

EXPLANATION OF FORM

The Deed-of-Trust is a security instrument that secures the repayment of a sum of money and/or the performance of certain conditions by the Borrower (who is also referred to as the “Beneficiary”).

The Lender is the Grantee. The Trustee is the individual who is legally authorized to enforce the Deed-of-Trust. For example, the Trustee may be the Grantee's lawyer or Chief Executive Official.

The Deed-of-Trust must secure all loans, including loans to heir-occupied and life estate properties. CDBG loans may be placed in first, second, third, etc., position on a property title. Once recorded, the Grantee may not subordinate DHCD’s position without its prior written approval. The Deed-of-Trust must address all construction costs, including exception and demolition costs. The Deed-of-Trust must be accompanied by the closing document Notice of Right to Cancel. The Deed-of-Trust must be recorded at the courthouse in the county or city where the rehabilitated house is located.

In addition to referencing the amount of financial assistance, the Deed of Trust must provide the following:

- The complete address of the Trustee’s residence;
- A 10-year term and zero percent rate of interest;
- The Deed-of-Trust Note or loan agreement requirement;
- The Borrower’s requirement to maintain the property to DHCD HQS during the term of the loan;
- The Borrower’s requirement to obtain adequate hazard insurance, with the Grantee listed as a loss payee;
- The Borrower’s requirement to obtain an annual septic maintenance agreement, if an alternative septic system is installed, as required by the Virginia Department of Health;
- The Lender’s right to inspect the property during its rehabilitation and during the term of the loan;

- The Borrower's requirement to pay all taxes, assessments and utility charges during the term of the loan;
- The Borrower's requirement to reside in the property rehabilitated for the entire term of the loan; and
- Default and resale requirements.

DHCD's Best Practices also recommends that the Deed of Trust provides:

- ☒ That a Note be recorded with a credit balance provided to the owner at the conclusion of the construction contract. This should eliminate the need for amendments to the mortgage instrument as a result of change orders.
- ☒ That the Deed-of-Trust prohibits the house from being used as bond security so that the Borrower or someone else can get out of jail while awaiting trial.
- ☒ In a life-estate situation, the Grantee should check with its Attorney to determine if the Deed-of-Trust should say the estate is encumbered in order to protect the Grantee if the beneficiary defaults.
- ☒ That the Deed-of-Trust's signatures are notarized and the Deed is recorded immediately after the three-day Right to Cancel period is over. When calculating the Right to Cancel period Saturdays, Sundays and holidays are normally not counted. During this time period, no activity regarding the loan may take place. This includes the issuance of the Notice to Proceed with Construction.