

MODEL **DOWN PAYMENT ASSISTANCE PROGRAM** **POLICY**

These policies and procedures were adopted by the (name of TDHE/TRIBE) by Resolution # _____ on _____, ____.

(Note: This is a model policy and the TDHE/TRIBE may choose to delete or add any sections or numbers used in this sample. Should the TDHE/TRIBE choose to make any changes, the TDHE/TRIBE should ensure that the policy remains in compliance with the Native American Housing Assistance and Self-Determination Act.)

POLICY STATEMENT

The purpose of the (NAME OF TDHE/TRIBE)'s Down Payment Assistance program is to provide the members of the (NAME OF TRIBE) with affordable homeownership financing opportunities to help improve the quality of life in the tribal communities.

The (NAME OF TDHE/TRIBE)'s Down Payment Assistance Program shall comply with all applicable regulations of the Native American Housing Assistance and Self-Determination Act of 1996 (as amended) (NAHASDA) along with other applicable rules and regulations. The (NAME OF TDHE/TRIBE) Executive Director with the approval of the governing body shall be responsible for periodically amending this policy to comply with any applicable laws or regulations.

CONTENTS

1. **Program Description**
2. **Assistance Available**
3. **Borrower Eligibility**
4. **Ineligibility**
5. **Waiting List/Applicant Pool**
6. **Reservation of Funds**
7. **Property Requirements**
8. **Repayment of the Loan**
9. **Annual Recertification**
10. **Resale Restrictions**
11. **Assumption of Loan**
12. **Transfer of Home**
13. **Counseling**
14. **Payment Oversight**
15. **Appeals Process**

1. PROGRAM DESCRIPTION.

The Down Payment Assistance Program is specifically designed to increase the availability of affordable housing by addressing homeownership on several levels. It combines (NAME OF TDHE/TRIBE) Indian Housing Block Grant funds with private first mortgages, thereby multiplying many times over the number of native families that can be assisted with (NAME OF TDHE/TRIBE)'s grant.

(Note: The TDHE/TRIBE shall determine whether the Downpayment Assistance Program will be a grant program or forgivable loan program.)

- A. **Eligibility** – The Down Payment Assistance Program is available to low-income Indian families with gross incomes at or below 80% of the median income adjusted for family size. The current income limits shall be appendices to this policy.
- B. **Credit** – Down Payment Assistance Program borrowers must meet the credit requirements of the first mortgage lender (bank/lender). Applicants will be pre-screened to determine credit worthiness. (NAME OF TDHE/TRIBE) will assist applicants in demonstrating that they have stable income and the ability and willingness to meet financial obligations.
- C. **Affordability** – Down Payment Assistance funds are available to buy down the cost of owning a home. This results in a lower mortgage amount and lower monthly payments. (NAME OF TDHE/TRIBE) funds will be in the form of a second mortgage with no monthly payments. This second mortgage is gradually reduced, thus converting it to homeowner equity.
- D. **Cash Flow** – Down Payment Assistance may include payment of reasonable loan closing costs associated with the first mortgage and (NAME OF TDHE/TRIBE)'s second mortgage.
- E. **Support** – Trained staff will assist eligible applicants in successfully completing an application with a bank/lender for a first mortgage loan.
- F. **Counseling** – Borrowers will be required to participate in homebuyers' classes designed to assist new homeowners in understanding and fulfilling the responsibilities of homeownership.

2. ASSISTANCE AVAILABLE. The (NAME OF TDHE/TRIBE) has established and implemented the Down Payment Assistance Program to assist creditworthy low-income households in purchasing a home. The Down Payment Assistance loan may help with down payment and closing costs and is designed to make home mortgage payments more affordable. The following is a list of the assistance offered at this time:

A. Down payment. (NAME OF TDHE/TRIBE) may provide funds to buy down the amount of the first mortgage to a level that is affordable to the homeowner. Down payment assistance is limited to (% OF THE VALUE OF THE PROPERTY OR AMOUNT TO BE ESTABLISHED BY TDHE/TRIBE) of the value of the property.

