



**Policies and Procedures Manual**  
**March 2023**

**EMPOWER HOMEBUYERS SCC: THE 2016 MEASURE A  
FIRST TIME HOMEBUYER PROGRAM FOR SANTA CLARA COUNTY**

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## I. Introduction

Empower Homebuyers SCC (EMPOWER) is a Santa Clara County program to assist first time homebuyers with down payment assistance to purchase a home within Santa Clara County. The County of Santa Clara Board of Supervisors has approved up to \$25 million in 2016 Measure A funding for the Empower Homebuyers SCC Program.

The Empower Homebuyers SCC Program is a loan program that provides down payment assistance, in the form of a deferred payment loan, to qualified low- and moderate- income families to help them achieve the goal of homeownership.

The County has partnered with the Housing Trust Silicon Valley (Housing Trust) to administer the Empower Homebuyers SCC Program. The Office of Supportive Housing administers the County's approval process for the purchase of the Empower Homebuyers SCC loans from the Housing Trust. The County has ongoing responsibilities for homeowner compliance with the Empower Homebuyers SCC Loan program. The Housing Trust is the County's exclusive marketing agent for the Empower Homebuyers SCC Loan Program. The Housing Trust also manages the homebuyer eligibility, qualification process and the funding of the Empower Homebuyer SCC Loans as well as the bulk sale of the Empower Homebuyers SCC Loans to the County. The Housing Trust is a non-profit organization and a secondary financing lender since 2000. Since its inception, the Housing Trust has helped over 2,300 homebuyers with down payment assistance loan programs. It is located at 75 East Santa Clara Street, Suite 1350, San Jose CA 95113. The office phone number is 408.703.3837 and fax number is 888.466.2969

The Policies and Procedures describe:

- Empower Homebuyers SCC Loan Program Requirements and Obligations for Homeownership
- The Empower Homebuyers SCC Loan Program requirement for homebuyers
- The procedures for administration for the Empower Homebuyers SCC Loan Program and the roles of each participant in the Empower Homebuyers SCC Loan Program
- The Empower Homebuyers SCC documents and other useful reference material

*Santa Clara County and the Housing Trust reserve the right to revise and change guidelines at their discretion.*

## II. Empower Homebuyers SCC Loan Program Requirements and Obligations for Homeownership

### A. General

The Empower Homebuyers SCC (EMPOWER) Program applies to eligible low- to moderate- income households purchasing a home in Santa Clara County. Eligible homebuyers may qualify for a “shared appreciation” loan to supplement the borrowers’ equity in the form of down payment. Shared appreciation loans are second mortgages which require that homeowners repay not only the initial subsidy that they received, but also a share of any appreciation gain on the subject property.

Each EMPOWER loan is subject to the following terms and conditions for the life of the loan: (See Exhibit #A-Terms and Policies Matrix)

1. The term of the deferred loan is thirty (30) years. No monthly principal or interest payments are required for 30 years, unless the owner sells or refinances the home, at which time the principal plus a share of the appreciation must be repaid.
2. The maturity date of the loan is thirty (30) years from the date of the Note, or upon sale or transfer, assignment, or default; or prepayment or refinance of the senior lien mortgage loan; or change to non-owner occupancy status, whichever occurs first.
3. The loan is subject to contingent interest equal to a percentage of the share of net appreciation. Net appreciation is defined as the difference between the Original Base Price of the Property and the greater of the future sales price of the Property or the appraised value of the Property at time of future sale less Borrower Contributions. The share of net appreciation shall be capped at 100% of the original EMPOWER loan amount for the first ten (10) years of the loan. After the initial ten (10) year period, there is no cap on the share of net appreciation.
4. Housing Trust will fund and close Empower Homebuyers SCC loans in its name. Within 180 days or sooner, the Housing Trust will sell the loans which have been reviewed and approved by the County of Santa Clara to the County. The County of Santa Clara will purchase the approved loans with designated Measure A 2016 funds. Housing Trust will notify the County of Santa Clara fourteen (14) days before beginning the loan process sale. The notification will be sent via letter or by email to the County staff person responsible for the purchase of the loan.
5. Owner must certify that he/she will be an owner-occupant and must maintain homeownership during the term of the loan by the filing of a homeowner’s exemption with the County of Santa Clara’s Office of the Assessor. The home, or any parts thereof, shall not be leased or rented by the homebuyer to any person or entity. The County, on a case-by-case basis, may consider a hardship request granting a temporary exemption from this requirement.

### B. Share of Appreciation

EMPOWER loans are “shared appreciation” loans which supplement a borrowers’ equity in the form of down payment assistance. These shared appreciation loans are second lien mortgages which require that homeowners repay not only the initial subsidy that they received, but also a share of any appreciation in the

subject Property.

No payments are required for 30 years, unless the owner sells or refinances the home, at which time the principal plus a share of the appreciation must be repaid. Full repayment of the EMPOWER loan and a share of the appreciation is due at the end of the thirty (30) year term.

The specific loan terms related to the shared appreciation of the EMPOWER Program are described below.

1. Original Base Price. The Original Base Price represents the original purchase price of the property or the appraised value of the Property at the time of the purchase, whichever is less.

2. Borrower Contributions. Borrower Contributions are the documented out-of-pocket closing costs for the Borrower's acquisition of the Property and any documented amounts paid by Borrower for Qualifying Capital Improvements made to the Property during the term of the Loan, plus simple annual interest on such Borrower Contributions from the date such Borrower Contribution was paid by Borrower until the Maturity Date at the then prevailing rate.

i. Borrower's "out-of-pocket closing costs" shall mean those costs reflected on the settlement statement for the acquisition of the Property which were paid by Borrower in addition to Borrower's down payment amount and which were not paid with funds from the Senior Loan, this Loan or any source other than cash from Borrower and may include documentary transfer taxes, escrow and recording fees, title insurance premiums, and any other non-recurring fees which were a necessary or customary cost of consummating the acquisition of the Property.

ii. Qualifying Capital Improvements. Qualifying Capital Improvements are "improvements" as defined by IRS Publication 523, that add to the value of the Property, cost at least \$2,500 for each improvement, and which require a building permit; qualifying capital improvements must be evidenced by approved building permits, invoices, proof of payment and a schedule summarizing the capital improvement.

iii. Prevailing Rate. The prevailing rate means the National Average Contract Mortgage Rate as derived from the Federal Housing Finance Agency's Monthly Interest Rate Survey (MIRS).

5. Fair Market Value. The Fair Market Value of the Subject Property will be determined at sale, refinance, or at Maturity Date. The Fair Market Value of the Subject Property shall be the greater of the Borrower's sales price of the Subject Property (if applicable) or the Appraised Value of the Subject Property as of the Maturity Date.

If the County and Borrower are unable to agree on a Fair Market Value then the "Appraised Value" of the Subject Property is defined as the value that would be agreed to by a seller who is willing to sell but under no particular or urgent necessity or obligation to sell, and a buyer who is ready, willing and able to buy but under no particular or urgent necessity to buy, each dealing with the other with full knowledge of all the uses and purposes for which the Subject Property is reasonably adaptable and available. For purposes of determining the Appraised Value, the Borrower shall select an appraiser who is an "MAI" member of the American Institute of Real Estate Appraisers or an "SRPA" member of the Society of Real Estate Appraisers (or any such equivalent designations). The County has the option, at its sole expense, to select an appraiser to conduct an additional appraisal of the Subject Property. If the two appraisals are not in agreement as to the Appraised Value of the Subject Property, the amounts determined by the appraisals will be averaged to determine the Appraised Value of the Subject Property for purposes of this section.

In any other transfer of the Property, or if Borrower and County disagree as to the Fair Market Value, Borrower, at his/her cost, will obtain an appraisal of the property pursuant to the terms defined in the

paragraph above. The value of the Property as stated in the Appraisal will conclusively establish the Fair Market Value.

