Sonoma County Community Development Commission

SONOMA COUNTY AFFORDABLE HOUSING PROGRAM
HOMEOWNERSHIP POLICIES

I. INTRODUCTION

A. Purpose

1. The Sonoma County Affordable Homeownership Policies (Homeownership Policies) apply to owner-occupied homes in developments that are subject to the Sonoma County Code Chapter 26, Article 89 (Article 89). Article 89 is intended to increase the supply of housing units available, accessible, and affordable to extremely low-, very low-, low- and moderate-income households.

2. The Homeownership Policies apply to owner-occupied homes in developments for which the Sonoma County Community Development Commission (Commission) provides development financing or homebuyer loans subject to the Sonoma County Community Development Commission Loan Policies (CDC Loan Policies). Commission's financing is intended to enable income-eligible households to purchase homes at affordable prices and to ensure continued affordability of the homes for future buyers.

3. The Homeownership Policies implement these purposes by restricting and governing the initial sale and future resales of the subject homes to income-eligible buyers at specified prices.

B. Authority

1. These Policies have been adopted concurrently by the Sonoma County Board of Supervisors and the Board of Commissioners of the Commission. No revisions may be made hereto without the express action of the Board of Supervisors and Commissioners.

2. The Executive Director of the Commission is hereby authorized to take all actions necessary to administer the provisions of these Policies, to interpret these Policies, and to make policy exceptions pursuant to the criteria established in Section IX of these Policies.

C. Conflict of Interest

No member of the governing body of the County of Sonoma or the Commission and no other official or employee or agent of the County government, Commission, or any other local government agency who exercises any decision-making functions or responsibilities in connection with the planning and implementation of the activities governed by these Policies shall directly or indirectly be eligible to participate in or benefit from said activities.

II. SHARE OF APPRECIATION APPROACH

A. Applicability

The Share of Appreciation approach for restricting and governing sales of homes subject to these Homeownership Policies will be used in the following circumstances:

1. For initial sales and resales of homes developed under federal, state, or local programs that continue to require use of a shared equity model, including the State Density Bonus Program as set forth in Article 89.

2. For resales of homes currently governed by Share of Appreciation loans and restrictions that were originally required to use the shared equity model under federal, state, or local programs, and for which a shared equity requirement no longer applies, subject to the provisions of II.B.2.b, below.

B. "Eligible Buyers" must meet the following criteria:

1. The household's income must not exceed the limits established in conjunction with Article 89 and/or the applicable Commission financing programs.

2. The household must occupy the unit being purchased as their primary residence.

C. Sales Prices

1. Initial Sales

   a. The developer shall sell each new home that is subject to the Share of Appreciation Approach of these Policies to an eligible homebuyer for its Fair Market Value (FMV) but shall receive as payment an amount equal to the Affordable Sales Price (ASP), as calculated pursuant to Section IV of these Policies.

      i. The difference between the FMV and ASP represents the value of the regulatory and other incentives and subsidies provided by County and/or Commission to the developer of the home.

      ii. Examples of such subsidies include, but are not necessarily limited to, density bonuses, fee waivers or deferrals, and below market rate loans that the developer does not repay at the time of initial sale of the homes in a development.

   b. The ASP may not exceed the FMV of the home. The developer shall submit to the Commission a copy of the appraisal of the home prepared by a licensed appraiser no more than 6 months prior to sale.

2. Resales

a. For homes subject to Section II. A. 1. above, the initial eligible homebuyer and all future eligible homebuyers will resell the home for its FMV as determined by an appraisal at the time of sale, and the provisions of Sections II.B.3 through II.C. will apply.

b. For homes subject to Section II.A.2 above, all future resales will be governed under the Restricted Sales Price Approach detailed in Section III.

i. The current owner under a Share of Appreciation Note will sell the home for its FMV as determined by an appraisal at the time of sale.

ii. If any public subsidy is used to make the sale of the home affordable to a new income-eligible buyer, the Restricted Sales Price for the new buyer will be the FMV less the amount of such public subsidy.

iii. If no public subsidy is used to assist in the sale to a new income-eligible buyer, the FMV sale price will become the Restricted Sales Price.

iv. All future eligible homebuyers shall be required to enter into a Resale Restriction Agreement and Option to Purchase as described in Section III. B. 2. and 3.

