



**MONACAN INDIAN NATION HOUSING  
DEPARTMENT PO BOX 960 AMHERST, VA 24521**

**DOWN PAYMENT & CLOSING COST ASSISTANCE  
PROGRAM POLICY AND PROCEDURES**

## TABLE OF CONTENTS

Policy Statement, Program Description & Assistance Available ...	PAGE 3
Borrower Eligibility & Ineligibility .....	PAGE 4
Waiting Lists, Reservation of Funds, Property Requirements.....	PAGE 5
Repayment of the Loan & Certification of Residence, Resale Restrictions, Assumption of Home, Transfer of Home.....	PAGE 6
Payment Oversight, Appeals Process, Appendix.....	PAGE 8

## Policy Statement

The purpose of the Monacan Indian Nation's (MIN) Down Payment & Closing Costs Assistance Program is to provide the members of the MIN with affordable homeownership financing opportunities to help improve the quality of life in the tribal communities.

The MIN's Down Payment & Closing Costs Assistance Program shall comply with all applicable regulations of the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA) along with other applicable rules and regulations. The MIN Housing Department Manager with the approval of the Tribal Chief shall be responsible for periodically amending this policy to comply with any applicable laws or regulations.

## Program Description

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

- **Eligibility** – The Down Payment & Closing Costs Assistance Program is available to low-income Tribal families who have been determined eligible in accordance with the MIN housing assistance program Eligibility Policy and Procedures.
- **Credit** – Down Payment & Closing Costs Assistance Program participants must meet the credit requirements of the first mortgage lender (bank/lender) and should be pre-screened to determine credit worthiness.
- **Affordability** – Down payment & closing costs assistance is available to buy down the cost of owning a home. This results in a lower mortgage amount and lower monthly payments. MIN IHBG funds will be in the form of a second mortgage with no monthly payments. This second mortgage is gradually reduced and converts into homeowner equity.
- **Cash Flow** – Down payment & closing costs assistance may include payment of reasonable loan closing costs associated with the first mortgage and MIN's second mortgage.
- **Support** – MIN Housing Dept. staff may assist eligible applicants in successfully working through the process of making an application to a bank/lender for a first mortgage loan.
- **Counseling** – Program participants may be required to participate in homebuyers' classes designed to assist new homeowners in understanding and fulfilling the responsibilities of homeownership.

### 1. Assistance Available

The MIN has established and implemented the Down Payment & Closing Costs Assistance Program to assist creditworthy low-income families in purchasing a home. The down payment & closing costs assistance loan may help with down payment and closing costs and is designed to make home mortgage payments more affordable. The following is a list of the assistance offered at this time:

#### a. Down payment

MIN may provide funds to buy down the amount of the first mortgage to a level that is affordable to the homeowner. Down payment & closing costs assistance is limited to \$10,000.

Nearly all lenders will require a down payment when purchasing a home. Part of this down payment may be provided by MIN, however, homebuyers may have to pay a portion from their own cash. The amount may depend on the requirements of the first mortgage lender.

**b. Closing Costs**

Funds are available from MIN to pay all, or a substantial part of, the closing costs of the first mortgage loan. This assistance is limited to actual, reasonable closing costs.

**c. Loan Amount**

The amount of assistance for each homebuyer will be \$10,000 including down payment and closing costs.

**2. Borrower Eligibility**

**a. Restricted to Tribal members**

Assistance is only available to members of the MIN.

**b. Income Limitations**

Participation in the Down Payment & Closing Costs Assistance Program is limited to low-income families as defined in the MIN housing assistance program Eligibility Policy and Procedures.

**c. Homeownership Counseling Classes**

The applicant may be required to successfully complete an MIN approved home ownership-counseling curriculum. The MIN's Housing Department Manager shall approve the curriculum.

**d. First Mortgage Loan**

1. The applicant must be able to obtain a mortgage loan with an eligible lender for the maximum affordable amount. The lending institution must be willing to participate in the MIN Down Payment & Closing Costs Assistance Program and its requirements..
2. The lending institution must, as a part of its mortgage loan, require purchase of property insurance, and must escrow the insurance payments.

**e. Assets**

The applicant shall not own any other residential property. An exception may be made for inherited property.