6. Appreciation. Appreciation is the amount determined by subtracting the sum of the Original Base Price and any Borrower Contributions from one of the following amounts, as applicable: (i) the Fair Market Value of the Property; or (ii) in the event a creditor acquires title to the Property through a deed in lieu of foreclosure, a trustee's deed upon sale, or otherwise, the amount paid for the Home by a successful bidder at a trustee's sale of the Property.

*For example: \$400,000 (Fair Market Value)-\$300,000 (Original Base Price) = \$100,000 (Appreciation)*

7. Shared Appreciation Percentage. The amount which represents the percentage obtained by dividing the EMPOWER Principal Loan Amount by the Original Base Price of the Home.

*For example: (\$30,000 (EMPOWER Principal Loan Amount)/\$300,000 (Original Base Price) = 10.0% or Ten Percent will be used to calculate the Share of Appreciation due to the County.*

8. Share of Appreciation. The Share of Appreciation is the Net Appreciation multiplied by the Shared Appreciation Percentage. The Net Appreciation is the Appreciation less Borrower Contributions.

*For example: \$400,000 (Fair Market Value)-\$300,000 (Original Base Price) - \$500<sup>1</sup> in acquisition closing costs - \$10,000<sup>2</sup> for qualifying capital improvements = \$89,500 (Appreciation) will be used to calculate the Share of Appreciation due to the Note Holder.*

*For example: (\$89,500 (Appreciation) Multiplied by 10.0% (Shared Appreciation Percentage) = \$8,950 (Share of Appreciation)) due to the Note Holder.*

The Share of Appreciation shall be capped at 100% of the EMPOWER Principal Loan Amount for the first ten (10) years of the Maturity Date of the Promissory Note. After the initial ten (10) years of the Maturity Date, the Share of Appreciation is uncapped. If there is no appreciation, or the value of the Property declines, the Note Holder is not obligated to contribute toward any deficit, and nothing shall make the Note Holder a partner or joint venture with Borrower. In the event the Appreciation is equal to zero then no EMPOWER Share of Appreciation shall be due.

*For example: Home is sold in year 5 of loan and is subject to cap:*

- Home purchase price: \$300,000
- EMPOWER loan: \$30,000 (10% of purchase price)
- Home resale price: \$1,000,000
- Borrower contributions: \$10,150
- Payment due: \$30,000 for original County loan + \$68,985 (10% of \$689,850 appreciation from \$1,000,000 to \$300,000 less Borrower Contributions (net appreciation))

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<sup>1</sup> Exact deduction for closing costs would be slightly higher to reflect interest earned at the prevailing rate from date of acquisition to the Maturity Date.

<sup>2</sup> Exact deduction for qualifying capital improvement would be slightly higher to reflect interest earned at the prevailing rate from date of the payment of the capital improvement to the Maturity Date.

- *Total payment to County: \$60,000=\$30,000 (original EMPOWER Principal loan) + \$30,000 (Share of Appreciation capped at \$30,000)*

*For example: Home is sold in year 15 and is not subject to cap:*

- *Home purchase price: \$300,000*
- *EMPOWER loan: \$30,000 (10% of purchase price)*
- *Home resale price: \$1,000,000*
- *Borrower contributions: \$10,150*
- *Payment due: \$30,000 for original County loan + \$68,985 (10% of \$689,850 appreciation from \$300,000 to \$1,000,000 less Borrower Contributions (net appreciation))*
- *Total payment to County: \$98,985=\$30,000 (original Empower Homebuyers SCC Principal loan) + \$68,985 (Share of Appreciation uncapped)*

### III. Empower Homebuyer SCC (EMPOWER) Program

#### A. Administration

The County has contracted with Housing Trust Silicon Valley (Housing Trust) to administer the Empower Homebuyers SCC Program. The scope of services includes administering program eligibility applications, evaluating applicants during the application process, and providing informational workshops and pre-purchase counseling. The Housing Trust will underwrite prospective buyers in accordance with the County's policies and procedures and will facilitate with the close of escrow along with the Title Company and senior lien mortgage lender (a "Senior Lender"). Housing Trust Silicon Valley can be reached at:

Housing Trust Silicon Valley  
 75 East Santa Clara Street, Suite 1350  
 San Jose, CA 95113  
 Phone: (408) 703.3837 ext. 301  
 Fax: (888) 466.2969  
 Email: [EmpowerHomebuyersSCC@housingtrustsv.org](mailto:EmpowerHomebuyersSCC@housingtrustsv.org)  
<http://housingtrustsv.org/programs/empower/>

#### B. Marketing

The Housing Trust shall be responsible for preparing and implementing the marketing plan for EMPOWER HOMEBUYERS SCC: THE 2016 MEASURE A FIRST-TIME HOMEBUYER PROGRAM FOR SANTA CLARA COUNTY.

#### C. Initial Inquiries and Intake

Prospective homebuyers are provided with a summary of the EMPOWER Program, which will include the program's requirements and contact information. Housing Trust Silicon Valley will invite prospective homebuyers who express an interest in the EMPOWER Program to complete an intake online or over the phone and register for the HUD certified 8 Hour Homebuyer Education classes and offer pre-purchase counseling. Housing Trust does not provide the HUD certified 8 Hour Homebuyer Education course.

The intake form provides a preliminary assessment of the prospective homebuyer's mortgage readiness and to develop a plan of action designed to move the homebuyer through the homeownership process. The Housing Trust shall ensure that interested persons receive information regarding the steps to homeownership and

other program materials within a reasonable time after initial contact. The eligibility application, program guidelines and program loan documents are also available on the designated EMPOWER web page. Interested applicants will be placed on a general interest list to receive program updates.

Once prospective buyers have determined they are purchase ready, they will provide their Certificate of Completion for the HUD certified 8 Hour Homebuyer Education Course and are referred to an approved Senior Lender for pre-approval.

A. Purchase-Ready buyer is a buyer who can qualify for adequate financing to purchase a home; able to provide a minimum down-payment of at least 3% or greater amount if required by the Senior Lender, plus closing costs; and has completed a HUD-certified eight (8) hour homebuyer education course. Adequate financing shall include a conventional senior-mortgage loan provided by an established residential lender that meets the requirements described in Section K of these guidelines, and may also include public-sector or non-profit junior loans, such as down-payment assistance loans or grants secured by the Applicant and approved by Housing Trust and the Senior Lender. Down-payment may include gift funds if seasoned and documented as explained in these guidelines. Applicants with recent foreclosures, bankruptcies, credit scores below 620, or inadequate down-payment funds do not qualify as Purchase-Ready.

#### D. Verification and Selection Process

Interested purchase ready buyers seeking Program Eligibility (Pre-approval) will be provided with a program eligibility application, a copy of the promissory note and deed of trust, and the program guidelines. The Housing Trust will meet with each purchase ready homebuyer to check the completeness of eligibility application for the EMPOWER Program and required documentation. Any missing documentation or information will result in rendering the application incomplete and may not be accepted. Homebuyers are required to submit any missing documentation within 3-5 calendar days. Within thirty (30) calendar days, all missing documentation must be submitted by the buyer, or the application will be cancelled. Upon determination of Program Eligibility, the applicant will receive a Program Eligibility (Pre-approval) letter that expires within ninety (90) days.

#### IV. Guidelines for Program Eligibility

These Underwriting Guidelines are for the Empower Homebuyers SCC Program. The Empower Homebuyers SCC Program Guidelines provides a description of the program, its guidelines and the application and loan process to Senior Lenders and prospective buyers. The Housing Trust administers other homebuyer programs, and these guidelines may not apply to other homebuyer programs.

##### **A. EMPOWER HOMEBUYERS SCC PROGRAM GENERAL INFORMATION**

- The Senior Lender and buyer are responsible for understanding the terms and conditions of the EMPOWER Program for which the buyer is applying.
- Although the Housing Trust offers other homebuyer assistance programs, applicants may only apply for one Housing Trust loan per transaction unless otherwise indicated in a program's guidelines.
- Funds are limited and the Housing Trust makes no guarantee that funds will be available. Funds will be available on a first-come, first-served basis.
- Reservations of funds (if available) are made at the receipt of a complete purchase loan application package. Priority for reservations of funds will be given to borrowers with completed purchase loan applications and will be processed in the order in which they are received. After Empower



Homebuyers SCC funds are depleted, eligibility and purchase loan applications will no longer be accepted. Potential homebuyers will be referred to other Housing Trust programs if available.