3. To maintain the long-term affordability of the home, the Commission shall execute an Option Agreement or Resale Restriction Agreement and Option to Purchase with the initial and all subsequent homebuyers pursuant to Section VI of these Policies, which will give Commission a first right of refusal to acquire the home at the allowed sales price.

D. Acquisition Financing

1. Initial Sales

a. The eligible buyer of the home shall finance the ASP with one or more fixed-rate, 30-year, fully amortized senior mortgages, a buyer's deposit, any down-payment that the homebuyer can provide, and in an approved mutual self-help project, the value of the buyer's "sweat equity" contribution.

b. The Commission may provide a loan to the eligible homebuyer to assist in financing the ASP, if needed to enable the acquisition and if funds are available.

c. The initial homebuyer shall enter into a promissory note with the

Commission in an amount equal to the difference between the FMV and the ASP (the "Share of Appreciation Note"). The Share of Appreciation Note amount represents the value of the regulatory and other incentives and subsidies provided to the developer of the home, and does not represent cash proceeds to the developer.

2. Resales

   a. The eligible buyer of the home shall finance the FMV with one or more fixed-rate, 30-year, fully amortized senior mortgages, a buyer's deposit, any down-payment that the homebuyer can provide.

   b. The Commission may provide a loan to the eligible homebuyer to assist in financing the FMV, if needed to enable the acquisition and if funds are available.

3. All Commission loans under the Share of Appreciation Approach will be deferred payment subordinate loans pursuant to Section V of these Policies.

4. Share of Appreciation Note Payment

   a. The homebuyer will repay to Commission the principal amount of the Share of Appreciation Note plus a share of the appreciation in the value of the home at the time of sale.

   b. The specified share of the appreciation in value of the home to be repaid to Commission shall equal the ratio of the original principal amount of the Share of Appreciation Note to the FMV of the home at the time the loan was made, multiplied by the difference between the FMV at the time of resale and the FMV of the home at the time the loan was made.

   c. The Share of Appreciation will be in lieu of an interest rate on the loan, unless otherwise required by a senior lender.

   d. To the extent permitted by applicable law, regulations, and senior mortgage lender(s), the Share of Appreciation Note, the Option Agreement between the homebuyer and Commission, or another instrument shall require the seller of the home, at resale, to pay the Commission the Commission's share of appreciation due under the Share of Appreciation Note, notwithstanding any prior prepayment on the Note that may have been made.

III. RESTRICTED SALES PRICE APPROACH

A. Applicability

The Restricted Sales Price approach for restricting and governing sales of homes subject to these Homeownership Policies will be used for the initial sales and resales of all homes that do not meet the applicability criteria for the Share of Appreciation Approach as set forth in Section II. A. 1. of these Policies.

B. "Eligible Buyers" must meet the following criteria:

1. The household's income must not exceed the limits established in conjunction with Article 89 and/or the applicable Commission financing programs.

2. The household must occupy the unit being purchased as their primary residence.

C. Sales Prices

1. Initial Sales

a. The developer shall sell each new home that is subject to the Restricted Sales Price Approach of these Policies to an eligible homebuyer for its ASP as calculated pursuant to Section IV of these Policies.

b. The ASP may not exceed the FMV of the home. The developer shall submit to the Commission a copy of the appraisal of the home prepared by a licensed appraiser.

2. Resales

The initial eligible homebuyer and all future eligible homebuyers will resell the home for a Restricted Sales Price (RSP) that is calculated by multiplying the buyer's purchase price by a factor equal to one plus the percentage increase in the Consumer Price Index ("CPI") from the time the buyer purchased the home until the time the home is sold. CPI shall refer to the Consumer Price Index – All Urban Consumers reported by the U.S. Department of Labor, Bureau of Labor Statistics, for the San Francisco-Oakland-San Jose area.