**f. Employees**

Employees, agents, officers or elected or appointed officials of MIN are eligible for loans under this program. The MIN's Housing Department Manager must approve all such loan applications and then application is submitted to Tribal Administrator for final approval. Employees, agents, officers or elected or appointed officials must comply with 24CFR 1000.30,1000.32, and 1000.34 regarding conflict of interest.

**3. Ineligibility**

- a. Applicants will be considered ineligible for not meeting items in Section 2 above or for any of one or more

of the following:

- Providing false information on the application.
- Failing to complete required forms or to supply requested information.
- Committing fraud in connection with any MIN program, or failing to disclose previously committed fraud in connection with any MIN program.
- Appearing on the Federal government's Excluded Parties List System (EPLS).
- Having an outstanding debt owed to the MIN.

**4. Waiting List/ Applicant Pool**

- a. The Down Payment & Closing Costs Assistance Program is operated on a first-come first-served basis subject to the availability of funds.
- b. The MIN Housing Department will maintain a list of eligible applicants based on the date and time the completed application is received.
- c. If funds are unavailable for the Down Payment & Closing Costs Assistance Program, the MIN Housing Department may suspend or discontinue accepting applications until funds become available.

**5. Reservation of Funds**

- a. Funds will be reserved for each applicant when the loan application is complete, including a copy of the Earnest Money Agreement and all information required by the first mortgage lender.
- b. Funds will be reserved for 60 days and may be extended for 30 days at a time.

**6. Property Requirements**

- a. The homebuyer must meet the following property requirements during the life of the loan:
  1. The home must be the primary residence of the owner.
  2. The property must be located within MIN's Indian area as defined in its IHP.
  3. The property must be a single-family residence, including condominiums and townhouses, manufactured homes, including doublewides, and/or modular homes.
  4. The initial purchase price of the home may not exceed the Total Development Cost limits established by the MIN for the type of single family housing for the area. The MIN may use HUD established Total Development Cost limits which are attached as appendices to this policy.
  5. The property must be reviewed by the MIN Housing Department for environmental impact in accordance with the National Environmental Policy Act (NEPA) and all other applicable statutes, regulations and Executive Orders.

6. The homebuyer shall be responsible for any insurance coverage required by the MIN Housing Department or the lending institution.

**7. Repayment of the Loan**

- a. There are no monthly payments or interest associated with MIN's Down Payment & Closing Costs Assistance Program loans.
- b. Twenty percent of the original down payment & closing costs assistance loan amount will be forgiven on each annual or monthly anniversary of the loan. If the property is sold (or the title is otherwise transferred) and ceases to be the homebuyer's primary residence, the unforgiven portion of the loan will be due and payable.
- c. There will be a secured loan agreement between the homebuyer and MIN, which will be attached to the property until the loan is fully forgiven. In the event of the only surviving owner becoming deceased during the restricted period, the loan will be fully forgiven and will not transfer to surviving family members and the loan agreement will become null and void.

**8. Certification of Residency**

- a. The property must remain the homebuyer's primary residence throughout the term of this loan. Homebuyers will be required to sign an annual affidavit stating the amount of time they lived in the house as their primary residence during the previous year. If they did not live in the house for at least seven (7) of the previous 12 months, the loan will be considered to be in default. MIN's Housing Manager will review each default and consider the appropriate course of action.

**9. Resale Restriction**

- a. Documents for the Down Payment & Closing Costs Assistance Program shall include resale restrictions and an option to purchase granted to MIN.
- b. If, at any time, the homebuyer sells or transfers title to the home throughout the term of the loan, the owner must repay the MIN any balance due.

**10. Assumption of Loan**

- a. If the property is sold during the term of MIN's loan, the MIN loan may be assumed by a qualified homebuyer. Generally, the assumption approval will be based on the following:
  1. The new homebuyer must assume the first mortgage and be contractually obligated to satisfy the mortgage.
  2. The new homebuyer must be determined eligible as defined in the MIN housing assistance Eligibility Policy and Procedures.
  3. The property must be the new homebuyer's primary residence.
  4. The new homebuyer must be a member of the MIN.

