

## COVENANT PROCEDURES

Adopted by the San Miguel County Housing Authority and the San Miguel County Board of  
County Commissioners on July 20, 2022  
By Resolution Number 2022-40

These Covenant Procedures (“Procedures”) are adopted pursuant to the General Provisions of the Amended and Restated Deed Restriction and Covenant (“Covenant”), (found most often at Section 12.3 or 13.3) burdening certain real property in San Miguel County. The Procedures shall remain in full force in effect until amended or revoked.

The purpose of these Procedures is to provide clarity to housing ownership and rental applicants, Owners, and Occupants, to provide interpretation and protocol direction for staff, and to provide consistency across neighborhoods over time.

All capitalized terms shall have the same meaning as set forth in the Covenant.

### **I. PURCHASE**

- A. **Submission of Notice of Intent to Sell.** An Owner who desires to offer their property for sale shall submit a Notice of Intent to Sell (available from the SMRHA) to the SMRHA at least seven days prior to offering the property for sale.
- B. **Pre-Application/Pre-Contract Conference.** Ownership Applicants are encouraged to meet with SMRHA staff to review the Purchase Application and the documentation necessary for approval as a Qualified Purchaser prior to executing a Purchase Contract and prior to formally submitting a Purchase Application. Administrator shall provide Ownership Applicants a brief overview of the responsibilities that come with the ownership of deed-restricted property.
- C. **Submission of Purchase Application.** Ownership Applicants are encouraged to formally submit a Purchase Application at least six weeks prior to the date that the Ownership Applicant’s earnest money on the Purchase Contract becomes non-refundable. The application and approval process can be time consuming and neither the County nor the SMRHA is responsible for an Ownership Applicant losing their earnest money due to a time delay. [Ownership Applicants are strongly encouraged to include a clause in the Purchase Contract stating that the buyer will not lose their earnest money if the buyer is not approved as a Qualified Purchaser.]
- D. **Determination of Application Completeness.** Within three working days of receipt of a Purchase Application, the SMRHA shall complete a preliminary review to determine whether the Purchase Application is complete. If the Purchase Application

is not complete, the SMRHA shall notify the Ownership Applicant of what materials are missing and the Ownership Applicant shall provide the missing materials to the SMRHA within seven days of the date on which the SMRHA so notified the Ownership Applicant. If the Purchase Application is complete, the SMRHA shall so notify the Ownership Applicant. The SMRHA shall enter the date on which the Purchase Application is determined complete on the front page of the Purchase Application.

**E. Review and Decision by SMRHA.** Once a Purchase Application is determined complete, the SMRHA shall review the Purchase Application for compliance with the current applicable Standard. SMRHA shall issue a written approval or denial of the Ownership Applicant as a Qualified Purchaser within seven days after the Purchase Application is determined complete.

**F. Documentation.** Examples of documents that tend to verify an Ownership Applicant's compliance with the current applicable Standard include, but are not limited to: (a) fully executed lease or rental agreements; (b) a Landlord Verification of Residency Form (available from the SMRHA); (c) voter registration; (d) valid driver's license; (e) valid automobile registration; (f) current utility bills; (g) copies of recent W2 forms or paycheck stubs; (h) copies of recent 1099 forms; (i) copies of recent federal tax returns, including all completed schedules; (j) copies of recent state tax returns; (k) copies of a current business license from either the Town of Telluride or the Town of Mountain Village or a personal property tax account number for personal property located on commercial real property within the Telluride R-1 School District; (l) copies of a current detailed work log or appointment book listing the number of hours worked each day for each employer, job or appointment, and customers' and/or clients' names and local addresses, to the extent permitted by law; (m) copies of invoices sent to customers and/or clients, particularly if the invoices reflect the amount of time spent on the job invoiced, and copies of payment for invoiced work, to the extent permitted by law; (n) a customer and/or client list that includes customer and/or client names with local telephone numbers and local addresses, type of work done, and approximate time spent with the customer and/or client per appointment, to the extent permitted by law; and (o) other miscellaneous documents such as business and personal banking records, bills, payments received, etc.

