



Commonwealth of Massachusetts EXECUTIVE OFFICE OF HOUSING & LIVABLE COMMUNITIES

Maura T. Healey, Governor ♦ Kimberley Driscoll, Lt. Governor ♦ Edward M. Augustus, Jr., Secretary

Preliminary and Final Exemption Request Form Instructions

All requests for exemptions from the right of first offer and right of first refusal pursuant to G.L. c. 40T, § 6 and 760 CMR 64.07 should be submitted on the form *40T Exemption Request Form*, available at <https://www.mass.gov/info-details/chapter-40t-guidance> (40T Guidance page).

The 40T Exemption Request Form applies to both requests for preliminary exemptions and final exemption certificates. Capitalized terms used but not otherwise defined in these instructions shall have the meanings given to such terms in G.L. c. 40T and 760 CMR 64.00.

Please fill out all sections of the 40T Exemption Request Form completely. If a section of the form does not apply to the property or Sale, please insert “N/A.”

If “Other” is selected under “Programs Under Which Affordability Restrictions are Currently in Place” on page 2 of the 40T Exemption Request Form, please provide additional facts and explanation that may be pertinent to the analysis of a termination. For instance, a loan under a listed program may have been prepaid under LIHPRA, but the affordability restrictions remained in place. In this case, the affordability restrictions no longer directly relate to one of the covered programs, but are pertinent to the analysis of whether or not the housing will be preserved after the proposed Sale.

The 40T Exemption Request Form must be submitted to EOHLC and all other applicable Institutional Recipients in accordance with G.L. c. 40T, § 2 and 760 CMR 64.03. Additionally, an electronic copy of the completed form may be sent to EOHLC via email to Caitlin Loftus, Caitlin.loftus@mass.gov.

Exemption Request Form Table:

The 40T Exemption Request Form includes a table to be filled out describing both the current restrictions on the property as well as the restrictions on the property after the proposed Sale. A sample table is available on the 40T Guidance page, reflecting a property with Section 8, LIHTC, and Section 236 restrictions.

In the tables describing the current and proposed affordability restrictions, create additional rows as necessary to fully describe the restrictions, and note the following:

- “Income Brackets” generally should refer to Area Median Income (AMI), but always should be listed as explicitly expressed in the respective restriction. For programs that establish layered/multiple income tiers, each tier should be identified and units should be listed for each restriction to which they apply, with the understanding that units may count towards more than one tier. For example, a unit that meets a 60% AMI requirement may also satisfy an 80% AMI requirement imposed by a different restriction and should be listed under each applicable restriction.
- “Number of Units” refers to the total number of units within a particular category (i.e., LIHTC @ 60% AMI, market rate units, etc.). If the restriction does not address bedroom size, but only the total number of units, that should be noted.
- EOHLC regulations require that information be submitted as to actual current occupancy and anticipated actual occupancy after the contemplated transaction of households within certain income ranges. These income ranges will not necessarily correspond to the income restrictions under a particular program, but the information is helpful to EOHLC in assessing the impact of a transaction on current tenants.
- In the “Before Transaction” section, “Number of Units Occupied by Eligible Households” refers to a “snapshot” as of the date of the request of the actual income of tenants in units covered by each restriction, as determined by their most recently re-certified income. The information requested includes the number of restricted units currently occupied by tenants who are above the income limits for the applicable program and the number of units covered by the restriction that are vacant. For an illustration of how to represent actual occupancy, see the model for the Section 236 program in the sample exemption request table.
- “Rent-Limits Formula” should be as expressed in the restriction, and may be a percent of household income or a cap on the monthly rent. Some programs may have more than one form of rent-limit formula and different rent-limit formulas for different income brackets. In such cases, list each one individually, and add notes as necessary.
- “Restricted,” as used in this form, means subject to an “Affordability Restriction” as defined in G.L. c. 40T, § 1, which can include contract-based affordability requirements as well as real estate restrictions.

EOHLC staff are available to review draft preliminary and final exemption requests before formal submission. Please contact Caitlin Loftus at Caitlin.loftus@mass.gov if you wish to submit a draft exemption request for review or have any questions before formal submission.