For a matrix of the Empower Homebuyers SCC Program, please see *Exhibit A*.

## **B. APPLICATION PROCESS**

An applicant must apply through the Housing Trust. Upon receipt of pre-approval from a Senior Lender, purchase ready applicants contact Housing Trust staff for an application submission appointment. An Applicant may apply with any Senior Lender of their choice provided the Senior Lender has a signed Lender Participation Agreement and provided written loan program review and approval. The Housing Trust maintains a list of approved Senior Lenders and preferred and certified loan officers/mortgage loan originators (LO/MLO).

*1. Eligibility Application-* Applicants interested in applying and receiving a Program Eligibility (Pre-approval) determination are required to complete a Homebuyer Assistance Program Eligibility Application and submit the required documents.

- The Eligibility Application Package must be submitted by the applicants by appointment only with Housing Trust staff, before entering into a purchase sales agreement.
- A Senior Lender pre-approval letter must show the applicant's name and current residential address along with the pre-approved mortgage loan amount, purchase price, and an expiration date for the preapproval.
- A copy of the credit report for all borrowers including non-borrowing spouses is required upon receipt of the Eligibility Application from the applicant. If the Senior Lender cannot provide the copy of the credit report of the borrowers directly to the Housing Trust, then the borrowers can obtain a copy from originating vendor of the Senior Lender.
  - In the event, a Senior Lender or originating vendor of the Senior Lender cannot provide the credit reports for the borrower(s), the borrower(s) must obtain a copy of their credit reports from all three credit bureaus (Equifax, Experian, & TransUnion) through <https://www.annualcreditreport.com/index.action> and provide it at the time of application.
- A copy of the credit scores from all three credit bureaus (Equifax, Experian, & TransUnion) are provided by each applicant borrower, co-applicant borrower and non-borrowing spouses. Generally, FICO credit scores are sent to the borrower(s) at lender pre-approval by Senior Lender.
  - A non-borrowing spouse who is not on the senior mortgage loan will be required to provide credit scores from all three credit bureaus (Equifax, Experian, & TransUnion) as part of the eligibility application package.
- If any documentation is missing or required, Housing Trust staff will prepare a list of missing documentation for the applicant to submit. Applicants will be able to submit missing documentation;
  - in person by the applicant; or
  - to the Housing Trust designated secure file sharing application (if this method is selected, Housing Trust must have in the file an E-Sign Disclosure and Consent Notice signed by the applicant(s)); or

- registered courier or delivery service (i.e., US Postal Service, Federal Express, etc.).
- Housing Trust staff will then begin the Initial Review process upon receipt of all documentation.
- Once an applicant is determined to be Program Eligible, a Program Eligibility (Pre-approval) letter and email will be sent to the applicant and the loan officer/mortgage loan originator. If email communication is used, an E-Sign Disclosure and Consent Notice signed by the applicant must be in the file.

An applicant's Program Eligibility (Pre-approval) status will be good for **90** days or, if sooner, the expiration date of the Senior Lender's pre-approval letter. The Program Eligibility letter cannot exceed 90 days. Applicants should not enter into a purchase sales agreement prior to receiving determination of Program Eligibility (Pre-approval) from Housing Trust. The applicant is responsible for maintaining Program Eligibility and updating Housing Trust with any required documentation and any pertinent information at least two weeks prior to the expiration of the Program Eligibility determination letter. A Program Eligibility letter from Housing Trust does not reserve funds for the program.

Applicants unable to meet the Empower Homebuyers SCC program eligibility requirements are ineligible and a Letter of Ineligibility along with the ECOA-Statement and Notice of Adverse Action is sent to the applicant(s) within 30 days.

*2. Extension of Program Eligibility (Pre-approval) status-* An applicant's Program Eligibility (Pre-approval) status will be good for the earlier of **90** days or within the expiration date of the Senior Lender's pre-approval letter. A one-time 90-day extension can be requested. Applicant must notify the Housing Trust at least 14 calendar days of the request. Housing Trust will provide a list of documents that must be updated to complete a new program eligibility determination.

- *Applicants must show they are actively shopping for home by providing copy of at least one rejected offer on property.*

*3. Loan Application-* Upon entering into a ratified purchase agreement, the Senior Lender will submit an EMPOWER Purchase Loan Application, on the applicant's behalf, to Housing Trust within 7 calendar days. A reservation of funds is made when Housing Trust receives a Purchase Loan Application and its supporting documents. A ratified purchase agreement is different than an executed purchase contract in that the ratified purchase agreement is an agreement where the parties have agreed in writing to all of the offered terms subject to certain conditions (including financing) and an executed purchase contract is one in which all agreed upon terms and conditions have been fulfilled. The executed purchase contract typically occurs at closing.

- The Purchase Loan Application and required documents can be delivered;
  - to the Housing Trust designated secure file sharing application; or
  - to the Senior Lender's secured email delivery; or
  - hand delivered by the Senior Lender; or
  - delivered by registered courier or delivery service (i.e., US Postal Service, Federal Express, etc.) to the Senior Lender.
- The Senior Lender must disclose all layers of subordinate financing, including the loan amount and program source, on the EMPOWER Purchase Loan Application, the Uniform Residential Loan Application (Fannie Mae Form 1003) (Page 3, Details of the Transaction) and in the comment

section located at the bottom of the Uniform Underwriting and Transmittal Summary (Fannie Mae Form 1008).

- Housing Trust will prepare and send required loan disclosures for its programs to the applicants.
  - EMPOWER requires (non-TRID disclosures) a Good Faith Estimate and Truth-in-Lending (TILA) disclosures prepared by Housing Trust and delivered to the borrowers within three (3) business days.
  - Housing Trust will ensure that all applicants receive an E-Sign Disclosure and Consent Notice for their signature. This notice gives Housing Trust authorization to communicate with the applicant electronically.

Loan applications with no activity for more than 30 calendar days (e.g., conditions have not been received, no response from Senior Lender, file has not moved forward), will be cancelled by designated Housing Trust staff without advance notice. For a quick reference on the timeline, please see *Exhibit #B*.

#### *4. Documents from Applicant(s) and Household Members-*

Applicants and ALL adult household members are required to submit valid third-party documentation. Documents must be issued directly by a public agency, private utility company, taxing entity, creditor, financial institution, school, employer, business, or Certified Public Accountant on such entity's own letterhead, verifying one or more eligibility criteria of any Applicant, Co-Applicant, or their dependents. Such documentation may be verified by Housing Trust staff through direct contact with such agency/issuer by phone, email, or written inquiry to verify accuracy of document's contents. Written statements of parties with any direct or indirect interest in the home purchase (i.e., persons related to Applicant by blood/family relationship, marriage, business ties (other than Certified Public Accountant, in the case of self-employment income) or other close personal relationship, do not qualify as valid third-party documentation. All documents must be in English.

All material misrepresentations, alterations, and/or omissions from the initial Housing Trust application; including but not limited to household size, income and asset information, loan details, etc., are not permissible and will render all future re-submissions ineligible for review and approval for a period of one year. Exceptions for re-submission of a loan application are significant life events such as a job/career change, marriage, or the birth of a child and are at the discretion of designated Housing Trust Homeownership Programs department staff.

Altered documents that show evidence of strikeovers, whiteouts, typewritten correction tapes, or other corrections to the document must be initialed by all borrowers and/or adult household members. Housing Trust will not accept changes that are not properly initialed by the borrowers and/or adult household members. Housing Trust reserves the right to request new documentation that is corrected and signed by all the borrowers and/or adult household members.