**11. Transfer of Home**

- a. If the homebuyer no longer desires to own the property and intends to sell or otherwise transfer title, the homebuyer must notify MIN of their intent in writing. Upon receipt of the notice, MIN shall then have the right to exercise its Purchase Option by delivery of notice to the homebuyer of such exercise at any time within thirty (30) days from its receipt of

such written notice from the homebuyer of interest to sell or otherwise transfer the residence.

- b. If MIN exercises its Option to Purchase the property, closing shall be through an escrow with the title insurance company issuing the homebuyer's title insurance policy. The closing shall be within sixty (60) days of the opening of escrow. In the event MIN decides to assign the Purchase Option, the opening of the escrow will be within thirty (30) business days after the homebuyer is notified of MIN's intent to exercise the Purchase Option. In the event MIN postpones opening of escrow and is unable to select an assignee, MIN retains the right to open escrow and complete the purchase provided the escrow is opened within thirty (30) business days and the sales transaction is completed within ninety (90) days from the homebuyer's notice of intent to sell.
- c. Up to ten (10) days before close of escrow, the homebuyer may give notice to the MIN Housing Department Manager of the homebuyer's intent to terminate the escrow. MIN shall retain the right by notice to the homebuyer to complete the purchase of the property for an additional period of ten (10) days commencing from the date of the receipt of notice the homebuyer's intent to terminate the escrow.
- d. In the event the MIN does not exercise its Purchase Option within thirty (30) business days of the homebuyer's notice pursuant to the Resale Restriction and Purchase Option, the homebuyer may offer the residence to anyone.
- e. Any attempt by the homebuyer to make a prohibited transfer of title or interest in the property in violation of the Down Payment & Closing Costs Assistance Program documents, the transfer will be void and subject to exercise of the purchase option described in the applicable section of that document.
- f. Permitted Transfer by Homebuyer

The following transfers are not prohibited and therefore are not subject to exercise by the Optionee of the Purchase Option:

1. Transfer by gift or inheritance to the homebuyer's spouse or children;
2. Transfer of title by a homebuyer's death to a surviving joint tenant, tenant by entireties, or surviving spouse.
3. Transfer of title to a spouse as part of divorce or dissolution proceedings;
4. Granting of leasehold interest or rental of the residence for a period of less than a year; or
5. Transfer of title or interest in the residence to the spouse in conjunction with marriage.
6. The above transfers are allowable if the Second Mortgage Document covenants continue to run with the title to the property following said transfers, and any transfer documents must contain the following covenant:

This residence is subject to the Resale Restrictions Agreement and Option to Purchase and Transferee, on behalf of Transferee and Transferee's successors and assigns, covenants and agrees to be bound by and perform the Agreement, and to include in any further transfer of the residence the covenant required by the Agreement.

7. The homebuyer must notify the MIN Housing Department at least thirty (30) business days prior to the sale or transfer of the property. MIN will approve or disapprove of the proposed Transferee within thirty (30) business days after receiving the notification.

## **12. Payment Oversight**

- a. The MIN Housing Department shall work with the homebuyer to ensure the success of their home ownership. If, for any reason, the first mortgage loan becomes delinquent, the lender will contact the MIN Housing Department Manager. Upon receipt of any delinquent notices, MIN Housing Department staff may contact the homebuyer to assist in resolving the problem. This intervention does not, in any way, diminish the homeowner's responsibilities to the first mortgage lender.
- b. If a homebuyer is found to be in default of any portion of the first mortgage documents, MIN Housing Department staff may provide or refer the home buyer to financial counseling in an effort to resolve the problem, and may:
  1. Arrange a meeting with the home buyer to discuss the default;
  2. Work with the home buyer to develop a specific plan of action to correct the default;
  3. Monitor the homebuyer's plan of action until the default is corrected.

## **13. Appeals Process**

- a. Individuals or families who have applied for the Down Payment & Closing Costs Assistance Program and who, for any reason, have been determined to be ineligible will be notified by the MIN Housing Department in writing. The notification shall state the reasons for ineligibility. All information relative to the rejection of the applicant shall be documented and placed in the applicant's file.
- b. An applicant who has been determined ineligible for the Down Payment & Closing Costs Assistance Program may request a second determination within 30 days of the date on the written notification. The applicant may resubmit eligibility documentation at the time of the second determination. A written notification of selection or denial will be provided based on the information submitted by the applicant. Other recourses for appealing a MIN Housing Department decision may also be available and will be described in each letter of denial sent to the applicant.