Nearly all lenders will require a down payment when purchasing a home. Part of this down payment may be provided by (NAME OF TDHE/TRIBE), however, homebuyers must provide a small portion from their own cash. (NAME OF TDHE/TRIBE) requires that the homebuyer pay at least (% TO BE ESTABLISHED BY TRIBE/THE) of the sales price toward the down payment. This amount may increase, depending on the requirements of the first mortgage lender.

B. Closing Costs. Funds are available from (NAME OF TDHE/TRIBE) to pay all, or a substantial part of, the closing costs of the first mortgage loan. This assistance is limited to actual, reasonable closing costs.

C. Maximum Loan Amount. The maximum amount of assistance for each homeowner will be (\$ AMOUNT TO BE ESTABLISHED BY TDHE/TRIBE) including down payment and closing costs.

D. Minimum Loan Amount. The minimum loan amount for this program is (\$ AMOUNT TO BE ESTABLISHED BY TDHE/TRIBE).

3. BORROWER ELIGIBILITY.

A. Native Restrictions. Assistance is only available to members of a Federally recognized tribe. Tribe means any Indian tribe, band, nation, or other organized group or community of Indians, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act. Borrowers must present a tribal membership card or other form of positive identification of native status at the time of application.

(Note: The TDHE/TRIBE may give preference to local tribal members if they have adopted the preference in its admissions policy. The tribe/TDHE has the option to serve the following types of families. Non low-income Indian families are eligible to receive rehabilitation assistance in accordance with 24CFR 1000.110. Also, essential families may receive this type of assistance on a reservation or Indian area if the essential family's housing needs cannot be reasonably met without such assistance and the tribe/TDHE determines that the presence of that family on the reservation or Indian area is essential to the well-being of Indian families.)

- B. Income Limitations.** Participation in the Down Payment Assistance Program is limited to low-income families as defined in the (NAME OF TDHE/TRIBE) established income limits. Participants will be required to provide documentation to verify the determination of low-income status.
- C. Homeownership Counseling Classes.** The applicant must successfully complete an (NAME OF TDHE/TRIBE) approved home ownership-counseling curriculum. The (NAME OF TDHE/TRIBE) (INSERT THE APPROPRIATE STAFF TITLE) shall approve the curriculum.
- D. First Mortgage Loan.**
- (1) The applicant must be able to obtain a mortgage loan with an eligible lender for the maximum affordable amount. The lending institution must be willing to participate in the Down Payment Assistance Program and its requirements. The borrower will sign a Release of Information form so that (NAME OF TDHE/TRIBE) is able to share information with the lending institution.
 - (2) The lending institution must, as a part of its mortgage loan, require purchase of property insurance, and must escrow the insurance payments.
- E. Cash Down Payment.** The applicant must be able to provide at least (% OR \$ AMOUNT TO BE DETERMINED BY THE TDHE/TRIBE) of the sales price in the form of a cash down payment from his or her own assets. This cash payment shall not be borrowed.
- F. Assets.** (NOTE: THIS SECTION IS OPTIONAL) The applicant shall not own any other residential property. An exception may be made for inherited property.
- G. Employees.** Employees, agents, officers or elected or appointed officials

of (NAME OF TDHE/TRIBE) are eligible for loans under this program. The Executive Director of (NAME OF TDHE/TRIBE) must approve all such loan applications. Employees, agents, officers or elected or appointed officials must comply with 24CFR 1000.30, 1000.32, and 1000.34 regarding conflict of interest.

4. INELIGIBILITY. Applicants will be considered ineligible for not meeting items in Section 2 above or for any of one or more of the following:

- Providing false information on the application.
- Failing to complete required forms or to supply requested information.
- Committing fraud in connection with any (NAME OF TDHE/TRIBE) program, or failing to disclose previously committed fraud in connection with any (NAME OF TDHE/TRIBE) program.
- Appearing on HUD's list of suspended, debarred and limited denials of participation.
- Having a record of eviction from any government assisted housing program.
- Having an outstanding debt owed to any public or Indian Housing Authority or Tribally Designated Housing Entity.

