



## **County of Monterey**

# **First Time Home Buyer Program Manual**

Approved by the Monterey County Board of Supervisors  
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# COUNTY OF MONTEREY FIRST TIME HOME BUYER PROGRAM MANUAL

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# COUNTY OF MONTEREY FIRST TIME HOME BUYER PROGRAM MANUAL

## INTRODUCTION

The Monterey County First Time Homebuyer Program (FTHB Program) provides down payment assistance loans primarily to lower income families and individuals who qualify under the FTHB Program guidelines. The purpose of the Program is to facilitate access to home ownership opportunities for those households that can qualify for a primary mortgage but lack sufficient down payment funds. The County provides assistance in the form of a down payment loan. Payment on these loans is generally deferred for the term of the loan unless the home is sold, refinanced with cash out, or no longer owner occupied. Funding for the FTHB Program generally comes from State of California, Department of Housing and Community Development (HCD) grants which have specific requirements and regulations. The County's FTHB Program, as presented in this Manual, is intended to provide a process and requirements that are generally consistent with all the funding sources. However, in some instances there are different requirements for each funding source. In the event that this FTHB Program Manual is not consistent with or contain sufficient detail on specific program definitions or processes required by a funding source, the requirements and definitions of the funding source will apply. An overview of the FTHB Program process is provided in **Appendix A**.

Under the Program, the County has a Housing Loan Committee (HLC) that has authority to review loan applications and make recommendations to the Director of Economic Development on borrower qualifying and loan approvals, based on the criteria and requirements presented in the Manual. Exemptions would generally need to be approved by the Board of Supervisors with appropriate findings justifying the exception.

## DEFINITION OF FIRST TIME HOME BUYER

"First-time homebuyer" means an individual or individuals or an individual and his or her spouse who have not owned a home during the three-year period before the purchase of a home with subsidy assistance.

In addition certain individuals may also qualify under one or more of the following HCD definitions:

1. A displaced homemaker who, while a homemaker, owned a home with his or her spouse or resided in a home owned by the spouse. A displaced homemaker is an adult (18 years old or older) who has not, within the preceding two years, worked on a full-time basis as a member of the labor force for a consecutive twelve-month period or has worked primarily without remuneration to care for his or her home and family.
2. A single parent who, while married, owned a home with his or her spouse or resided in a home owned by the spouse, but is no longer married. A single parent is defined as an individual who is unmarried or is legally separated from a spouse and has one or more minor children for whom the individual has custody or joint custody or is pregnant.
3. An individual or individuals who owns or owned, as a principal residence during the three-year period before the applying to purchase a home with assistance, a dwelling unit whose structure is:
  - a. not permanently affixed to a permanent foundation in accordance with local or state regulations; or
  - b. not in compliance with state, local, or model building codes and cannot be brought into compliance with such codes for less than the cost of constructing a permanent structure.

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## FIRST-TIME HOMEBUYER PROGRAM

### DESCRIPTION OF PROGRAM

#### **Qualifying Households**

The following outlines the household qualifications for the Monterey County FTHB Program.

#### Definition

Applicants must meet the definition of a First Time Home Buyer as defined above.

#### Priority

The program is established as first-come, first-served for very-low, low-and moderate-income households, as funding is available. Specific funding sources may have additional priorities.

#### Income

Total income for all members of the household over the age of 18 may not exceed 80% of Monterey County Area Median Income (AMI) as adjusted for household size. The current median income schedule and methodology for determining income are included in **Appendix B**. Income will be calculated based on the funding source requirements, e.g. HOME funded loans will use the definitions provided by HOME such as the HUD Technical Guide for Determining Income and Allowances for HOME Program or as revised or replaced in the future. Depending on the availability of alternative funding such as BEGIN or redevelopment or other HCD funding sources, households with income between 81-120% of median may be eligible for FTHB assistance.

#### Owner Occupancy

The applicant must be seeking to purchase a home in order to occupy that home as a primary residence for the term of the loan. The purchase of homes for use as rentals, shared rentals, or for subsequent sale is not allowed

#### Asset Limits

Applicant's ownership of other real property is not permitted. Liquid assets (i.e., cash, cash equivalents, or assets readily convertible to cash) are limited to \$50,000, or the amount allowed by the funding source, if less. An applicant is expected (but not specifically required) to make a reasonable financial contribution to the purchase of a home above the required minimum of 3.5% of the purchase price if they do have substantial liquid assets. The County's Housing Loan Committee (HLC) may recommend a reasonable financial contribution to the purchase.

The value of assets and income from assets will be determined pursuant to 24 CFR 5 Subpart F and in general accordance with the HUD Technical Guide for Determining Income and Allowances for HOME Program.

#### Credit

Applicants are required to explain in writing any derogatory items on their credit record. The County may request additional information from the applicant after a review of credit history.

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## Underwriting Standards

Underwriting Standards are outlined in **Appendix C**.

## **FTHB Loan Description**

### Loan Type

Monterey County will provide assistance to eligible borrowers for the purchase of eligible properties in the form of a second loan, generally funded by HOME, BEGIN, CDBG and/or CalHOME. County FTHB loans may be in third position if used in conjunction with other County funding which is given second position, such as Neighborhood Stabilization Program (NSP) funding. In general, grants of FTHB funds will not be given. The payment and affordability provisions of the most restrictive funding source will take precedence over those included in this Manual.

### Interest Rate

The rate will be three (3%) simple interest per year, with payments deferred for thirty years.

### Loan Term

The FTHB loan will be for 30 years (360 months). Payment will be deferred until the earlier of the term of the FTHB loan or repayment of the senior loan, including refinances where there is cash out. The FTHB loan (principal and accrued interest) will be “all due and payable” at the end of the term. However, the Note shall become “all due and payable” immediately if title to the property changes, generally related to the sale of the unit (this does not apply to adding and deleting a spouse, or certain trust arrangements), or if the property is no longer the primary residence of the borrower. Where primary financing is provided by the USDA 502 program and/or Redevelopment funds, the FTHB loan term shall match the requirements of those funding sources. The FTHB loans provided under the County’s FTHB Program are generally not assumable unless the County accepts a funding source that requires it or other specific circumstances exist that benefit the goals of the Program. HOME loans are not assumable. However, HOME loans may be transferred to an heir under specific circumstances.

### Occupancy Requirement

The borrower must occupy the home as his/her principal residence for the term of the FTHB loan. The borrower is prohibited from renting the home during the term of the loan. In the event the borrower no longer occupies the home as his/her principal residence or the title to the property is transferred to another person or entity, the County’s loan will be considered to be in default and it will become immediately due and payable. The County will monitor compliance with the loan terms on an annual basis by verifying that the home is occupied by the borrower. It is important for the borrower to respond as non-compliance with the monitoring could lead to a possible loan default.

### Resale Controls and Affordability Periods

Affordability, recapture of funds and resale restrictions vary depending on the funding source. The County’s Inclusionary Housing Program and Redevelopment Program have affordability periods and resale controls where the home must be re-sold to both a qualified household and at an affordable price. The provisions of those programs will be utilized in regard to loan type, resale/recapture provisions, and affordability period, as applicable. In the event where there is “layered” financing using more than one funding source and there is a conflict of provisions, the program provisions with the most restrictive terms will apply. Following are the general requirements which are currently in place for HOME, CDBG, and CalHOME funding. FTHB loans provided by the County using these sources will be subject to the terms and provisions required at the time funding is received from these sources as specified in the State

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Standard Funding Agreements. Loans funded using HOME funds will conform to HOME program requirements and are generally not assumable.

### *HOME*

Under current HOME regulations, if the FTHB loan is provided by the County using State HOME funding, the loan is subject to specific requirements. HOME funded FTHB loans require that the buyer be income qualified as earning not more than 80% of the AMI at the time of purchase. However the home is purchased at market rate and the home can be resold by the FTHB owner at any time at market rate. Until the FTHB loan is paid off, payments are deferred. The loan is not forgiven and is due and payable with interest upon sale or if the owner no longer complies with the terms of the loan, including complying with the occupancy requirements or refinances with cash out. There are no resale restrictions tied to the HOME-funded County loan and the new buyer does not have to be income qualified for the program.

The HOME Program has requirements that apply to funds that are re-captured by the County through repayment of the FTHB loan. These requirements are linked to specific time frames. HOME calls these time frames that relate to the re-payments the “affordability period”, which varies depending upon the amount of the County’s loan. If the loan amount is less than \$15,000, the affordability period is five (5) years. Loans of \$15,000 to \$40,000 have an affordability period of ten (10) years and loans of more than \$40,000 carry an affordability period of fifteen (15) years. If the home is sold during the HOME-defined “affordability period”, the balance owed on the County’s FTHB loan is repaid to the County with interest and this repayment is considered “recapture” by the HOME Program. Recaptured funds are required to be re-loaned again by the County in compliance with HOME regulations. These regulations basically require that the re-captured funds be used to assist another income qualified household purchase another eligible property. The County can not take an administrative charge during the Home-defined “affordability period”. If the home is sold after the “affordability period”, the payoff of the County loan is considered HOME Program Income. Program Income must be used for uses allowed by HOME program and an administrative charge can be taken.

### *CDBG*

Loans made with CDBG funds do not have an affordability period. The home must be affordable to the household that is purchasing it at the time of sale based upon the required underwriting standards. Under CDBG, households must earn less than 80% of AMI to qualify, but the home is purchased at market rate. There are no resale restrictions and the home can be re-sold at market rate at any time. The loan balance, together with interest, is due at the time of resale. Reuse of the re-payment shall comply with CDBG regulations.

### *CalHOME*

Loans made with CalHome funds do not have an affordability period. The home purchased must be affordable to the household at the time of sale. Currently under CalHOME, households must earn less than 80% of AMI to qualify, therefore the home purchased must be priced to be affordable to the household based on the required underwriting standards. There are no resale restrictions and the home can be re-sold at market rate. The loan balance, together with interest, is due at the time of such re-sale. Reuse of the re-payment shall comply with CalHOME regulations.



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## Maximum Loan Amounts

The approved standard loan amounts for Monterey County are included in **Appendix D**. The HLC may approve exceptions in the loan amounts up to 10% above the standard limit on a case-by-case basis upon review of the applicant's circumstances and County funding priorities. Exceptions exceeding 10% of the standard limit may be considered but need to be approved by the Board of Supervisors. An exception may also be granted by the HLC where other sources of funding are utilized for the FTHB loan and different limits are in effect. However, in no event will the down payment assistance provided by the County exceed HOME Program subsidy limits when HOME Program funds are utilized. In compliance with HOME regulations, no additional HOME assistance will be provided during the period starting one year following the filing of the HCD Project Completion Report and lasting through the end of the applicable affordability period.

## **Qualifying Properties**

### Maximum Purchase Price

The Maximum Purchase Price of the home is calculated by the Federal Department of Housing and Urban Development (HUD) or HCD as applicable to the funding source and is adjusted on a regular basis. The Monterey County's FTHB Program will be available for the purchase of property at or below the HUD or HCD maximums as dictated by the funding source. The current maximum purchase prices are included in **Appendix E**. The HLC may establish lower purchase price limits to respond to changes in market conditions, County priorities, and availability of below market rate units.

### Eligible Properties

All Eligible Properties must be located within the limits of Monterey County. Depending on the funding source, eligible properties may be limited to those in the unincorporated areas of Monterey County. Eligible Properties include single-family homes, condominiums, and mobile/manufactured homes on permanent foundations. Income properties and rental units are not eligible.

Consistent with the HOME Modest Housing Rule, the maximum eligible housing size is three bedrooms with two full bathrooms (2 1/2 baths also comply). Exceptions to the maximum housing size may be granted on a case by case basis based on overcrowding or other extenuating circumstances. If the funding source is HOME, approvals for exceptions based upon extenuating circumstances must be approved by HCD. Homes may not have swimming pools.

## **Other Financing**

### Buyer Contributions

Buyers will be required to put a minimum of three and a half percent (3.5%) of the purchase price into an escrow account as their portion of the down payment. If the buyer has significant liquid assets in excess of that allowed by this program, the HLC may require a larger down payment in order to qualify the buyer and make a recommendation for approval of the loan. Down payment funds are permitted to be gift funds and may be used toward closing costs.

### Primary Financing

The primary loan must be a fixed-rate loan for a 30-year term with none of the following provisions: a) interest rate buy-down; b) negative amortization; c) principal increases; d) deferred interest; e) balloon payment or f) prepayment penalty. Interest rates shall be within one percent (1.0%) of the average rate for the type of loan.

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## Maximizing Primary Financing

The County desires to assist as many families as possible and therefore will provide the minimum FTHB assistance required to each qualified family. Accordingly, the County requires that buyers obtain the maximum primary loan for which they are qualified. Current income standards are shown in **Appendix B**. Underwriting Standards and additional information on determining County FTHB loan amounts can be found in **Appendix C**.

