

**BURNS PAIUTE TRIBE  
HOUSING DEPARTMENT  
POLICIES & PROCEDURES**



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# **1. GENERAL PROVISIONS**

## **1.1. NAHASDA Objectives**

- to assist and promote affordable housing activities to develop, maintain, and operate affordable housing in safe and healthy environments on Indian reservations and in other Indian areas for occupancy by low-income Indian families;
- to ensure better access to private mortgage markets for Indian tribes and their members and to promote self-sufficiency of Indian tribes and their members;
- to coordinate activities to provide housing for Indian tribes and their members with Federal, State, and local activities to further economic and community development for Indian tribes and their members;
- to plan for and integrate infrastructure resources for Indian tribes with housing development for tribes; and
- to promote the development of private capital markets in Indian country and to allow such markets to operate and grow, thereby benefiting Indian communities.

## **1.2. Purpose**

The purpose of this Policy is to set forth standards for the Burns Paiute Housing BPHD (BPHD) housing programs funded through the U.S. BPHD of Housing and Urban Development ("HUD"), as well as:

- To provide guidelines enabling the Burns Paiute Housing BPHD (BPHD) staff to administer the programs consistently and fairly;
- To provide training and orientation for newly hired staff;
- To provide answers to program questions beyond the scope of the Federal Regulations; and,
- To educate Housing BPHD clients and the public of the basis for Housing BPHD decisions.

This policy pertains to the following programs funded by the Indian Housing Block Grant (IHBG):

- The Homeownership Program, by which the Homebuyer enters into a lease with option to purchase, known as the Mutual Help and Occupancy Agreement ("MHO"), with BPHD; and
- The Rental Program, by which the tenant family enters into a Rental Agreement with BPHD to rent a housing unit.

## **1.3. Adoption**

The Admissions Occupancy Policy is adopted by, and may only be amended by, the Burns Paiute Tribal Council

## **1.4. Interpretation**

If any provision of the Admissions Occupancy Policy conflicts with the Federal Regulations (24 CFR § 1000), the Federal Regulations shall prevail. If any provision of this policy conflicts with the Agreement or the Rental Agreement, the Agreement or Rental Agreement shall prevail. However, in all instances the Agreement, the Rental Agreement, the regulations and this policy shall be construed to achieve consistency and to fulfill the overall program goals.

## **2. ELIGIBILITY**

### **2.1. Family Composition**

Homeownership and Rental housing are provided to eligible Indian families. A Family can consist of any of the following:

- An Elderly Family whose head or spouse meets the following definition:
  - 60 years of age or older; or
  - is Disabled or a person with a disability.
- Two or more persons, at least one of whom is a minor, who will live regularly together in the same home, and whose income and resources are available to meet the Family's needs, with the following clarifications:
  - There can also be other unrelated persons living in the household, such as foster children; if it is determined the home will not be overcrowded.
  - Persons residing with a Family to permit the employment of a sole wage earner, or solely because the person is essential to the care of a family member, shall not be considered a family member when determining eligibility.
- The remaining member of a tenant family (if in Rental housing, transfer to Tribally-owned housing required).

### **2.2. Eligible Families.**

#### **2.2.1. Low-Income Indian Families**

The term 'low-income family' means a family whose income does not exceed 80 percent of the median income for the area, as determined by the Secretary with adjustments for smaller and larger families.

#### **2.2.2. Non-low income Indian Families**

Pursuant to the conditions outlined in 24 CFR 1000.110, the BPHD may provide to non low-income families if there are no eligible low-income families on the BPHD Waiting List.

#### **2.2.3. Essential Families**

**Families may be eligible for housing assistance provided that BPHD has determined that the presence of the family is essential to the well-being of Indian families, and that the need for housing for the family cannot reasonably be met except under this program. In determining whether the family is essential, BPHD shall consider any resolution of a federally recognized tribal governing body or, if none exists, any other local governing body.**

#### **2.2.4. Law Enforcement Officers**

The BPHD may provide housing or housing assistance for a law enforcement officer if--

(A) the officer—

- (i) is employed on a full-time basis by the Federal Government or a State, county, or other unit of local government, or lawfully recognized tribal government; and
- (ii) in implementing such full-time employment, is sworn to uphold, and make arrests for, violations of Federal, State, county, or tribal law; and

(B) the recipient determines that the presence of the law enforcement officer may deter crime.

## **2.3. Income Limitations**

To be eligible, the family's Annual Income must meet the requirements set out below.

### **2.3.1. Maximum income**

Except as provided below, the family's Annual Income cannot exceed the applicable income limits for admission established by the Federal regulations as set forth in Appendix A.

### **2.3.2. Exception to maximum income limit**

- BPHD may provide for admission of applicants to the Homeownership Program and Rental Housing Program whose income is between 80% and 100% of median income, as specified in Appendix A, if it is determined that there is a need for housing for such families that cannot reasonably be met except under this program.
- Total Indian Housing Block Grant (IHBG) funds used for this purpose cannot exceed 10% of the annual grant allocation.
- Unless the family is determined to be essential and there is no other housing available, assistance will be prorated as required by program regulations.
- Income limits apply to all applicant families and to existing families who are moving and a new Lease or Agreement is required. Families must be determined eligible at the time the Lease or Agreement is signed. Families do not become ineligible if their income increases above the income limit after they have entered into an Agreement with the BPHD.

### **2.3.3. Minimum income**

*Homeownership Program only:* Families must have sufficient income to make monthly house payments, utility payments and perform maintenance of the home. To be eligible the family must have earned income of at least \$10,000 per year from a permanent job (source of income is reliable and will be ongoing).

### **2.3.4. Estimating income**

If it is not feasible to anticipate a level of income over a 12-month period, the income anticipated for a shorter period may be annualized, subject to a re-determination at the end of the shorter period.

## **2.4. Additional Criteria for Admission**

To be eligible for the Homeownership or Rental Housing Program, applicants must be able to comply with program requirements. Also, a family whose conduct in present or prior housing is likely to diminish the health, safety, welfare, or quiet enjoyment of other tenants, or to adversely affect the project environment, the physical condition of the home or neighborhood, or the Housing BPHD's financial ability to operate the program and enforce tenant obligations without undue burden, will not be admitted. Past habits and practices with respect to housing occupancy will be assessed to determine eligibility. Disqualifying factors include:

### **2.4.1. Outstanding debts**

No family will be admitted who has an outstanding debt as a result of a previous BPHD or Tribal housing tenancy, notwithstanding any repayment agreement, or to any utility company, which would prohibit the family from obtaining utility services. To be considered for eligibility, the family must repay the debt in full.

### **2.4.2. Fraud**

No family will be admitted whose head or spouse has committed fraud as a participant

or applicant in any housing program administered by a Housing Authority, or other publicly funded housing program.

**2.4.3. Drug-related criminal activity**

No family will be admitted who has a member with a history of engaging in drug-related criminal activity, as defined in this policy.

**2.4.4. History of violence**

No family will be admitted who has a member who has a history of engaging in violent criminal activity, as defined in this policy.

**2.4.5. Ability to perform obligations**

*Homeownership Program only:* In addition to the above eligibility criteria, applicants to the Homeownership Program must demonstrate their ability and willingness to maintain the home. This ability must include the financial resources available for maintenance purposes and the physical abilities of the family members to perform this maintenance, or the ability of the family to access maintenance services. Past tenant history will be considered by the Housing BPHD.

**2.5. Factors and information to be assessed**

Eligibility will be determined by reviewing such factors as previous occupancy with the Housing BPHD, landlord references, information from neighbors and persons with relevant knowledge of habits and practices, credit reports and criminal background checks. If unfavorable information is received, BPHD considers the time, nature, and extent of the past occurrence and the reasonable probability of future favorable performance. Such factors as the length of time since the last evidence of such activities, the seriousness of the conduct, and the record of rehabilitation efforts on behalf of the family member(s) will be relevant.

**2.6. Homeownership Counseling Program**

*Homeownership Program only:* Applicants to the Homeownership Program must agree to participate in the Housing BPHD's Counseling Program, including attending all training sessions. Prior to occupancy, applicants will receive training in the following areas:

- Explanation of the Homeownership program
- Community resources and services
- Property care, landscaping and maintenance (including mold prevention)
- Budgeting, money management and insurance
- Fire safety

Failure or refusal to participate in counseling authorizes BPHD to terminate the admissions process at any time.

**3. APPLICATION PROCESS**

This section sets out procedures for obtaining and verifying information from applicant Families for purposes of determining whether they meet the conditions of eligibility for participation (Section 2, above).

**3.1. Application**

**3.1.1. Open process**

Unless the waiting list is closed per Section 3.3.2, applications are accepted from all families seeking participation in the Program.



- Transfer to a retirement home, elder housing, nursing home, care facility, or family member's home due to age, illness, or inability to care for one self or to live independently in a single family home requiring maintenance;

**4.3.3. Eligibility of successor**

To be eligible, the designated successor must:

- be an adult person who will promptly make the home his or her primary residence;
- be willing and able to pay the Administration Charge (or higher Required Monthly Payment, depending on income) and to perform all Homebuyer obligations under the Homeownership Agreement, including maintenance and replacements;
- satisfy program eligibility requirements (including family eligibility, income standards, no other home-ownership, and Native/Indian status or waiver for Non-Indians under Section 2.2) Occupancy standards under Section 4.7; and,
- execute an assumption of the former Homebuyer's obligations under the Homeownership Agreement, including responsibility to cure any non-maintenance and accrued balance due.

**4.3.4. Ineligible successors may exercise purchase option**

If a designated successor satisfies all requirements except for program eligibility standards, the successor may execute an outright purchase of the home.

**4.3.5. Current homebuyers ineligible**

A Homebuyer already occupying a BPHD Homeownership home is not an eligible successor. This covers both Heads of Household and Spouses, both of whom are considered Homebuyers.

**4.3.6. Housing BPHD selection of successor**

If the designated successor does not meet all requirements, or there is no designated Successor, the BPHD may, but is not required to select a family member of the Homebuyer who meets all requirements.

**4.3.7. Succession to all rights and obligations**

An eligible designated successor shall succeed to all rights and obligations of the former Homebuyer, including all outstanding amounts owing to BPHD and any balance in the Monthly Equity Payments Account (MEPA).

**4.3.8. Guardianship agreements**

- Upon death or mental incapacity of the Homebuyer(s), there is no designated eligible successor, and a minor child or children of the Homebuyer are living in the home, BPHD may, in order to protect their continued occupancy and opportunity for acquiring ownership of the home, approve as occupant of the home an appropriate adult who has been appointed legal guardian of the children with a duty to perform the obligations of the Homebuyer Agreement in their interest and behalf.
- The guardianship agreement shall remain in effect until the oldest child reaches majority, at which time that person shall become the head of household, if willing and eligible. If the oldest child is not willing to assume the responsibilities of the home, the agreement may remain in effect until the next oldest child reaches majority, so long as at least one child remains living in the home.
- If at any time before a child assumes full legal responsibility for the home as an adult, the legal guardian becomes unwilling or unable to perform the

obligations of the Agreement, and no other legal guardian is appointed, possession of the home shall revert to BPHD.