### **C. OCCUPANCY REQUIREMENTS**

The EMPOWER Program requires the borrower(s) to occupy the home as their principal residence. Applicants seeking EMPOWER financing must occupy the financed residence as their principal residence within 60 calendar days of closing, and continuously thereafter, for the term of the loan or until the property is sold. Investor loans are prohibited. Failure of the borrowers to occupy the property will result in a declaration of a non-monetary default. EMPOWER borrowers are required to claim the Homeowners Exemption and provide documentation on an annual basis.

## **D. HOMEBUYER EDUCATION AND ONE-ON-ONE COUNSELING**

### *1. Homebuyer Education Class-*

The borrowers, including non-borrowing spouses, are required to attend and complete an eight (8) hour in-person, virtual, or online HUD certified homebuyer education course. Housing Trust maintains a list of designated housing counseling agencies offering different methods of participation in a homebuyer education course.

These workshops, webinars, online courses, and counseling sessions are available in different languages through several housing counseling agencies. Housing Trust encourages applicants to enroll in a homebuyer education course in their strongest language. Homebuyers may be expected to complete a counseling session with the selected housing counseling agency before a Certificate of Completion is issued to the homebuyer. Expiration of the Certificate of Completion for the 8 Hour HUD certified Homebuyer Education course is within two years at the date of eligibility application submission.

A list of designated housing counseling agencies offering these courses is available on the program's website at: [www.housingtrustsv.org](http://www.housingtrustsv.org).

### *2. One-on-One Counseling-*

As a condition to program loan approval, all EMPOWER borrowers are also required to meet with Housing Trust staff for a one-on-one counseling session. Housing Trust will contact the borrowers for a one-on-one counseling session and loan document signing. The one-on-one counseling session will allow the borrowers to ask any questions regarding financing, review Housing Trust loan disclosures, and sign Housing Trust loan documents. Borrowers will also sign a Homebuyer One-on-One Counseling Acknowledgement Form. **ALL Borrowers (including non-borrowing spouses) are required to attend this session with Housing Trust.**

## **E. FIRST-TIME HOMEBUYER STATUS AND DEFINITION**

For the EMPOWER Program, a first-time homebuyer is an individual or individuals, or an individual and his or her spouse, who have not had an ownership interest in a home or have owned a home during the past **THREE (3)** consecutive calendar years period prior to the date of application for eligibility, except that the following individual or individuals may not be excluded from consideration as a first-time home buyer under this definition:

- A "displaced homemaker or spouse" who, while a homemaker, owned a home with his or her spouse or resided in a home owned by the spouse. A displaced homemaker is an adult who has not, within the preceding two years, worked on a full-time basis as a member of the labor force for a consecutive twelve-month period and who has been unemployed or underemployed, experienced difficulty in obtaining or upgrading employment and worked primarily without remuneration to care for his or her home and family;
- A single parent who, while married, owned a home with his or her spouse or resided in a home owned by the spouse. A single parent is an individual who is unmarried or legally separated from a spouse and has one or more minor children for whom the individual has custody or joint custody or is pregnant; or
- An individual or individuals who owns or owned, as a principal residence during the three-year period before the purchase of a home, a dwelling unit whose structure is:

- Not permanently affixed to a permanent foundation in accordance with local or state regulations; or
- Not in compliance with state, local, or model building codes and cannot be brought into compliance with such codes for less than the cost of constructing a permanent structure. *From Title 25, California Code of Regulations §8201(l)*

This applies to all applicants, co-applicants, a non-borrowing spouse, and the applicants' adult household members.

Applicants who own a home meeting the description provided in Exception 3 of the First Time Home Buyer definition must sell such home prior to Housing Trust loan program approval or close concurrently with the purchase transaction. If the Applicant is unable to ratify a sales contract for the home, the applicant will be ineligible. If Applicant's net proceeds of the sale would cause Applicant's Household to exceed the Program's asset limits, the household will not be eligible for the Program.

Documentation required from applicants and all adult household members:

- Signed and dated Federal and State Income Tax Returns with ALL W2s, Schedules, and/or 1099s (including taxable interest forms) from the last three (3) calendar years are examined to determine first-time homebuyer status.
- Tax transcripts for the last three (3) calendar years are also examined.
- For any non-filing adult household member, the following must be provided:
  - Verification of non-filing for each tax year for the last three (3) calendar years.
  - Wage and income transcript for each tax year for the last three (3) calendar years.

The preliminary review consists of determining if the applicant has deducted mortgage interest and property taxes on the tax returns. Housing Trust may utilize any reasonable method of documenting first-time homebuyer status including, but not limited to a review of the applicants' tax returns and credit report.

#### **F. MINIMUM BORROWER DOWN PAYMENT CONTRIBUTION**

For the EMPOWER Program, applicants are required to contribute at least 3% of the purchase/sales price as a down payment for the purchase of the property.

##### *1. Borrower's Minimum Down Payment Contribution-*

A minimum of half of the required down payment must be the applicant's own funds. Housing Trust will also allow 50% of the required down payment to be funds borrowed from a retirement plan.

##### *2. Gifts-*

Housing Trust will allow up to 50% of the required borrower contribution to be in the form of a gift. A borrower may use donated gift or grant funds from an immediate relative or acceptable entities to fund all or part of the down payment, closing costs, or financial reserves subject to the minimum borrower down payment contribution requirements described below.

- The gift must be a bona fide gift with no repayment required.
- A gift from an immediate relative requires a gift letter signed by the donor and applicant along with a current copy of the bank statement showing the source of funds.
- Acceptable entities include churches, municipalities, nonprofit organizations (excluding credit unions), a regional Federal Home Loan Bank under one of its affordable housing programs, a grant program offered by from the institutional or mortgage lender financing the senior mortgage, and public agencies. Housing Trust review and approval are required prior to application submission.

**FHA borrowers: The borrower must have an investment of at least 3.5% of the purchase price of the property from a source acceptable to HUD (this source cannot include a loan from Housing Trust).**

## **G. ELIGIBLE HOUSEHOLD**

### *1. Household Definition*

A household is comprised of ALL individuals who occupy a housing unit. The occupants may be a single family, one person living alone, two or more families living together, or any other group of related or unrelated persons who share living arrangements (Code of Federal Regulations Title 24, Section 570.3).

The following individuals are not counted as part of the household:

- Foster children
- Unborn children
- Children who live with the applicant (parent) less than 50% of the time
- Children being pursued for legal custody or adoption who are not yet living with the household at the time of application
- Non-family care-takers. Note: The income of family caretakers (e.g. relatives) who live with the applicant will be included in the household income calculation.

Children, who reside with the household at least 50% of the time and receive over 50% of the care from the applicant, can be counted as a household member.

### *2. Applicant/Co-Applicant-*

A Head of Household and any adult members of his/her household over the age of 18 years (“Co-Applicant(s)”) who is/are interested in purchasing and residing in the home, as evidenced by their signature(s) on the Eligibility Application submitted to Housing Trust. “Applicant” may be used to refer to the Applicant’s entire Household and/or all adults in the Household, as the context requires. Primary Applicant refers to the first-named party on the application form, who must be the Head of Household, as defined herein. Co-Applicants are all other adult members of the Household over the age of 18 years.