The documentation listed above is illustrative of the type of documentation that may provide the information necessary to establish that a person meets or complies with an applicable requirement or standard. Submission of all listed documentation does not guarantee approval, and failure to submit any such documentation does not necessarily preclude approval.

**II. OWNERSHIP EDUCATION.** SMRHA staff should meet with new Owners to review the rights and responsibilities of ownership of deed-restricted housing after purchase and before 180

days have passed. If Owner declines the meeting, SMRHA may request compliance verification to ensure the new Owner is in compliance.

### III. RENTAL

- A. **Submission of Notice of Intent to Rent.** An Owner who desires to offer their Subject Property for rent shall submit a Notice of Intent to Rent (available from the SMRHA) to the SMRHA at least seven days prior to offering the Subject Property for rent. The Notice of Intent to Rent shall include: (1) a statement as to whether the Owner will continue to occupy the Subject Property as his or her Primary Residence and share occupancy with a tenant(s), or if the Subject Property will not be Owner occupied during the term of the rental; and (2) if the Owner intends to rent the Subject Property through an agent, the agent's name and contact information. Please note: If Owner does not intend to occupy the Subject Property, a Leave of Absence exception shall be required unless the Subject Property is a multi-family Housing Unit or is a Rental Property.
- B. **Determination of Completeness of Notice of Intent to Rent.** If the Notice of Intent to Rent is not complete or if the SMRHA determines that additional process is required (for example, an exception may be necessary) the SMRHA shall, within two working days after receipt, notify the Owner that it is not complete and identify what additional information and/or process is required. The Owner shall provide the SMRHA with the additional information no later than seven days after receiving notification that such additional information and/or process is required.
- C. **Review and Decision by SMRHA.** If the Owner will continue to occupy the Subject Property and will share occupancy with a tenant(s), the SMRHA shall issue a written Approval to Rent within seven days after the Notice of Intent to Rent is submitted. If the Subject Property will not be Owner occupied, the SMRHA will not issue an approval to rent until the Owner receives an appropriate exception from the County, if required.
- D. **Approval of Tenant(s).** Any person who desires to occupy property subject to the Covenant as a renter shall submit a Rental Application to the SMRHA. If the Rental Application is not complete, the SMRHA shall, within two working days after receipt, notify the applicant that it is not complete and identify what additional information is required. The applicant shall provide the SMRHA with the additional information no later than seven days after receiving notification that such additional information is required. SMRHA shall issue a written approval or denial for the applicant to occupy the Subject Property no later than seven days after the Rental Application is determined complete

### IV. EXCEPTIONS

- A. **Submission of Exception Application.** Request must be presented in writing to SMRHA on forms available on the SMRHA website and in paper at the SMRHA offices and must include a fully completed Request for Exception Form, including:

1. The name, mailing and electronic addresses and telephone number of the exception Applicant and similar information of exception Applicant's representative, if any;
2. The standard(s) or prohibition to which the applicant seeks an exception;
3. The action or remedy requested;
4. An affidavit from the applicant describing the circumstances and reasons why an exception is necessary;
5. Proof of history of employment within the Telluride R-1 School District boundary, if applicable;
6. The nature and extent of the applicant's community commitments and involvement;
7. A statement describing any change in circumstances warranting the requested exception;
8. The compelling circumstances that the applicant believes justify the exception, together with supporting documentation or information, if available; and
9. Verification that notice of the Request for Exception was sent to the HOA, if applicable.
10. An Exception Fee in an amount set by BOCC Resolution.
11. NOTE: No exception requests shall be heard for Purchasers until the Subject Property has been listed on the SMRHA website at a price that is consistent with the Policy Considerations listed in D, below, for a minimum of six (6) months from the date of the Notice of Intent to Sell.