**4.3.9. Restricted land**

In the case of a home on restricted land, an otherwise eligible successor who is ineligible to receive the Housing BPHD's interest in the underlying land may nonetheless succeed to the rights and obligations of the Agreement, provided that the successor agrees to any Agreement modifications necessary or desirable to conform to the land restrictions.

**4.3.10. MEPA and Purchase Price Schedule**

Successorship does not affect or interrupt the Purchase Price schedule, except that in the event of a dispute between BPHD and potential successors, the General Manager of the Burns Paiute Tribe may suspend the Purchase Price schedule pending and subject to resolution or settlement of the dispute. All MEPA balances shall remain with the home, with all related rights and obligations with respect to those funds going to the successor family. No equity funds shall be paid to the former family in the event of successorship. MEPA payout is available upon Agreement termination, only.

**4.4. Transfers**

An eligible Rental Program participant family may transfer into the vacancy.

**4.4.1. Families eligible for transfer (*Rental Program only*)**

A Rental family is eligible to transfer when:

- The number of family members has permanently changed so that the current home is no longer appropriate, and the vacant home is an appropriate size; or
- The family has verifiable medical needs or a qualifying disability, which cannot be accommodated in their present home, currently or after modification, and the vacant home can accommodate such needs.

**4.4.2. Current in payments**

Before a family will be allowed to transfer to another home, all amounts owed to BPHD must be paid.

**4.4.3. Maintenance and repairs performed**

If the unit of the family desiring to transfer requires maintenance, replacement or repairs in order to prepare it for new occupants, BPHD may disallow transfer or require the family to pay an amount equal to BPHD's estimate of the cost necessary to complete the work. If the actual cost exceeds the estimate, the Family shall be fully responsible for payment.

**4.5. Selection from Waiting List**

If no Successor qualifies under Section 4.3, and no transfer occurs under Section 4.4, the vacancy will be filled by selecting applicants from the waiting list, according to the occupancy standards stated in Section 4.7. Once the pool of applicants matching the unit characteristics is determined, the preferences stated below are applied.

**4.5.1. Order of selection - general guidelines**

- Elderly families, as defined, will receive preference for housing units designated for the elderly;
- Families with one or more persons with a disability will receive a preference for housing units with special accessibility features;
- Families are to be selected in the order in which they appear on the waiting list; and

- Families must be selected from the top of the waiting list;

**4.5.2. Order of selection**

Selection shall be made in the following order, subject to the limitations in 4.5.1, above:

- Enrolled Tribal members by date and time of application; and then
- Other Native Americans by date and time of application.

**4.5.3. Drug-related criminal activity**

The BPHD will not admit an applicant if any member of the family was evicted from assisted housing because of drug-related criminal activity during the three years prior to the application date. "Assisted housing" means housing assisted under a Public or Indian Housing Authority program. Admission may be granted if the applicant clearly establishes, and BPHD determines, that in fact one of the following circumstances exist:

- The evicted person has successfully completed a rehabilitation program approved by the BPHD.
- The evicted person did not participate in or know about the drug-related criminal activity.
- The evicted person no longer participates in any drug-related criminal activity.

**4.6. Non-discrimination**

Except as required for Indian eligibility and preference, all Families will be selected without regard to race, color, creed, religion, national origin, gender, handicap, disability or familial status. No person will be excluded from participation in, or denied the benefits of, the program because of membership in a class or group, such as unmarried mothers or recipients of public assistance.

**4.7. Assignment of Homes**

To avoid overcrowding, BPHD matches family size to the bedroom size of Homeownership and Rental homes in accordance with the following Occupancy Standards. Such standards may be waived when necessary to achieve or maintain full occupancy.

**4.7.1. Maximum and Minimum Family Size**

Bedrooms	Minimum Persons	Maximum Persons
1	1	2
2	2	4
3	2	6
4	4	8
5	5	10

**4.7.2. Minors in Family**

To qualify for a housing unit there must be at least one minor child residing in the household.

**4.7.3. Notification of Families**

After the BPHD determines that a home is available, and makes the initial selection in accordance with Section 4.5, the following actions will be taken:

#### **4.7.4. Notice**

The family selected according to this Policy shall be notified promptly of the vacancy and the approximate date the home will be ready for occupancy.

#### **4.7.5. Family to provide information and participate in counseling**

The family will also be given a period of time, not to exceed thirty days, to provide all information necessary to complete the application and admission process. All families shall also be given the opportunity to receive help in providing this information through the BPHD's Homebuyer Counseling Program.

#### **4.7.6. Failure to respond or participate**

If the selected family does not respond to the BPHD's notification of a vacancy or does not provide the necessary information within the required time, the applicant will be removed from the waiting list, if applicable, and the BPHD shall proceed to select the next eligible family.

#### **4.7.7. Rejection of offer**

Applicants who reject two offers of selection are moved to the bottom of the waiting list, except that the following circumstances will not count as rejections:

- The applicant is unable to move at the time of the offer and presents clear substantiating evidence, for example a doctor verification that the applicant is physically unable to relocate at the time required.
- Accepting the offer would result in verified undue hardship to the applicant, such as temporary or seasonal employment, participation in education, and similar situations.

## **5. CERTIFICATION PROCESS**

To assure that Families participating in the Program meet the eligibility requirements for continued participation set forth in Section 2, and that such Families are paying the appropriate Required Monthly Payment, family composition and Income are to be periodically reexamined and re-determined in accordance with this policy. Families are required to provide full cooperation in this process.

### **5.1. Initial Certification**

Prior to signing a Homeownership or Rental Agreement, all families must certify their income, and family status through an initial certification process.

#### **5.1.1. Verification**

The head-of-household and spouse are required to execute a Release of Information form which authorizes any depository or private source of income, or any Federal, State, local or tribal agency to furnish or release to BPHD and/or to HUD such information as BPHD and/or HUD determines to be necessary. The use or disclosure of information obtained from a family or from another source pursuant to this release shall be limited to purposes directly connected with the administration of the program for which the family has applied.

#### **5.1.2. Determination of Rents**

Total Tenant Payment (TTP) shall be 30 percent of Monthly Adjusted Income, as defined, less the applicable utility allowance. The maximum monthly rent shall be \$200.

If the family receives welfare assistance from a public agency and a part of such payments, adjusted in accordance with the family's actual housing costs, is specifically

designated by such agency to meet the family's housing costs, the monthly portion of such payments that is so designated, less the applicable utility allowance.

Tenant Rent is computed by subtracting the utility allowance applicable to the size and location of the family's unit, from the Total Tenant Payment.

**5.1.3. Senior Housing**

Families living in BPHD Senior Rental Housing pay the lesser of the following

- 30 percent of Monthly Adjusted Income, as defined, less the applicable utility allowance; or
- \$155 per month.

**5.1.4. Maximum Utility Allowance**

The utility allowance shall be reduced as necessary so that it does not exceed the Total Tenant Payment. No utility reimbursements shall be allowed.

**5.1.5. Determination of Homebuyer Payment**

Except for maximum payments, specified below, Homebuyer Payments shall be the highest of the following:

- 15 percent of Monthly Adjusted Income, as defined, less the applicable utility allowance; or
- the Administration Charge, as specified in the Homeownership Program Operating Budget for the current year, up to a maximum of 30% of Monthly Adjusted Income.

**5.1.6. Maximum Homebuyer Payment**

The maximum Homebuyer Payment shall be the sum of the Administration Charge and the monthly debt service amount as shown on the Homebuyer's Purchase Price Schedule. However, in no event shall the Homebuyer Payment exceed 30% of a family's Monthly Adjusted Income.

**5.2. Annual Reexamination**

Reexaminations for all Families are conducted not less than once every twelve (12) months.

**5.2.1. Scheduling**

Annual Reexaminations are normally scheduled 60-90 days before the anniversary date of the Agreement. When the reexamination is due, the Family will be notified by letter of the date and time of the appointment. The Family will be requested to provide information necessary for recertification prior to the time of the appointment.

**5.2.2. Adjustments**

After eligibility and Income have been determined, any adjustments in the Required Monthly Payment required by this Section shall be made.

**5.2.3. Interim reexamination**

Determinations of eligibility and changes in Required Monthly Payment may be made between annual reviews, if warranted, pursuant to this Section.

**5.2.4. Income presumed if family fails to provide information**

If a Family's monthly payment cannot be determined due to failure of to recertify eligibility or supply information in a timely manner, the payment will be automatically calculated based on the maximum income limits for a Family of that size and shall be effective on the recertification date.

### **5.3. Special Reexaminations**

If, at the time of admission to the program or reexamination, it is not possible to estimate Adjusted Income for the next twelve (12) month period with reasonable accuracy because of (a) unemployment and no anticipated prospects of employment or (b) conditions of employment or receipt of income is so unstable as to render inaccurate the usual and normal standards for determination, a special reexamination may be scheduled for a specified time depending upon the BPHD's estimate of the time required for the Family circumstances to stabilize.

#### **5.3.1. Continuance of special reexamination process**

If, at the time of special reexamination, it is still not possible to make a reasonable estimate of Adjusted Income, special reexaminations may continue to be scheduled and conducted up until it is possible to make a reasonable estimate of Family Income.

#### **5.3.2. Income patterns**

If, at the time of admission to the Program or annual review, a Family is known to have a history of widely fluctuating income over the past year(s) as a result of fluctuating between employment and welfare or other assistance, special reexaminations are not required where such fluctuations show a pattern that is expected to continue.

#### **5.3.3. Projecting income**

If, at the time of admission to the program, reexamination, or Special Reexamination, it is not possible to reasonably estimate Adjusted Income for the next twelve (12) month period, the Family's rate of Income, based on the Income which the Family is expected to receive from the date of the current examination to the date of the next examination shall be projected for a twelve-month period even though it is anticipated that income may fluctuate substantially, and even though another annual or Special Reexamination is scheduled. The monthly payment remains in effect until the next annual review or interim re-determination.

#### **5.3.4. Zero income**

If, at the time of admission or annual review, a Family reports no income, the lack of income shall be appropriately documented. The Family shall be required to re-verify their income situation on a monthly basis until such time as a source of income is documented.

### **5.4. Interim Reexamination**

#### **5.4.1. Reporting changes**

In addition to submitting information required at the time of annual or special reexamination, Families shall report to the BPHD the following changes in Family circumstances, within ten (10) days:

- Changes affecting family composition: loss or addition of any Family member through marriage, death, divorce, birth, adoption or any other circumstances.
- Changes affecting Income: increases or decreases in income as a result of changes in Family composition, employment, benefits, or any other reason.