## Other County Financing

A County FTHB loan may be approved to be in third position after the primary mortgage, but only if there is and another County homebuyer assistance loan, such as those provided through the Neighborhood Stabilization Program that must be in second position due to the funding source requirements.

## Loan-to-Value Ratio

Maximum financing will generally not exceed 96.5% of the purchase price. However, financing may be up to 98% of the purchase price to include closing costs and mortgage prepayments in certain instances.

## ELIGIBILITY REVIEW AND PROCESSING PROCEDURES

### **Funding Priorities**

The First Time Homebuyer Program is available on a first-come, first-served basis for very low, low- and moderate-income households as funding is available. Funding for moderate-income households is less likely to be available from the State and Federal funding sources than funding for low-income households.

### **Marketing**

#### Federal Fair Lending Regulations

All outreach efforts will be done in accordance with state and federal fair lending regulations to assure nondiscriminatory treatment, outreach, and access to the Program. No person shall be excluded, denied benefits, or subjected to discrimination under the Program on the grounds of age, ancestry, color, creed, physical or mental disability or handicap, marital or familial status, medical condition, national origin, race, religion, gender, or sexual orientation. The County will ensure that all persons, including those qualified individuals with handicaps, have access to the Program.

#### Program Resources

At least annually, the County shall notify local realtors and lenders of the availability of FTHB Program funding. Information regarding the FTHB Program will be included on the County's website and will be available at County offices and the Monterey County Housing Resource Center (HRC). Public service announcements and press releases will be issued annually or as additional grants are received. Marketing information, application forms, and other available information such as lead based paint brochures and notices will be made available in English and Spanish and will be available on the County website. In addition, program materials will be provided to non-profit service agencies, the Housing Authority, and various citizens advisory groups to insure a wide distribution. Notices will be published in newspapers of general circulation in Spanish and English. The County will follow the affirmative fair marketing procedures contained in the Fair Housing and Equal Opportunity Procedural Guidelines.

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## Outreach

The Fair Housing Lender logo will be placed on all outreach materials. Fair housing marketing actions will be based upon a characteristic analysis comparison (census data may be used) of the Program's eligible area compared to the ethnicity of the population served by the Program (including, separately, all applications given out and those receiving assistance) and an explanation of any underserved segments of the population will be provided. This information will be used to ensure that protected classes (age, gender, ethnicity, race, and disability) are not being excluded from the Program. (For HOME, the Sponsor shall develop a Fair Housing Marketing Plan prior to project set up). Flyers or other outreach materials, in English and Spanish, will be widely distributed in the Program-eligible area and will be provided to local social service agencies as requested. The County has and will continue to sponsor homebuyer classes to help educate homebuyers about the home buying process and future responsibilities of owning a home. Persons who have participated in local homebuyer seminars will be notified about the Program.

Section 504 of the Rehabilitation Act of 1973 prohibits the exclusion of an otherwise qualified individual solely by reason of disability from participation under any program receiving Federal funds. The County shall take appropriate steps to ensure effective communication with disabled housing applicants, residents and members of the public.

## LOAN APPLICATION PROCESS

### **Program Interest**

The RHO will establish a database of interested parties who have inquired about the FTHB program. A form will be completed for each telephone call and actions taken (e.g., mailing a flyer, Program Interest Forms and/or Real Estate Agent/Lender packets) will be noted.

An applicant obtains, completes, and returns the application to the RHO. The returned form will be date-stamped and logged onto the Interest database, in order to track households interested in the Program.

### **Preliminary Screening of Buyers**

Upon receipt of the completed application, RHO staff will conduct a preliminary evaluation to determine preliminary eligibility for the Program based upon stated income, meeting the definition of FTHB status and adopted priorities. Those applicants who do not meet the basic qualifications will be removed from the FTHB database and placed onto a list of declined applicants. Applicants may reapply after six months.

Provided funding is anticipated to be available, applicants who meet the guidelines will receive a Preliminary Qualification letter explaining the step-by-step process for participation. Information packets will be provided to the applicant for their lender and real estate agent. A letter will be sent to ineligible applicants citing the basis for the determination of ineligibility for the Program. (Income determination and underwriting criteria are included in **Appendices B and C**.)

### First Time Homebuyer Re-certification

Information on preliminarily qualified applicants will be maintained in the FTHB database for a period of one year. Annual re-certification of eligibility is required. Applicants who do not comply with a re-certification request or other County inquiries requiring a written response shall be considered inactive and removed from the database.

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## **Homebuyer Education**

Preliminarily qualified applicants must complete an eight-hour homebuyer education course. The homebuyer education course must be offered by a HUD-certified counseling agency which has been approved by the County. The applicant will be required to provide a course completion certificate from a County approved course prior to any final determination on the application by the County, and the certificate shall become part of the permanent loan file. Course fees are not permitted to be paid by the homebuyer or through loan proceeds.

## **Eligibility Determination/Loan Approvals**

An application for a FTHB loan is only deemed “complete” when: a preliminarily qualified applicant has completed the homebuyer education course; an eligible property is under contract; completed lender and realtor packets plus required documentation of eligibility are returned to the County; the applicant is income qualified; and proof of pre-approval of primary financing is in place. Complete applications will be considered for approval on a first-come first-served basis by the date that the application was determined to be complete by the County. A letter will be sent to the applicant confirming that a) the application is complete; and b) whether or not funding is currently available; and c) will also describe the process for final FTHB loan approval.

## **Applicant Selection**

As the FTHB Program is offered on a first-come, first-served basis, completed applications will be processed in the order received. Determination of eligibility does not guarantee that an applicant will receive a FTHB loan. Loans will be funded on the same first-come, first-served basis, based on submission of a valid purchase offer by an eligible applicant. In the event that two valid purchase offers executed on the same date are simultaneously submitted to the County by two different qualified applicants, the County may prioritize the applications based on the County’s housing priorities as established in the most recent Monterey County Annual Housing Report. If both applications are deemed to meet County housing priorities and there are insufficient funds for all applications, then a lottery will be conducted to determine which application is funded.

## **Equal Housing Opportunity/Affirmative Marketing**

The County of Monterey is committed to providing equal access to FTHB funds, by all eligible households in the County without consideration for race, creed, religion, color, national origin, sex, disability, or other classification.

During the operation of the FTHB Program, the County will supervise the review of the loan applications and screening of applicants to insure that all Fair Housing Laws are upheld.

The County uses the Equal Housing Opportunity logo on all advertising. Copies of the Federal and State Fair Housing Laws will be made available to all interested parties. A copy of all advertising and marketing materials will be retained by the County and made available to HCD or other funding agencies during monitoring or as otherwise requested.

## **Conflict of Interest Provisions**

No member of the governing body of the locality and no other official, employee, or agent of the County government who exercises policy, decision-making functions, or responsibilities in connection with the planning and implementation of the FTHB Program shall directly or indirectly be eligible for this program, unless the application for assistance has been reviewed and approved according to applicable California Department of Housing and Community Development (HCD) or other funding source

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guidelines. This ineligibility shall continue for one year after an individual's relationship with the County ends.

When the Sponsor's program contains Federal funds, the applicable Conflict of Interest requirements of 24 CFR Section 570.611 shall be followed for CDBG assistance, and Section 92.356 of the HOME Final Rule shall be followed for HOME assistance.

### LENDER APPLICATION PROCESS

Once a household has received a Preliminary Qualification letter from the County and completed the homebuyer education process, they then work with a lender to become pre-qualified for a primary mortgage. The lender will coordinate with the County on the overall financing for purchasing a home. FTHB applicants need to contact a lender of their choice to complete the primary mortgage loan application. A list of CalHFA approved lenders will be made available by the County's Redevelopment and Housing Office (RHO) upon request. CalHFA underwriting standards which include providing verification of income, expenses, family size, and other information and requirements listed in **Appendix C, Underwriting Standards** will be utilized. The lender will have the applicant complete an Applicant Certification of Eligibility Form, which becomes part of the FTHB loan package. Credit reports will be required. The lender will then calculate the price range that the buyer can afford and complete an Initial Eligibility Review and Determination Form. The lender forwards copies of this form to the County and the real estate agent (if any).

If the Applicant's income is within FTHB Program guidelines and is sufficient to purchase available homes with down payment assistance, the Applicant will be directed to select a real estate agent to find a home, write a contract and begin the purchase process. The Applicant will provide the real estate agent with the Real Estate Agent FTHB Program Packet.

The maximum allowable overall debt-to-income ratio for the FTHB Program shall not exceed 42%. The allowable housing debt-to-income ratio shall be no less than 25% and no more than 30%. All debt shall not exceed 35%. Exceptions may be made on a case by case basis for up to 35% for housing debt and up to 40-42% for all debt.

The underwriting criteria of other funding shall prevail when those funds are matched with HOME or CDBG resources or are the sole source of FTHB assistance.

If acceptable to the primary lender, co-signer loans may be approved where the applicant is unable to qualify without a co-signer. The co-signer cannot live in the home and must sign an affidavit of non-occupancy for the residence to be purchased. They will not be included in the income limit calculation for the FTHB program, but generally must co-sign on the Note for the primary financing. For the HOME program, co-signers are specifically prohibited.

### HOME SELECTION AND PURCHASE

Once an applicant is determined to be eligible for the County's FTHB Program and has been pre-qualified for a primary mortgage, they should select a real estate agent of their choice to help them find a home within the price range they can afford and that qualifies for the County's Program. Once a home is identified, the real estate agent will generally write an Offer to Purchase agreement. The County may consider applications for FTHB assistance if the applicant and/or seller choose not to use a real estate agent or attorney, however the applicant and seller shall be required to sign an Acknowledgment for such transactions that documents that both parties understand the risks (including delays) of not having an agent or attorney assist them.

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## Acquisition Notices and Affidavit

Prior to presenting the Offer to Purchase a home, the Buyer and/or the Buyer's agent shall require the Seller to sign the following forms as appropriate. These are included in the FTHB Buyer Packet:

- **“Acquisition Notice to Seller”**: This type of form includes: (a) certification that the purchaser has no power of eminent domain and will not acquire the property if negotiations fail to result in an amicable agreement; (b) an estimate of the fair market value of the property; (c) the need for a final appraisal; and d) a statement that, if an Acquisition Notice is not given prior to acceptance of the purchase offer, the seller may withdraw from the agreement after this information is provided. **Appendix F** is a Sample for Disclosure to Seller form.
- **“Notice to Sellers of Existing Homes”**: This type of form requires that the property is subject to inspection and seller will make all necessary repairs to the property prior to the close of escrow unless the purchase is for acquisition and rehabilitation.
- **“Lead Paint Disclosure”**: All housing units built prior to January 1, 1978 will require that this form be signed by both the homebuyer and the seller.
- **“No Relocation Benefits”**: This type of form confirms that, since the sale is voluntary, the seller will not be eligible for relocation payments or other relocation assistance.
- **“Affidavit of Prior Occupancy”**: This type of form provides information regarding occupancy of the unit for four months prior to acceptance of the purchase offer, (**Appendix G.**)

## Home Protection Plan

The County recommends that the buyers purchase a Home Protection Plan which provides insurance on all interior electrical, plumbing, and appliances for the first twelve (12) months. The cost of the protection plan may be included in the FTHB loan and paid through escrow as a part of the closing costs.

## Relocation

Tenant-occupied homes are not eligible for funding under the County's FTHB Program unless the existing tenant is purchasing the unit. It is not anticipated that the implementation of the FTHB program will result in the displacement of any persons, households, or families.

## Vacant Units

Sellers must provide documentation to the County of recent owner occupancy or submit acceptable proof of vacancy for a minimum of three months if the unit was previously tenant occupied.

## Newly Developed Homes

Construction must be complete, the property must comply with all local codes and standards, and a Certificate of Completion/Occupancy must be provided prior to close of escrow. Improvement bonds shall be paid-in-full by the seller prior to or at close of escrow.

## Existing Homes

Prior to close of escrow, the property must comply with all local codes and standards. For FTHB loans, the property must comply with the County's Property Housing Quality Standards (HQS) at the time of closing, which are consistent with Federal Section 8 HQS Standards.

# COUNTY OF MONTEREY FIRST TIME HOME BUYER PROGRAM MANUAL

## INSPECTION CLEARANCES

Properties acquired with FTHB assistance must comply with all local codes and pose no health or safety issues. Required inspections include, but are not limited to: Lead-based Paint Hazard Inspection, Pest Control Inspection, and County Building Standards Inspection. The County, or its qualified property inspection consultant, will verify the reported property conditions and health and safety conditions during its inspection. If the primary lender requires inspections and repairs before making a loan on the property, the County may accept those reports in-lieu of requiring the purchaser to obtain separate reports. The County must be provided copies of these inspection reports prior to the close of escrow.