## **14. Appendix**

1. The current Total Development Costs are available at:  
[https://www.hud.gov/sites/dfiles/PIH/documents/PIH-2019-19\\_attachment.xls](https://www.hud.gov/sites/dfiles/PIH/documents/PIH-2019-19_attachment.xls)





Enacted, on this day, 9 of Sept, 2020, in Amherst, Virginia.

Kenneth Branham 9-9-2020

Chief Kenneth Branham

Date

RECIPIENT GUIDANCE 2013-06 (R)

NATIVE AMERICAN HOUSING ASSISTANCE AND SELF-DETERMINATION ACT  
USEFUL LIFE/AFFORDABILITY PERIOD/USE RESTRICTION  
(Indian Housing on Fee Land with Pro-rated Recovery Amount)

THE FOLLOWING PROPERTY (HEREIN AFTER THE **Property**) IS HEREBY MADE SUBJECT TO A LIEN AND COVENANT RUNNING WITH THE LAND:

Address: \_\_\_\_\_  
Located at: \_\_\_\_\_  
Lot \_\_\_\_\_, in the subdivision known as \_\_\_\_\_,  
shown by map on file in Book No. \_\_\_\_\_, pages \_\_\_\_\_ through  
\_\_\_\_\_ of Maps \_\_\_\_\_, Records of County of \_\_\_\_\_,  
and State of \_\_\_\_\_.

Legal description: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

This Useful life/affordability period/Use Restriction, a covenant running with the land (hereinafter the **Land Restriction**), dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, for good and valuable consideration, is hereby declared covenanted and made by \_\_\_\_\_ (hereinafter the **Owner**), who is the owner(s) of the Property. The Land Restriction is imposed because Indian Housing Block Grant (IHBG AND/OR TITLE VI) funds to benefit the Property have been granted or loaned by \_\_\_\_\_, an Indian Tribe or an Indian or Alaska Native tribally designated housing entity (hereinafter the **Tribe**), to assist or facilitate low-income Indian housing.

1. DEED RESTRICTED

- 1.1 Use Restrictions. The Property shall be used only for residential purposes and that residential occupancy shall only be by individuals or families who are members of, or are headed by a member of, a federally recognized tribe or an eligible State recognized tribe who are low-income. The terms "federally recognized tribe," "State recognized tribe" and "low-income" are as defined in the Native American Housing Assistance and Self-Determination Act (hereinafter **NAHASDA**), 25 U.S.C. §§ 4101, et seq.
- 1.2 Subsequent Owners. Family or household members who take Subsequent Ownership will not be subject to the binding agreement. However the binding commitment will not terminate upon subsequent family/household ownership, the binding commitment will not apply to the family/household. Any subsequent transfer by the family member or household member to a third party (not a family member or household member) is subject to this Land Restriction for the remaining affordability period.
- 1.2 Restricting Owners. All of the rights, restrictions and agreements in this Land Restriction shall be deemed to be covenants and a deed restriction placed on the Property and Owner and binding and enforceable against the Owner and other subsequent owners of the Property; however, subsequent Owners that are family members or household members are not subject to this Land

## RECIPIENT GUIDANCE 2013-06 (R)

Restriction. Any subsequent transfer by the family member or household member to a third party (not a family member or household member) is subject to this Land Restriction.

1.3 Covenant Running With the Land. The Owner declares and covenants on behalf of itself that this Land Restriction and all accompanying enforcement rights run with the land until the Termination Date.

1.4 Term. This Land Restriction, including all of its rights, restrictions, covenants and agreements, shall expire \_\_\_\_\_ ( \_\_\_\_\_ ) years from the date of this Land Restriction agreement (hereinafter the **Term**), which shall be the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ (hereinafter the **Termination Date**). As of the Termination Date, this Land Restriction shall expire by its own terms and this Land Restriction shall have no further force or effect and shall be extinguished and released without the execution or recording of any further documents.

### 2.0 ENFORCEMENT

2.1 Right to Enforce. The Tribe has all the rights and remedies necessary to enforce the use restrictions contained in this Land Restriction. This includes, but is not limited to enforcing compliance with the low-income and members of federally recognized tribe use restrictions, invalidating any conveyance which violates the terms of this Land Restriction, and levying upon the Property to recover in full the money expended, advanced or loaned either on the Property or to the Owner by the Tribe under its low-income Native American housing programs.