**B. SMRHA Staff Review of Exception Application.** SMRHA Staff shall review the Exception Application for completeness and may request additional information or documentation from the applicant. The applicant shall provide any such information or documentation within seven days of the date that SMRHA Staff requests such additional information or documentation. If the applicant does not provide such additional information or documentation when requested, then SMRHA Staff will review the application with only the information and documentation that the applicant has submitted.

The SMRHA shall refer a copy of the proposed exception to any Association governing the Subject Property and the Association shall be given a reasonable opportunity to review and comment on the proposed exception prior to final review and action.

**C. SMRHA: Memo and Recommendation.** Once certified complete, the SMRHA shall schedule the Exception Application for review at the next regularly-scheduled public meeting or as soon as practicable for the exception applicant and the SMCHA. SMRHA Staff shall provide the SMCHA with a written memo that includes a list of all exception requests and determinations in the past ten years, the relevant history of the Subject Property, the exception applicant's relevant history, including compliance with all deed restricted property regulations in San Miguel County, list of ownership of other real property and business assets, whether owned directly or indirectly, a statement of the current AMI for San Miguel County with an extrapolation of purchase power for the average Employee, a report analyzing the impact of the exception on the County's Housing Program, and all other relevant information so that the SMCHA may make an

informed decision. SMRHA shall also provide a recommendation to approve, deny, or approve with conditions at least two working days before the public meeting to the exception applicant and the SMCHA.

**D. SMCHA Policy Considerations.** Covenant recitals and requirements establish the following:

1. The purpose of the Affordable Housing Programs is to help preserve a sufficient supply of Deed Restricted Property to meet the needs of locally employed residents of the Telluride R-1 School District boundary while allowing customary free-market (unrestricted) practices [among the local employees] to influence the sale and/or rental of Deed Restricted Property as much as possible. This was modeled on LUC 5-1305 A. Purpose language.
2. The Affordable Housing Programs program is intended to limit use and occupancy to persons (and their families) who live and earn their livings primarily in the Telluride R-1 School District of San Miguel County.
3. The granting the requested exception shall be consistent with the purpose and intent of this Covenant.
4. The exception applicant must establish compelling circumstances upon which the exception is justified. Compelling is not defined in the Covenant.
5. Factors to consider in determining whether an exception should be granted include: a. Stable Resident Population; b. Deed Restricted Property Market, specifically creates a housing market for employees in which sales prices directly relate to the income earned by those who live and work in the Telluride R-1 School District (Qualified Purchasers); and c. Consistency and Uniformity. Other factors may be considered.
6. Community commitments and involvement are appropriate factors to consider but will not, standing alone, be grounds upon which to grant an exception for all of the earned Qualifying Income requirement.

**E. SMCHA Determination.** The exception applicant may submit additional information or documentation in support of the exception request up to and including the date of the public meeting. The SMCHA shall review the Exception Application at the scheduled public meeting and at the conclusion of the meeting shall: (1) approve of the Exception Application, with or without additional conditions, which approval shall become effective upon execution of an Exception Agreement between the SMRHA and the applicant; (2) issue a written denial of the Exception Application which shall state the reasons for denial; or (3) continue consideration of the Exception Application to a specified date and time. An applicant may withdraw an Exception Application at any time. All exception approvals and denials shall be recorded with the Clerk and Recorder's Office, San Miguel County within seven days of full execution.

## **IV. APPEALS**

**A. Appeal of SMRHA Staff Decision.** An appeal is appropriate when the Applicant understands and acknowledges the criteria and believes that after an initial determination the criteria have been applied incorrectly. Any person who is affected or

aggrieved by an incorrect decision of the SMRHA Staff may appeal the decision to the SMRHA by preparing a letter addressed to the SMRHA requesting an appeal (“Appeal”). The Appeal must be presented in writing to SMRHA on forms available from SMRHA and within twenty-one (21) days of the decision or determination being appealed.

