Plans prepared in accordance with the requirements of Section 701 herein, for individual housing developments which were omitted from a previously approved Affordable Housing Plan by reason of error, incompleteness or for any other reason. Each Supplemental Affordable Housing Plan submitted and approved shall reference the specific Affordable Housing Plan previously approved by the Committee, and shall state the reason for its omission from the Affordable Housing Plan previously submitted and approved by the Committee. The Supplemental Affordable Housing Plan shall be approved.

29 VIC §940(b)(7)-703. Register

The Agency shall keep a register containing copies of each approved Affordable Housing Plan, and modification thereto, and each Supplemental Affordable Housing Plan, for public

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inspection at its principal office.

29 VIC §713e

Article 8: Tax Incentives

29 VIC §940(b)(7)-800. Applicability of Rules under Industrial Development Program

Except where the context otherwise requires a different application, the rules and regulations applicable under the Industrial Development Program under Title 29, Chapter 12, with respect to the issuance of industrial development certificates, public hearings, Commissioner meetings, and action by the Commissioner, shall not be applicable in connection with the granting and administration of tax benefits under the Act. Every Applicant who applies to the Agency by submitting an Affordable Housing Development Plan for approval as a developer, builder, provider or sponsor of affordable housing units, must satisfy, and throughout the term of the applicable Affordable Housing Development Agreement, continue to satisfy all of the rules and regulations in this Article 8 in order to receive the exemption from taxes provided at Section 713e of Title 29 of the Virgin Islands Code.

29 VIC §940(b)(7)-801. Certificate of Compliance by Applicant

The Applicant shall submit to the Agency, as part of the Affordable Housing Development Plan being submitted for approval, a certification which contains the following representations and information:

(a) The total estimated construction cost of the affordable housing units comprising the housing development which are the subject of the Affordable Housing Development Plan;

(b) The names and addresses of all contractors, subcontractors, materialmen, suppliers and vendors which will be providing labor, material or supplies to the subject project, with an estimated breakdown of costs to be allocated to each such entity;

(c) Federal ID number of the Applicant and all Beneficiaries listed in Section 802(b) herein;

(d) Agreement to hire and train, on a part-time basis for the duration of construction of the project, no fewer than eight (8) students enrolled in vocational education programs in the United States Virgin Islands or participating in the Pre-Apprenticeship Construction Program sponsored by the Virgin Islands Department of Labor and the Agency, two (2) students from each of the fields of plumbing, electrical, carpentry and masonry;

(e) Agreement to give preference to contractors, subcontractors, trade contractors, materialmen, suppliers and vendors providing labor, material and supplies to the housing project,

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who are Residents of the United States Virgin Islands;

(f) Representation that the Applicant complies and will continue to comply with Section 934 of the U.S. Internal Revenue Code of 1986, as amended (26 U.S.C. §934);

(g) Certification that neither the Applicant nor its principals, contractors, or sub-contractors is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in any federal or local program related to affordable housing in the Territory or any Federal department or agency.

(h) Representation regarding whether the Applicant, or any one or more of its stockholders or partners have, or have had, any proprietary interest in any other business or project which is or was a beneficiary under the Act or the Industrial Development Program;

(i) List of the major items of machinery and equipment utilized or to be utilized in the construction of the housing development, including, in the case of purchased machinery and equipment, the date(s) of acquisition and purchase price. In the case of leased machinery and equipment, the Applicant shall include the date(s) of acquisition, annual rent cost, length of lease, documentation attesting to the fair market value of the equipment, and a copy of the lease.

The Certification of Compliance to be submitted by the Applicant as herein provided shall be signed by an authorized officer or partner of the Applicant attesting to the truth, accuracy and completeness of the Certification and any documents submitted in support thereof. The Certification of Compliance may be in the form attached as Exhibit D hereto or such other form as may be approved by the Agency.

29 VIC §940(b)(7)-802. Issuance of Certificate of Tax Exemption

The Agency shall review the Certificate of Compliance submitted by the Applicant to ensure compliance with these rules and regulations in its review of Affordable Housing Development Plans submitted by Applicants for approval. The Agency shall issue a Certificate of Tax Exemption in the forms attached hereto as Exhibits C-1 and C-2, to the Applicant and each Beneficiary, as appropriate, upon the satisfaction of the following conditions:

(a) Execution by all necessary parties of an Affordable Housing Development Agreement pursuant to these rules and regulations; and

(b) Approval by the Committee on Government Services & Housing of the Legislature of an Affordable Housing Plan which includes the housing development which is the subject of the applicable Affordable Housing Development Agreement executed under Section 802(a) herein.

The Certificate shall be signed by the Applicant, or each Beneficiary, as appropriate, and

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by the Executive Director of the Agency, and shall be distributed to the Bureau of Internal Revenue, the U.S. Customs and Border Protection, the Economic Development Commission, the Office of the Lt. Governor, and the Virgin Islands Department of Labor.