3. To maintain the long-term affordability of the home, the Commission shall execute a Resale Restriction Agreement and Option to Purchase (RRAOP) with homebuyer pursuant to Section VI of these Policies, which will give Commission a first right of refusal to acquire the home at the allowed sales price.

D. Acquisition Financing

1. Initial Sales and Resales

a. The initial buyer of the home shall finance the ASP, and all subsequent buyers shall finance the RSP, with one or more fixed-rate, 30-year, fully amortized senior mortgages, a homebuyer's deposit, any down-payment that the homebuyer can provide, and in an approved mutual self-help project, the value of the initial buyer's "sweat equity" contribution.

b. The Commission may provide a loan to the eligible homebuyer to assist in financing the ASP or RSP, if needed to enable the acquisition and if funds are available.

2. All Commission loans under the Restricted Sales Price Approach will be deferred payment subordinate loans pursuant to Section V of these Policies.

IV. AFFORDABLE SALES PRICE CALCULATIONS

A. The Commission shall calculate the ASP for initial sales of affordable ownership homes using the following assumptions and calculations:

1. Use the average prevailing interest rate for a fixed-rate, 30-year fully amortized mortgage available to the homebuyer.

2. Assume a 10% down-payment.

3. Assign a presumed household size to each unit size. The assumption is that the number of persons in the household equals the number of bedrooms plus one. For example, one person will occupy a studio, two persons will occupy a one-bedroom unit, three persons will occupy a two-bedroom unit, etc.

4. Calculate the maximum eligible annual income for the presumed household size in the targeted extremely low-, very low-, low-, or moderate-income category, and divide the figure by 12 to obtain the maximum monthly income.

   a. Extremely low-income households shall have incomes not exceeding 30% of Area Median Income (AMI), very low-income households shall have incomes not exceeding 50% of AMI, and low-income households shall have incomes not exceeding 80% of AMI, each as published annually by HUD, adjusted for presumed household size.

   b. Moderate-income households shall have incomes not exceeding 120% of AMI, as published annually by the California Department of Housing and Community Development (HCD), adjusted for presumed household size.

5. Multiply the maximum monthly income by 30% to establish the maximum allowed monthly housing expense.

6. Subtract the estimated costs of homeowner's insurance, property taxes, homeowner association dues and private mortgage insurance, if any, to arrive at an amount that would be available for monthly mortgage payments.

7. Calculate the mortgage amount that could be supported by the affordable monthly mortgage payments determined in Section IV.A. above. The calculation shall exclude any deferred payment financing that the developer will provide for the initial homebuyers, either directly or through another lender other than the Commission.

8. Divide the mortgage amount by 0.90 to arrive at the ASP.

V. COMMISSION HOMEBUYER ACQUISITION LOANS

A. All Commission loans that provide acquisition financing to eligible homebuyers are subject to the terms and conditions set forth in the CDC Loan Policies, as well as to the provisions set forth below.

B. All Commission loans and notes made to assist eligible homebuyers under these Policies shall be deferred payment, with no payments due until the earliest of the date of the resale of the home, the date on which the loan matures, or the date on which the homebuyer defaults on the loan.

C. The term of a Commission loan shall be 30 years; however, if required by a senior lender, the term may be extended to conform to the term of the senior mortgage.

D. Interest Rates

1. Except as provided in Section V. D. 2 below, Commission loans will have a fixed interest rate as established in the CDC Loan Policies. As of October 2022, the interest rate is 3%.

2. The interest rate on the Share of Appreciation Note will be 0%, unless otherwise required by a senior lender. The share of appreciation in the value of the property at the time of sale, as calculated pursuant to Section II.C.4 of these Policies, shall be paid in lieu of an interest rate.

E. The Commission’s loans for homebuyer assistance shall be secured by a deed of trust recorded against the property acquired.

1. The Commission loan may be subordinate to one or more mortgages from other private or public lenders that finance the acquisition of the home.

2. The principal amount of the Commission loan must be fully secured by the appraised value of the acquired property, except as provided below.