#### **5.4.2. Procedure**

Upon receipt of a report of a change in family composition or income, BPHD shall perform an interim re-determination of Adjusted Income as appropriate, and the monthly payment will be adjusted as follows:

- Increases in Required Monthly Payments between periodic reexaminations are effective the first day of the second calendar month following the month in which the changed circumstance occurred.
- Decreases in Required Monthly Payments between periodic reexaminations

are effective the first day of the month following the month during which the changed circumstance was verified.

## **5.5. Adjustment for Utility Allowances**

At least annually, and at such other times as deemed appropriate, the BPHD shall determine whether there has been a substantial change in utility rates and whether an adjustment is required in the Utility Allowances.

### **5.5.1. Notice of adjustment**

If the BPHD determines that an adjustment should be made, affected Homebuyers will be given notice of the Utility Allowance revisions not less than sixty (60) days prior to the proposed effective date of such revisions. Homebuyers will be provided an opportunity to submit written comments during a period expiring not less than thirty (30) days prior to the proposed effective date of the allowance revisions.

### **5.5.2. Effective date of change**

Changes in payments shall become effective the first day of the month following the date of adoption of the Utility Allowance by the Board of Commissioners. Homebuyers whose rent increases due a Utility Allowance adjustment shall receive at least thirty (30) days' notice of such increase.

## **5.6. Adjustments Due to Errors**

In the case of error or mistake, BPHD will adjust the Required Monthly Payments in a manner designed to discourage misrepresentation and to encourage diligent Homebuyer and BPHD action.

### **5.6.1. Retroactive adjustments**

Adjustments to Required Monthly Payments shall be retroactive to the first day of the rent period affected when there is:

- an error due to mistake or misrepresentation by the Family, where the corrected determination results in increased rent;
- a good faith error which, when corrected, results in decreased rent.

### **5.6.2. Prospective adjustment**

An adjustment in monthly payment shall be effective the first day of the second month following the date an error is found if the error was not the fault of the Family and the corrected determination results in increased rent.

### **5.6.3. BPHD errors**

BPHD will not calculate retroactive increases if an income change was reported in a timely manner with sufficient verification provided and the BPHD failed to make the appropriate adjustment. The term "error" does not include an estimate or projection of Adjusted Income due to fluctuations or lack of information which is made in accordance with this Policy, but which turns out to be inaccurate.

## **5.7. Procedure for Reexamination**

### **5.7.1. Personal Declaration**

The Head of Household shall complete a Personal Declaration form, and any additional forms required, prior to the reexamination, and shall provide the information required for BPHD to determine family composition and Annual Income.

### **5.7.2. Notice of Changes**

At least thirty (30) days prior to the Anniversary date of the Agreement or the effective

date of any changes in monthly payments, the Family will be notified in writing concerning their eligibility status, any changes in monthly payments, and any amounts owing as a result of mistake or inaction on the part of the Family.

**5.7.3. False information**

Upon determination by the BPHD that data supplied by the Family is false, misleading, or contains a material omission, the BPHD may terminate the Agreement or adjust the Required Monthly Payment retroactively.

**5.8. Failure to Report Income Changes**

If it is found at the time of reexamination or otherwise that the family failed to report changes in family circumstances as they occurred and that such changes would have required the Family to pay a higher monthly payment, the BPHD shall collect the increased payment, including any accrued late charges, retroactive to the first of the month in which the changes occurred. Unless the General Manager of the Burns Paiute Tribe approves a Payment Agreement, as specified below, the amount shall be due and payable thirty (30) days from the date of the notice to the Family specifying the amount owed.

**5.9. Failure to Report with Extenuating Circumstances**

The BPHD may allow a Family who has failed to report income changes, to enter into a Payment Agreement in accordance with Section 9.5 under the following circumstances:

- The failure to report income changes was not an intentional misrepresentation of income;
- The family does not have the funds available to repay the debt; and,
- The debt is greater than the Family's gross monthly income.

## **6. LEASING PROCESS**

A Homeownership Occupancy Agreement or "Agreement," which is a lease with an option to purchase, must be entered into between BPHD and each Homebuyer. A Rental Agreement must be entered into between BPHD and each Tenant. The Agreement shall be kept current and reflect the obligations of Homebuyer, participant family and BPHD.

**6.1. Execution of the Agreement**

The Head of Household and Spouse, if any, both of which are considered Homebuyers or Renters throughout this Policy, and the authorized BPHD representative, shall execute the Agreement or Rental Agreement prior to actual admission. A copy shall be given to the participant family and the original shall be filed in the permanent record folder established for the Family.

**6.2. Participant Family change**

If for any reason one of two original signers ceases to be an occupant, BPHD may require execution of a new Agreement or Rental Agreement by the remaining signer, and, where feasible, execution of a relinquishment by the absent signer. BPHD may also require amendment of the Agreement or Rental Agreement to reflect a change in the Head of Household, in order to accurately represent the interest and identity of the Homebuyer and any Spouse. The "Spouse" may be an adult family member who agrees to the terms of the Homeownership Agreement or Rental Agreement.

**6.3. Change of home**

If for any reason a Family transfers to a different home, the existing Agreement shall be canceled, and the Participant shall execute a new Agreement or Rental Agreement for the home into which the Family is moving.



## **6.4. Amendments to Agreement or Rental Agreement**

If the BPHD desires to change, amend or waive any provision of the Agreement with respect to any individual or group of homebuyers or tenants, an appropriate addendum or amendment shall be prepared, signed by the family and BPHD's representative, and attached to and made part of the Agreement.

## **6.5. Termination of Agreement or Rental Agreement**

Termination of the Agreement or Rental Agreement shall be in accordance with the terms of the Agreement and applicable law. For terminations due to nonpayment or financial ineligibility, BPHD has established specific procedures in Section 9. The general termination procedure for breach of the Agreement or Rental Agreement for other reasons is stated below.

### **6.5.1. Notice of breach**

When a breach of the Agreement or Rental Agreement has been identified, BPHD shall discuss the noncompliance with the Homebuyer or Tenant as well as providing the family with written notification identifying the breach, and giving the Homebuyer or Tenant an opportunity to identify any extenuating circumstances, and an opportunity to enter into a plan of action to correct the breach. If requested by the Homebuyer or Tenant, a plan of action shall be agreed upon specifying how the homebuyer or tenant will come into compliance, as well as any actions by BPHD that may be appropriate and a deadline for the plan's completion. The plan of action will be signed by the BPHD representative and the Homebuyer or Tenant.

### **6.5.2. Notice of termination**

If the homebuyer or tenant fails to enter into a plan of action, or fails or refuses to comply with the plan of action, BPHD will issue a Notice of Termination, as provided in Section 9. The Notice shall state the reasons for the termination, and will provide the family with an opportunity to file a grievance according to the BPHD's Grievance Policy. BPHD may require the Homebuyer or Tenant to attend a mandatory conference to discuss the noncompliance with the plan of action.

### **6.5.3. Eviction Notice**

If the Agreement or Rental Agreement terminates as a result of the family's failure to cure the noncompliance after Notice of Termination, BPHD will issue an Eviction Notice, as provided in Section 9.

## **6.6. Incurable breaches of Agreement or Rental Agreement**

Certain breaches of the Agreement or Rental Agreement are of a nature so serious and damaging to the project environment that BPHD is not required to offer a plan of action to the Homebuyer or Tenant prior to termination. These include, but are not limited to, the following:

- felonious criminal activity, such as alcohol & drug-related criminal activity and crimes involving the abuse of minors;
- Domestic violence and violence, such as assault, use or threats of physical or deadly force; use, discharge, or assaultive display of weapons in and around the development;
- maintenance of conditions hazardous to the health of the occupants and the project, including maintenance of fire risks, discharge of pollutants or unsanitary waste.

BPHD's maintenance of insurance to cover the kinds of risk areas described above shall in no way limit its right to take reasonable action to protect the project environment, neighboring families, and BPHD property.

## **6.7. Payment of Required Monthly Payments**

All monthly payments shall be made according to the procedures stated in the BPHD Collection

Policy (Section 9).

## **6.8. Principal Residency Requirement**

Throughout the term of the Agreement or Rental Agreement, Homebuyers and Tenants must use the home as their principal place of residence. Ownership or use of another residence is prohibited, unless it is a secondary home necessary for the family's livelihood or for cultural preservation, and it is not another IHA home. Any income derived from or as a result of the use of the home must be reported and included in Annual Income.

### **6.8.1. Prior notice and approval of absences**

Provided the family complies with the financial and maintenance obligations of the Agreement or Rental Agreement, and takes reasonable steps for the proper safeguarding of the home, the family may be absent for up to 30 consecutive calendar days without providing advance notice to BPHD. All other absences from the home, including an absence combined with occupancy by persons who are not Authorized Family Members, requires prior written approval from the Housing BPHD. "Authorized Family Member" means (a) the Homebuyer family, as listed on the schedule to the Agreement; (b) children born to or adopted by members of such family after the date of the Agreement, and foster children; (c) persons providing live-in care of a member of the family, and (d) aged or widowed parents of the Head-of-Household or spouse.

### **6.8.2. Abandonment**

A family's absence from the home for a period exceeding the time stated in Section 6.8.1 without prior notice to and approval from BPHD; or a family's absence which exceeds 7 days but is shorter than the period stated in Section 6.8.1, combined with failure to pay and failure to take appropriate steps to safeguard the home, may be deemed abandonment by BPHD, justifying immediate termination and repossession without court action.

## **6.9. Sublease Policy**

*Homeownership Program only:* In limited circumstances a Homebuyer family may receive approval to sublease the home during an BPHD approved absence that is necessary, temporary and nonrecurring. "Temporary" means an absence not exceeding two years.

### **6.9.1. Duration of sublease**

The initial term of a sublease may be for a period of between thirty days and twelve months. The sublease may be extended for additional periods, however under no circumstances may an absence, for any reason or combination of reasons, exceed two years. Failure to return to the home within the allowed time authorizes BPHD to terminate the Agreement.

### **6.9.2. Allowable justifications**

Subleasing is permitted only during the time period the Homebuyer or family member is participating in one of the temporary activities specified below.

- Education.** An accredited program of training or education designed to enable one or more family members to acquire the skills necessary to obtain gainful employment.
- Medical reasons.** A medical or other rehabilitation program, including confinement in a hospital or other facility, as required by a licensed physician, or other qualified professional.
- One-time employment or service opportunity.** A one-time absence to take a verified job or service opportunity, not to exceed one year. Any request to sublease under this category more than once during the course of the

Homebuyers' Homeownership participation, and any request to exceed the one-year limit, is subject to approval by the General Manager of the Burns Paiute Tribe.

- Military service.** The requirement for the family to relocate to a military installation due to military service.