### *3. Eligible Household*

A Household (see definition above) that is eligible to apply for the EMPOWER Loan Programs, as follows:

- The household is comprised of **ALL** individuals who will be occupying the home over the next or upcoming twelve months. All household members are considered co-applicants. Eligibility application will list all household members who will be living together in the home to be purchased with the Empower Homebuyer loan. Valid Third-party documents listed as required attachments in the Program Eligibility applications forms must be provided, to verify that each member of the Household resides, and has been residing for at least 60 days, at the same dwelling unit and street address or otherwise intends to live with the applicant for the coming 12 months; and
- Household does not exceed the program income and asset limits: Total gross (pre-tax) annual income and assets of all adult Household members over the age of 18 combined do not exceed the Program's income and asset limits provided in the program guidelines, adjusted for the size of the Household; and

- All of the current members of Applicant’s household must individually meet all program eligibility requirements applicable to individuals, such as First Time Home Buyer status and Permanent Residency, as explained in **Section 4** and **subsection D (below)** of these Policies & Procedures. If the household member is new to the residence or if they are not claimed on the previous year's tax return, the applicant will be required to submit viable and verifiable third-party documentation that the household member will live with the applicant over the coming 12 months. All letters of explanation provided by the applicant must be signed by the applicant under penalty of perjury; and
- A Borrower or Co-Borrower whose earnings or primary source of annual income (salary, wages, commissions) is through employment by a Santa Clara County employer licensed and permitted by a city within Santa Clara County, at a primary work-site in Santa Clara County; or through operation of a Santa Clara County-based business that is licensed and permitted by a city in Santa Clara County. Working in Santa Clara does NOT include volunteer or unpaid work, or self-employment consisting solely of operating a business entity established solely for the purposes of investment in a rental property. Income earned in Santa Clara County must be verified by your paycheck stubs, tax returns, and/or other documentation described in the application forms; and
- Valid third-party documents listed as required attachments in the Program Eligibility applications forms must be provided, to verify that each member of the Household resides:
  - Current lease or rental agreement must be signed by landlord and all adult household members.
  - Documentation of three (3) months of rental payments (e.g., cancelled checks).
  - Last three (3) months of paid utility bills.

#### 4. Residency

All members of Applicant’s household (including all borrowers and co-borrowers) must provide acceptable documentation with the Program application to meet the following residency and identification requirements of the program:

- The Primary Borrower and Primary Applicant must provide:
  - Proof of U.S. Citizenship or naturalized citizenship, or permanent legal residency (holders of permanent “green cards”); and
  - A copy of a valid Social Security card; and
  - An unexpired/ valid California issued Driver’s License or Identification card.
  - Visas of any kind and/or temporary residency (temporary green cards) do not constitute permanent legal residency, except for temporary green cards of spouses as described below.
  - Refugees and asylum-seekers may submit documentation from the federal immigration agency or a court order granting admission for permanent legal residency based on such status.
- Co-borrowers (on the senior mortgage loan and on title) and a non-borrowing spouse (on the Empower program loan and on title) must provide:
  - Proof of U.S. Citizenship or naturalized citizenship, or permanent legal residency (holders of permanent “green cards”); and
  - A copy of a valid Social Security card; and
  - An unexpired/ valid California issued Driver’s License or Identification card.

- Any co-borrower or a non-borrowing spouse who is unable to meet the residency and identification requirements mentioned above; will be required to present the alternative documentation:
  - i. An unexpired, valid Individual Taxpayer Identification Number (ITIN) card or letter from the Internal Revenue Service stating its issuance; and
  - ii. An unexpired/ valid California issued Driver's License or Identification card.
- A Spouse with pending permanent residency due to marriage to an Applicant who is a U.S. citizen or permanent legal resident. Acceptable documentation must be provided.
- Any additional adult household member, the following is provided:
  - Proof of U.S. Citizenship or naturalized citizenship, or permanent legal residency (holders of permanent "green cards"); and
  - A copy of a valid Social Security card; and
  - An unexpired/ valid California issued Driver's License or Identification card.
  - For any adult household member who is unable to meet the residency and identification requirements mentioned above; will be required to present the alternative documentation:
    - i. An unexpired, valid Individual Taxpayer Identification Number (ITIN) card or letter from the Internal Revenue Service stating its issuance; and
    - ii. An unexpired/ valid California issued Driver's License or Identification card; or
    - iii. Identification that meets IRS guidelines for acceptable proof of identity and foreign status: <https://www.irs.gov/individuals/revised-application-standards-for-itins>.
- Any children in the household, the following is provided:
  - U.S. Birth Certificate issued by the state where the child was born; or
  - Current and valid U.S. Passport; or
  - Current and valid Passport issued by Country of origin.

Household members without proof of permanent legal residency in the U.S. are not prohibited from occupying the home as guest of Applicant. If such household members have been residing in Applicant's household for more than 30 days at time of application, such household members must also be listed in Applicant's application and must provide all required income and asset documentation for inclusion in Applicant's Gross Household Income and Assets.

However, due to the temporary nature and/or uncertainty about duration of their stay in the U.S., such household members (visa-holders, etc.) will not be counted toward Applicant's Household size.

## **H. MAXIMUM HOUSEHOLD INCOME AND CALCULATION**

### *1. Maximum Household Income Limits and Income Calculation*

The Maximum Household Income Limit by Household Size and the Income Calculation is updated on an annual basis. The maximum income limit for the EMPOWER Program is 120% of Area Median Income (AMI).

- The EMPOWER Program employs the Maximum Gross Annual Household Income Limits adjusted for household size and by county determined by the California Department of Housing and Community Development (HCD).



- Unless otherwise indicated, the EMPOWER Program uses the "Part 5" definition of income found at 24 CFR 5.609. The Part 5 definition of annual income is the gross amount of income of all adult household members anticipated to be received during the coming 12-month period. Adults are defined as all household members 18 and over. For a quick matrix of available Income Inclusions and Exclusions, please see *Exhibit C*.

2. *Determination of Income Eligibility*- All household members aged 18 or older are required to submit income and asset documentation.

- **For Hourly and Salaried Employees**, the following is required:
  - **FOUR (4) most recent consecutive** paystubs for all household members over the age of 18. Paystubs must be within **30** days old at the date of application and cannot be more than **90** days old at the date of closing.
  - **Written** Verification of Employment (VOE) may be required for **all** household members earning an income. The written Verification of Employment cannot be more than **90** days old at the date of closing. Housing Trust will not accept a verbal Verification of Employment (VOE).
  - Verification of Employment and Income is required for all adult household members. For those employers requiring third-party vendor verification (such as The Work Number) for employment and income verification, applicants will have to provide a check to Housing Trust for the verification service fee charged by third-party vendor.
- **For Self-Employed**, the following is required by Housing Trust staff to determine income eligibility and applicants should be prepared to document their projected annual earning using any or all of the following methods:
  - Applicant must provide the last three (3) years' income tax returns, both State and Federal with ALL W2s, ALL Schedules and/or 1099s (including taxable interest forms).
  - A year-to-date profit and loss and income statements prepared and signed by a Certified Public Accountant/Tax Preparer and/or Applicant (at Housing Trust's discretion), with information covered through the last quarter, and
    - A letter of explanation signed and certified by the applicant, stating the anticipated net household income (after deducting business expenses) over the next 12 months; or
  - A year-to-date balance sheet, prepared and signed by a Certified Public Accountant /Tax Preparer and/or Applicant (at Housing Trust's discretion), reflecting the financial position of the business at a specific point in time and a signed letter of explanation regarding applicant's anticipated net household income (after deducting business expenses) signed and certified by the applicant; or
  - Current owner salary documentation and three years of profit/loss statements from partnerships and S corporations prepared and signed by the Certified Public Accountant; and a signed letter of explanation regarding the applicant's anticipated gross household income over the next 12 months, signed and certified by the applicant.
  - For the purposes of self-employed individuals, net income from the operation of a business may only be used if the net income is derived by deducting expenses solely associated with the operation of the business.
  - An applicant who both has a job and is self-employed must provide documentation for both.
  - Housing Trust reserves the right to determine if the income information for a self-employed applicant must be supplied by a Certified Public Accountant.