2.2 Recovery of Amounts Contributed by the Tribe. The Tribe has contributed through loan(s) or grant(s) the sum of \_\_\_\_\_ (\$ \_\_\_\_\_ ) to the Owner or Property and shall be entitled to recover some or this entire amount as follows:

(a) If the Property consists of a single family unit, the Tribe shall be entitled to recover the following declining amounts for any violation of the Land Restriction agreement during the duration of this Land Restriction:

- Year 1 - 100%
- Year 2 - 80%
- Year 3 - 60%
- Year 4 - 40%
- Year 5 - 20%

(b) If the property is not a single family unit, the Tribe shall be entitled to recover the full amount contributed for any violation of the Land Restriction agreement during the duration of this Land Restriction

2.3 Rights to Recover Other Costs by the Tribe. The Owner, as well as subsequent owners of the Property, shall also be liable to the Tribe for any and all reasonable attorney fees, costs and court expenses that the Tribe may incur in any enforcement actions it takes under this Land Restriction agreement.

### 3.0 NOTICE OF PENDING SALE, RENTAL OR CONVEYANCE.

3.1 Notice. The Owner, and any subsequent owner of the Property, is obligated to notify the Tribe in writing, delivery of which shall be evidenced with a written receipt, at the following address: \_\_\_\_\_ that they intend to change occupancy, lease, sell, or convey the Property. This Notice shall be given no less than sixty (60) days prior to the Owner binding itself to such action(s).

## RECIPIENT GUIDANCE 2013-06 (R)

- 3.2 Confirmation of Compliance with Land Restrictions. After receipt of the Notice, the Owner of the Property must provide any and all information it has and that the Tribe requests and deems necessary to ascertain that the Property shall remain in compliance with this Land Restriction agreement.
- 3.3 Assistance in Conveying to Low Income Native Americans. The Tribe may offer to assist the Owner and subsequent owners in finding individuals eligible under this Land Restriction agreement to occupy, rent, lease, purchase, or obtain title to the property.
- 3.4 Delivery of Notice Has No Effect on Land Restriction. The Notice is for information purposes only. Any Tribe inactions or actions taken pursuant to such a Notice do not constitute Tribe approval of any particular use and are not a waiver by the Tribe of any rights it has to enforce compliance with this Land Restriction.

### 4.0 USEFUL LIFE/AFFORDABILITY PERIOD

- 4.1 Term of Land Restriction Should Meet HUD Requirements. NAHASDA requires that the Secretary of the U.S. Department of Housing and Urban Development determine that the Property is minimally restricted for a period of time acceptable to its Secretary, 25 U.S.C. § 4135(a)(2). In section 1.4 of this Land Restriction agreement, a Term has been set for this Land Restriction and that Term should not be less than what is acceptable to the Secretary of HUD based on the nature and the amount of IHBG AND/OR TITLE VI funds to this Property. The Tribe should ensure that a Land Restriction has been obtained for a Term that meets HUD's standards.

### 5.0 MISCELLANEOUS

- 5.1 Amendment. Any amendment to this Land Restriction by an Owner of the Property shall require the approval and consent of the Tribe and be recorded in the same manner as this Land Restriction agreement. However, other use restrictions may be placed on the Property so long as they do not conflict or contravene this Land Restriction agreement.
- 5.2 Severability. If any provision of this Land Restriction is held by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions shall survive and their validity, legality and enforceability shall not in any way be affected or impaired.
- 5.3 Homestead Waiver. This Land Restriction is prior and superior to any Owner right to a homestead exemption under applicable law. Owners of the Property waive their homestead rights to extent that they are in conflict with the rights and remedies set out in this Land Restriction.

Executed as of the date first written above.

OWNER:

\_\_\_\_\_  
\_\_\_\_\_

CONCURRED IN BY THE TRIBE (IF DIFFERENT FROM OWNER)

Tribe: \_\_\_\_\_  
Signature: \_\_\_\_\_  
Name & Title: \_\_\_\_\_  
Date: \_\_\_\_\_