### Lead-based Paint Hazards

All housing units built prior to 1978 are subject to the requirements of this section regarding potential lead based paint (“LBP”) hazards. Such homes must undergo a visual assessment by a person who has taken HUD’s online Visual Assessment course. Typically, this assessment will be part of the home inspection process. Deteriorated paint must be stabilized using work safe methods. After paint stabilization, clearance must be obtained by a Department of Health Services (DHS) certified LBP Risk Assessor/Inspector. **Appendices H through J** address LBP issues. **Appendix H** is a Homebuyer’s Assistance Program Sample Lead-Based Paint Contract Contingency Language form.

The following requirements must be met for all applicable properties:

1. Notification:
  - a) As part of the Qualification Package provided to eligible applicants, the County will provide to the Buyer the most recent version of the EPA pamphlet “Protect Your Family from Lead in Your Home” (EPA 747-K-94-001). A signed receipt indicating the Applicant has received and read the pamphlet will be kept in the County’s homebuyer file;
  - b) A notice to any resident of a property proposed to be purchased is required following a risk assessment/inspection using form DHS 8552. This notice will be provided by the DHS-certified Risk Assessor/Inspector; and
  - c) A further notice to residents of the property is required following any lead-based paint mitigation work using Lead-based Paint Visual Assessment and Notice of Presumption and Hazard Reduction form, LBP – 1 (Appendix I). The notice will be produced by a contractor approved to perform the inspection.
2. Seller Disclosure: Prior to the finalizing of any proposed homebuyer’s obligation to purchase a pre-1978 housing unit, the HUD disclosure notice “Seller’s Lead-based Paint Disclosure” (Appendix J) must be provided by the seller to the homebuyer. Documentation of such disclosure must be provided for the County’s homebuyer file.
3. Inspections: Prior to finalizing any proposed purchase, the Lead Based Paint (LBP) Inspector shall conduct a “Visual Assessment” of all the painted surfaces in the dwelling in order to identify deteriorated paint. All deteriorated paint must be stabilized in accordance with CFR 35.1330 (a) and (b) and a Clearance concerning such stabilization is required, in accordance with CFR 35.1340.
4. Mitigation: If stabilization is required, the contractor performing the mitigation work must use appropriately trained workers. The County must receive copies of the contractor’s and workers’ appropriate proof of LBP training, as applicable to the job, in order to assure that only qualified contractors and workers are allowed to perform the mitigation. . This proof of training must be provided to the County prior to the contractor starting mitigation work. Documentation that the

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required mitigation has been satisfactorily completed shall be provided to the County for the homebuyer file.

## **Pest Control Inspection**

A licensed inspector must make a pest inspection of the property. Any work required to correct existing substandard conditions shall be completed prior to the close of escrow. For acquisition loans, the property must comply with the County's Property Housing Quality Standards (HQS) at the time of close. A copy of the inspection report must be provided to the County prior to the approval of the County's FTHB loan.

## **Building Standards**

As a minimum requirement, all homes must meet the County's Property Housing Quality Standards (HQS). The HQS are consistent with:

1. Federal Housing Quality Standards;
2. State of California, Health and Safety Code;
3. If unit was built prior to 1978, Lead-Based Paint Regulations as provided in Title X of the Housing and Community Development Act of 1992; and
4. Cost Effective Energy Conservation and Effectiveness Standards.

In addition, the following codes adopted by Monterey County must be met as they relate to repairs/replacement and rehabilitation completion in existing housing or new construction:

1. Uniform Building Code;
2. Uniform Mechanical Code;
3. Uniform Plumbing Code;
4. National Electrical Code; and
5. Uniform Housing Code.

To determine compliance with necessary local codes and health and safety standards, existing homes will be inspected by either (1) an FHA appraiser as a Lender requirement on all CalHFA/FHA loans, or (2) by the RHO Inspector or representative. The County may contract for housing inspection services and will require HQS format reports. FHA appraisals with HQS checklists may be substituted for the County inspection report.

New Homes will be built under the requirements of the Uniform Building Codes and the adopted Building Code of the County of Monterey. Newly constructed housing must also meet the requirements of the current edition of the Model Energy Code.

The Primary lender may require other inspections and repairs before making a loan on the property.



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## INSURANCE REQUIREMENTS

### Homeowners Insurance

The borrower shall secure and maintain homeowner's insurance on the property for the duration of the loan(s). This insurance must be an amount adequate to cover all encumbrances on the property. The insurer must identify the County as Loss Payee for the amount of the loan(s) made by the County under the FTHB Program. In situations of financial hardship where the owner does not have insurance at the time the loan is made, the County may include the cost of the initial premium for such insurance in the loan. An insurance certificate shall be provided to the County.

### Flood Insurance

In areas designated by HUD or the Federal Emergency Management Agency (FEMA) as a 100- year flood zone, the owner is required to secure and maintain flood insurance in an amount adequate to secure the FTHB Loan and all other encumbrances. This policy must designate the County as Loss Payee. The initial premium may be paid by the County as described above.

## LOAN POLICIES

Once the applicant has pre-qualified for both a primary mortgage and FTHB loan and has an eligible property under contract, the County will continue with the County's FTHB loan approval process. All loans must be reviewed and approved by the County's Housing Loan Committee (HLC), or in certain instances where there are unique circumstances, by the Board of Supervisors.

## HOUSING LOAN COMMITTEE

The Housing Loan Committee (HLC) consists of representatives from the Office of the County Counsel, County Revenue Division, and the Redevelopment and Housing Office (RHO). The HLC reviews and approves individual FTHB loan applications, subordination requests, as required, and default, foreclosure and modification proposals. In addition, the HLC reviews program policy issues and procedures as necessary to enhance the effectiveness of the Program, in order to make recommendations to the Board of Supervisors. The HLC meets as required to process loan applications in a timely manner. The HLC considers the following criteria in evaluating FTHB loan applications:

1. Applicant's income status and property characteristics to verify that program eligibility and loan requirements have been met.
2. Applicant's credit report, the loan to value and debt coverage ratios; appraised value, preliminary title report, and any other property related information that may be required to minimize the risk of loss to the County in the event of foreclosure.
3. If necessary, priority in approving funding approvals will follow funding source requirements and/or housing policies adopted by the Board of Supervisors in the Annual Housing Report. Otherwise, the program will operate on a first-come, first-served basis.

All applicants and borrowers will be notified in writing of the HLC decisions. The decision may be appealed via the Appeal Process described below.

## COUNTY LOAN REVIEW

Upon receipt of the accepted purchase agreement, the County will process the FTHB loan. The primary lender will forward the County a copy of: the bank application, the credit report, appraisal, title report,

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verification of income, assets and liabilities, and other documents. Upon receipt of the Lender's loan application package, the County will date-stamp it, enter it into the log, and set up a loan file for the borrower.

The RHO staff will review the package for compliance with the FTHB guidelines contained in this manual. RHO staff will complete an analysis of the application and prepare an Income Determination Worksheet. Utilizing the criteria in the Income and Underwriting Standards (**Appendices B & C**), the loan will be processed for HLC review.

During this time, the County will be working with the applicant to qualify them as FTHB borrowers. Additional documentation may be required.

An HLC staff report, which includes the amount of the proposed loan, debt-to-income ratios, analysis and recommendations will be prepared by County staff for review by the Housing Loan Committee. The loan application will be scheduled as an item for the next available HLC meeting. The agenda and standard notices for the meeting will be posted as required by County procedures and distributed.

After the HLC has taken action on the FTHB loan application, RHO staff will complete loan processing subject to final approval of primary financing by the first mortgage lender and satisfaction of other conditions of approval.

## **Approvals**

When the first mortgage lender has approved the loan, the lender will notify the County, applicant, and title company of loan approval. At this time, the buyer will deposit their portion of the down payment funds into escrow. The County will make every effort to complete the processing of the FTHB loan to accommodate an escrow to close within approximately 14 days of receipt of the approval by the first mortgage lender.

## **Denials**

In the case of denial by the HLC, written notification will be mailed to the applicant with copies to the first mortgage lender and real estate agent(s).

## **LOAN CLOSING**

Following are the specific steps associated with closing escrow for the County's FTHB loan including a description of the required loan documents; impound accounts, loan document reviews, and coordination with the escrow company.

### **Loan Documents**

The County loan will be evidenced by a Promissory Note and secured by a Deed of Trust. These documents are to be approved as to form by County Counsel.

### **Impounds**

Applicants are required to establish impound accounts through their lenders for property taxes, homeowners' insurance premiums, and flood insurance if required.

### **Procedure for Review and Execution of FTHB Loan Documents**

An appointment with RHO staff will be scheduled for loan document review. The First Time Homebuyer Program Agreement, Loan Disclosure, 3-Day Notice of Right to Rescind, Privacy Act Notice, Fair

## **COUNTY OF MONTEREY FIRST TIME HOME BUYER PROGRAM MANUAL**

Housing Notice, Promissory Note, Request for Notice of Default and Deed of Trust are reviewed with the Borrower and then signed. The Request for Notice of Default and Deed of Trust are notarized. Homeowners and flood insurance requirements are also reviewed, verified, and an acknowledgment form is signed.

The County will issue escrow instructions and forward the notarized Deed of Trust and the Request for Notice of Default to the Title Company. The County will then draw a check for the FTHB loan and forward it to the escrow company.

The Escrow Agent at the Title Company prepares documents for execution and recording. The Borrowers' Estimated Closing Statement is forwarded to the County for review and approval by RHO staff. No cash out of escrow to borrowers will be approved; and the FTHB loan amount will be reduced by the amount of any overage shown in the Estimated Closing Statement. Amended escrow instructions shall be forwarded to the Title Company, if necessary, to show the reduced amount of the FTHB loan, and the direction to return any excess funds to the County.

The Escrow Agent records all necessary documents, including the County's Deed of Trust and Request for Notice of Default. Certified copies of all escrow documents, along with the HUD-1 Settlement Statement and insurance binder, are to be sent to the County within five (5) days of close of escrow. The Title Policy is generally sent under separate cover.

### **PROGRAM COMPLAINT AND APPEAL PROCEDURE**

Complaints concerning the FTHB Program, including denials of loan applications, should be made first to RHO Housing Program Manager. If the complaint remains unresolved, the complaint or appeal shall be made in writing and filed with the Director of Economic Development. The Director will schedule a meeting with the applicant. A written response will be made within fifteen (15) working days of the meeting. Appeals of the Director of Economic Development response may be made to the Housing Loan Committee who will consider the appeal and make a recommendation to the Board of Supervisors for final consideration of any appeal. Appeals to the Board of Supervisors will be resolved as expeditiously as possible, but can still take significant time. The County is not responsible for any claimed losses resulting from processing an appeal.

### **AMENDMENTS AND EXCEPTIONS**

Amendments to these policies for HCD funded programs may be made by the County and submitted to HCD for approval. Any amendments required by state or federal law or regulations shall be implemented by the date specified by such Law or regulation without requiring further approval by the County or HCD. Adjustments to income and property valuation limits promulgated by HUD, HCD or other funding sources shall become effective upon notice to the County.

Exceptions to these guidelines, except those for which authority is granted herein to the HLC, require Monterey County Board of Supervisors and HCD approval unless required by Law or changes to State or Federal regulations or regulations of the funding source for new programs. The Guidelines shall be reviewed for conformance with current regulations at least annually or in conjunction with the acceptance of new grants or loans that provide program funding.

### **LOAN SET-UP**

Loan set up requirements vary depending on the funding source. Regulations for each funding source will be followed as they pertain to loan set up. For example, for loans funded with HOME, the County prepares the Project Set-Up Report, Funding Source Detail, Draw-Down Request and Project Completion

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Report and sends them to State HCD along with the HUD-1 and Income Worksheet. Upon receipt of the Draw-Down Request, the State will set up the request with HUD and send the County a reimbursement check within approximately sixty (60) days.

For all FTHB loans, regardless of the funding source, the loan is added to the County's Loan Log and flagged for required reviews as appropriate. The Original Promissory Note, Deed of Trust, Title Policy and insurance binder are set up in a Vault File and stored in a fireproof file cabinet. A financial file consisting of copies of the security documents, draw-down request, match documentation, loan approval and related matters is set up for the Fiscal Officer's records. The Master Loan file shall, in addition to the previously related information, contain income and asset verification and other eligibility related documentation.

## LOAN MAINTENANCE

### Period of Affordability

Affordability restrictions shall be applied as required by the funding source and shall not be more restrictive than required by the funding source.

### HOME Funded Loans

County FTHB loans funded with State HOME Funds are subject to HOME re-payment provisions. These re-payment provisions are linked to specific terms that HOME defines as affordability terms as follows:

- Loan amount is less than \$15,000, the affordability period is 5 years;
- Loan amount is between \$15,000 to \$40,000, the affordability period is 10 years; and
- Loan amount is more than \$40,000, the affordability period is 15 years.