29 VIC §940(b)(7)-803. Tax Exemptions

Every Applicant and Beneficiary granted a Certificate under the Act and who continues to comply with all of the requirements of the Act and these rules and regulations shall be entitled to receive the tax exemptions and subsidies as follows:

- (a) 100% exemption of gross receipts taxes, as further specified in Section 804 below;
- (b) 100% exemption of excise taxes on building materials, articles, supplies, goods, merchandise, and tools manufactured or brought into the U.S. Virgin Islands on or about April 1, 1990 for the production of affordable housing, as specified in Section 805 below;
- (c) Exemption of all customs duties in excess of a one percent (1%) handling charge or such materials used in the production of affordable housing, as further specified in Section 806 below; and
- (d) 100% exemption of the income taxes for the term of the applicable Affordable Housing Development Agreement, as further specified in Section 807 below.

29 VIC §940(b)(7)-804. Gross Receipts Tax Exemption

An Applicant or Beneficiary awarded a Certificate by the Agency shall be entitled to an exemption from all gross receipts taxes related to receipts, cash or accrued, derived exclusively from or directly connected with the production of affordable housing units under the Act. The gross receipts tax exemption shall apply to the gross receipts of the affordable housing development for which a Certificate is granted, but not including the gross receipts of non-housing facilities or housing units that are not affordable housing units as determined by the Agency which are operated within the same housing development for which a Certificate is granted. Common areas shall be allocated between non-housing improvements, affordable housing improvements and non-affordable housing improvements. Only that portion of common areas attributable to the affordable housing units shall be exempt from gross receipts taxes.

29 VIC §940(b)(7)-805. Excise Tax Exemption

An Applicant or Beneficiary awarded a Certificate by the Agency shall also be entitled to an exemption from all excise taxes on materials used exclusively in the production of affordable housing units. The excise tax exemption shall apply to all excise taxes on building materials, articles, goods, supplies, merchandise, appliances, tools, pipes, pumps, and similar items brought

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into the United States Virgin Islands as necessary and exclusively for use in the construction, alteration, reconstruction or rehabilitation of affordable housing units with respect to which an Affordable Housing Development Agreement is in effect. The excise tax exemption shall not apply to (i) materials used in the production of housing units which are not affordable housing units, (ii) materials used in the construction of non-housing facilities and (iii) materials used for the construction of common areas allocable to non-housing facilities and units which are not affordable housing units. The excise tax exemption does not apply to materials related to the construction, reconstruction, alteration or rehabilitation of non-housing facilities located on the premises.

29 VIC §940(b)(7)-806. Custom Duties Reduction

An Applicant or Beneficiary awarded a Certificate is further entitled to a reduction in customs duties payable with respect to items imported for the production of affordable housing. Notwithstanding any other law, materials, goods, tools, equipment and other similar articles imported into the United States Virgin Islands to be used exclusively for the production of affordable housing shall be imported into the United States Virgin Islands at a customs duty rate of one percent (1%). The customs duty reduction shall not apply to materials, goods, tools, equipment, articles and commodities used in the construction of non-housing facilities located on the premises with the affordable housing units. The custom duties subsidy similarly does not apply to materials used to produce housing units that are not affordable housing units under the Program nor shall it apply to customs duties attributable to materials used to construct common areas allocable to non-affordable housing units and materials used to construct common areas allocable to non-housing facilities.

29 VIC §940(b)(7)-807. Reduction of Income Taxes

(a) Each Applicant who is granted a Certificate is further entitled to have its income tax liability, for income derived from or effectively connected with the production of affordable housing, reduced on a current basis as provided in this Section. The income tax exemption available under paragraph (b) of §713e of Title 29 of the Virgin Islands Code, shall be structured as a reduction of income taxes payable to the Government of the United States Virgin Islands in connection with income derived: (1) from the construction, operation or management of affordable housing units under the Program; (2) from or effectively connected with the sale or rental of affordable housing units under the Program; (3) from the operation or management of such affordable housing during the period which it is not sold; or (4) where applicable, from the management of affordable rental property, provided that, in addition to the requirements of the Act, the requirements of Section 934 of the U.S. Internal Revenue Code of 1986, as amended, are met.

(b) An Applicant shall be entitled to:

(1) Reduce the amount of each payment of estimated income taxes

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attributable to the production of affordable housing as provided in paragraph (a) by one hundred percent (100%); and

(2) Reduce the income tax liability attributable to the production of affordable housing as provided in paragraph (a) shown on the income tax return for the taxable year by one hundred percent (100%), for each of the years specified in the Certificate granted under the provisions of this Section. In the case of estimated income taxes, such reduction shall be prorated over the quarterly payments due, or constructively due by the Applicant, and in the case of the determination of income tax liability, by the entire amount of the subsidy thus constructively calculated.

(c) The reduction of income tax liability on a current basis of, or the reduction of income taxes otherwise payable by, Applicants entitled to such reduction shall be applicable with respect to all of the computations, assessments, and collections of such income taxes, as provided by the Internal Revenue Code of 1986, as amended.