5. WAITING LIST / APPLICANT POOL

- A. The Down Payment Assistance Program is operated on a first-come first-served basis (with any preferences the TDHE/TRIBE has defined under eligibility on page 2) subject to the availability of funds.
- B. (NAME OF TDHE/TRIBE) will maintain a list of eligible applicants based on the date and time the completed application is received by (NAME OF TDHE/TRIBE).
- C. If funds are unavailable for the Down Payment Assistance Program, (NAME OF TDHE/TRIBE) may suspend or discontinue accepting applications until funds become available.

6. RESERVATION OF FUNDS.

- A. Funds will be reserved for each applicant when the loan application is complete, including a copy of the Earnest Money Agreement and all information required by the first mortgage lender.
- B. Funds will be reserved for (# TO BE DETERMINED BY TDHE/TRIBE) days and may be extended for (# TO BE DETERMINED BY TDHE/TRIBE) days at a time.

7. PROPERTY REQUIREMENTS. The owner must meet the following property requirements during the life of the loan:

- A. The home must be the primary residence of the owner.
- B. The property must be located within (NAME OF TDHE/TRIBE)'s Indian area as defined in its IHP.
- C. The property must be a single-family residence, including condominiums and townhouses.
(Note: The TDHE/TRIBE shall determine whether manufactured homes and/or mobile homes qualify for the program.)
- D. The initial purchase price of the home may not exceed the Total Development Cost limits established by the (NAME OF TDHE/TRIBE) for the type of single family housing for the area. The (NAME OF TDHE/TRIBE) may use HUD established Total Development Cost limits which are attached as appendices to this policy.
- E. The house must pass all Housing Quality Standards as established by the (NAME OF TDHE/TRIBE), if applicable.
- F. The property must be reviewed by (NAME OF TDHE/TRIBE) for environmental impact in accordance with the National Environmental Policy Act (NEPA) and all other applicable statutes, regulations and Executive Orders.
- G. Lead based paint prevention requirements apply to housing acquired under this program. (Note: The TDHE/TRIBE should require the seller to certify that there is no lead based paint in the home.)
- H. If the owner selects a home in a flood plain, flood insurance must be obtained in an amount adequate to cover the first and second mortgage loan in compliance with 24CFR 1000.38. The owner must provide a certification of insurance to (NAME OF TDHE/TRIBE) annually.
- I. The owner shall be responsible for an insurance coverage required by the TDHE/TRIBE or the lending institution.

8. REPAYMENT OF THE LOAN

- A. There are no monthly payments or interest associated with (NAME OF TDHE/TRIBE)'s Downpayment Assistance Program loans.
- B. (% TO BE DETERMINED BY TDHE/TRIBE) of the original down payment assistance loan amount will be forgiven on each annual or monthly anniversary of the loan. If the property is sold (or the title is otherwise transferred) and ceases to be the borrower's primary residence, the unforgiven portion of the loan will be due and payable.

9. **CERTIFICATION OF RESIDENCY.** The property must remain the borrowers' primary residence throughout the term of this loan. Borrowers will be required to sign an annual affidavit stating the amount of time they lived in the house as their primary residence during the previous year. If they did not live in the house for at least 11 of the previous 12 months, the loan will be considered to be in default, (NAME OF TDHE/TRIBE)'s Executive Director will review each default and consider the appropriate course of action. (NOTE: THIS SECTION IS OPTIONAL AND THE TRIBE/TDHE SHOULD ESTABLISH ITS OWN CRITERIA. FOR EXAMPLE, ALASKAN FISHERMAN MAY LIVE IN A FISHING CAMP PART OF THE YEAR AND THEN LIVE IN THEIR PRIMARY RESIDENCE THE REST OF THE YEAR.)