The buyer must be eligible under HOME regulations and earn less than 80% of AMI. The home is purchased at the market rate and may be re-sold at anytime at market rate. If the home is sold during the applicable "affordability term", the balance owed on the County's FTHB loan must be repaid with interest. This repayment is considered a "recapture" by the HOME Program. Recaptured funds will be used to provide loans for new First Time Homebuyers in compliance with HOME requirements. There are no re-sale restrictions on HOME funded loans.

### CDBG, CalHOME, and BEGIN Funded Loans

The home must be purchased at an affordable price for the first sale, based on the stated income limits (80% of AMI for CDBG and CalHOME and 120% of AMI for BEGIN). However, the home may be re-sold at market value, and does not have to remain affordable.

If the house is sold, the period of affordability ends and funds are recaptured through repayment. The County's FTHB loans are not assumable.

## LOAN MANAGEMENT

Appendix K outlines loan servicing policies and procedures.

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## Monitoring

### Annual

The County will perform an annual monitoring of the properties which have been assisted with FTHB Down-Payment Assistance to determine that:

1. The qualified household is in residence, remains the primary residence of the borrower, and the unit has not been rented or sold;
2. Homeowners insurance, including flood insurance (if required) is in place that complies with the terms of the Loan documents.

During the period of the FTHB loan regardless of the term of affordability, the borrower is required to document occupancy and certify that the home is the primary residence of the household. If the borrower defaults on this owner-occupancy requirement, the FTHB loan (together with interest) is immediately due and payable.

## Subordination

- The purpose of the County's FTHB loan is to allow a household that can qualify for a mortgage, but does not have a sufficient down payment, to purchase a home. It is not intended to provide an ongoing source of funds to the household for other purposes, therefore no "cash out" is allowed. If the household wishes to take cash out of the value of the home through a refinancing, they need to re-pay the County's FTHB loan as part of that process. The County will consider approving subordination requests when the new loan results in a lower interest rate, reduces payments or otherwise improves the borrower's and the County's position and no cash is taken out. In no instance can the FTHB loan repayment schedule be compromised by the new loan.

Requests for subordination that meet the County's guidelines described above will be processed as follows:

### General Procedures

- Borrower requests Subordination Request form and submits it along with any required documentation of special circumstances to the RHO.
- Borrower supplies copies of lender's credit report, loan application, appraisal, income verification, preliminary title report, and preliminary loan closing statement to the County.
- RHO staff reviews the information and determines if the request conforms to the subordination guidelines for the type of loan. Refer to **Appendix B** for the method of determining household income.
- Subordination requests can be approved at the RHO staff level when the proposed loan-to-value ratio does not exceed 80% and no change in borrower's equity is proposed (no cash out).
- The proposed debt-to-income ratio shall not exceed 42%.
- The borrower's ability and willingness to make payments on the County's loan, in addition to the proposed loan, will be determined and considered by the HLC in reviewing the proposed subordination. The ability of the borrower to pay the FTHB loan in full will be determined by the lender and such information shall be considered by the Housing Loan Committee

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- Cash may not be taken out in any circumstance, unless the borrower repays the County's loan.
- The Housing Loan Committee reviews all requests where the proposed loan-to-value ratio exceeds 80% of the current appraised value of the property. Extreme hardship must be shown and no subordination request will be allowed that exceeds 90% of the current appraised value of the property.
- The borrower will be notified in writing of the approval/denial of the Subordination Request.
- If approved, the Subordination Agreement is prepared and forwarded to the Title Company for execution by the borrowers. The Director of Economic Development or Assistant Director is authorized to sign the documents on behalf of the County. The recorded Agreement is copied and the original document is placed in the vault file for the loan.

### Deferred Loans

- The proposed debt-to-income ratio shall not exceed 42%.
- The borrower's ability and willingness to make payments on the County's loan, in addition to the proposed loan will be determined and considered by the HLC in reviewing the proposed subordination. The ability of the borrower to pay the FTHB loan in full will be determined by the lender and such information shall be considered by the Housing Loan Committee.
- If any changes are made to the loan, Borrower will be required to sign a Modification of Promissory Note with the terms approved by the HLC and execute a Memorandum of Modification of Deed of Trust to be recorded prior to or concurrent with recordation of the Subordination Agreement.

### **Loan Repayment, Payoffs, and Recapture**

- FTHB loan repayment is deferred until the earlier of (a) 30 years, (b) non-occupancy, or (c) sale. Borrowers may make voluntary payments of principal and interest without penalty on the FTHB loan.
- Any payments are first applied to accrued interest.
- The remaining payment amount reduces the principal balance.
- Borrowers may request a payment history with current principal balance by contacting the Housing Office.

### Loan Payoff Procedures

- Borrower or borrower's representative requests payoff demand from RHO staff.
- RHO Staff completes a Demand Calculation Form.
- RHO Staff reviews loan files to confirm number of loans, terms, balances and regulatory agreements.
- RHO Staff completes a Demand for the applicable Title Company and sends via fax and mail.

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- Upon receipt of payment in full by RHO, a reconveyance is prepared and forwarded to County Recorder's Office for recording.
- The RHO makes copies of the recorded reconveyance for the file and forwards the original to the owner.

### Recaptured Funds

Borrowers are permitted to payoff their loans at any time. HOME loans funds that are repaid before expiration of the affordability period are recaptured.

Recaptured funds may not be used for FTHB Program administration.

### Sale of other FTHB assisted property

#### *Inclusionary Units/Redevelopment Assisted Units*

Units developed under the County's Inclusionary Ordinance and Redevelopment Program have affordability restrictions with specific terms. Units receiving FTHB loans will have to follow the re-sale provisions of the County's Inclusionary Administrative Manual and recorded Inclusionary Housing Agreement, as applicable, for Inclusionary Units and State Redevelopment law provisions for Redevelopment units, regardless of any repayment of FTHB funds.

#### *Re-sale of Restricted Units*

FTHB Loans provided in conjunction with non-profit housing developments may have project specific re-sale restrictions as approved by the HLC or as required by approved sources of funding. Those resale restrictions prevail.

## DEFAULT AND FORECLOSURE

Foreclosure actions by the County must be reviewed and approved by the Housing Loan Committee.

### **County as Junior Lien holder**

It is the County's policy to prepare and record a "Request for Notice" on all senior liens placed on properties financed by a loan or loans through the FTHB program, with notification to come to the RHO Housing Program Manager.

This document requires any senior lien holder to notify the County of the initiation (recording of "Notice of Default") of a foreclosure. The junior lien holder may generally cancel the foreclosure proceedings by "reinstating" the senior lien holder. The reinstatement amount must be obtained by contacting the senior lien holder. This amount will include all delinquent payments, late charges, advances (fire insurance premiums, property taxes, property protection costs, etc.), and foreclosure costs (fees for legal counsel, recordings, certified mail, etc.).

Once the County has the information on the reinstatement amount, RHO staff must then determine if it is cost effective to protect the County's position by: reinstating the senior lien holder; by keeping the first loan current by submitting a monthly payment thereafter; or by foreclosing on the property. There are costs associated with all of these actions, including the costs of foreclosure; protection of the property against vandalism; and paying marketing costs (readying the home for marketing, paying for yard maintenance, and/or paying a real estate brokerage sales commission).

# COUNTY OF MONTEREY FIRST TIME HOME BUYER PROGRAM MANUAL

## Default on Loan Repayment

A borrower can cause a default on the County FTHB loan by, among other things, not occupying the property as a primary residence or by defaulting on the first mortgage. A borrower can also be in default on a FTHB loan if repayment is not made at the end of the 30-year deferral period. The County may issue a Demand for Repayment in situations where the Borrower has breached the terms of the Promissory Note, Deed of Trust or First Time Homebuyer Agreement. Examples include:

- failure to maintain adequate insurance coverage;
- no longer occupying the property as primary residence; or
- failure to document occupancy, sale, transfer or assignment of the property or misrepresentation or fraud for the purpose of obtaining the FTHB loan.

When the Borrower is in default on the County FTHB loan, active efforts will begin. Attempts will be made to assist the homeowner in complying with the terms of the loan.

These attempts will be conveyed in an increasingly urgent manner until a default has lasted for 60 days in arrears, at which time the County may consider foreclosure. An appointment will be scheduled with the borrower to discuss the reason for non-compliance. If due to job loss, reduction in income or other financial hardship, the Housing Loan Committee will consider temporary forbearance or modification of the loan terms. County staff will consider the following factors before initiating foreclosure.

- Determine if the borrower is willing to refinance with a commercial lender or to sell the property to pay off the County FTHB loan.
- Review the loan balance; if the balance is under \$5,000, the expense to foreclose may exceed the loan amount.
- Determine if the sale of the home “as is” will be sufficient to cover the principal balance owing, necessary advances (maintain fire insurance, maintain or bring current delinquent property taxes, monthly yard maintenance, periodic inspections of property to prevent vandalism, etc.), foreclosure costs, and marketing costs.

If the balance is substantial and all of the above factors have been considered, the County may opt to initiate foreclosure. The owner must receive, by certified mail, a thirty-day notification of foreclosure initiation. This notification must include the exact amount of funds to be remitted to the County to prevent foreclosure.

At the end of thirty days, the County will contact a reputable foreclosure service or local title company to prepare and record foreclosure documents and make all necessary notifications to the owner and junior lien holders. The service will advise the County of all required documentation to initiate foreclosure and funds required from the owner to cancel foreclosure proceedings.

When the foreclosure process is completed, and the property has “reverted to the beneficiary” at the foreclosure sale, the County would then contact a real estate broker to market the home. Short sales must be approved by HCD.



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## APPENDIX A: Monterey County First Time Homebuyer Process

1. Applicant contacts County to be added to program interest list. County mails preliminary application form to be returned.
2. When application form is returned, County makes preliminary determination on program eligibility and priority status. Letter explaining eligibility determination and step-by-step participation process is sent to applicant.
3. Applicant completes a homebuyer education class and forwards certificate of completion to the County. (Classes taken before application are also acceptable.)
4. Applicant chooses a lender to assist with securing primary financing on a home purchase. Applicant submits lender contact info to the County. County sends lender an information packet.
  - a. Applicant completes an Applicant Certification of Eligibility Form.
  - b. Lender completes Initial Eligibility Review and Determination Form.
  - c. Lender orders credit report.
  - d. Applicant is pre-qualified by lender.
5. Applicant chooses a real estate agent to help him/her find a home. Applicant submits real estate agent contact info to the County. County sends real estate agent an information packet.
6. Applicant finds a home that is within the maximum price limits identified by the County and meets the other requirements of the County's program guidelines (e.g., modest housing rule).
7. Applicant and real estate agent submit an offer on the selected home. Offer must be contingent on receiving funds from the County. As part of the offer process, applicant's real estate agent works with seller to complete County-required forms.
8. Applicant or his/her lender submits a complete application package, including executed purchase agreement, proof of financing, and all required lender and real estate agent information.
9. County processes the application, working with the applicant, real estate agent, and lender to obtain any additional information necessary.
  - a. County will conduct third-party verification of all income and assets.
  - b. County conducts an environmental review of the property.
  - c. County will inspect the property for compliance with lead-based paint hazards and building codes. County will also require pest inspection.
  - d. County staff prepares a summary report to forward to the Housing Loan Committee.

## COUNTY OF MONTEREY FIRST TIME HOME BUYER PROGRAM MANUAL

10. The Housing Loan Committee considers the application, comparing the applicant's information to the County's underwriting standards and determining whether the loan is an acceptable risk for the County.
11. Notice of the Housing Loan Committee's decision is provided in writing to the applicant.
12. If loan is approved, County prepares loan documents. Applicant signs loan documents and they are forwarded to escrow. Loan funds are wired or sent by check to escrow.
13. As a part of the loan closing, applicant ensures that all applicable County insurance requirements will be met. Impounds for property taxes and insurance are required.
14. Loan documents and a final settlement statement are forwarded by the escrow agent to the County. Loan documents requiring recordation are recorded by the escrow agent and returned to the County.
15. Applicant moves into his/her new home.

# COUNTY OF MONTEREY FIRST TIME HOME BUYER PROGRAM MANUAL

## Appendix B: Income & Underwriting Standards

### INCOME DETERMINATION AND INCOME LIMITS

#### Determining Income Eligibility

Annual income includes the gross amount of income of all adult household members anticipated to be received during the coming 12 months. The current employment and income situation of the family should be used to determine the anticipated annual income. When determining the household size, the following are not counted as household members: co-signers, foster children, live-in aides, unborn children, and children being pursued for legal custody or adoption who are not currently living in the household. Once the annual household income has been established, it must be compared to the most recent HUD area income limits. **In no event will HOME, CalHOME or CDBG Program assistance be provided to households whose incomes exceed HUD income limits for 80% of the median income of the Monterey County Area as adjusted for household size.** Depending on the availability of BEGIN, Redevelopment, Inclusionary, Joe Serna Farm Worker Housing Grant or other funding that has higher limits (including exceptions to CDBG funding), households with incomes between 80-120% of median may be eligible for FTHB Program loans.