- **For Zero Income-** Any adult household member who **does not** receive income from ANY source. The household member must complete and sign a Certification of Zero Income at the application submission appointment.
- **Alimony or child support-** Alimony or child support payments are considered income and are included in the gross household income. Applicant must provide a copy of a divorce decree or a court filed separation agreement (if the divorce is not final) including marital settlement agreement, spousal support court order, child custody and support court order.
- **Full-time college students-** over the age of 18, living away from home, and who continue to receive over half of their support from the applicant, may be considered a household member. Student's income must be counted in the applicant's total income calculation.
  - Student must provide enrollment verification from the registrar's office of the university/college he/she is attending.
  - If the student is unable to produce income documentation, the Housing Trust will add \$480 to the applicant's annual household income. However, if the student is a head of household or a spouse/domestic partner of the applicant, the student will be required to produce verifiable income documentation.
- **All other forms of income-** Documentation must be provided from ALL adult household members including non-borrowing spouses for all other forms of income including Social Security, unemployment, disability, etc. This income will be included in the gross monthly income calculation. Satisfactory income documentation is required.
  - For Social Security benefit, Social Security Administration's (SSA) award letter and proof of current and regular receipt of payments are required.
  - For unemployment and disability, claim benefit statement from government source must be presented.

## **I. HOUSEHOLD ASSETS**

Definition of an asset: a liquid or non-liquid item that can readily be converted to cash. The value of ordinary (i.e., non-investment) personal or household items, such as furniture and personal vehicles, are not considered assets for the purpose of Program eligibility.

### *1. Asset Documentation-*

Housing Trust requires applicants and all adult household members to provide **THREE (3)** most recent consecutive statements from **all** asset accounts (checking, savings, certificate of deposit, stocks, mutual funds, money market, bonds, etc.) including retirement accounts.

- Statements must be within thirty days (30) old at the date of application and cannot be older than ninety days (90) at the date of closing.

Asset income is included in total gross household income. The calculation for determining asset income is to take the greater of 1) the actual income from assets and 2) passbook rate which is currently .13% of the cash value of assets over \$5,000. An asset worksheet is included in each applicant file.

### *2. Asset Limitation-*

The EMPOWER Program has a post-closing asset limit per household of \$125,000. This limit includes liquid and non-liquid assets. Liquid and non-liquid assets are defined and will include checking, savings,

money market accounts, certificates of deposit, stocks, mutual funds, bonds, and annuities, etc. **It does not include retirement accounts (including 401k, 403b, CalPERS, CalSTRS, and IRAs.)**

### 3. Reserve Requirements-

The EMPOWER Program has a reserve requirement of a minimum of one month of reserves. Reserves are cash assets remaining after the down payment and the closing costs have been paid. The EMPOWER Program requires that all borrowers **have no less than one (1) month reserves** after closing to cover principal, interest, taxes, insurance, and homeowner association dues.

Funds from retirement accounts may be considered for non-liquid reserves only if the borrower has access to the funds. Retirement accounts funds may not be used as reserves when withdrawals are allowed only in connection with borrower's retirement (and borrower is not of retirement age), termination of employment or death (such as pension and cash balances plans) or when withdrawals are prohibited.

**The monetary value assigned to any non-liquid asset used for reserves will be 60% of the current value of the asset.**

## **J. FINANCING AND CREDIT REQUIREMENTS**

### 1. Credit Scores-

- Credit scores are by each applicant borrower, co-applicant borrower and non-borrowing spouses for an EMPOWER loan. The credit scores are examined to ensure compliance with minimum credit score requirement.
- Co-borrowers and a non-borrowing spouse with an Individual Taxpayer Identification Number are required to provide the following:
  - Credit report and credit scores from all three credit bureaus
  - Credit report may be traditional or nontraditional.
  - Credit report must contain full name, date of birth, and previous addresses.
- Credit score: The borrower(s) must have a middle FICO credit score of 620.
- A borrower's spouse with no credit score may be eligible if the borrower with the credit scores meets the minimum representative credit score requirement.
- When all borrowers have a credit score, they must **all** meet the minimum representative credit score requirement for the program.
- The middle score of the lowest scoring borrower should be used to determine eligibility.

### 2. Credit Requirements and Credit Reports-

The borrower and any co-borrowers (including a non-borrowing spouse) are required to submit copies of their credit report from all three credit bureaus (Equifax, Experian, & TransUnion) as part of the eligibility application package. Borrower(s) will obtain the credit reports through <https://www.annualcreditreport.com/index.action>. Prior to close of escrow on a transaction, Housing Trust may obtain a soft-pull credit report through its vendor on all the borrowers.

- Credit reports submitted by the borrower(s) must be within 30 days old at the date of application and cannot be more than **90** days old at the date of closing. A new credit report from each credit bureau will be required from the borrower(s).
- Housing Trust requires a credit report for a co-applicant non-borrowing spouse.

- Monthly installment debt and credit payments are compared to the senior lender's 1003-Uniform Residential Loan Application (Fannie Mae) and 1008-Uniform Underwriting and Transmittal Summary (Fannie Mae).
- Housing Trust may request alternative credit if borrowers' credit history is less than two years.
- Liens and judgments must be paid prior to loan approval.
- Collections: Collections *may* require repayment terms. Buyer cannot have more than \$2,000 in total collections including medical collections. For total collection amounts over \$2,000 additional analysis will be required. Medical Collections and charge off accounts are excluded from repayment requirement.
- Student loans will be included in the debt-to-income ratio unless they have a deferment or forbearance of 12 months or more at the time of the loan application and prior to closing of escrow.
- Letters of explanation from the borrower, co-borrower, or non-borrowing spouse are required for **any and all** derogative credit on the credit report without regard to length of time. Letter of explanation must identify the derogatory debt and a clear and concise **reason for** the derogatory status.

3. *Bankruptcy/Short Sales/Foreclosures-* Applicants/co-applicants with past bankruptcy, short sales, or foreclosure will be considered an exception and may apply if they can demonstrate compensating factors and;

- Completed short sales or bankruptcy (discharge date) is over four (4) calendar years, or
- Completed foreclosure is over seven (7) calendar years, and
- Applicants/Co-Applicants must demonstrate compensating factors for consideration and provide a letter of explanation regarding the event.
- Viable third-party documentation for the bankruptcy must be provided.
- Applicants/Co-Applicants must demonstrate sufficient reestablished credit. Housing Trust may require additional borrower contribution for the transaction.

4. *Letters of Explanation-*

Letters of explanation must be signed and dated by the applicant providing the explanation. All letters of explanation must acknowledge that the applicant understands the statements provided are under penalty and perjury of the law. Letter of explanation must be clear and provide responses to the additional information requested from the Housing Trust staff. The letter should answer who, what, where, when or how clarifying any questions Housing Trust may have with documentation, non-electronic deposits, etc. Letter of Explanation when requested must be accompanied by verifiable documentation. Any information received by Housing Trust that is contradictory to a letter of explanation may disqualify the applicant.

5. *Non-occupant Co-signers-* Housing Trust will not allow any non-occupant borrowers or co-signers for the senior loan or any Housing Trust loan programs.

6. *Debt Payoff prior to Closing-* Housing Trust funds cannot be used to pay off all or any portion of the borrower's consumer debt, collections, liens, or judgments. This is not permitted even if required by the Senior Lender as a condition of loan approval and even if paid through escrow.

7. *Debt Ratios-* Each applicant for an EMPOWER loan must meet debt to income ratios to qualify for a loan. These ratios apply to all Housing Trust Homebuyer Assistance Loan programs.

- The Front-end ratio is calculated by dividing the total housing payment by the applicant's gross income. The minimum Front-end ratio is 25%. The Front-end ratio shall not be more than 38% front-end (housing cost) and includes the following:
  - Principal and interest payments on the senior mortgage;
  - Principal and interest payments, if any, on subordinate financing non-deferred loans;
  - Real estate taxes
  - FHA MIP/PMI/MI monthly premium
  - Hazard insurance premium
  - Flood insurance premium, if applicable
  - Monthly Homeowners' Association dues for condominiums and for homes located in a planned unit development (PUD).
  