**B. Appeals must include:**

- A. The name, address, telephone number of the appellant and similar information of appellant’s representative, if any;
- B. Verification that Applicant has fully completed the application process;
- C. The particular ground(s) upon which the appeal is based, include the specific action taken by staff and the specific grounds why the staff decision was incorrect;
- D. The action or remedy requested;
- E. Proof of notification of the appeal request to the Subject Property’s homeowners association, if applicable; and
- F. Appeal Fee, in an amount set by SMCHA Resolution.

A. **Process**– All appeals will be reviewed by SMRHA Staff for completeness and forwarded to SMCHA Board within twenty-one (21) days.

1. **Timing.** The SMCHA Board shall address the appeal at the next scheduled board meeting. The appellant shall be afforded a fair hearing providing the basic safeguards of due process, including notice and an opportunity to be heard in a timely, reasonable manner. The SMCHA Board may continue the hearing based upon consent of the parties .

2. **Discovery.**

- i. All materials that any party to the appeal would like the SMCHA to consider must be submitted to the SMCHA no later than seven days prior to the date of the meeting, and, to the extent permitted by law, shall be included in the public record.
- ii. The appellant and SMRHA Staff shall have the opportunity to examine all documents, records and regulations of SMCHA that are relevant to the hearing.
- iii. Appellant shall be responsible for all photocopying expenses. Any document not made available after written request may not be relied upon at the hearing.

3. **Representation.** Appellant has the right to be represented by counsel.

4. **Failure to Appear.** If the appellant fails to appear at the hearing, the SMCHA Board may make a determination to postpone the hearing or make a determination based upon the evidence submitted.

5. **Hearing.** The hearing shall be conducted by a designated member of the SMCHA Board, the “Hearing Officer”.

i. The hearing shall be recorded. Oral or documentary evidence may be received without strict compliance with the Colorado Rules of Evidence.

ii. The right to cross-examine shall be at the discretion of the Hearing Officer and may be regulated by the Hearing Officer as it deems necessary for a fair hearing.

6. **Decision.** At the public meeting, the Hearing Officer, in consultation with and on behalf of the SMCHA, shall either affirm or reverse the staff decision, or shall continue the meeting to a specified date and time.
7. **Binding Determination.** The final determination of the SMCHA shall be binding and SMRHA shall take all actions necessary to carry out the decision.

**V. AMENDMENTS:** These Procedures may be amended or revoked by Resolution of the Board of Commissioners of San Miguel County, Colorado (BOCC).

- A. Review: These Procedures shall be reviewed at least every five (5) years by the San Miguel County Housing Authority (SMCHA) or its Designee and changes based on the success and failure of the previous policy, if any, will be recommended to BOCC.
- B. Amendments to these Guidelines requiring BOCC approval shall be made according to the following procedure:
  1. Any proposed amendment shall be presented to the BOCC for its consideration and recommendation who shall consider such amendment in a timely manner, and who shall adopt, adopt with conditions or reject the proposed amendment.
  2. If an amendment is adopted, it will be adopted in form of a written resolution of the BOCC.

## **VI. ADMINISTRATIVE PROCEDURES**

- A. **Fair Housing Standards** – SMCHA and SMRHA shall administer these Procedures in compliance with all applicable fair housing standards, including but not limited to the Fair Housing Act. These standards prohibit discrimination in housing on the basis of age, race, color, religion, sex, or sexual identity, familial status, national origin, and handicapped or disabled status.
- B. **Reasonable Accommodation** – SMCHA and SMRHA shall administer this policy in compliance with all reasonable accommodation standards, including but not limited to the Americans with Disabilities Act.
- C. **Assignment of Administrative Responsibilities** – SMCHA and SMRHA shall have the right to contract with any qualified person or entity for the purpose of administering these Procedures.