All persons in residence are considered household members for purposes of income eligibility unless specifically excluded in the paragraph above. Listed below are definitions of income.

### 24 CFR Part 5 ANNUAL INCOME INCLUSIONS AND EXCLUSIONS

#### Part 5 Inclusions

This table presents the Part 5 income inclusions as stated in the Code of Federal regulations.

This table presents the Part 5 income inclusions as stated in the Code of Federal regulations.

General Category	Statement from 24 CFR 5.609 paragraph (b) (April 1, 2004)
1. Income from wages, salaries, tips, etc.	The full amount, before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips and bonuses, and other compensation for personal services.
2. Business Income	The net income from the operation of a business or profession. Expenditures for business expansion or amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation of assets used in a business or profession may be deducted, based on straight-line depreciation, as provided in Internal Revenue Service regulations. Any withdrawal of cash or assets from the operation of a business or profession will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested in the operation by the family.
3. Interest & Dividend Income	Interest, dividends, and other net income of any kind from real or personal property. Expenditures for amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation is permitted only as authorized in number 2 (above). Any withdrawal of cash or assets from an investment will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested by the family. Where the family has net family assets in excess of \$5,000, annual income shall include the greater of the actual income derived from all net family assets or a percentage of the value of such assets based on the current passbook savings rate, as determined by HUD.
4. Retirement & Insurance Income	The full amount of periodic amounts received from Social Security, annuities, insurance policies, retirement funds, pensions, disability or death benefits, and other similar types of periodic receipts, including a lump-sum amount or prospective monthly amounts for the delayed start of a periodic amount (except as provided in number 14 of Income Exclusions).
5. Unemployment & Disability Income	Payments in lieu of earnings, such as unemployment and disability compensation, worker's compensation, and severance pay (except as provided in number 3 of Income Exclusions).
6. Welfare	Welfare Assistance. Welfare assistance payments made under the Temporary Assistance for Needy Families

# COUNTY OF MONTEREY FIRST TIME HOME BUYER PROGRAM MANUAL

General Category	Statement from 24 CFR 5.609 paragraph (b) (April 1, 2004)
Assistance	<p>(TANF) program are included in annual income:</p> <ul style="list-style-type: none"> <li>▶ Qualify as assistance under the TANF program definition at 45 CFR 260.31; and</li> <li>▶ Are otherwise excluded from the calculation of annual income per 24 CFR 5.609(c).</li> </ul> <p>If the welfare assistance payment includes an amount specifically designated for shelter and utilities that is subject to adjustment by the welfare assistance agency in accordance with the actual cost of shelter and utilities, the amount of welfare assistance income to be included as income shall consist of:</p> <ul style="list-style-type: none"> <li>▶ the amount of the allowance or grant exclusive of the amount specifically designated for shelter or utilities; <b>plus</b></li> <li>▶ the maximum amount that the welfare assistance agency could in fact allow the family for shelter and utilities. If the family's welfare assistance is reduced from the standard of need by applying a percentage, the amount calculated under 24 CFR 5.609 shall be the amount resulting from one application of the percentage.</li> </ul>
7. Alimony, Child Support, & Gift Income	Periodic and determinable allowances, such as alimony and child support payments, and regular contributions or gifts received from organizations or from persons not residing in the dwelling.
8. Armed Forces Income	All regular pay, special day and allowances of a member of the Armed Forces (except as provided in number 7 of Income Exclusions).

## Part 5 exclusions

This table presents the Part 5 income exclusions as stated in the Code of Federal Regulations.

General Category	Statement from 24 CFR 5.609 paragraph (c) (April 1, 2004)
1. Income of Children	Income from employment of children (including foster children) under the age of 18 years.
2. Foster Care Payments	Payments received for the care of foster children or foster adults (usually persons with disabilities, unrelated to the tenant family, who are unable to live alone).
3. Inheritance and Insurance Income	Lump-sum additions to family assets, such as inheritances, insurance payments (including payments under health and accident insurance and worker's compensation), capital gains and settlement for personal or property losses (except as provided in number 5 of Income Inclusions).
4. Medical Expense Reimbursements	Amounts received by the family that are specifically for, or in reimbursement of, the cost of medical expenses for any family member.
5. Income of Live-in Aides	Income of a live-in aide (as defined in 24 CFR 5.403).
6. Disabled Persons	Certain increases in income of a disabled member of qualified families residing in HOME-assisted housing or receiving HOME tenant-based rental assistance (24 CFR 5.671(a)).
7. Student Financial Aid	The full amount of student financial assistance paid directly to the student or to the educational institution.
8. Armed Forces Hostile Fire Pay	The special pay to a family member serving in the Armed Forces who is exposed to hostile fire.
9. Self-Sufficiency Program Income	<ul style="list-style-type: none"> <li>a. Amounts received under training programs funded by HUD.</li> <li>b. Amounts received by a person with a disability that are disregarded for a limited time for purposes of Supplemental Security Income eligibility and benefits because they are set aside for use under a Plan to Attain Self-Sufficiency (PASS).</li> <li>c. Amounts received by a participant in other publicly assisted programs that are specifically for, or in reimbursement of, out-of-pocket expenses incurred (special equipment, clothing, transportation, childcare, etc.) and which are made solely to allow participation in a specific program.</li> <li>d. Amounts received under a resident service stipend. A resident service stipend is a modest amount (not</li> </ul>

# COUNTY OF MONTEREY FIRST TIME HOME BUYER PROGRAM MANUAL

General Category	Statement from 24 CFR 5.609 paragraph (c) (April 1, 2004)
	<p>to exceed \$200 per month) received by a resident for performing a service for the PHA or owner, on a part-time basis, that enhances the quality of life in the development. Such services may include, but are not limited to, fire patrol, hall monitoring, lawn maintenance, resident initiatives coordination, and serving as a member of the PHA's governing board. No resident may receive more than one such stipend during the same period of time.</p> <p>e. Incremental earnings and benefits resulting to any family member from participation in qualifying state or local employment training programs (including training not affiliated with a local government) and training of a family member as resident management staff. Amounts excluded by this provision must be received under employment training programs with clearly defined goals and objectives, and are excluded only for the period during which the family member participates in the employment training program.</p>
10. Gifts	Temporary, nonrecurring, or sporadic income (including gifts).
11. Reparations	Reparation payments paid by a foreign government pursuant to claims filed under the laws of that government by persons who were persecuted during the Nazi era.
12. Income from Full-time Students	Earnings in excess of \$480 for each full-time student 18 years old or older (excluding the head of household or spouse).
13. Adoption Assistance Payments	Adoption assistance payments in excess of \$480 per adopted child.
14. Social Security & SSI Income	Deferred periodic amounts from SSI and Social Security benefits that are received in a lump sum amount or in prospective monthly amounts.
15. Property Tax Refunds	Amounts received by the family in the form of refunds or rebates under state or local law for property taxes paid on the dwelling unit.
16. Home Care Assistance	Amounts paid by a state agency to a family with a member who has a developmental disability and is living at home to offset the cost of services and equipment needed to keep this developmentally disabled family member at home.
17. Other Federal Exclusions	<p>Amounts specifically excluded by any other federal statute from consideration as income for purposes of determining eligibility or benefits under a category of assistance programs that includes assistance under any program to which the exclusions of 24 CFR 5.609(c) apply, including:</p> <ul style="list-style-type: none"> <li>▶ The value of the allotment made under the Food Stamp Act of 1977;</li> <li>▶ Payments received under the Domestic Volunteer Service Act of 1973 (employment through VISTA, Retired Senior Volunteer Program, Foster Grandparents Program, youthful offender incarceration alternatives, senior companions);</li> <li>▶ Payments received under the Alaskan Native Claims Settlement Act;</li> <li>▶ Income derived from the disposition of funds to the Grand River Band of Ottawa Indians;</li> <li>▶ Income derived from certain sub-marginal land of the United States that is held in trust for certain Indian tribes;</li> <li>▶ Payments or allowances made under the Department of Health and Human Services' Low-Income Home Energy Assistance Program;</li> <li>▶ Payments received under the Maine Indian Claims Settlement Act of 1980 ( 25 U.S.C. 1721);</li> <li>▶ The first \$2,000 of per capita shares received from judgment funds awarded by the Indian Claims Commission or the U.S. Claims Court and the interests of individual Indians in trust or restricted lands, including the first \$2,000 per year of income received by individual Indians from funds derived from interests held in such trust or restricted lands;</li> <li>▶ Amounts of scholarships funded under Title IV of the Higher Education Act of 1965, including awards under the Federal work study program or under the Bureau of Indian Affairs student assistance programs;</li> <li>▶ Payments received from programs funded under Title V of the Older Americans Act of 1985 (Green Thumb, Senior Aides, Older-American Community Service Employment Program);</li> </ul>

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General Category	Statement from 24 CFR 5.609 paragraph (c) (April 1, 2004)
	<ul style="list-style-type: none"> <li>▶ Payments received on or after January 1, 1989, from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in the In Re Agent Orange product liability litigation, M.D.L. No. 381 (E.D.N.Y.);</li> <li>▶ Earned income tax credit refund payments received on or after January 1, 1991, including advanced earned income credit payments;</li> <li>▶ The value of any child care provided or arranged (or any amount received as payment for such care or reimbursement for costs incurred for such care) under the Child Care and Development Block Grant Act of 1990;</li> <li>▶ Payments received under programs funded in whole or in part under the Job Training Partnership Act (employment and training programs for Native Americans and migrant and seasonal farm workers, Job Corps, veterans employment programs, state job training programs and career intern programs, AmeriCorps);</li> <li>▶ Payments by the Indian Claims Commission to the Confederated Tribes and Bands of Yakima Indian Nation or the Apache Tribe of Mescalero Reservation;</li> <li>▶ Allowances, earnings, and payments to AmeriCorps participants under the National and Community Service Act of 1990;</li> <li>▶ Any allowance paid under the provisions of 38 U.S.C. 1805 to a child suffering from spina bifida who is the child of a Vietnam veteran;</li> <li>▶ Any amount of crime victim compensation (under the Victims of Crime Act) received through crime victim assistance (or payment or reimbursement of the cost of such assistance) as determined under the Victims of Crime Act because of the commission of a crime against the applicant under the Victims of Crime Act; and</li> <li>▶ Allowances, earnings, and payments to individuals participating in programs under the Workforce Investment Act of 1998.</li> </ul>

## **Income Verification Requirements**

The primary lender participating in the County’s FTHB Program is responsible for obtaining income verification and forwarding such information to the County with the Lender packet. The Housing Staff will review the packet for completeness and request additional documentation if necessary, to clarify actual and projected income for the household.

The two procedures for verifying income are as follows:

- **Third-Party Verification.** Through this method, the lender contacts outside sources in writing to provide information. Before information can be obtained from the third-party entity, a written release must be requested from the household. The forms for these requests are listed below:
  - Verification of Employment;
  - Verification of Social Security;
  - Verification of Pension and Annuities;
  - Verification of Veterans Benefits;
  - Verification of Unemployment Benefits; and
  - Verification of Public Assistance.
- **Review documentation provided by the applicants, including the following:**
  - Current 30-day consecutive pay stubs;

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- Last three years of Federal Tax returns;
- Last two years of W2's;
- Last two months of bank statements;
- If self employed, last two years of Schedule C of Federal tax returns and a current profit and loss statement;
- Divorce documents showing child support and alimony received; and
- Benefits statements (pension, Social Security, etc.).

### **Income Worksheet**

The Housing Analyst prepares an Income Worksheet using household income as projected for the next twelve months.

When assessing the information it is important to note whether the employee is paid hourly, weekly, every two weeks, twice a month, or monthly, and note average overtime pay. It is also important to determine if overtime is continuous or sporadic. Documentation must be included in the Borrower's file.

In cases where the net assets are less than \$5,000, use actual income from the assets. If net assets are in excess of \$5,000, use the higher of income generated by those assets or use the current passbook savings rate.

### **Maximum Income Limits**

HCD and HUD issue annual income limits usually in the early spring of each year. Applicants with incomes at or below 80% of median as adjusted by household size are eligible for HOME, CalHOME, and CDBG Program funded loans. Households with income between 80-120% of median may be eligible for FTHB assistance if alternative funding is available with these income limits.

Income limits are available on the HCD website at [www.hcd.ca.gov](http://www.hcd.ca.gov).