### **6.9.3. Subleasing disallowed**

Subleases and temporary absences are not authorized for Homebuyers who have committed substantial breaches of the Agreement. No Subleasing is authorized until any amounts owed by the Homebuyer to BPHD are paid in full. No sublease shall be permitted if the home is not in habitable condition.

### **6.9.4. Eligible sublessee**

An eligible sublessee must meet all eligibility requirements Occupancy standards of this policy, excluding the maximum income and Native requirements, as long as the home will not be overcrowded according to the occupancy standards.

### **6.9.5. Notice, approval and form of sublease**

The Homebuyer shall notify the Housing BPHD of the proposed temporary absence in advance, specifying the anticipated length of the absence. Upon approval, the Homebuyer and the sublessee must execute a Sublease Agreement in a form approved by BPHD. The term of the Sublease shall not exceed the period of the anticipated absence.

### **6.9.6. Homebuyer acknowledgment**

As a condition of the Sublease, Homebuyers shall sign an Acknowledgment provided by BPHD, which shall specify

- their understanding that they will continue to be responsible for all obligations under the Agreement during the sublease period;
- their sole responsibility for managing the sublessee's occupancy compliance;
- the dates of the temporary absence and their intent to return to make the home their principal place of residence;
- that termination may result if they do not return to occupancy within the specified time or otherwise breach the Agreement, either through personal action or through the action of their sublessee.

### **6.9.7. Sublease payment**

The Homebuyers' Required Monthly Payment shall continue to be based on the Homebuyers' income. The Homebuyer shall continue to cooperate in annual and interim certification of income. The payment between the Homebuyer and the Sublessee is not limited; however, the Homebuyer shall accurately report the sublease payments received as income.

## **6.10. Business Use of Home**

The Homebuyer or Tenant may operate a small business in the dwelling unit, subject to approval from BPHD.

### **6.10.1. Conditions of use**

The BPHD may grant permission for the business use if the Family provides written assurances of the conditions stated below. Permission may be rescinded upon violation of these conditions:

- The dwelling unit will remain the Family's principal residence.
- The business activity will not disrupt the basic residential nature of the

housing site and neighborhood.

- ❑ The business will not require permanent structural changes to the dwelling unit that could adversely affect a future Family's use of the dwelling unit.
- ❑ The Family has a current business license and liability insurance, as applicable.
- ❑ The activity does not violate zoning codes, project covenants and/or homeowner association rules.

#### **6.10.2. Procedure**

The request from the Homebuyer to operate a small business must be submitted in writing. The BPHD will verify that the proposed business is appropriate for the location and meets the above conditions and guidelines. The BPHD will provide the Homebuyer with written notification of approval or disapproval.

### **6.11. Structural Modifications**

*Homeownership Program only:* A Homebuyer may not make any structural changes in or additions to the dwelling unit unless the BPHD has determined that such change will not:

- impair the value of the home, the surrounding homes, or the project as a whole;
- affect the use of the home for residential purposes; or
- violate any Federal, State or local building code requirements as to construction and/or design.

#### **6.11.1. Approvable alterations and additions**

Additions which may be approved include, but are not limited to, energy conservation items such as solar panels, wood-burning stoves, flues and insulation.

#### **6.11.2. Homebuyer expense**

Any changes made in accordance with this section shall be at the Homebuyer's expense, and in the event of termination of the Agreement, the Homebuyer shall not be entitled to any compensation for such alterations, additions, or improvements, which automatically become the property of the Housing BPHD.

#### **6.11.3. No liens**

The Homebuyer shall not permit any liens or liabilities to encumber the unit, including mechanics or suppliers liens. In the event Homebuyer breaches this requirement, BPHD may take any reasonable action to protect itself, the home and the land from encumbrances and liability, and may withhold payout of any MEPA balance or other funds pending the Homebuyers' satisfaction of such liability.

#### **6.11.4. Procedure**

A Homebuyer who wishes to make any structural changes in or additions to the home must provide a written request, with plans and/or specifications, to the BPHD for written approval prior to beginning any modifications. The Homebuyer shall specify the time anticipated to make the improvement, and shall make all diligent efforts to complete the work within the time specified. Failure to complete the work, if it results in damage to or devaluation of the home, may constitute grounds for termination of the Agreement.

#### **6.11.5. MEPA loans**

If the Homebuyer is in compliance with the terms of the Agreement and has a MEPA balance, the BPHD may authorize the homebuyer to borrow from the MEPA to pay for betterments or additions to the home, subject to the Homebuyers' written agreement to replenish the MEPA within a specific period, not to exceed 5 years.

## 7. INSPECTIONS

Homebuyers and Tenants are required to participate in inspections, intended for the BPHD to determine whether the Family is complying with all maintenance and replacement responsibilities. (See Maintenance policies, Section 10)

### 7.1. Initial Inspection

An initial inspection of the home is required before Family move-in. Families shall not be permitted to occupy a home before construction is complete or, in the case of a subsequent Homebuyer or Tenant, until the home is repaired, cleaned and ready for occupancy.

#### 7.1.1. Participants

The inspection shall be conducted with both the Head of Household and Spouse, if possible, and the BPHD representative present.

#### 7.1.2. Counseling opportunity

*Homeownership Program only:* The Homebuyer will be counseled and advised of the maintenance and replacement responsibility during the inspection.

#### 7.1.3. Documentation of conditions

The pre-occupancy condition of the home, as well as any deficiencies, missing items, necessary repairs, and similar facts shall be entered on the inspection report form prescribed by the BPHD.

#### 7.1.4. Use

The report shall be signed and dated by both the Head(s)-of Household and the BPHD. Because the report serves as the official record documenting the condition of the home at the time of occupancy, and may form the basis for move-out charges, if any, the Head(s)-of Household shall be encouraged to read the report carefully before signing. The original inspection form shall become a permanent part of the Family's file, with a copy of the report shall be provided to the Family.

### 7.2. Follow-up Inspection

A special interim inspection of the home shall be scheduled approximately two (2) months after initial occupancy to ensure proper home care. This inspection will be waived if the regular annual inspection will occur no more than four months after the move-in date.

#### 7.2.1. Notification

The Family shall be given appropriate written notice of the date and of the inspection, and the time of the inspection if feasible, as well as an explanation of the reasons for the inspection.

#### 7.2.2. Report

An inspection report shall be completed and signed by the Head(s)-of Household and the BPHD representative. Deficiencies shall be discussed with the Family.

#### 7.2.3. Inspection results

If the inspection shows adequate care by the Family, the next inspection will be conducted in accordance with Section 7.3, below. If inadequacies are revealed, an interim inspection, as set forth in Section 7.4, shall be scheduled.

### 7.3. Annual Inspection

The Family and a BPHD representative will conduct an inspection of the dwelling unit at least once each year. The annual inspection is conducted to ensure that the dwelling unit is being

properly maintained, and to counsel the family in any maintenance areas where assistance is needed (*Homeownership only*). The annual inspection also documents the condition of the unit.

**7.3.1. Deficiencies**

If deficiencies are noted during the inspection, the Housing BPHD will note them on the inspection report and will write a plan of action (homebuyers) or a Work Order (Rental tenants). A follow-up inspection will be conducted approximately thirty (30) days following the annual inspection to insure the work has been completed.

**7.3.2. Waiver of annual inspection**

*Homeownership Program only:* If families have shown that the dwelling unit is being well-maintained, the Housing BPHD may elect to conduct inspections on a less frequent basis. However, in no event shall a dwelling unit be scheduled for inspection less frequently than every two years.

**7.4. Special Inspections**

A special inspection will be conducted where deficiencies are noted at the follow-up or annual inspection or when damages or other violations are suspected. If the interim inspection reveals inadequate care of the home, the Homebuyer shall be advised of the breach. A letter listing the deficiencies shall be sent to the Family stating that corrective action must be taken by a certain date and setting a re-inspection date. This shall constitute the Homebuyer's plan of action unless the Homebuyer agrees to a modified plan, with Housing BPHD approval. If the breach is not cured, BPHD shall enforce the Agreement or Rental Agreement by appropriate action, including termination of the Agreement if necessary.

**7.5. Vacate or Move-out Inspection**

An inspection of a home being vacated will be required.

**7.5.1. Scheduling**

The vacate inspection will be scheduled when the Family has removed all personal items and completed all repairs and cleaning.

**7.5.2. Instructions**

Families will be mailed vacate instructions in order to facilitate the move-out and to promptly determine whether any charges may be due.

**7.5.3. Participants**

If possible, the inspection will be conducted with the Head(s)-of Household present, with the inspection report signed by both the Head(s)-of Household or family member and the BPHD representative. Where Families have vacated without notice or have been evicted, and are not available for the inspection, two BPHD representatives should be present to document the condition of the home through the inspection report, and preferably, through photos or videotape.

**7.5.4. Charges**

A list of potential charges shall be summarized on the appropriate section of the report. The vacate inspection report shall be compared with the initial inspection to evaluate any damages beyond normal wear and tear.

**7.5.5. Dispute**

Any disagreement by the Family regarding vacates charges and/or the disposition of MEPA (*Homeownership only*) shall be resolved in accordance with the BPHD's *Grievance Procedure*.

## **7.6. Project Inspections**

The BPHD will conduct project inspections as often as feasible to note items in need of repair, general trends of Family neglect, and any deficiencies in the appearance or upkeep of homes.

# **8. CONVEYANCES AND CONVERSIONS**

## **8.1. Opportunity to Purchase**

The Homeownership program provides eligible Homebuyers with an option to purchase the home. Until the purchase option is exercised, the Homebuyer is a lessee with a contingent option to purchase the home.

## **8.2. Purchase Price Schedule**

When the Homebuyer enters the program, a Purchase Price Schedule will be provided, containing the following information:

- The Initial Purchase Price or Subsequent Purchase Price for the size of home and for the applicable project;
- The amount by which the Purchase Price is amortized each month, and the price for the Homebuyer to exercise the Purchase Option in any given month over the term of the Agreement, which shall be not less than 15 nor more than 25 years;
- Where BPHD has used a constructive interest rate to compute the declining Purchase Price, the interest rate used;
- The approximate date on which the Purchase Price is zero.

### **8.2.1. Initial purchase price**

For a new project, and for the original Homebuyer, the Initial Purchase Price is determined by the Total Development Cost and the size and type of home being purchased.

### **8.2.2. Subsequent purchase price**

The Subsequent Purchase Price is determined by using the remaining purchase price of the home as listed on the original Purchase Price Schedule as of the date the new homebuyer is admitted

### **8.2.3. Starting place on schedule**

In addition to the Subsequent Purchase Price, BPHD shall determine the number of years over which the Purchase Price schedule shall decline from the Subsequent Purchase price to zero, and specify the starting point on the schedule for the subsequent Homebuyer if it is not the first month on the schedule.