3. The total debt that finances the purchase of a home may not exceed the purchase price plus closing costs.

4. The homebuyer may not receive cash out of the purchase escrow except to reimburse the homebuyer for any overpayment of estimated closing costs.

5. When the homebuyer borrows funds to pay any portion of the buyer’s

closing costs, the Commission loan can be unsecured by the value of the home in an amount not exceeding the amount of the funds borrowed to pay the buyer's closing costs.

F. Upon close of escrow of the sale of a home to the initial homebuyer, the Commission shall receive from the escrow an administrative fee equal to a percentage of the ASP of the home.

  1. As of October 2022, the percentage is 1.0% of the ASP.

  2. The Commission or Board of Supervisors may approve changes in the administrative fee from time to time.

G. The eligible buyer must reside in the home as their principal residence.

H. The payoff amount of the Commission loan shall equal the principal amount of the loan plus any interest accrued on the loan, plus any Share of Appreciation required, subject to the provisions of Section II.C.4 of these Policies.

  1. Notwithstanding Section V.H above, unless the homebuyer defaults on the deed of trust securing the Commission loan, the payoff amount of the loan shall be reduced, to the extent necessary, to ensure that the sum of (a) the amount due under the Commission loan, (b) the balance due on the homebuyer's senior mortgage(s), (c) the homebuyer's original down-payment amount, and (d) the value of the homebuyer's "sweat equity" contribution, does not exceed the sum of the FMV of the home at resale less the homebuyer's costs of sale described in the promissory note for the deferred payment subordinate loan. The payoff amount could be less than the original principal amount of the Commission loan, but never less than zero.

  2. The payoff amount of the Commission loan shall give the homebuyer credit for the appraised value of non-luxury, permanent capital improvements that the homebuyer makes to the home.

I. A homebuyer's prepayment of all amounts due under a Commission loan will not extinguish the homebuyer's obligations under the Option pursuant to Section VI of these Policies.

J. Refinancing

  1. The Commission will accept a subordinate position to a new senior mortgage that will refinance senior loans that assisted acquisition of the home under the conditions specified in the CDC Loan Policies.

VI. OPTION AGREEMENTS - FIRST RIGHT OF REFUSAL TO PURCHASE

A. To maintain the long-term affordability of each assisted home, the Commission shall execute an Option Agreement (under the Share of Appreciation approach) or a Resale Restriction Agreement and Right of First Refusal (under the Restricted Sales Price approach) with each eligible homebuyer, regardless of whether they are receiving a Commission loan for acquisition of a home, which shall be recorded against title to the acquired property.

B. The Option Agreement or RRAOP shall grant the Commission a first right to purchase the home for the allowed sales price. The Commission may choose to acquire the home in its own name or may assign the right to purchase to an eligible homebuyer.

C. The term of the Option Agreement or RRAOP for the home shall be 30 years from the date of the sale of the home.

D. A homebuyer's repayment of the Commission's loan will not extinguish the Commission's Option Agreement or RRAOP and first right to purchase the home at a later date of resale.

VII. RESALE PROCESS

A. Notice of Intent to Sell.

If the homebuyer desires to resell the home, the Option Agreement and RRAOP require that they submit to the Commission a written "Notice of Intent to Sell" the home for the allowed RSP or FMV, as determined according to the procedure set forth in the Option Agreement or RRAOP.

1. From the date on which the homebuyer has provided the Commission with both the Notice of Intent to Sell and, for the Share of Appreciation Approach provided documentation of the FMV of the home, the Option Agreement or RRAOP will provide the Commission or its agent a specified time period (typically, 45 calendar days) to advise of the Commission's intent to exercise its option to purchase the home for the allowed sales price.

2. The Commission shall market the home to identify the resale homebuyer in accordance with procedures and agreements as approved by the Executive Director of the Commission.

3. If the Commission notifies the owner in writing within the specified time period of the Commission's intent to exercise the option to purchase the home, the Option Agreement or RRAOP shall require the Commission, its agent, or assignee to complete the purchase within a specified time period (typically, 90 days following receipt of the Notice of Intent to Sell and, for the Share of Appreciation Approach the documentation of the FMV of the home).