# COUNTY OF MONTEREY FIRST TIME HOME BUYER PROGRAM MANUAL

## APPENDIX C: UNDERWRITING STANDARDS

### CREDIT HISTORY

Past credit history and credit patterns are verified by the primary lender and a copy of the report is included in the loan package for the County.

- Previous rental or mortgage payment history covering the most recent twelve month period must be documented if not included in the credit report.
- Collections & Judgments: Court ordered judgments must be paid off prior to close of escrow unless a payment agreement is in effect and documentation of acceptable payments is made available.
  - In the case of bankruptcy:
    - Chapter 7 Liquidation – At least two years must have passed since the bankruptcy was discharged.
    - Chapter 13 – A borrower paying off debts under Chapter 13 may be qualified if the Bankruptcy Court approves both the primary loan and FTHB additional debt and monthly payments.

### **Borrowers without Credit History**

Utility payment records, insurance payments, non-commercial loan receipts and other documentation may be accepted when a borrower's Credit Report does not reflect adequate credit history.

### **Borrowers with Poor Credit History**

- In general, poor credit history more than two years in the past will not affect the credit review for the County's FTHB Program review. More recent derogatory information will require written explanation from the borrower that is consistent with other credit information.
- Poor Credit: Borrowers with continuous slow payments and delinquent accounts within the last two years will not be eligible unless a co-signer with a compensating excellent credit history is willing to co-sign on the primary promissory note. The co-signer must sign the loan application and provide documentation of income, assets and credit history. The co-signer cannot live in the home to be purchased and must sign an affidavit of non-occupancy. The HOME program does not allow co-signers.

### **Previous Mortgage Foreclosure**

If a foreclosure on a proposed borrower's prior home meets the following criteria, then the foreclosure will not adversely affect eligibility under the FTHB Underwriting Standards:

- foreclosure occurred more than 3 years prior to application;
- was the result of extenuating circumstances beyond the borrower's control; and
- the borrower has since established good credit.



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## **Primary Lender Credit Disqualification**

The primary lender may disqualify applicants under additional credit criteria such as credit scores, delinquent state or federal debts, Credit Alert Interactive Voice Response System records, or other factors that are part of the primary lender's or CalHFA's Underwriting Standards. Disqualification by the primary lender will result in automatic disqualification for a FTHB loan, although someone who has been disqualified under those conditions may seek to qualify again through a new application.

## **STABILITY OF INCOME**

Borrowers must demonstrate at least two years of income stability unless there are extenuating circumstances such as recent entry into the job market after college or trade school, staying out of the workforce to care for children or other family members or job changes within the same industry or line of work.

## **Self-Employed Borrowers**

Income from self-employment is considered stable if the borrower has been self-employed for two years with a 25% or greater interest in a business and is able to provide tax returns and a profit and loss statement to document income and expenses.

## **ASSETS AND GIFT FOR DOWN PAYMENT & CLOSING COSTS**

### **Required FTHB Down payment**

A minimum 3.5% down payment of the purchase price is required for the FTHB loan unless the borrower meets all other criteria and demonstrates extreme financial hardship. Exceptions may be granted for special terms of other subsidized financing, such as sweat equity, or buyer investment in property repairs prior to close of escrow. CalHFA down payment assistance loans, in particular, are encouraged.

- An outright gift of funds to the borrower is acceptable for the down payment if the donor is a relative, employer, charitable organization, government or quasi-governmental agency or friend not otherwise party to the sales transaction.
- Loans for the required down payment from collateralized sources, such as retirement funds, life insurance, and deposited funds, are allowable as long as repayment of such loans may be provided by liquidating the asset which is the collateral.
- The primary lender may require additional documentation and additional funds beyond the County's requirements.
- The reason for the additional borrower funds must be provided to the County in writing with copies of the lender's or CalHFA's Standard Underwriting Criteria to support the request for additional funds.

## **DEBT RATIOS**

### **Housing Debt-to-Income Ratio**

In general, the total of principal and interest payments, real estate taxes, hazard insurance premiums and homeowner's association dues should be no less than 25% and no more than 30% of the household's income. Higher ratios, not to exceed 35% may be acceptable if the household has a co-signer, low recurring expenses, or other compensating factors described in the next section. HOME does not allow a co-signer.

# COUNTY OF MONTEREY FIRST TIME HOME BUYER PROGRAM MANUAL

## **Total Debt-to-Income Ratio**

- In addition to housing costs, the following types of liabilities are to be included in the calculation of total debt-to-income: installment loans, revolving charge accounts, child support, alimony and any other debt lasting more than 12 months.
- Revolving accounts are calculated at 5 per cent of the current balance unless the account shows a specific minimum payment.
- Contingent liabilities are included unless a 12 to 24 month history demonstrating payment by another party is provided.
- The total debt-to-income ratio should not exceed 44% unless there are substantial compensating factors. THE HOME limit is 42%.

## **OTHER COMPENSATING FACTORS**

### **Non-Taxable Income**

Income that is not subject to federal taxes may be considered as a compensating factor when a borrower's credit history or income stability is otherwise less than desired. For underwriting purposes, an adjustment of 125% is acceptable.

### **Housing Expenses**

Borrower has successfully paid housing expenses, nearly equal to, equal to, or greater than the proposed monthly expense over the last 12 months.

### **Down Payment**

Borrower makes a large down payment toward purchase price plus closing costs.

### **Asset Reserves**

Borrower has substantial liquid or readily converted asset reserves after closing and has contributed at least 3.5% of total assets towards the purchase of the property.

### **Co-signer**

Any co-signer must have excellent credit history, substantial assets, and/or low debt-to-income ratios. Co-signer's contribution to the borrower's housing expense can be factored into the housing expense ratio with written documentation of the planned contribution including the period for which the co-signer will contribute. HOME does not allow a co-signer.

### **Debt Pay Down**

The borrower can agree to pay down existing debts in order to lower the total debt-to-income ratio and submits verification prior to loan closing.

### **Energy Efficient Homes**

Higher housing debt-to-income ratios are allowed for homes built after April 1994 under the Model Energy Codes or otherwise determined to be energy efficient by the FHA, a home energy rating system or energy consultant (generally, up to 2%). These higher ratios may not be used if a high efficiency utility allowance is used.

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## DETERMINING FTHB LOAN AMOUNT

In coordination with reviewing the entire loan package, the RHO staff will analyze the proposed loan utilizing the underwriting criteria described in previous sections above and:

- Review primary lenders Mortgage Credit Underwriting Worksheet to determine if the lender has maximized the first mortgage amount.
- Review the projected income including income from assets and complete the Income Worksheet using the appropriate funding source definition of income, e.g. the HOME Income Calculation Guide.
- Calculate debt-to-income ratios based on documentation in the Credit Report, loan application, and Lender's Estimated Borrower's Statement. Confirm principal and interest payments, estimated property tax, and hazard insurance premiums. For HOME loans, these ratios are based upon the HOME Income Calculation Guide.
- Confirm earnest money deposit, final purchase price, estimated closing costs, and funds available from the borrower for down payment.
- Contact borrower to discuss indicated potential assistance from employers, family members, and co-signers.
- Review compensating factors to determine if the borrower meets criteria for higher debt-to-income ratios.
- Calculate maximum loan based on total acquisition costs, funds from borrower for down payment, and standard maximum ratios.
- Ensure that the term of program loan is less than or equal to the primary loan.
- Verify that the total loan-to-value ratio of all loans is no more than 96.5%. For HOME loans, the ratio is based upon the HOME Income Calculation Guide.
- Calculate maximum loan based on higher ratios if compensating factors are significant. For BEGIN assisted units, the combined indebtedness shall not exceed 100 percent of the sales price plus a maximum of up to 5 percent of the sales price to cover actual closing costs.
- Prepare a staff report for the Housing Loan Committee detailing the underwriting process and presenting standard and exception loan alternatives.

# COUNTY OF MONTEREY FIRST TIME HOME BUYER PROGRAM MANUAL

## APPENDIX D: LOAN LIMITS

HOME publishes annual maximum subsidy limits by unit size annually, called the Section 221(d)(3) limits. The maximum subsidy as of November 28, 2011 ranged from \$128,698 for a studio unit to \$254,753 for a four-bedroom unit. More detailed information is available at [www.hcd.ca.gov](http://www.hcd.ca.gov). Updates to the Section 221(d)(3) subsidy limits will be considered a part of these guidelines.

The Monterey County First Time Homebuyer Loan Program (FTHB) is intended to provide the minimum gap financing to enable a household to qualify to purchase a home in the unincorporated areas of the County. The actual FTHB loan amount is determined based on underwriting criteria in **Appendix B**.

Monterey County has established maximum loan limits for each County sub-area, as outlined below. Loans shall not exceed the lesser of the maximum limit or 20% of the purchase price and, in no case, shall exceed limits prescribed by other funding sources.

### MONTEREY COUNTY MAXIMUM LOAN AMOUNT (BY SUB-AREA), 2011

<b>Sub-Area</b>	<b>20% of Maximum Purchase Price</b>	<b>Section 221(d)(3) Limit<sup>1</sup></b>	<b>Maximum Loan Amount</b>
North County	\$59,040	\$232,080	<b>\$59,040</b>
South County	\$38,400	\$232,080	<b>\$38,400</b>
Salinas Area	\$47,760	\$232,080	<b>\$47,760</b>
Peninsula	\$170,400	\$232,080	<b>\$72,558</b>
Marina/Seaside/Ft. Ord	\$75,600	\$232,080	<b>\$72,558</b>

<sup>1</sup> Based upon a 3-bedroom home

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## APPENDIX E: MAXIMUM PURCHASE PRICE

HOME publishes annual maximum purchase price limits by unit size annually, called the Section 203(b) limits. The maximum purchase price as of January 1, 2011 was \$362,790. Updates to the Section 203(b) maximum purchase price limits will be considered a part of these guidelines.

The County also sets maximum purchase price limits, based on median home sales prices in areas of the County. These maximum purchase price limits are updated periodically.

The maximum purchase price limit is the lesser of the HOME Section 203(b) maximum or 120% of median price of all units in the sub-area for the previous year.

### MONTEREY COUNTY MAXIMUM PURCHASE PRICE (BY SUB-AREA), 2011

<b>Sub-Area</b>	<b>120% of Median Home Price</b>	<b>Section 203(b) Limit</b>	<b>Maximum Purchase Price</b>
North County	\$295,200	\$362,790	<b>\$295,200</b>
South County	\$192,000	\$362,790	<b>\$192,000</b>
Salinas Area	\$238,800	\$362,790	<b>\$238,800</b>
Peninsula	\$852,000	\$362,790	<b>\$362,790</b>
Marina/Seaside/Ft. Ord	\$378,000	\$362,790	<b>\$362,790</b>

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APPENDIX F: SAMPLE DISCLOSURES TO SELLER WITH VOLUNTARY, ARM'S LENGTH, PURCHASE OFFER

Declaration

This is to inform you that \_\_\_\_\_ ("Buyer") would like to purchase the property, located at \_\_\_\_\_, if a satisfactory agreement can be reached. We are prepared to pay \$ \_\_\_\_\_ for a clear title to the property under conditions described in the attached proposed contract of sale.

Because Federal funds may be used in the purchase, we are required to disclose to you the following information:

- 1. The sale is voluntary. If you do not wish to sell, Buyer, thru the agency, \_\_\_\_\_ (name of agency/Sponsor), will not acquire your property. Buyer does not have the power of eminent domain to acquire your property by condemnation (i.e. eminent domain) and the \_\_\_\_\_ (agency/Sponsor) will not use the power of eminent domain to acquire the property.
2. The estimated fair market value of the property is \$ \_\_\_\_\_ and was estimated by \_\_\_\_\_, to be finally determined by a professional appraiser prior to close of escrow.

Since the purchase would be a voluntary, arms length, transaction, you would not be eligible for relocation payments or other relocation assistance under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA), or any other law or regulation. Also, as indicated in the contract of sale, this offer is made on the condition that no tenant will be permitted to occupy the property before the sale is completed.

Again, please understand that if you do not wish to sell your property, we will take no further action to acquire it. If you are willing to sell the property under the conditions described in the attached contract of sale, please sign the contract and return it to us at: \_\_\_\_\_ . If you have any questions about this matter, please contact \_\_\_\_\_ at \_\_\_\_\_ .

Sincerely,

\_\_\_\_\_
Title

\_\_\_\_\_
Buyer

\_\_\_\_\_
Date

\_\_\_\_\_
Buyer

\_\_\_\_\_
Date

Form continues on next page with Seller's Acknowledgment

**APPENDIX F: SAMPLE DISCLOSURES TO SELLER WITH VOLUNTARY, ARM'S LENGTH, PURCHASE OFFER (PAGE 2)**

**Acknowledgement**

As the Seller, I/we understand that \_\_\_\_\_ (inspector's name or business) will inspect the property for health and safety deficiencies. I/we also understand that public funds may be involved in this transaction and, as such, if the property was built before 1978, a lead-based paint disclosure must be signed by both the buyer and seller, and that a Visual Assessment will be conducted to determine the presence of deteriorated paint.