## **8.3. Conveyance of the Home**

The following policies and procedures apply to conveying a Homeownership property. Throughout this policy, the term "Homebuyer" means the person or persons who signed the Agreement with BPHD.

### **8.3.1. Eligibility to purchase**

Homebuyers are not eligible to purchase the home unless they have complied with all obligations under the Agreement, including the obligation to make Required Monthly Payments, and the obligation to occupy the home as their principal residence. For Homebuyers with delinquencies remaining after the Purchase Price reaches zero, see *Section 8.12*.

### **8.3.2. Exercise ineffective until compliance**

If the Homebuyer exercises the purchase option prior to the time the Homebuyer is in compliance with all Homeownership obligations, such exercise shall not be effective unless and until the Homebuyer comes into compliance.

## **8.4. Initiation of Process**

Either the Homebuyer or BPHD may initiate the process for conveyance.

### **8.4.1. General**

In general, BPHD will initiate the process for conveyance when the balance of a participant's reserve accounts and MEPA approximates the Purchase Price of the unit. BPHD may, but is not required to, notify the Homebuyer when the balances of the Homebuyer's reserves and accounts equal the purchase price of the home.

### **8.4.2. Homebuyer**

The Homebuyer initiates the process by exercising the option. Exercising the Option is an offer to make a lump sum payment of any remaining balance of the Purchase Price after reserves and accounts are applied, plus any closing or settlement costs, either through cash or financing.

### **8.4.3. Confirming reserves and accounts**

BPHD shall determine the amount of the Homebuyers' reserves and accounts in response to a request from the Homebuyer or to determine whether BPHD should counsel or notify the Homebuyer concerning exercise of the purchase option.

### **8.4.4. Confirming site control**

Before conveyance, BPHD shall research site control and determine whether the home is located on land owned in fee simple by BPHD, or is leased or restricted land. The Housing BPHD shall determine the correct legal description of the land for use in all conveyance documents.

## **8.5. Counseling**

The Homebuyer will be counseled or advised in writing that once conveyance of title is transferred to the Homebuyer, the Homebuyer becomes wholly responsible for all costs, liabilities and responsibilities associated with ownership, including but not limited to insurance coverage of the home, property taxes, and utilities. The Homebuyer should take these costs into consideration as future responsibilities.

## **8.6. Interim Responsibilities**

After exercise of the option, but before title is conveyed, the Homebuyer shall continue to be responsible for the payment of the Administration Charge until the Settlement Date. BPHD will continue to maintain insurance coverage of the home until conveyance.

## **8.7. Closing Costs**

In addition to the payment of the balance of the purchase price schedule, the Homebuyer pays all settlement costs incidental to acquiring ownership. These costs may include:

- As-built survey;
- Title examination and title insurance inspections;
- Deed preparation fees;
- Closing, recording or transfer fees associated with title;
- Any financing, escrow, and similar costs associated with outside financing, if any.



### **8.7.1. Use of reserves and accounts**

The Homebuyer may use any of the accounts or reserves available for payment of settlement costs, or the Homebuyer's own funds. If the Homebuyer's accounts/reserves will be used to pay off the home, the following charges will be paid from the Monthly Equity Payments Accounts (MEPA), Voluntary Equity Payments Account (VEPA), and MH Reserves, in the order listed;

- Initial payment of fire and extended coverage insurance (if home is being purchased through BPHD financing);
- Settlement costs, unless the Homebuyer uses other funds or financing to cover such costs;
- Purchase price balance.

### **8.7.2. Title insurance**

If the Homebuyer desires title insurance, the associated costs shall be the Homebuyer's responsibility. A Homebuyer opting to buy title insurance should generally advise BPHD of that decision at least three weeks in advance of the settlement date

## **8.8. Transfer of Title**

### **8.8.1. Deed**

Transfer of title shall be by Quitclaim Deed from BPHD to the Homebuyer or Homebuyers who signed the Agreement. In the event of any dispute over eligible transferees, the conveyance will be delayed until such dispute is resolved. Conveyance may be made to the Estate of a deceased Homebuyer, in appropriate situations.

### **8.8.2. Conveyance package**

BPHD shall coordinate with the Homebuyer in preparation of the Quitclaim deed and other documents comprising the conveyance package. If the Homebuyer has elected to purchase title insurance, the parties will also coordinate with the title company. In general, BPHD's legal counsel prior to the transfer of the property will review the conveyance package; however, such review is solely for the protection of BPHD.

The Conveyance documents shall be adequate to convey BPHD's interest in the home to the Homebuyer. The deed shall adequately describe the property. Documents appropriate for transferring any BPHD possessory interest in leased land, or land in restricted status, shall be prepared. Settlement documents shall also provide for a full & final release of claims, obligations and liabilities between BPHD and the Homebuyer, and for release of the Agreement. The Homebuyer may be required to sign a "Property Disclosure Statement" waiver under state law.

The conveyance package shall be based upon and shall state the estimated Settlement Date, determined by the Housing BPHD. In general, the Purchase Price is effective as of the Settlement Date. The Settlement Date may be amended in the event of delays or other cause.

### **8.8.3. Settlement/Closing**

Closing will generally occur at the Housing BPHD office, and may be performed by mail.

### **8.8.4. Post-settlement recording and reporting**

To ensure proper conveyance of record, BPHD may record the Deed at the appropriate Recorder's office, at the Homebuyer's expense. Other arrangements for recording and deed transfer may be made through qualified agents, such as title or escrow companies, provided that BPHD's interest is adequately protected.

Absent clear tax guidance to the contrary, BPHD will complete an IRS 1099 form or similar statement for interest accrued on homebuyer equity accounts during the term

of the Agreement. Further, BPHD will comply with any other tax or transfer reporting required or advisable under the Internal Revenue Code or local tax laws.

BPHD will notify the Office of Native American Housing (ONAP) at ONAP Headquarters of the transfer of interest. BPHD will notify its insurance carrier that the unit has been paid off and provide the date of recorded transfer, so that BPHD's cost of coverage will terminate.

## **8.9. Disposition of Proceeds**

After conveyance of the property, the funds from the sale shall be placed in BPHD's reserve account and shall be used for low-income housing purposes.

## **8.10. Conveyance of Homes on Leased or Restricted Land**

Many of BPHD's Homeownership homes are located on land that is leased by BPHD from the Burns Paiute Tribe. Conveyance of homes located on land not owned by BPHD shall follow the regular procedure, with the following additional steps:

### **8.10.1. Counseling**

BPHD shall counsel the Homebuyer in writing that the conveyance covers the building, only, and that the Homebuyer will not be receiving fee ownership of the land from BPHD.

### **8.10.2. Additional or modified documentation**

In the event the Quitclaim Deed (or other special deed BPHD uses for the transaction) is insufficient to legally convey BPHD's leasehold interest in the land, BPHD will prepare, execute and record document(s) sufficient to assign BPHD's rights in the land to the Homebuyer. Counsel for the housing BPHD and the Homebuyer may review such documents, if any. If assignment is prohibited or inadvisable, BPHD shall advise the Homebuyer.

### **8.10.3. Homebuyer's assumption of lease responsibilities**

The Homebuyer shall agree in writing to comply with all land lease obligations, as appropriate. The Homebuyer may be required to indemnify BPHD for any breach of the lease, if BPHD is not fully discharged from responsibility under the lease. At the end of the lease period, it shall be the family's responsibility to enter into a lease agreement with the Tribe.

### **8.10.4. Other approvals**

ONAP and/or BIA approval and signature shall be obtained, to the extent required or customary. Additional time may be required before settlement can occur, in order to obtain necessary approvals and signatures.

### **8.10.5. Land leased to BPHD**

Conveyance of homes located on land owned by the Homebuyer, and leased to BPHD, shall follow the regular procedure, except that BPHD may require additional documentation to show termination of the original lease. Legal counsel, ONAP, and BIA approvals and signatures shall be obtained as necessary or appropriate.

## **8.11. Post-conveyance Modernization Work**

BPHD may, in its sole discretion, perform previously approved modernization work on homes after conveyance, subject to modernization program policies and federal regulations.

### **8.11.1. No guarantees**

Due to contingencies associated with federal funding, potential for emergency conditions in other homes, and the need for BPHD to reallocate funding to homes for

which it holds title and which have priority, modernization work cannot be guaranteed. BPHD will not perform previously scheduled modernization work on a Homeownership home, which has been re-conveyed by the original Homebuyer/Homeowner to a third party.

#### **8.11.2. Pre-requisites**

Before BPHD performs modernization work on a conveyed home, the Homeowner(s) shall:

- Verification that the family is an eligible family per Section 2.
- Provide proof of adequate homeowners' insurance on the home.
- Sign any required agreements, acknowledgments, waivers, or releases of liability BPHD requires as a condition of performing work.
- Fully cooperate and prepare the home to be worked on, including moving furnishings, performing any required self-help, and ensuring the home is safe for BPHD workers.
- Upon BPHD's request, establish to BPHD's satisfaction that the home is still owned by the former Homeownership Homebuyer/Homeowner.

#### **8.12. Ineligible Homebuyers**

If a Homebuyer owes money to BPHD at the end of the Agreement term, BPHD may refuse conveyance until the debt is paid and take any action against the Homebuyer as authorized by the Agreement, or proceed with conveyance and file a suit against the homebuyer for the debt in Tribal Court or another court with jurisdiction over the matter.

#### **8.13. Conversion from Homeownership to Low Rent**

Homebuyer families may suffer a permanent loss of homeownership potential, due to a variety of reasons beyond their control, including loss of ability to maintain the home and inability to meet the cost of homebuyer responsibilities. The Housing BPHD may agree to convert the home in place to the Low Rent program subject to the following conditions and procedures.

##### **8.13.1. Financial feasibility analysis**

All conversions are subject to a financial feasibility analysis. The BPHD will determine the potential impact a conversion will have on the BPHD. No conversion will be approved unless it can be found that the impact will be minimal. Conversion may be declined or delayed until additional units are available for conversion or are constructed.

##### **8.13.2. Condition of home**

The home must be brought into acceptable condition prior to conversion, including repair of all damages, exterior and interior painting if not performed in the past two years, replacement of missing or non-working appliances, and any other work required by the Housing BPHD.

##### **8.13.3. Cost of work and delinquencies**

The Homebuyer shall be responsible for all costs of bringing the home into compliance. MEPA funds may be applied to this cost. The Homebuyer may be required to enter into a Payment Agreement to cover any arrearage.

##### **8.13.4. Accounts and reserves**

Any balance remaining in the MEPA shall be applied first to any delinquencies, then to repair/maintenance work, then to the Security Deposit for the new Low Rent Lease, with any remainder paid to the Homebuyer. Reserve accounts associated with the unit shall be applied in the manner determined by BPHD

#### **8.14. Conversion from Low-rent to Homeownership**

In the event the family regains the potential to qualify for Homeownership participation, as defined by BPHD's Homeownership eligibility standards, the Tenant may apply to the Housing BPHD for conversion to Homeownership, provided that not less than 3 years have elapsed since the conversion to Low-Rent and the family has established a track record sufficient to ascertain Homeownership eligibility. As with conversion from Homeownership to Rental, approval will be contingent upon the financial feasibility of the conversion for the BPHD.