(d) An individual whose permanent residence is in the United States Virgin Islands, a corporation which is organized under the laws of the United States Virgin Islands, or a corporation organized under the laws of the United States, or one of the States, territories or commonwealths thereof, whose principal office is located in the United States Virgin Islands, is presumed to continue to be permanently domiciled in the United States Virgin Islands for purposes of this Section, unless it is established that such residency or domicile has been superseded by a new residence or domicile.

(e) In the computation of the income tax exemption, there shall not be considered as part of the base of the exemption the taxes paid into the Treasury of the United States Virgin Islands on any income of the Applicant which is derived from sources outside the United States Virgin Islands.

829 VIC §940(b)(7)-08. Regular Reports by Applicants and Beneficiaries

After a Certificate has been issued to an Applicant or Beneficiary, the Applicant and each Beneficiary must regularly file the following with the Agency no later than July 15th of each year of applicability:

(a) A copy of the annual report, required to be filed in the Office of the Lieutenant Governor, listing the names and addresses of all persons owning five percent (5%) or more of the stock of any corporate Applicant or Beneficiary and the percentage owned by each.

(b) A copy of the quarterly unemployment Insurance report filed with the Department of Labor.

(c) A certificate or affidavit of continuing program compliance in a form prepared by the Agency to the effect that the Applicant or Beneficiary is in compliance with its Affordable

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Housing Development Agreement and the requirements of the Act and the rules and regulations thereunder.

29 VIC §940(b)(7)-809. Reports by Beneficiaries of Change in Ownership Stock

A corporate Applicant or Beneficiary shall immediately notify the Agency, in writing, of any change in ownership of more than 20% of the voting stock of the corporation and of any change in ownership of the voting stock of the corporation which results in a change in majority control.

29 VIC §940(b)(7)-810. Grounds for Revocation, Suspension or Modification of Certificates

A Certificate granted pursuant to the Act may be revoked, suspended, or modified by the Agency on any of the following grounds:

(a) The Applicant or Beneficiary has failed to maintain compliance with the requirements of the Act, these rules and regulations or its Certificate; or

(b) In the case of a corporation, upon a finding submitted to the Agency by the Attorney General of the U.S. Virgin Islands that the corporation:

(1) Has been dissolved; or

(2) Has filed, or there has been filed against the corporation, a petition in bankruptcy which has been approved, provided, however, that the filing of a petition for reorganization under Chapter XI of the U.S. Bankruptcy Act shall state any Agency proceeding based solely on this Subsection, and/or commencement thereof, until an order to liquidate has been issued or a petition to convert has been filed pursuant to such Bankruptcy Act; or

(c) The Applicant or Beneficiary has failed to file an annual report of ownership as required by Section 808; or

(d) The Applicant or Beneficiary, or in the case of a corporation, an officer acting in behalf of the corporation, has given or offered, or caused to be given or offered, a bribe, or any money, property, or value of any kind, or any promise or agreement therefore, to a public officer, or to a person executing any of the functions of a public officer, or to a person elected, appointed or designated to thereafter execute the same, with intent to influence him with respect to any act, decision, vote, opinion or other proceedings, in the exercise of the powers or functions which he has or may have pertaining in any way to the Program. In addition to the fine and/or imprisonment provided by law for this offense, any benefit granted or obtained as a result of such act, decision, vote, opinion or other proceeding shall be void as to the briber and/or recoverable from the briber as the circumstances of the particular case may dictate.

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(e) The Applicant or Beneficiary failed to give notice that any of its principals, contractors, or subcontractors is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in any federal or local program related to affordable housing in the Territory or any Federal department or agency.

29 VIC §940(b)(7)-811. Investigation and Proceedings

An investigation by the Agency shall be conducted before the Agency acts to revoke, suspend or modify a Certificate pursuant to these Rules and Regulations.

29 VIC §940(b)(7)-900. Separability. If any clause, sentence, paragraph, section, subsection or part of these rules and regulations shall be adjudged by a court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section, subsection or part thereof directly involved in the controversy in which such judgment shall have been rendered.

SECTION II.

By his signature hereon, the Governor of the Virgin Islands certifies, in accordance with the provisions of Title 3, Chapter 35, Section 938, Virgin Islands Code, that compelling circumstances and the public interest require that the Virgin Islands Rules and Regulations contained herein become effective on this 11th day of June, 2014, without the lengthy delay of prior publication, and on which date they have been submitted to the Legislature pursuant to Title 3, Chapter 35, Section 913, Virgin Islands Code.

Pursuant to the provisions of Title 29, Chapter 16, Section 940(b) (7), Virgin Islands Code, the above Rules and Regulations are hereby promulgated.

Dated: June 11, 2014.

Dated: June 11, 2014.

OFFICE OF MANAGEMENT AND
BUDGET

BY: 

Debra E. Gottlieb
Chairperson, VIHFA Board of Directors

VIRGIN ISLANDS HOUSING FINANCE
AUTHORITY

BY: 

Adrienne L. Williams
Executive Director

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Pursuant to the powers vested in me by Section 11 of the Revised Organic Act of 1954, and by Title 33, Section 913, Virgin Islands Code, the above Rules and Regulations are hereby approved.

Dated: _____

June 11, 2014

John P. de Jongh, Jr.
Governor