As the Seller, I/we understand that any agreement I make with Buyer to sell the property is completely voluntary. Also as the Seller, I/we understand that under Monterey County's program, the property must be currently owner-occupied, vacant for four months at the time of submission of purchase offer, new (never occupied), or where the renter is purchasing the unit. I/we hereby certify that the property is:

Vacant at least 4 months;  Owner-occupied;  New; or  Being Purchased by Renter Occupant

*I/we hereby certify that I have read and understand this "Declaration" and  a copy of said Notice was given to me prior to the offer to purchase.*

*If received after presentation of the purchase offer, I/We choose  to withdraw or  not to withdraw, from the Purchase Agreement.*

\_\_\_\_\_  
*Seller*

\_\_\_\_\_  
Date

\_\_\_\_\_  
*Seller*

\_\_\_\_\_  
Date

COUNTY OF MONTEREY FIRST TIME HOME BUYER PROGRAM MANUAL

APPENDIX G: SELLER'S OCCUPANCY CERTIFICATION

(FOR VACANT PROPERTY ONLY)

*[To be completed and signed by the seller of the property.]*

\_\_\_\_\_  
Address of Property ("Property")

\_\_\_\_\_  
City, State Zip

The undersigned, Seller of the Property certifies to \_\_\_\_\_ (Buyer) that:

1. At the time of the acquisition of the Property by the buyer/grantee, the Property will be delivered vacant, unoccupied and without any party in possession or with a right to possession to the Property.
2. At the time of the acquisition of the Property by the buyer/grantee, the Property will have been vacant for at least four months if it was last renter-occupied.

Further, if the Property is not occupied at this time, the Seller also certifies and agrees that he/she has not now and will not after the date hereof allow any person, including the former owner, to occupy the Property under a lease or any other agreement for possession of the Property either oral or written.

**Signature of Seller**

\_\_\_\_\_ Date: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_



## **APPENDIX H: HOMEBUYER ASSISTANCE PROGRAM SAMPLE LEAD-BASED PAINT CONTRACT CONTINGENCY LANGUAGE**

This contract is contingent upon a risk assessment or inspection of the property for the presence of lead-based paint and/or lead-based paint hazards, to be performed at the Purchaser's expense, until 9 p.m. on the tenth calendar-day after ratification of the Purchase Agreement. This ending date is: \_\_\_\_\_ . [Insert date 10 days after contract ratification or a date mutually agreed upon].

Intact lead-based paint that is in good condition is not necessarily a hazard. See the EPA pamphlet "Protect Your Family from Lead in Your Home" for more information.

This contingency will terminate at the above pre-determined deadline unless the Purchaser (or Purchaser's agent) delivers to the Seller (or Seller's agent) a written contract addendum listing the specific existing deficiencies and corrections needed, together with a copy of the inspection and/or risk assessment report.

The Seller may, at the Seller's option, within \_\_\_\_\_ days after Delivery of the addendum, elect in writing whether to correct the identified condition(s) prior to settlement. If the Seller will correct the condition, the Seller shall furnish the Purchaser with certification from a risk assessor or inspector demonstrating that the condition has been remedied before the date of the settlement. If the Seller does not elect to make the repairs, or if the Seller makes a counteroffer, the Purchaser shall have \_\_\_\_\_ days to respond to the counter-offer or remove this contingency and take the property in "as is" condition or this contract shall become void. The Purchaser may remove this contingency at any time without cause.

Seller: \_\_\_\_\_ Date: \_\_\_\_\_

Purchaser: \_\_\_\_\_ Date: \_\_\_\_\_

Property Address: \_\_\_\_\_

# COUNTY OF MONTEREY FIRST TIME HOME BUYER PROGRAM MANUAL

## APPENDIX I: LEAD-BASED PAINT VISUAL ASSESSMENT, NOTICE OF PRESUMPTION AND HAZARD REDUCTION FORM

<b>Section 1: Background Information</b>			
Property Address:			No LBP found or LBP exempt <input type="checkbox"/>
Select one:	Visual Assessment <input type="checkbox"/>	Presumption <input type="checkbox"/>	Hazard Reduction <input type="checkbox"/>

<b>Section 2: Visual Assessment.</b> Fill out Sections 1, 2, and 6. If paint stabilization is performed, also fill out Sections 4 and 5 after the work is completed.	
Visual Assessment Date:	Report Date:
Check if no deteriorated paint found <input type="checkbox"/>	
Attachment A: Summary where deteriorated paint was found. For multi-family housing, list at least the housing unit numbers and common areas and building components (including type of room or space, and the material underneath the paint).	

<b>Section 3: Notice of Presumption.</b> Fill out Sections 1, 3, 5, and 6. Provide to occupant w/in 15 days of presumption.	
Date of Presumption Notice:	
Lead-based paint is presumed to be present <input type="checkbox"/> and/or Lead-based paint <b>hazards</b> are presumed to be present <input type="checkbox"/>	
Attachment B: Summary of Presumption: For multi-family housing, list at least the housing unit numbers and common areas, bare soil locations, dust-lead location, and or building components (including type of room or space, and the materials underneath the paint) of lead-based paint and/or hazards presumed to be present.	

<b>Section 4: Notice of Lead-Based Paint Hazard Reduction Activity.</b> Fill out Sections 1, 4, 5, and 6. Provide to occupant w/in 15 days of after work completed.	
Date of Hazard Reduction Notice:	
Initial Hazard Reduction Notice? Yes <input type="checkbox"/> No <input type="checkbox"/>	Start & Completion Dates:
If "No", dates of previous Hazard Reduction Activity Notices:	
Attachment C: Activity locations and types. For multi-family housing, list at least the housing unit numbers and common areas (for multifamily housing), bare soil locations, dust-lead locations, and/or building components (including type of room or space, and the material underneath the paint), and the types of lead-based paint hazard reduction activities performed at the location listed.	
Attachment D: Location of building components with <u>lead-based paint remaining</u> in the rooms, spaces or areas where activities were conducted.	
Attachment E: Attach clearance report(s), using DHS form 8552 (and 8551 for abatement activities)	

<b>Section 5: Resident Receipt of Notice for Presumption or Lead-Based Paint Hazard Reduction Activity</b>		
Printed Name:	Signature:	Date:

<b>Section 6: Contact Information</b>	Organization:	
Contact Name:	Contact Signature:	
Date:	Address:	Phone:

**COUNTY OF MONTEREY FIRST TIME HOME BUYER PROGRAM MANUAL**

**APPENDIX J: SELLER’S LEAD-BASED PAINT DISCLOSURE**

**DISCLOSURE OF INFORMATION ON LEAD-BASED PAINT AND/OR LEAD-BASED PAINT HAZARDS LEAD WARNING STATEMENT**

Every purchaser of any interest in residential real property on which a residential dwelling was built prior to 1978 is notified that such property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning. Lead poisoning in young children may produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavioral problems, and impaired memory. Lead poisoning also poses a particular risk to pregnant women. The seller of any interest in residential real property is required to provide the buyer with any information on lead-based paint hazards from risk assessments or inspections in the seller’s possession and notify the buyer of any known lead-based paint hazards. A risk assessment or inspection for possible lead-based paint hazards is recommended prior to purchase.

**SELLER’S DISCLOSURE**

- (a) Presence of lead-based paint and/or lead-based paint hazards (check (i) or (ii) below):
  - (i) \_\_\_ Known lead-based paint and/or lead-based paint hazards are present in the housing (explain).  
\_\_\_\_\_
  - (ii) \_\_\_ Seller has no knowledge of lead-based paint and/or lead-based paint hazards in the housing.
- (b) Records and reports available to the seller (check (i) or (ii) below):
  - (i) \_\_\_ Seller has provided the purchaser with all available records and reports pertaining to Lead-based paint and/or lead-based paint hazards in the housing (list documents below).  
\_\_\_\_\_
  - (ii) \_\_\_ Seller has no reports or records pertaining to lead-based paint and/or lead-based paint hazards in the housing.

**PURCHASER’S ACKNOWLEDGMENT (INITIAL)**

- (a) \_\_\_ Purchaser has received copies of all information listed above.
- (b) \_\_\_ Purchaser has received the pamphlet Protect Your Family from Lead in Your Home.
- (c) \_\_\_ Purchaser has (check (i) or (ii) below):
  - (i) \_\_\_ received a 10-day opportunity (or mutually agreed upon period) to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards; or;
  - (ii) \_\_\_ waived the opportunity to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards.

**AGENT’S ACKNOWLEDGMENT (INITIAL)**

- (a) \_\_\_ Agent has informed the seller of the seller’s obligations under 42 U.S.C. 4852d and is aware of his/her responsibility to ensure compliance.

**CERTIFICATION OF ACCURACY**

The following parties have reviewed the information above and certify, to the best of their knowledge, that the information they have provided is true and accurate.

_____	_____	_____	_____
Seller	Date	Seller	Date
_____	_____	_____	_____
Purchaser	Date	Purchaser	Date
_____	_____	_____	_____
Agent	Date	Agent	Date

# COUNTY OF MONTEREY FIRST TIME HOME BUYER PROGRAM MANUAL

## APPENDIX K: LOAN SERVICING POLICIES AND PROCEDURES

The County of Monterey, hereafter called “Lender,” has adopted these policies and procedures in order to preserve its financial interest in properties which have been assisted with public funds. Lender will assume responsibility for loan servicing, adhering, to the greatest extent possible, to the following policies and procedures. However, each loan will be evaluated and handled on a case-by-case basis.

As funding for the Program is derived from various HOME Investment Partnership grants, the Loan Servicing Plan has been formulated to comply with state and federal regulations regarding the use of these public funds and any property restrictions which are associated with them.

The policies and procedures are broken down into the following areas:

- 1) making required monthly payments or voluntary payments on a loan’s principal and interest;
- 2) loan payoff;
- 3) required payment of property taxes and insurance;
- 4) required Request for Notice of Default on all second mortgages;
- 5) loans with annual occupancy restrictions and certifications;
- 6) required noticing and limitations on any changes in title or use of property;
- 7) required noticing and process for requesting a subordination during a refinance;
- 8) processing of foreclosure in case of default on the loan;
- 9) short sales

### **1. Loan Repayments:**

Lender will collect monthly payments from those Borrowers who are obligated to do so under Notes which are amortized promissory notes. Late fees will be charged for payments received after the assigned monthly due date.

For Notes which are deferred payment loans, Lender must accept voluntary payments on the loan. Loan payments will be credited to principal on HOME loans only. The Borrower may repay the loan balance at any time with no penalty.

All Program assistance to individual households under any and all HCD Standard Agreements shall be made in the form of a deferred payment loan (DPL) within the following term:

- The Program loan term shall be for 30-years, and
- The Program loan interest rate shall be 3%.

Loans made from other sources such as RDA funds may have longer terms. If multiple loans are made, the restrictions of the longer-term loans shall remain and apply when earlier loan restrictions expire.

All loan payments are payable to Lender. At its discretion, Lender may enter into an agreement with a third party to collect and distribute payments and/or complete all loan servicing aspects of the Program.

Lender will maintain a financial record-keeping system to record payments and file statements on payment status. Payments shall be deposited and accounted for in Lender’s Program Income Account as required.

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Program loan payment will be made to:

County of Monterey  
Redevelopment and Housing Office  
168 W. Alisal Street, 3rd Floor  
Salinas, CA 93901  
ATTN: Housing Program Manager

When using HOME funds, the property is subject to the requirements of the period of affordability that is then associated with the property. The period of affordability is a time period during which there are restrictions placed upon refinancing or selling the home. The time period is based upon the amount of funds borrowed. **Depending upon the circumstances, when refinancing or selling the home during the period of affordability, the original HOME loan funding may be returned to Lender as either Program Income or Recaptured Funds.** This is in accordance with Section 80208 of the California State HOME Regulations. See the following chart for the period of affordability and loan amounts:

Amount of HOME Assistance	Period of Affordability in Years
Under \$15,000	5-Years
\$15,000 - \$40,000	10-Years
Over \$140,000	15-Years

Recaptured Funds are HOME funds which are recouped by Lender when HOME assisted homeownership housing does **NOT** continue to be the principal residence of the assisted homebuyer for the full affordability period required by 24 CFR 92.254(a)(4). Recaptured funds represent a return of the original HOME investment.

All HOME loans are required to follow the recapture method. The Recapture option is a mechanism to recapture all or a portion of the direct HOME subsidy if the HOME recipient decides to sell the house before the end of the affordability period, at whatever price the market will bear. The Recapture option provides Lender and the assisted homebuyer with maximum flexibility. The homebuyer is permitted to resell the property at whatever price the market will bear.