### **9. COLLECTIONS**

The proper operation of the Homeownership and Rental programs depends on the money generated by Family payments. BPHD's policy is to take diligent action to collect past-due payments, in a manner consistent with the homeownership goals of the Homeownership program, and the individual circumstances of each family. As used in this policy, the terms "Homebuyers", "Tenants" and "Families" refer to the person(s) who signed the Homebuyer or Rental Agreement.

#### **9.1. Amount of Required Monthly Payment**

Families will be informed of the amount of their Required Monthly Payment, and how the payment was calculated. BPHD will advise Families of their obligation to make regular payments in accordance with the Agreement and the Rental Agreement. The method of payment shall be by postal money order, personal check or, if payment is made in person, by cash.

#### **9.2. Failure to Meet Financial Obligations**

As stated in the Homebuyer Agreement and Rental Agreement, prompt and regular payments are essential for continued occupancy. Families who fail to make timely payment in the proper amount risk being terminated from the program. Delinquent Homeownership homebuyers are required to cooperate in financial and family budget counseling as directed by the BPHD, to insure that the Homebuyer understands the importance of making payments when due. Counseling may include discussion of direct deposits, payroll deductions, MEPA deductions, and prepayment. Refusal or failure to participate in counseling is considered by BPHD in determining whether stricter collection action is appropriate.

#### **9.3. Inability to Make Full Payment Due to Hardship**

Although payments are originally established at amounts within the financial reach of eligible families, financial hardships can arise, such as death of a family member or loss of a job, where the Homebuyer despite best efforts is unable to make full payment on the due date.

##### **9.3.1. Conditions**

BPHD's policy is to reasonably accommodate families suffering legitimate financial hardship, provided that the hardship is of a temporary nature, the Family complies fully with all other requirements of the Homebuyer Agreement or Rental Agreement, and the Family communicates the problem to BPHD in a timely manner.

##### **9.3.2. Family to provide notice of problem**

Families with a legitimate and justifiable inability to make the required payment on the due date must contact BPHD:

- to explain the circumstances,
- to request and describe the financial extension needed, and
- to make arrangements for entering into a written Payment Agreement, if the extension is needed for longer than 30 days. Partial monthly payments are generally required for Payment Agreements.

#### **9.4. Partial Payment**

Where financial hardship is suffered, Families are required to make voluntary partial payments rather than pay nothing. Partial payments show the Family's continued commitment to the Homebuyer Agreement and the Rental Agreement. Where partial payments are being made, BPHD will hold-off on immediate termination action if the Family's payment history is good, it appears that the past-due balance will be repaid in the near future, and the Family is complying with all other requirements of the Homebuyer Agreement. If the inability to make full payments is expected to exceed 30 days, the Family must promptly sign a written Payment Agreement, which states the reason for the extension or partial payment and specifies the date or dates on which payments will be made. Generally, extensions will not exceed 90 days absent extraordinary good cause.

#### **9.5. Payment Agreements**

To maximize a Family's compliance, achieve the goals of the Homeownership and Low Rent program, and avoid evictions, families with delinquencies or a pattern of late or inconsistent payments, must enter into a written plan of action. The plan of action is generally documented in a Payment Agreement, which specifies the plan for paying the Family's debt. A Family which fails to pay or is unable to pay the Required Monthly Payment, and Families which incur debts to the BPHD for non-maintenance, abuse or replacements which are greater than one month's Administration Charge or Tenant Rent, shall take prompt remedial action.

##### **9.5.1. Short term basis only**

Payment Agreements are made available to Families in recognition of unavoidable or unexpected financial problems, and are intended to be of a temporary and short-term nature. Unless otherwise authorized by signature of the General Manager of the Burns Paiute Tribe or designee, the term of the Payment Agreement shall not exceed twelve months.

##### **9.5.2. Corrective action**

The Family shall (a) enter into a Payment Agreement with the BPHD, and (b) if a Homebuyer, have the amount deducted from the MEPA with a Payment Agreement to replenish the MEPA.

##### **9.5.3. Requirements of payment agreement**

The Payment Agreement shall provide:

- Minimum monthly payments shall be 1/12th of the amount owed, or \$25.00, whichever is greater. The minimum monthly payment amount may be reduced, in the BPHD's discretion, so that the monthly payment plus the Family's Total Tenant Payment does not exceed fifty (50%) percent of the Family's Gross monthly income.
- The monthly payment shall be set at an amount, which will result in the most prompt possible repayment, and may be higher if the BPHD determines that the family can afford a higher payment. In no event shall a Payment Agreement exceed three years.
- Payment Agreements shall be due and payable in the same manner as Required Monthly Payments.

##### **9.5.4. Signed document**

Payment Agreements must be executed by the Head(s) of Household, and where the Agreement requires financial commitments from other authorized occupants or family members, those occupants are also required to sign.

##### **9.5.5. Application of payments**

Payments made by a Family with a Payment Agreement shall be made in the following

order:

- Current Required Monthly Payment
- Unpaid Required Monthly Payments or other charges, which are past due and not included in a current Payment Agreement.
- Repayment Agreement
- MEPA (Homeownership only)

**9.5.6. Breach of payment agreement**

Breach of the Payment Agreement authorizes termination of the Payment Agreement at the election of the BPHD upon notice to the Family. Failure of the Family to make two consecutive payments under the Payment Agreement will result in automatic termination of the Payment Agreement, without notice to the Family. Breach of a Payment Agreement also authorizes termination of the Agreement or Rental Agreement.

**9.5.7. Reinstatement of payment agreement**

The BPHD may reinstate a terminated Payment Agreement upon appropriate payment and assurances from the Homebuyer, in which case the termination shall not count against the Family under the table provided below. After termination of a Payment Agreement, the BPHD may require the Family to enter into a new Payment Agreement.

**9.5.8. Restrictions where payment agreements have failed**

For Families who breached their last Payment Agreement, a substantial lump sum payment is required before a new Payment Agreement will be accepted. The minimum lump sum payment is a percentage of the balance due, determined by the following table:

Breached Agreements	Down Payment Required
1	25%
2	50%
3	75%
4	100%

Families who have breached four (4) Payment Agreements during the term of their Agreement or Rental Agreement must pay their balance in full, and are not permitted to enter into another Payment Agreement. A lump sum payment will be required to correct the balance owed. Only the General Manager of the Burns Paiute Tribe, for good cause shown, may waive this restriction.

**9.6. MEPA Application**

*Homeownership Program only:* Where a Homebuyer falls behind in payments for any reason, BPHD is authorized to apply the Homebuyers' MEPA balance, if any, toward the Homebuyers past-due administrative charges. BPHD may apply all or part of the MEPA toward the Homebuyers' past-due balance where the delinquency is serious, or the Homebuyer voluntarily requests such action with BPHD approval. BPHD may provide notice to the Homebuyer of the MEPA application but is not required to do so. In accordance with Section 9.5, the Homebuyer shall enter into a Payment Agreement. "Serious" delinquency is defined as any delinquency, including Miscellaneous Account balance, exceeding three Required Monthly Payments or \$300, whichever comes first.

**9.7. Collection of Delinquencies**

BPHD applies the following guidelines in enforcing the financial obligations of the Homeownership and Low Rent program in collecting delinquent payments:

**9.7.1. Payment due dates**

Payments are due on the first day of each month, and are late on the 10th day of each month. On the 10th day of the month, families who have missed their payment and who have not signed an approved Payment Agreement covering the breach shall be sent a Delinquency Notice.

**9.7.2. Issuance of Two-Week Notice**

If after 30 days (the 10th of the following month) the Family has still not cured the breach or agreed to a written plan of action, BPHD is authorized to send a Two-Week Notice, which shall state:

- The family has two weeks in which to respond;
- Any requirement by BPHD that the Family execute a Payment Agreement;
- The family's opportunity to receive counseling assistance to assist in resolving the payment problem; and
- The amount owed.

**9.7.3. Response to Two-Week Notice**

The Family must respond to the Two-Week Notice in accordance with the Notice, by making payment acceptable to BPHD, executing an approved Payment Agreement, or fully securing the debt by payroll deduction agreement or other valid method.

**9.7.4. Notice of termination**

If after an additional 14 days (the last day of the month after the delinquency arose) the Family fails to respond to the Two-Week Notice, BPHD is authorized to send or serve *Notice of Termination*. Unless the Family cures the breach, the Agreement will terminate in accordance with the Notice, which shall provide not less than 30 days for the Family to respond to and cure the breach. The Notice of Termination will convey the following information:

- The reason for termination;
- That the Family has thirty (30) days, during which the Family will be allowed to respond to the BPHD, in writing or in person, regarding the reason for termination;
- That, if responding in person, the Family is allowed to be represented or accompanied by a person of his/her choice;
- That the BPHD may advise the local governing body concerning the termination;
- That if, within thirty (30) days of the date of the Notice of Termination, the Family presents to the BPHD assurances or evidence satisfactory to the BPHD, the BPHD may rescind the Notice of Termination; and
- That unless there is a rescission per above, the lease term and Agreement will terminate on the 30th day after the date of the Notice of Termination.

**9.8. Termination and Eviction**

If the Agreement terminates as a result of the Family's failure to cure the breach and respond to the Notice within the time allowed, BPHD is authorized to send final Eviction Notice. The Eviction Notice shall direct the Family to vacate the home by a specific time and date, and shall notify the Homebuyer that the BPHD may file a civil action in court to obtain eviction.

**9.9. Reservation of BPHD rights**

This policy shall not limit BPHD's right to (1) require additional assurances, reimbursement or payment from the Family as a condition of any reinstatement, settlement, or settlement documentation; (2) require security for the debt owed or agreed to be paid by the Family; (3)

reject the Family's attempted cure or request to cure, or (4) seek judicial relief.

### **9.10. Collection after Move-out**

Following a voluntary move-out, abandonment, or eviction, BPHD will make reasonable efforts to collect all past due payments, miscellaneous accounts, and any debts arising from damages or non-maintenance, from former Homebuyers and tenants. Collection action may include Small Claims actions, other legal proceedings, referral to a collection agency, and judgment execution, including garnishments, as determined by the BPHD to be consistent with sound financial management.

## **10. MAINTENANCE**

Maintenance in BPHD housing is the process of keeping the home, equipment and grounds from declining in usefulness and appearance. This section of this BPHD Housing Policy will serve as the Maintenance Management Plan for all housing units managed by the BPHD pursuant to applicable statutory and regulatory requirements.