- The Back-end ratio or the total debt-to-income ratio is calculated by adding together the total monthly payments of all existing long-term debt (debt with a remaining term of 10 or more months) and the total monthly housing payment and dividing that sum by the applicant's gross monthly income. The Back-end ratio shall not exceed 45% of the applicant's gross monthly income. The Back-end ratio includes:
  - The monthly housing payment as defined above;
  - Long term installment debt beyond 10 months remaining to be paid;
  - Revolving credit account and lines of credit;
  - Alimony, child support or maintenance, if applicable

Housing Trust requires submittal of the Fannie Mae 1008 Underwriting form and Automated Underwriting System approval from the Senior Lender for all programs as one source of ratio calculation. The Housing Trust will also calculate ratios based on its income calculations.

*8. Compensating Factors-* Housing Trust may consider compensating factors for credit scores or debt ratios that fall outside of its guidelines. Compensating factors include, but are not limited to:

- The applicant's proven ability to devote a larger amount of income to housing expenses.
- The applicant has substantial reserve funds (well beyond the 1-month minimum requirement).
- The applicant's down payment exceeds the program minimum.
- The applicant's housing expense will not increase more than five percent over previous housing payments.
- Length of time at the same job or with the same employer.
- Excellent credit score and history.
- Applicant has very little non-housing debt.
- Applicant has substantial non-taxable income.

## **K. MORTGAGE REQUIREMENTS**

### *1. Senior Mortgage Requirements-*

Prior to obtaining a loan from the EMPOWER Program, the applicant must provide evidence of Senior Lender approval for the maximum senior mortgage loan amount.

- All applicants are required to have a senior mortgage provided by a State of California licensed residential lender (including credit unions) with standard loan origination and underwriting and closing capabilities. Private-party, family member, or seller/agent loans, gifts, etc. may not be

used in full or part as a substitute for a senior mortgage equal to at least 60% of the purchase price.

- Senior mortgage may not include provisions for potential negative amortization, balloon payments, or principal increase on deferred interest.
- Senior mortgage must be a 30 year fully amortized fixed rate loan.
- Minimum Loan To Value (LTV) is 60%.
- Maximum Loan To Value (LTV) is 80%.
- Maximum Combined Loan To Value (CLTV) 97%.
- Requirement for impound/escrow account for taxes and insurance will vary from program to program.

2. *Maximum EMPOWER Loan Amount Percentage- 30% of the purchase price.*

3. **Maximum EMPOWER Loan Amount- (as of February 20, 2023) is \$250,000.** This number may be adjusted annually according to 120% of the Area Median Income as set by the California Department of Housing and Community Development.

4. *Minimum Loan Amount- \$68,000*

5. *EMPOWER Loan Lien Priority-* EMPOWER loan will be in **SECOND LIEN** priority and only subordinate to the senior mortgage lien.

6. **NO Maximum Purchase Price (as of February 20, 2023)**

7. *Subordinate Financing-*

- No subordinate financing may have a balloon, deferred or negative amortization payment **prior to 30 years**. Fees and/or charges for subordinate financing shall be consistent with industry standards.
- Any additional subordinate financing must be approved by the Housing Trust at eligibility determination and prior to loan application submission.

## **L. PROPERTY REQUIREMENTS**

1. *Eligible Housing Units-* Eligible types of EMPOWER Program-assisted housing units include single family detached and attached homes including condominiums and townhomes.

- The property must be intended for single family residential use only.
- The housing unit must be in Santa Clara County.
- Borrowers must occupy the property within 60 calendar days.
- Financing for below market homes, manufactured or mobile homes is not available.
- Property for Sale must be owner occupied or vacant. **Tenant Occupied properties are not allowed.**

2. *Short Sale Properties-* The Housing Trust will make a new loan on a short sale property where the seller has an existing Housing Trust Closing Cost Assistance Program (CCA) program loan for \$6,500. Funds from the new Housing Trust loan cannot be used to pay off the previous Housing Trust loan.

- The property must have an active up-to-date short sale file with the Asset Management department of Housing Trust with pending approvals from all lien holders in order for loan funds reservation.

- Any Housing Trust borrower who executes a short sale or a foreclosure where the Housing Trust receives less than the full outstanding loan amount will be **permanently ineligible for any future assistance from** Housing Trust.

Any questions regarding short sale property with a Housing Trust loan should be directed to the Asset Management department.

## **M. SENIOR LENDER DOCUMENTATION AND PROCESS**

1. *EMPOWER Loan Disclosures*- Housing Trust will provide all required loan disclosures for the EMPOWER Program to borrower/co-borrowers upon submission of the loan application, ratified contract and signed 1003 loan application submitted by the Senior Lender.

The following loan disclosures are sent to the borrowers and co-borrowers within 3 business day:

- Intent to Proceed with Loan Application
- Buyer's Disclosure Statement- EMPOWER Program
- Good Faith Estimate
- Acknowledgment by Applicant of Required Disclosures and Notices
- Truth in Lending Disclosure Statement
- Fair Lending Notice
- Sample Promissory Note
- Sample Deed of Trust
- Your Home Loan Toolkit
- E-Sign Disclosure and Consent Notice, borrower does have the option **not** to sign this notice

Our Eligibility Application requires Borrowers and Co-Borrowers to sign an Authorization to Release Information and Housing Trust Privacy Policy.

2. *Close of Escrow Date*- The close of escrow date is no more than 120 calendar days and no less than 21 calendar days from the issuance date of program eligibility determination letter.

3. *Documents from the Senior Lender*- Housing Trust reserves the right to request additional documents, if needed, from the Senior Lender, to document compliance with any statutory funding source regulation or these guidelines.

Documentation requested from the Senior Lender includes:

- Pre-Approval letter
- 1003-Uniform Residential Loan Application (Fannie Mae)
- 1008-Uniform Underwriting and Transmittal Summary (Fannie Mae)
- Loan Estimate (LE)
- Automated Underwriting System/ Direct Underwriting (AUS/DU) Approval
- Loan Commitment letter
- Appraisal Report
- Executed Purchase Contract and All Addendums/Counter Offers
- Closing Disclosure (CD) - upon receipt

4. *Loan Approval-* After all conditions have been received, the file will be submitted for Final Review. Any additional documentation may be requested during Final Review.

- **All required documentation and conditions for loan approval are prior to loan approval and Prior to Docs.** Upon Loan Approval, a letter will be sent to the Senior Lender and the borrowers (via email). An email is sent to the Title Company with the Truth in Lending and Good Faith Estimate requesting an estimated settlement statement.

5. *Request for EMPOWER Loan Documents-* The Senior Lender will also receive loan request document instructions that must be completed and emailed back to Housing Trust Homebuyer Programs staff as soon as possible. Loan documents require up to 48 hours' notice to be prepared. Non-borrowing spouses will be included in the EMPOWER Promissory Note and Deed of Trust.

Loan documents for the EMPOWER Program shall include but will not be limited to:

- Loan Program Promissory Note
- Loan Program Deed of Trust
- Loan Program Condominium/PUD Rider (if applicable)
- Request for Notice

In addition, borrowers will be required to sign a Notification of Loan and Servicing Rights Transfer disclosure. Housing Trust will contact the borrowers for a one-on-one counseling session and loan document signing. The one-on-one counseling session will allow the borrowers to ask any questions regarding financing, review EMPOWER loan disclosures, and sign EMPOWER loan documents. **ALL Borrowers (including non-borrowing spouses) are required to attend this session with the Housing Trust.** The Title Company will be notified for pick up once this is completed. Loan documents must remain in the custody of the Title Company at all times.

## **N. TITLE AND ESCROW DOCUMENTATION AND REQUIREMENTS**

1. *Preliminary Title Report-* The Preliminary Title Report cannot be more than 90 days at the date of closing. The Preliminary Title Report must include the legal description of the property. Documentation requested will be:

- Preliminary Title Report including Wire Instructions
- Copy of Earnest Money Deposit Funds/Check
- Copy of Title Company's receipt for the initial deposit
- Copy of the Master Policy if there is a Homeowners Association (HOA)

2. *Title Policy Requirements for an EMPOWER Second Loan-* Housing Trust **requires** an ALTA lenders title insurance policy in the amount of the EMPOWER loan. This must show on the settlement statement along with any other associated title and escrow charges for the EMPOWER loan and is a funding condition prior to the close of escrow.