10. RESALE RESTRICTION

- A. Documents for the Down Payment Assistance Program shall include resale restrictions and an option to purchase granted to (NAME OF TDHE/TRIBE).
- B. If, at any time, the owner sells or transfers title to the home, the owner must repay the TDHE/TRIBE any balance due. (NOTE: THIS SECTION WOULD APPLY IN A FORGIVABLE LOAN SITUATION.)

11. **ASSUMPTION OF LOAN (NOTE: THIS SECTION IS OPTIONAL).** If the property is sold during the term of (NAME OF TDHE/TRIBE)'s loan, the (NAME OF TDHE/TRIBE) loan may be assumed by a qualified borrower.

Generally, the assumption approval will be based on the following:

- A. The new owners must assume the first mortgage and be contractually obligated to satisfy the mortgage.
- B. The new owners must be low income, as defined by the (NAME OF TDHE/TRIBE). The definition of low-income shall be the same as defined in the (NAME OF TDHE/TRIBE) Eligibility, Admissions & Occupancy Policy.
- C. The property must be the new owner's primary residence.
- D. The new owners must be members of a Federally recognized tribe, band, nation, or other organized group or community of Indians.

12. TRANSFER OF HOME (NOTE: THIS SECTION IS OPTIONAL.)

- A. If the homebuyer no longer desires to own the property and intends to sell or otherwise transfer title, the homebuyer must notify (NAME OF TDHE/TRIBE) of their intent in writing. Upon receipt of the notice, (NAME OF TDHE/TRIBE) shall then have the right to exercise its Purchase Option by delivery of notice to the homebuyer of such exercise at any time within thirty (30) days from its receipt of such written notice from the homebuyer of interest to sell or otherwise transfer the residence.
- B. If the (NAME OF TDHE/TRIBE) exercises its Option to Purchase the property, closing shall be through an escrow with the title insurance company issuing the owners title insurance policy. The closing shall be within sixty (60) days of the opening of escrow. In the event the (NAME OF TDHE/TRIBE) decides to assign the Purchase Option, the opening of the escrow will be within thirty (30) business days after the homebuyer is notified of (NAME OF TDHE/TRIBE)'s intent to exercise the Purchase Option. In the event (NAME OF TDHE/TRIBE) postpones opening of escrow and is unable to select an assignee, (NAME OF TDHE/TRIBE) retains the right to open escrow and complete the purchase provided the escrow is opened within thirty (30) business days and the sales transaction is completed within ninety (90) days from the homebuyer's notice of intent to sell.
- C. Up to ten (10) days before close of escrow, the homebuyer may give notice to (NAME OF TDHE/TRIBE) of the homebuyer's intent to terminate the escrow. (NAME OF TDHE/TRIBE) shall retain the right by notice to

the homebuyer to complete the purchase of the property for an additional period of ten (10) days commencing from the date of the receipt of notice the homebuyer's intent to terminate the escrow.

- D. In the event the (NAME OF TDHE/TRIBE) does not exercise its Purchase Option within thirty (30) business days of the homebuyer's notice pursuant to the Resale Restriction and Purchase Option, the homebuyer may offer the residence to anyone.
- E. Any attempt by the homebuyer to make a prohibited transfer of title or interest in the property in violation of the DOWN PAYMENT ASSISTANCE Program Documents, the transfer will be void and subject to exercise of the purchase option described in Section VI of that document.
- F. Permitted Transfer by Owner. The following transfers are not prohibited and therefore are not subject to exercise by the Optionee of the Purchase Option:
 - (1) Transfer by gift or inheritance to the homebuyer's spouse or children;
 - (2) Transfer of title by a homebuyer's death to a surviving joint tenant, tenant by entireties, or surviving spouse of community property;
 - (3) Transfer of title to a spouse as part of divorce or dissolution proceedings;
 - (4) Granting of leasehold interest or rental of the residence for a period of less than a year; or
 - (5) Transfer of title or interest in the residence to the spouse in conjunction with marriage.
 - (6) The above transfers are allowable if the Second Mortgage Document covenants continue to run with the title to the property following said transfers, and any transfer documents must contain the following covenant:

This residence is subject to the Resale Restrictions Agreement and Option to Purchase and Transferee, on behalf of Transferee and Transferee's successors and assigns, covenants and agrees to be

bound by and perform the Agreement, and to include in any further transfer of the residence the covenant required by the Agreement.