### **10.1. Definitions**

As used in this Policy, the term "home" includes roofs, attic spaces, windows, gutters, walls, gutters, porches, doors, foundations, floors, etc. "Equipment" includes utility lines and piping, heating and plumbing equipment, pumps and tanks, ranges and refrigerators, and similar components. "Grounds" include lawns, roads, sidewalks, drainage, and similar physical features surround and part of the property.

### **10.2. Purpose and Objectives**

BPHD's objective is to provide decent, safe and sanitary housing. This policy sets the standards for the inspection and maintenance of Homeownership and rental units, and is intended to ensure that several objectives are achieved:

- To keep the home, equipment and grounds from deteriorating and/or failing before the end of their useful life.
- To remove detected conditions that may lead to injury or accident to occupants and others.
- To identify potential problems and provide maintenance to prevent the need for future emergency maintenance or major structural or system failures in and around the home, commonly known as "preventive" maintenance.
- To perform major repairs or improvements to the home or equipment, or the replacement of the item, commonly known as non-routine maintenance.

### **10.3. Family Responsibilities**

#### **10.3.1. Homebuyers**

Homebuyers are responsible, per the Agreement, for all maintenance of the home, including all repairs and replacements, including repairs and replacements necessitated by damage from any cause. The BPHD shall not be obligated to pay for or to provide any maintenance of the home other than the correction of warranty items reported during the applicable warranty period.

#### **10.3.2. Tenants**

Tenants are responsible for any damage to the home caused by any member of the household or any guest of a household member. In addition, tenants are responsible to notify the BPHD immediately upon the discovery of any defect or damage that may result in further damage if not repaired.



### **10.3.3. Failure to maintain home or report damages and defects.**

- ❑ Failure of the resident to perform the maintenance responsibilities constitutes a breach of the Agreement. Upon a determination by the BPHD that a breach has occurred, the BPHD shall require the resident to agree to a specific plan of action to cure the breach and to assure future compliance.
- ❑ If the problem is not remedied within the required time frame set by the BPHD, or if the resident fails to agree to a reasonable plan or fails to carry out the agreed-to plan, the BPHDBPHD shall terminate the Agreement.
- ❑ Repeated failure to maintain the home and/or equipment, and/or repeated damage to the home and/or equipment is cause for termination of the Agreement and eviction.

### **10.3.4. Hazardous conditions**

*Homeownership Program only:* If the condition of the property creates a hazard to the life, health or safety of the occupants, the BPHDBPHD shall have the work done, and charge the cost thereof to the Homebuyer's MEPA in accordance with the terms of the Agreement. If the Homebuyer has insufficient MEPA balance to cover the cost of the repairs, the resident shall be required to sign a Payment Agreement; and may be required to replenish the MEPA pursuant to a Payment Agreement.

## **10.4. Types of Maintenance**

Maintenance is divided into the following categories:

### **10.4.1. Emergency maintenance**

Emergency maintenance is performed in response to an unanticipated defect endangering life or property or the normal use of dwelling units or systems.

### **10.4.2. Routine maintenance**

Routine maintenance is the day-to-day, ordinary maintenance of structures and equipment that have deteriorated through normal wear and tear. It includes responding to service needs when items are not functioning correctly; making minor repairs to systems and equipment; and replacing component parts of systems and equipment. Examples of routine maintenance include, but are not limited to, the following:

- ❑ replacing furnace filters, fan belts, air cooler pads and other minor mechanical equipment;
- ❑ repairing or replacing hose bibs and water/sewer lines;
- ❑ repairing or replacing electrical outlets, circuit breakers, outlet switch covers, and other minor electrical elements;
- ❑ repairing or replacing locks, door and window hardware, floor tile and vinyl, minor segments of roofing, gutters and siding;
- ❑ replacing thermostats and smoke detector batteries;
- ❑ interior painting.

### **10.4.3. Preventive maintenance**

The preventive maintenance program is the most important activity a property owner performs. If performed properly, preventive maintenance minimizes the need for major corrective maintenance and maintenance expenses. There are two phases to the Preventive Maintenance Program:

- ❑ preventive maintenance inspections, which the Homebuyer and/or BPHD shall perform, and

- ❑ the actual preventive maintenance which is the sole responsibility of the Homebuyer or BPHD (rental units).

Preventive maintenance requires the resident and/or BPHD to establish a regular, periodic schedule for the following types of work:

- ❑ checking fire safety and fire detection equipment (i.e., fire extinguishers and smoke alarms)
- ❑ inspecting, adjusting, cleaning and/or lubricating heating systems and equipment, such as furnaces, wood stoves and flues, ranges, hot water heaters, space heaters and refrigerators;
- ❑ Inspecting and repairing plumbing systems and fixtures, including caulking around bathtubs, windows and exterior door frames;
- ❑ inspecting, repairing and replacing worn parts in electrical systems and fixtures;
- ❑ Inspecting and repairing roofs, gutters and flashing;
- ❑ inspecting and re-painting sealed surfaces which protect underlying structures and materials;
- ❑ inspecting for condensation, dampness and rot in wood materials, and for rust in metal components, and taking corrective action as needed;
- ❑ correcting erosion and drainage deficiencies;
- ❑ fertilizing and cultivating planted areas;
- ❑ inspecting sewer lines, clean-outs and inspecting and pumping of septic system
- ❑ Inspecting and patching paved surfaces inspecting for and controlling vermin and pests.

Preventive maintenance work is cyclical and can be scheduled during the "off season" of equipment use. For example, heating systems should be inspected, cleaned and repaired during the summer months to ensure that they will be operating smoothly when they are needed in the winter months. Painting should be scheduled during the Spring, and minor preventive maintenance should occur year-round.

#### **10.4.4. Non-routine maintenance**

Non-routine (or extraordinary) maintenance is replacement, or improvement of the structure, systems or major equipment. Non-routine maintenance can be further defined as involving substantial expenditure, either planned or caused by unforeseen events (storms, total deterioration of system, abuse, vandalism). Non-routine maintenance can include:

- ❑ replacing roofs;
- ❑ replacing major systems of the home, such as heating or electrical systems;
- ❑ replacing major equipment, such as water heaters or appliances;
- ❑ replacing water pumps, pressure tanks and wells;
- ❑ making major repairs to (or replacing) septic systems or drainfields; and
- ❑ painting and/or residing the exterior of the home.

### **10.5. BPHD Responsibilities**

#### **10.5.1. General inspection requirement**

The BPHD staff is required to perform several types of inspections, including periodic inspections of all homes, as well as move-in, move-out, warranty and special inspections.

#### **10.5.2. Annual inspections**

When a Family is in compliance with all the provisions of the Agreement, the BPHD

will perform the periodic inspections once a year. If at any time it is determined the Family is not in full compliance with all terms of the Agreement, the BPHD may conduct inspections on a more frequent basis.

#### **10.5.3. Insurance claims**

Promptly after receipt of notice, or after having evidenced a condition that would require a claim to be filed, the BPHD shall notify its insurance company.

#### **10.5.4. BPHD Maintenance Instruction Program**

BPHD provides instruction programs to train and advise Families of their maintenance responsibilities. The areas to be covered include:

- Operation of appliances and equipment in the home.
- Preventive maintenance programs;
- Energy conservation;
- Routine maintenance and housekeeping methods.

In addition, information will be provided to the resident regarding the availability of additional instructional materials from the following sources:

- U.S. Department of HUD (home construction and maintenance)
- Indian Health Service (water and sanitation facilities)
- schools (home economics, landscaping, adult education)
- social service agencies (home economics)
- utility companies (energy conservation)
- appliance manufacturer representatives (warranty and maintenance work on new appliances)
- fire department (fire prevention and protection)

### **10.6. Maintenance Program**

#### **10.6.1. Inspections**

- Annual inspections of the homes, equipment and grounds will be conducted in accordance with the inspection schedules and procedures established by the BPHD. Emergency and special inspections may be conducted at any time. Unless an emergency exists which requires immediate entry, the Department shall provide reasonable notice to residents of all inspections.
- During periodic inspections, BPHD personnel will complete a "walk-through" of the home, visually noting discrepancies. Where minor deficiencies are noted, the BPHD shall confer with the Homebuyer family and provide the necessary instruction and advice to inform the occupants of the responsibility to correct the deficiencies, or for tenant families, will initiate a Work Order.
- Major deficiencies, where noted, will require additional measures to be taken, including a written plan of action and follow-up to ensure that the Homebuyer family takes appropriate steps to correct all deficiencies within a certain period of time, or for tenant families, incorporating the repair work within the BPHD's modernization plan.
- When a deficiency presents an immediate threat to the health and/or safety of the occupants or where the Homebuyer family is incapable of performing the work necessary to correct a deficiency, the Department shall have the work done and charge the costs in accordance with this Policy, Section 10.3.3.
- Failure to cooperate in allowing the BPHD to perform inspections and/or repair work is a violation of the Agreement and will result in appropriate action by the BPHD.

### **10.6.2. Maintenance requirements**

- ❑ *Homebuyer Program only:* BPHD will respond to requests by Homebuyers for maintenance work only where it has been determined that, unless corrected or serviced immediately, the condition will adversely affect the health or safety of the occupants, or could lead to imminent or irreversible damage or deterioration to the home or equipment.
- ❑ To expedite charges to Families and reimbursement to BPHD, the BPHD shall use a standard list of charges, updated periodically to reflect actual costs associated with commonly replaced parts. This shall be prominently posted in the project office and given to Families requesting the list.
- ❑ For charges not included on the standard list, the BPHD will charge the Family for the actual costs incurred by the BPHD plus a 10% handling fee.
- ❑ *Homebuyer Program only:* Except for emergency or health and safety issues, the BPHD shall reserve the right to refuse new work orders if the family owes any money to the BPHD.

### **10.6.3. Maintenance Work Order System**

#### **10.6.3.1. System**

The BPHD shall create and utilize a work order system for receiving and recording resident maintenance requests.

All maintenance requests must be processed through the work order system.

Maintenance work initiated as a result of inspections shall also be processed through the work order system.

If a BPHD employee receives a maintenance request directly from a resident, a work order shall be initiated and the work completed in accordance with the established maintenance schedule and plan.

#### **10.6.3.2. Form**

The BPHD Director working in cooperation with his/her designated BPHD employee shall create a work order form.

The work order form should be prepared in triplicate. One completed copy should be kept in the unit file, the second given to the resident, and the third kept with all other work orders to serve as a complete record of maintenance performed by the BPHA.

The form should include, at a minimum, the following information:

Resident name

Unit number and address

Brief description of problem

Resident permission to enter unit if resident is not at home

Who took the request and the date of request

What work has been performed

What materials and supplies were used  
Date when the work was performed  
Time work started  
Time work completed  
Any parts on order  
Charges to the resident, if any  
Resident's signature accepting completed work  
BPHA staff person's signature who performed or approved of work

## **11. GRIEVANCE POLICY**

### **11.1. Right to a Hearing**

Upon filing of a written request as provided herein, a Complainant shall be entitled to a hearing before the BPHD General Manager of the Burns Paiute Tribe.