B. The eligible buyer of a home at resale shall finance as much of the RSP or FMV and closing costs with a deposit, down-payment and senior mortgage loans(s) as the senior mortgage lender's underwriting standards will permit.

C. To the extent that funds are available and pursuant to Section V of these Policies, the Commission may provide the new buyer of a home a loan in an amount equal to the difference between the sum of the RSP or FMV plus homebuyer closing costs, and the sum of the deposit, down-payment and the senior mortgage amount(s) for which the new buyer has qualified.

D. The Commission shall record with the new eligible homebuyer an Option Agreement or RRAOP granting the Commission the first right to purchase the home when the resale homebuyer is ready to resell the unit. The Option Agreement or RRAOP shall include the provisions described in Section VI, above.

F. Resale Administrative Fee.

   1. When the Commission, its agent or assignee exercises the Commission's option to purchase a home and completes the purchase, the seller of the home shall pay the Commission an administrative fee equal to a percentage of the permitted sales price of the home, as established under the Share of Appreciation or Restricted Sales Price Approach above, as applicable to the home.

      a. As of October 2022, the percentage is 3% of the FMV for Share of Appreciation Approach and 3% of the RSP for the Restricted Sales Price Approach.

      b. The Commission or Board of Supervisors may approve changes in the administrative fee from time to time.

   2. The Commission may transfer or assign all or a portion of said fee to a third party that assists the Commission with the sale or resale of a unit subject to these policies.

G. The Commission's option rights shall be reinstated if the home is not sold within 180 calendar days following the occurrence of one of the following events:

   1. Commission fails to provide seller a notice of intent to exercise the option within the time specified in the Option Agreement; or

   2. Commission provides owner written notice within the time specified in the Option Agreement that Commission will not exercise the option.

H. The Commission may pursue legal action to enforce its option rights following the occurrence of one of the following events:

   1. The home is sold without providing the Commission the required Notice of Intent to Sell; or

   2. The home is sold without providing the Commission the time period specified in the Option Agreement or RRAOP to:

a. Respond to the Notice of Intent to Sell; or

b. Complete the resale after giving a written notice of intent to exercise its option to purchase the home.

VIII. USE OF PROCEEDS FROM DEFERRED PAYMENT SUBORDINATE LOANS

A. The Commission shall deposit all proceeds from the repayment of deferred payment subordinate loans into a dedicated affordable housing fund.

B. The Commission shall use the loan proceeds in the affordable housing fund for one of the following purposes:

1. Provide deferred payment subordinate loans to eligible buyers of the assisted homes at resale.

2. Provide deferred payment subordinate loans to eligible buyers to purchase homes not originally sold subject to Commission option agreements.

3. Purchase the home at resale if an eligible homebuyer cannot be identified with timeframes set for in the Option Agreement or RRAOP for subsequent resale or rental to eligible households.

4. Finance the conservation, rehabilitation, and construction of permanent rental housing and fund any other housing programs authorized by the Board of Commissioners or the Board of Supervisors for the development of housing affordable to low- and very low-income households.

IX. ALTERNATIVE FINANCING PROGRAMS AND AFFORDABILITY GUARANTEES

A. Where the Executive Director of the Commission determines, after consultation with County Counsel, that one or more federal, state and/or local affordable housing programs available to a project will achieve results that are equivalent to, or more effective than, the affordability and/or financing requirements of these Homeownership Policies, and that such affordable housing programs otherwise comply with applicable federal, state and local laws, the Executive Director of the Commission may authorize the relevant provisions of those programs to replace or supersede the corresponding affordability and/or financing requirements of these Policies if necessary to facilitate the financing or development of a project.

B. The Affordable Housing Agreement for a project that will benefit from these Homeownership Policies shall incorporate the Commission-approved affordability and/or financing provisions of the relevant federal, state, and local programs that will replace the corresponding or similar requirements of these Policies. The Commission shall record an Affordable Housing Agreement in compliance with Article 89 for each unit sold under this Alternative provision.