



TOPA Earnest Money Deposit Loans

Frequently Asked Questions

Program Background

Program History: National Housing Trust (NHT) is proud to offer the TOPA EMD Loan Program in partnership with City First Enterprises (CFE). The program was created in response to the challenge Tenant Associations (TAs) face getting over the first financial hurdle of the TOPA process, the earnest money deposit (EMD). With the goal of reducing this barrier to enable more TAs to be able to pursue their rights, NHT and CFE designed the program to be relatively risk free for TAs with an untraditional success fee model. Since launching in 2016, the program has lent to over 30 tenant associations across all eight DC Wards. 85% of TAs using this program have successfully exercised their TOPA rights.

Lending Entity: Borrowers work with NHT or CFE staff when applying for and closing TOPA EMD loans. Institute for Community Economics (I.C.E.), one of NHT's two CDFI affiliates, is the entity generating the loan when working with NHT. Loan documents will show I.C.E.'s name as the lender.

Loan Terms

Standard Loan Terms:

- **Length:** The shorter of one-year or the end of a TA's TOPA rights
- **Application Fee:** 0.5% of the EMD and credited towards origination fee
- **Origination Fee:** 1% of the EMD or alternative origination fee structure (see below)
- **Success Fee:** 8% if successful TOPA assignment for the purposes of affordable housing (fee is waived if TOPA is unsuccessful)
- **Legal Fee:** None (to keep fees down, NHT has a standard set of closing documents)

Application Fee: The application fee is 0.5% of the EMD (half of the origination fee). The application fee needs to be sent by the time of application, at least two weeks before the EMD is due. The application fee will be credited towards the origination fee, meaning that total upfront fees total 1% of the EMD. If for whatever reason NHT does not approve the loan, the application fee will be returned.

Origination Fee: The standard origination fee is 1% of the EMD. NHT is available to help strategize options for how a TA can raise the funds. Typically, TAs have been able to internally fundraise, receive grant funding, or solicit partner funding to cover this fee. A plan for payment of the origination fee must be solidified before the loan closes. Payment is due within 7 days of closing or else faces a late penalty. Failure to pay the origination fee will result in the return of the deposit to NHT.

Alternative Origination Fee: Recognizing that some TAs are weeks away from signing with a development partner and cannot cover the origination fee independently, NHT offers an alternative origination fee structure. This option has an upfront application fee of \$15/unit (including vacant units) and requires that a full 1% deferred origination fee is paid upon signing with a development partner and is due within 120 days of the loan. Unlike the other standard application fee, this fee is in addition to the deferred origination fee and cannot be credited towards the deferred origination fee. This fee is refundable if NHT does not approve the loan. At the end of the 120-day period, if the TA has not assigned

their rights to a development partner, the TA will need to cover the 1% deferred origination fee or conclude their TOPA rights at the end of the first negotiations period. To apply with the alternative origination fee option, there is a supplemental application that requires a letter of support from at least one potential development partner that signifies their intention to partner on the project and their agreement to cover the 1% deferred origination fee if selected by the TA.

Success Fee: To reduce the risk for TAs and support the use of TOPA to preserve affordable housing, NHT applies three different success fees based on outcome of the TOPA Process. During the term of the loan, NHT does not collect any interest or ongoing loan payments.

- **Unsuccessful TOPA:** If a TA is unable to exercise their TOPA rights, NHT waives the success fee
- **Successful TOPA with Affordable Housing:** Upon successful TOPA acquisition for affordable housing, there will be a success fee priced at the lesser of 8% of the deposit or the accrued annual interest at a rate of 18% (1.5% per month)
- **Successful TOPA without Affordable Housing:** If the TA assigns its rights to a for-profit developer or chooses to take buy-outs without any affordability preserved for the remaining tenants, the success fee is priced at the greater of 8% of the deposit or the accrued annual interest at a rate of 18% (1.5% per month)

While TAs are responsible for paying this fee, they should make sure that when negotiating with potential partners they are aware and able to cover this fee upon successful execution of TOPA rights. If a TA or their development partner closes with acquisition, bridge, or construction financing with NHT or CFE, the success fee will be reduced by 50%.

Affordability Definition: NHT defines affordability based on the IRS’ Safe Harbor guidelines; whereby, 75% of the units in a project are occupied by residents that are at or below 80% of median income for the area, and either at least 20% of the units are occupied by residents that are at or below 50% of median income for the area, or 40% of the units are occupied by residents that are at or below 60% of the median income for the area.

Process Notes

Closing Timeline: NHT requests that an I.C.E. TOPA EMD application is submitted **two weeks before the projected date of executing the matching contract**. Below is a draft timeline of a 2-week closing.

TASK / PROCESS	WEEK 1					WEEK 2				
	M	T	W	TH	F	M	T	W	TH	F
TA Submits Loan Application and Sends Application Fee	█									
NHT Seeks Approval		█	█	█	█					
TA Confirms Origination Fee and Escrow Agent		█	█	█	█					
NHT Sends Loan Documents					█	█	█			
TA Reviews and Signs Documents						█	█	█		
NHT Wires Deposit									█	█

Closing Documents: closing documents include a promissory note, loan agreement, and an assignment of the TA's rights to the deposit over to NHT. To keep program costs low and not charge legal fees, NHT does not negotiate these documents. NHT reserves the right to charge a small fee if document modification is necessary. NHT requires wet signatures by the TA president for all three documents and the Escrow Agent needs to sign the assignment. After funding, the original signed promissory note should be mailed directly to NHT headquarters at: Institute for Community Economics, Inc., 1101 30th Street NW, Suite 100A, Washington, D.C. 20007, Attn: Loan Fund Administrator.

Escrow Agent: NHT recommends using Eisen & Rome as the Escrow Agent for the deposit; however, can work with a different agent if the seller has a strong preference. If the TA's legal team is not already in contact with Eisen & Rome, NHT is happy to provide an introduction. NHT asks the TA to coordinate directly with the Escrow Agent.

Wire Timing: Most Purchase and Sale Agreements have a 2-5 day window from execution during which the deposit is due. Please confirm with NHT what this window is as early as possible. NHT requires that all loan documents are signed and approved at least 48 hours before a wire is needed. If meeting that deadline seems unlikely, please give NHT advance warning so that NHT can endeavor to coordinate internally.

Reporting: After closing of an EMD loan, the TA must submit a status report describing its progress towards acquisition of the property every 60 days after funding of the deposit. Status reports should be sent to LoanReporting@nhtinc.org, CCing cslepin@nhtinc.org.

Further Questions: Please reach out to Cali Slepín (cslepin@nhtinc.org) on the NHT Team. NHT is also available to join a TA meeting to discuss the program and application process.