### **11.2. Definitions**

**Complainant (Grievant).** Any tenant or participant in housing projects operated by BPHD whose rights, duties, welfare or status are, or may be, adversely affected by the Housing BPHD's action or failure to act, and who files a grievance or complaint with respect to such action or failure to act, after first attempting to resolve the complaint informally with the Housing BPHD.

**Grievance or complaint.** Any dispute with respect to the Housing BPHD's action or failure to act in accordance with a lease or Mutual Help and Occupancy Agreement (MHOA) requirements which affect the rights, duties, welfare or status of the Complainant.

### **11.3. Procedure Prior to a Hearing**

- a. Any grievance or complaint shall be personally presented in writing to BPHD's office so that it might be informally discussed and settled without a hearing. The grievance or complaint must be signed by the Complainant and filed in BPHD's office within ten (10) working days of BPHD's action or failure to act, which is the basis of the grievance.
- b. The Complainant and BPHD's Housing Director will attempt to resolve the problem at the time the complaint is presented to BPHD.
- c. Within ten (10) working days, BPHD's Housing Director will send a letter to the Complainant summarizing the discussion. The letter shall specify the names of the participants in the discussion, the date of the discussion, the proposed disposition of the complaint and the reasons therefore. The letter must advise the Complainant of his or her right to a hearing and the procedure herein described by which such a hearing before the General Manager of the Burns Paiute Tribe may be obtained.

### **11.4. Procedure to Obtain a Hearing**

- a. The Complainant shall submit a written request for a hearing to BPHD within ten (10) days after receipt of the Housing Director's summary of the informal discussion and decision of the BPHD.
- b. The written request shall specify:
  - (1) The reasons for the grievance.
  - (2) The action or relief sought.

### **11.5. Notification to the General Manager of the Burns Paiute Tribe**

A formal hearing before the General Manager of the Burns Paiute Tribe shall be scheduled as follows:

- a. The BPHD Director will be notified in writing that a request has been made for a formal hearing. The written notice shall include a copy of the Complainant's written request for a hearing.
- b. The General Manager of the Burns Paiute Tribe shall send the Complainant written notice as to the time, date and place of the hearing within ten (10) working days of receipt of a written request for a hearing. The notice shall inform the Complainant that the Complainant may (1) at his or her expense examine and copy all documents, records and regulations of BPHD that are relevant to the hearing, (2) be represented by another person of the Complainant's choice at the hearing, (3) ask questions of witnesses and have others make statements on the Complainant's behalf, and (4) be entitled to receive a written decision from the General Manager of the Burns Paiute Tribe.

#### **11.6. Hearing Prerequisite**

All grievances shall be presented in writing as a condition to a hearing under this section. This Grievance Procedure Policy is intended to assist in the resolution of complaints by rental and homeownership residents or homeowners. It is not intended to provide a forum for an aggrieved party to challenge eviction proceedings or the BPHD's policies, statutory or regulatory requirements or regulations, and any hearing requests on such issues will be denied.

#### **11.7. The Hearing**

- a. The hearing shall be held before General Manager of the Burns Paiute Tribe.
- b. The Complainant shall be afforded a fair hearing providing the basic safeguards of due process that shall include:
  - (1) The opportunity to examine and copy, before the hearing and at the expense of the Complainant, all documents, records and regulations of BPHD that are relevant to the hearing. Any document not made available after request by the Complainant may not be relied upon by BPHD at the hearing.
  - (2) The right to be represented by counsel or another person chosen as his/her representative.
  - (3) The right to a private hearing unless the Complainant requests a public hearing.
  - (4) The right to present evidence and arguments in support of his/her complaint, to controvert evidence relied upon by the Housing BPHD and to confront and cross-examine all witnesses on whose testimony the Housing BPHD relies.
  - (5) A decision shall be based solely and exclusively upon the facts presented at the hearing.
- c. The General Manager of the Burns Paiute Tribe may render a decision without proceeding with the hearing if it determines that the issue has been previously decided in another proceeding.
- d. If the Complainant fails to appear at a scheduled hearing, the General Manager of the Burns Paiute Tribe may make a determination that the party absent has waived his/her right to a hearing. The Complainant shall be notified in writing of such determination.
- e. At the hearing, the Complainant must make a convincing showing of entitlement to the relief sought.
- f. The hearing shall be conducted informally by the General Manager of the Burns Paiute Tribe. Verbal or documentary evidence pertinent to the facts and issues raised by the Complainant may be received without regard to whether that evidence would be admissible under the rules of evidence employed in judicial proceedings.

#### **11.8. Decision of the General Manager of the Burns Paiute Tribe**

- a. The decision of the General Manager of the Burns Paiute Tribe shall be based solely and exclusively on facts presented at the hearing and applicable federal, state and tribal law, and

regulations.

b. The General Manager of the Burns Paiute Tribe shall prepare a written decision that shall include an explanation of the reasons for the decision within ten (10) working days after the hearing. A copy of the decision shall be sent to the Complainant. A copy shall be retained in the tenant's or participant's file.

c. The decision of the General Manager of the Burns Paiute Tribe shall be binding on the BPHD which shall take all actions or refrain from any actions necessary to carry out the decision.

#### **11.9. Appeals from the General Manager of the Burns Paiute Tribe's Decision**

A decision by the General Manager of the Burns Paiute Tribe in favor of the BPHD or which denies the relief requested by the Complainant, in whole or in part, shall not constitute a waiver of, nor affect in any manner whatsoever, any rights the Complainant may have to judicial review in any judicial proceedings which thereafter may be brought in the matter.

#### **11.10. Applicant Grievance Procedures**

Applicants for admission to BPHD housing projects have a right to an informal hearing on BPHD's denial of an applicable preference or a determination of non-eligibility. If BPHD determines that an applicant does not meet the criteria for receiving a preference or that the applicant is otherwise ineligible for BPHD housing, BPHD shall promptly provide the applicant with a written notice of its determination. The notice must contain a brief statement of the reasons for the determination, and state that the applicant has the right to meet with BPHD's General Manager of the Burns Paiute Tribe, or the BPHD official who made the determination, if the applicant requests such a hearing within ten (10) days of receipt of BPHD's notice. The applicant shall have the right to review the records upon which BPHD made its determination.

BPHD preferences.

### **3.3.1. Purging the waiting list**

BPHD may periodically update the pool of active applications by requiring all persons on the waiting list to respond to a mailing requesting affirmative response and update by the applicant. Failure of an applicant to respond permits the applicant to be purged from the waiting list.

### **3.3.2. Closing the waiting list**

If the number of Families on the waiting list is such that there is no reasonable prospect that additional applicants could be housed within the next year, the BPHD may suspend the taking of additional applications in any category affected.

## **4. SELECTION PROCESS**

### **4.1. General Provisions**

In the event of an opening in the Homeownership or Low Rent Program, selection of families proceeds in such a manner as to preclude admission of applicants whose habits and practices reasonably may be expected to have a detrimental effect on the participants or the project environment and give preference in the selection of certain applicant families as specified in this policy.

### **4.2. Order of Selection**

Vacancies are filled in the following order:

- First Priority (*Homeownership Program only*): a Family eligible as a designated Successor, as described in Section 4.3, if such a family has been so designated;
- Second Priority (*Rentals only*): a Family eligible for a transfer, as described in Section 4.4, if such a family exists and there is no eligible designated successor;
- Third Priority: a Family at the top of the Waiting List, as described in Section 4.5, if there is no eligible designated successor and no eligible family needing a transfer.

### **4.3. Successorship**

*Homeownership Program only*: BPHD's policy is to respect the Homebuyer's designation of qualified successor families. To the maximum extent, and consistent with the Homeownership Program and the needs of applicant families, BPHD seeks to maintain a continuity of family ownership opportunity for Homebuyer families leaving the program for reasons beyond their control. To achieve this goal, families will be encouraged, both during the initial contracting process and again during the annual re-certification process, to designate a successor.

#### **4.3.1. Manner of designation**

The Homebuyers' designation of a successor shall be made when the Agreement is executed, if possible, and may be changed from time to time by clear, written notice from the Homebuyer to BPHD.

#### **4.3.2. Events authorizing successorship**

In order for a designated individual to succeed to a Homebuyer's rights and responsibilities in the home, one of the following successorship events must occur with respect to all of the persons who have executed the MHO Agreement as homebuyers:

- Death;
- Mental Incapacity;
- Move-out due to disability or long-term illness;



### **3.1.2. Applicant responsibilities**

The application constitutes the basic record of each Family applying for participation. Each applicant, therefore, will be required to supply the information requested on the application form and to sign the application, attesting to the information provided. Applicants placed on the wait list are required to respond to any update requests as a condition of remaining on the list and as a condition of admission.

### **3.1.3. Application file**

The application, together with all other material relating to the Family's eligibility, preference ranking, and similar documents, is maintained in an active file classified as "Applicants Apparently Eligible Pending Verification" for each participant who has not been found ineligible or whose application has not been withdrawn.

## **3.2. Eligibility Determination**

### **3.2.1. Initial review**

The Housing BPHD makes reasonable efforts to determine the suitability of a family for admission. Review of Family eligibility may include, but is not limited to, assessment of previous occupancy with the Housing BPHD, references from previous landlords, tenants, or persons with relevant knowledge, credit reports and criminal background checks.

### **3.2.2. Final determination**

Not more than sixty (60) days prior to move-in all eligibility criteria will be verified and documented upon which basis the final eligibility determination shall be made.

### **3.2.3. Family determined eligible**

If an applicant is determined eligible but the Housing BPHD has no vacancies, the Family shall be placed on the appropriate waiting list and receive written notice of the placement and the approximate date that a vacancy may occur, if such date can be reasonably determined.

### **3.2.4. Determination and notice of ineligibility**

If, during the application interview or subsequent verification process, BPHD determines that the applicant is ineligible, the applicant will be given prompt written notice of the determination. The Notice shall state the reasons for ineligibility. The notice shall inform the applicant of any other program(s) for which the applicant may be eligible, and advise the applicant of the right to request an informal hearing according to the BPHD Grievance Policy. The application, together with sufficient information as to the reasons for the determination, is maintained in a file of "Ineligible Applications".

### **3.2.5. Ineligible Applicant records to be maintained**

The Housing BPHD shall retain for three (3) years the original application, notification letter, any applicant response and any record of informal hearing and final disposition.

### **3.2.6. Other applicant rights**

The procedures set forth in this section do not preclude any applicant from exercising rights, which may be available to the applicant under applicable nondiscrimination laws.

## **3.3. Wait List**

A waiting list will be maintained by date and time of application, sorted by bedroom size and