- (7) The homebuyer must notify (NAME OF TDHE/TRIBE) at least thirty (30) business days prior to the sale or transfer of the property. (NAME OF TDHE/TRIBE) will approve or disapprove of the proposed Transferee within thirty (30) business days after receiving the notification.

13. COUNSELING

A. All applicants will be required to attend an (NAME OF TDHE/TRIBE) approved homebuyer counseling class prior to loan approval. The purpose of this requirement is:

- (1) To enable the applicant to understand the responsibilities that accompany participation in (NAME OF TDHE/TRIBE)'s Down Payment Assistance Program.
- (2) To enable the applicant to understand the home buying process,
- (3) To enable the applicant to understand and prepare to assume homeownership responsibilities and tasks,
- (4) To develop an understanding of the Down Payment Assistance Program with a goal of promoting feelings of self-respect, pride and community responsibility.

B. If available, applicants may elect to attend Post-Occupancy counseling. The cost of this counseling may be included in closing costs paid by (NAME OF TDHE/TRIBE) if the homeowner makes arrangements before the loan closing. (NOTE: THE FOLLOWING SENTENCE IS OPTIONAL SINCE THE COUNSELING COSTS ARE ELIGIBLE UNDER SECTION 202(3) OF NAHASDA.) If the homebuyer elects to attend after the loan closing, the costs of the counseling will be at the owner's expense. Post-Occupancy counseling may include the following:

- (1) Budget Counseling
- (2) Home Maintenance

(3) Refresher review of (NAME OF TDHE/TRIBE)'s Down Payment Assistance Program requirements.

C. Any counseling required by the lender of the TDHE/TRIBE shall be at no cost to the homebuyer.

14. PAYMENT OVERSIGHT

A. (NAME OF TDHE/TRIBE) shall work with the homebuyer to ensure the success of their home ownership. If, for any reason, the first mortgage loan becomes delinquent, the lender will contact (NAME OF TDHE/TRIBE). Upon receipt of any delinquent notices, (NAME OF TDHE/TRIBE) staff may contact the homebuyer to assist in resolving the problem. This intervention does not, in any way, diminish the homeowner's responsibilities to the first mortgage lender.

B. If a homebuyer is found to be in default of any portion of the first mortgage documents, (NAME OF TDHE/TRIBE) may provide or refer the home buyer to financial counseling in an effort to resolve the problem, and may:

(1) Arrange a meeting with the home buyer to discuss the default;

(2) Work with the home buyer to develop a specific plan of action to correct the default;

(3) Monitor the homebuyer's plan of action until the default is corrected.

15. APPEALS PROCESS

A. Individuals or families who have applied for the Down Payment Assistance

Program and who, for any reason, have been determined to be ineligible will be notified by (NAME OF TDHE/TRIBE) in writing. The notification shall state the reasons for ineligibility. All information relative to the rejection of the applicant shall be documented and placed in the applicant's file.

- B.** An applicant who has been determined ineligible for the Down Payment Assistance Program may request a second determination within 30 days of the date on the written notification. The applicant may resubmit eligibility documentation at the time of the second determination. A written notification of selection or denial will be provided based on the information submitted by the applicant. Other recourses for appealing a (NAME OF TDHE/TRIBE) decision may also be available and will be described in each letter of denial sent to the applicant.

APPENDIX

1. Income Limits

<http://www.huduser.org/datasets/il/il09/index.html>

2. Total Development Costs

www.hud.gov/offices/pih/publications/notices/09/pih2009-27_tdc.pdf