When Lender receives Program Income, they are permitted to keep 10% of the funds for administration. However; when Recaptured Funds are received, no administrative funds will be kept. One hundred percent of Recaptured Funds and 90% of Program Income Funds will be expended on another HOME-eligible activity before additional HOME funds may be drawn down.

## 2. Loan Payoffs:

The Borrower is eligible to pay-off the loan at any time without penalty. Lender maintains a master grant accounting worksheet with all calculated principal and interest accrued (if applicable) for each loan that has been issued. A Borrower may contact Lender at any time to determine the payoff amount. A payoff should be received by Lender via a hand delivered check to the County of Monterey delivered to the office cited in #1 above.

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## Program Income versus Recaptured Funds

The collection payoff amount will be designated between Program Income or Recaptured Funds depending on the particular situation.

<b>Assisted Household</b>	<b>Continues to Reside in the Home</b>	<b>Ceases to Reside in the Home</b>
During Period of Affordability	Program Income	Recaptured Funds
After Period of Affordability	Program Income	Program Income

At the time of pay-off, if the Borrower continues to reside in the home and the period of affordability has not yet expired, the funds are considered Program Income funds. At the time of pay-off, if the Borrower ceases to reside in the home and the period of affordability has not yet expired, the funds are considered Recaptured funds. After the affordability period ends, all repaid funds are considered Program Income.

## Notice of Reconveyance

When all debt to Lender has been satisfied, a Full Reconveyance will be recorded with the County Recorder's and issued to the Borrower, without warranty, all the estate, title and interest acquired by Lender under the Deed of Trust for subject property.

### **3. Payment of Property Taxes and Insurance:**

*Insurance* - As part of keeping the loan from going into default, Borrower must maintain property insurance coverage naming Lender as loss payee in first position or additional insured if the loan is a junior lien. If Borrower fails to maintain the necessary insurance, Lender may take out force placed insurance to cover the property while the Borrower puts a new insurance policy in place. All costs for installing the necessary insurance will be added to the loan balance at time of installation of Borrower's new insurance.

When a property is located in a 100-year flood plain, the Borrower will be required to carry the necessary flood insurance. A certificate of insurance for flood and for standard property insurance with an endorsement naming the County of Monterey as additional insured will be required at close of escrow. Lender will verify the insurance on an annual basis.

*Taxes* - Property taxes must be kept current during the term of the loan. If the Borrower fails to maintain payment of property taxes, Lender may pay the taxes current and add the balance of the tax payment plus any penalties to the balance of the loan. Wherever possible, Lender encourages Borrower to have impound accounts set up with their first mortgagee wherein they pay their taxes and insurance as part of their monthly mortgage payment.

### **4. Required Request for Notice of Default:**

When the Borrower's loan is in second position behind an existing first mortgage, it is Lender's policy to prepare and record a "Request for Notice of Default" for each senior lien in front of Lender's loan. This document requires any senior lien holder listed in the notice to notify Lender of initiation of a foreclosure action. Lender will then have time to contact the Borrower and assist them in bringing the first loan current, if possible. Lender can also monitor the foreclosure process and go through the necessary analysis to determine if the loan can be made whole or preserved. When Lender is in a third position and

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receives notification of foreclosure from only one senior lien holder, it is in their best interest to contact any other senior lien holders regarding the status of their loans.

### **5. Annual Occupancy Restrictions and Certifications:**

A requirement of the County of Monterey First-Time Homebuyer is that the Borrower must remain the owner and occupant of the home purchased. If the Borrower does **NOT** remain the owner and occupant, Lender reserves the right to make the FTHB loan due and payable.

Lender will require that the Borrower submit utility bills and/or other documentation (i.e., property tax statement, insurance policies, etc.) annually to prove occupancy during the term of the loan. Lender reserves the right to perform site visits to document occupancy status.

### **6. Required Noticing and Restrictions on Any Changes of Title or Occupancy:**

In all cases where there is a change in title or occupancy or use, the Borrower must notify Lender in writing within 30 days of any change. Lender and borrower will work together to ensure the property is kept in compliance with the original Program terms and conditions such that it remains available as an affordable home for low-income families.

These types of changes are typical when Borrowers do estate planning (adding a relative to title) or if a Borrower dies and property is transferred to heirs or when the property is sold or transferred as part of a business transaction. In some cases, the Borrower has moved and turned the property into a rental unit without notifying Lender. *Changes in title or occupancy must be in keeping with the objective of benefit to low-income households (below 80 percent of AMI).*

#### **A. Transfer of Title**

The voluntary or involuntary transfer of title to any interest in the real property, except a transfer to a Borrower's surviving spouse, causes the whole of the unpaid principal, plus applicable fees, charges and penalties, to be immediately due and payable in full, unless otherwise approved by Lender in its absolute discretion.

#### **B. Loan Assumption**

Lender shall approve loan assumption, at its option, only if subsequent purchasers or transferee of the property meet the eligibility requirements then in effect per the HOME regulations. Should the loan assumption be approved, the new purchaser must execute an assumption agreement confirming the agreement with the terms of the loan.

#### **C. Owner-Occupant to Owner-Occupant**

Change from owner-occupant to owner-occupant occurs at a sale. When a new owner-occupant is not low-income, the loan is **NOT** assumable and the loan balance is immediately due and payable. If the new owner-occupant qualifies as low-income, the purchaser may either pay the loan in full or assume all loan repayment obligations of the original owner-occupant, subject to the approval of Lender's Loan Committee (depending on the HCD program).

#### **D. Transfer through Inheritance**

If a transfer of the property occurs through inheritance, the heir (as owner-occupant) may be provided the opportunity to assume the loan at an interest rate based on household size and household income, provided the heir is income eligible. If the heir intends to occupy the property and is not low-income, the

## COUNTY OF MONTEREY FIRST TIME HOME BUYER PROGRAM MANUAL

balance of the loan is due and payable. If the heir intends to act as an owner-investor, the balance of the loan may be converted to an owner/investor interest rate and loan term and a rent limitation agreement is signed and recorded on title. All such changes are subject to the review and approval of Lender's Loan Committee.

### E. Owner-Occupant to Owner-Investor

Change from owner-occupant to owner-investor occurs when an owner-occupant decides to move out and rent the assisted property, or if the property is sold to an investor. If the owner converts any assisted unit from owner-occupied to rental, the loan is due in full.

### F. Conversion to use other than Residential

Conversion to use other than residential use is **NOT** allowable where the full use of the property is changed from residential to commercial or other. In some cases, Borrowers may request that Lender allow for a partial conversion where some of the residence is used for a business but the household still resides in the property. Partial conversions can be allowed if it is reviewed and approved by any and all agencies required by local statute. If the use of the property is converted to a fully non-residential use, the loan balance is due and payable.

## 7. **Requests for Subordinations:**

When a Borrower wishes to refinance the property, they must request subordination from Lender. Subordination of a loan may occur only when there is no "cash out" as part of the refinance. No cash out means that there are no additional charges on the transaction above loan and escrow closing fees. There can be no third party debt payoffs or additional encumbrance on the property above traditional refinance transaction costs. Furthermore, the refinance should lower the housing cost of the household via a lower interest rate and the total indebtedness on the property should **NOT** exceed the current market value.

Also, provisions in regard to primary loans as cited in the Other Financing Section in this manual (see page 5) still apply, which state that the loan must:

- a) be fully amortized and have a fixed interest rate that does **NOT** exceed the current market rate, as established by an index identified in the most recent NOFA;
- b) **NOT** have a temporary interest rate buy-down;
- c) have a term "all due and payable" in no fewer than 30 years; and;
- d) **NOT** have a balloon payment due before the maturity date of the Program loan.

Upon receiving the proper documentation from the refinance lender, the request will be considered by the loan committee for review and approval. Upon approval, the escrow company will provide the proper subordination document for execution and recordation by Lender.

## 8. **Process for Loan Foreclosure:**

Upon any condition of loan default: 1) non-payment; 2) lack of insurance or property tax payment; 3) change in title or use without approval; 4) default on senior loans, Lender will send out a letter to the Borrower notifying them of the default situation. If the default situation continues, then Lender may start a formal process of foreclosure.

When a senior lien holder starts a foreclosure process and Lender is notified via a Request for Notice of Default, Lender, as junior lien holder, may cancel the foreclosure proceedings by "reinstating" the senior lien holder. The reinstatement amount or payoff amount must be obtained by contacting the senior lien holder. This amount will include all delinquent payments, late charges and fees to date. Lender must confer with Borrower to determine if, upon paying the senior lien holder current, the Borrower can



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provide future payments. If this is the case, then Lender may, in its sole discretion, cure the foreclosure and add the costs to the balance of the loan with a Notice of Additional Advance on the existing note.

If Lender determines, based on information on the reinstatement amount and status of Borrower, that bringing the loan current will not preserve the loan, then staff must determine if it is cost effective to protect their position by paying off the senior lien holder in total and restructure the debt such that the unit is made affordable to the Borrower. If Lender does not have sufficient funds to pay the senior lien holder in full, then they may choose to cure the senior lien holder and foreclose on the property themselves as long as there is sufficient value in the property and Lender can afford to pay for the foreclosure process and pay off the senior lien holder and retain some or all of their investment.

Typically, if Lender decides to reinstate, the senior lien holder will accept the amount to reinstate the loan up until five (5) days prior to the set "foreclosure sale date." If Lender fails to reinstate the senior lien holder before five (5) days prior to the foreclosure sale date, the senior lien holder would then require a full pay off of the balance, plus costs, to cancel foreclosure. If Lender determines the reinstatement and maintenance of the property not to be cost effective and allows the senior lien holder to complete foreclosure, Lender's lien may be eliminated due to insufficient sales proceeds.

### Lender as Senior Lien holder

When Lender is first position as a senior lien holder, active collection efforts will begin on any loan that is 31 or more days in arrears. Attempts will be made to assist the homeowner in bringing and keeping the loan current. These attempts will be conveyed in an increasingly urgent manner until loan payments have reached 90 days in arrears, at which time Lender may consider foreclosure. Lender's staff will consider the following factors before initiating foreclosure:

- 1) *Can the loan be cured and can the rates and terms be adjusted to allow for affordable payments such that foreclosure is not necessary?*
- 2) *Can the Borrower refinance with a private lender and pay off Lender?*
- 3) *Can the Borrower sell the property and pay off Lender?*
- 4) *Does the balance warrant foreclosure? (If the balance is under \$5,000, the expense to foreclose may not be worth pursuing.)*
- 5) *Will the sale price of the home "as is" cover the principal balance owing, necessary advances, (maintain fire insurance, maintain or bring current delinquent property taxes, monthly yard maintenance, periodic inspections of property to prevent vandalism, etc.) foreclosure and marketing costs?*

If the balance is substantial and all of the above factors have been considered, Lender may opt to initiate foreclosure. The Borrower must receive, by certified mail, a thirty-day notification of foreclosure initiation. This notification must include the exact amount of funds to be remitted to Lender to prevent foreclosure.

At the end of thirty days, Lender should contact a reputable foreclosure service or local title company to prepare and record foreclosure documents and make all necessary notifications to the owner and junior lien holders. The service will advise Lender of all required documentation to initiate foreclosure (Note and Deed of Trust usually) and funds required from the owner to cancel foreclosure proceedings. The service will keep Lender informed of the progress of the foreclosure proceedings.

When the process is completed, and the property has "reverted to the beneficiary" at the foreclosure sale, Lender could sell the home themselves under a homebuyer program or use it for an affordable rental property or use it for a transitional housing facility or other eligible use. Lender could contract with a local real estate broker to list and sell the home and use those funds for program income eligible uses.

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## 9. Short Sale

A short sale occurs when the sale price of a home is less than the total amount of liens encumbering the property. To close, a short sale must have approval from all lenders, acknowledging that the sale price will **NOT** cover a portion (up to the total amount) of their existing loan amount. Usually short sales are instigated when a household contacts a listing agent to sell (maybe due to homeowner's difficulty in making their mortgage payments) and it is determined that the likely sales price will **NOT** satisfy all liens. The listing agent will want to continue the process, assuming they can get one or more of the lien holders to "forgive" a portion or the entire lien amount.

Any transaction that involves a shortage in the repayment of the HOME Promissory Note amount requires review prior to the State Recipient's approval of the short sale.

The Short Sale Request form (available on-line) must be submitted electronically to the jurisdiction's HOME Program Representative along with a preliminary title report (current ALTA policies may also be used). Additional supporting documentation may be required after the request form and preliminary title report have been received.

HCD will review and approve/disapprove the request which outlines the circumstances of a household's short sale, but not the short sale itself. Since the State Recipient is the lien holder, all short sale transaction terms must be negotiated and approved by the State Recipient. The Short Sale Request, HCD approval, and all supporting documents must be maintained by the jurisdiction in the project file.