- Any funds required to close escrow must be deposited into an escrow account.
- Housing Trust requires proof of Hazard Insurance and/or a Master Insurance policy that shows Housing Trust as a mortgagee/loss payee. This must be provided prior to funding.
- Housing Trust requires signed documents, and any required documentation be returned to Housing Trust, in accordance with escrow instructions, prior to funding.
- Cash out of escrow, to applicants, **is limited and requires approval from Housing Trust prior to funding.**



## **O. INSURANCE REQUIREMENTS AND DOCUMENTATION**

The Housing Trust will require the applicant to obtain hazard insurance for the EMPOWER loan, which includes the amount of the EMPOWER loan, at the close of escrow. Hazard/Fire Insurance (and flood insurance if property is located in a FEMA designates Special Flood Hazard Area) requirements are as follows:

- Applicant must maintain insurance on the property in an amount **at least equal to the replacement value of the improvements**; and
- Housing Trust must be named as an additional loss payee (Second Loss Payee/Second Mortgagee) on the policy.
- The **Mortgage Clause for Housing Trust Silicon Valley** is the name and address of the company and the corresponding Housing Trust loan number.
  - **For example: Housing Trust Silicon Valley or its assignees  
75 East Santa Clara Street, Suite 1350  
San Jose, CA 95113  
Empower Homebuyers SCC Program**

## **P. CLOSING DOCUMENTATION AND PROCEDURES**

*1. Funding Process-* The Housing Trust's Lender Instructions submitted with the loan documents are the "Master Instructions or Escrow Instructions" mandated by the Housing Trust regarding Recording and Closing procedures for all Housing Trust loans.

Contribution of EMPOWER funds may be suspended if escrow fails to comply with the Master Instructions or Escrow Instructions.

- Empower Homebuyer loan documents are to be delivered to the title company and remain in the custody of the title company.
- The escrow officer must sign and return a copy of the Escrow Instructions, along with a complete funding package, to Housing Trust prior to funding the EMPOWER loan.
- Escrow must provide the Funding Package of all executed documents, required conditions and any additional conditions requested at least **24 hours** prior to Release of EMPOWER Funds.

Upon receipt and review of all required funding conditions and once compliance of the Senior Lenders instructions has been adhered to, funds will be wired within **24 hours** from date and time of receipt and review of last funding condition required to fund EMPOWER loan.

*2. Recording and Closing procedures*

- All documents must be recorded in sequential order as stated in the Housing Trust Lender/Escrow Instructions.
- Upon close of escrow, the Title Company is required to notify Housing Trust staff of any funds due to the buyer and confirm Title Company is allowed to release those funds.
- Title Company will send to Housing Trust a final HUD-1 settlement statement and all required documents as listed in the Lender/Escrow Instructions.

## **Q. PROGRAM LOAN REPAYMENT TERMS FOR BORROWERS**

Loan repayment terms for the EMPOWER Program are based on the program guidelines and Policies and Procedures. At loan document signing, the borrowers will sign a disclosure regarding the possible loan and servicing rights transfer and purchase from Housing Trust Silicon Valley to the County. The borrower will be

notified of the sale by both the Housing Trust and the County. This Sale and Purchase Agreement is discussed in Post-Closing Activities.

The County may agree to subordinate its security interest on a real estate loan when the following conditions have been met to the satisfaction of the Office of Supportive Housing's Director or his designee:

*1. Refinance of Senior Mortgage/Lien-* All homes must be **owner occupied** for the life of the loan. Borrowers must occupy the home as their principal residence.

- Borrowers seeking the refinance of their senior mortgage loan must pay off the EMPOWER loan unless the refinancing qualifies for subordination approval by the County. To pay off the EMPOWER loan, Borrower must send certified written notification to the County's or its assignee to request a written payoff demand for any EMPOWER loan prior to obtaining a new senior mortgage.
- Subordination requests for an EMPOWER loan is limited to rate and term refinances.
- After subordination, the total indebtedness evidenced by all liens against the property shall not exceed ninety percent (95%) of the appraised value of the property.
- The County shall have the right to review and approve all documents supporting the proposed subordination including, but not limited to, appraisals of the property.
- Cash-out refinances are not allowed. Applying for a home equity loan or line of credit is considered as cash-out and is not permitted under the EMPOWER Program.

Any questions regarding loan payoff and subordination requirements should be directed to the Office of Supportive Housing at the County of Santa Clara office.

*2. Loan Assumption-* All EMPOWER loans are not assumable by subsequent purchasers or any other parties.

## **R. SENIOR LENDER PARTICIPATION**

In general, the EMPOWER Program is open to participation from all senior mortgage lenders, mortgage bankers, mortgage brokers, mortgage loan originators (MLO) or loan officers (LO). Senior Lenders wishing to provide senior financing in connection with the EMPOWER Program must be licensed through the state of California. It is highly recommended for lenders to:

- Encourage the Senior Lender's Mortgage Loan Originator or Loan officer to attend a Lender Training Workshop and pass the exam to be considered a Certified Mortgage Loan Originator;
- Maintain a Lender Participation Agreement (renewed annually) on file with Housing Trust Silicon Valley;
- The participating Senior Lender and its Mortgage Loan Originators or Loan Officers must maintain NMLS in good standing;
- Demonstrate a thorough knowledge of Housing Trust general and program underwriting guidelines.
- Lender Participation Agreement and Homebuyer Assistance Loan program documents must be reviewed and approved by Senior Lender's Compliance or Legal department. Senior Lender will provide to the Housing Trust a written verification of the review signed by the company's authorized signer.

## **S. SENIOR LENDER APPROVAL-LOAN DOCUMENTS AND PROGRAM GUIDELINES SUBMISSION**

- Contact staff at Housing Trust Homebuyer Program Department to forward Senior Lender Approval package to appropriate Senior Lender underwriting and compliance staff by providing their contact information including name, title, phone number and email address.
- Interested Senior Lender can also go to the Housing Trust webpage “*Lender Partners*” located under Homeownership Assistance or click on this link: <https://bit.ly/HousingTrust-Lender-Realtor-Resources>
- Submits letter from Senior Lender’s underwriting department regarding the acceptance and approval of Housing Trust Programs and its loan documents (notes, deeds of trust, and program guidelines).
- Senior Lender will follow instructions for Senior Lender participation.

*1. Certified Loan Officer/Mortgage Loan Originator-* The Housing Trust maintains a list of Certified Loan Officers/Mortgage Loan Originators (LO/MLO). The LO/MLO will:

- Offer assistance to First-Time Homebuyers interested in Housing Trust Silicon Valley Homebuyer Assistance Programs, including the EMPOWER Program;
- Assist the applicant with pre-approval for a senior mortgage loan prior to applicant meeting with the Housing Trust and submitting their Program Eligibility Application;
- Review Housing Trust Program Eligibility (Pre-approval) letter to ensure senior mortgage information is correct;
- Submit a Homebuyer Assistance Program Purchase Loan Application on behalf of their client along with supporting documents upon ratification of a purchase agreement;
- Comply and follow Housing Trust procedures for Program Eligibility (Pre-approval) and Purchase Loan Application;
- Attend a yearly Housing Trust Senior Lender training workshop and pass mini- exam;
- Maintain an up-to-date approved Lender Participation agreement on file;
- Maintains NMLS in good standing;
- Demonstrates a thorough knowledge and understanding of Housing Trust general and program underwriting guidelines.

First time homebuyers can contact Housing Trust to verify loan officer/mortgage loan originator has been certified.

*2. Preferred Loan Officers/Mortgage Loan Originators-* Housing Trust may invite a Certified Loan Officer or Mortgage Loan Originator to become a Preferred Loan Officer at its discretion. The LO/MLO will meet the following criteria:

- Must be a Certified Loan Officer/Mortgage Loan Originator;
- Demonstrates extensive knowledge and understanding of Housing Trust general and program underwriting guidelines;
- Attends the Preferred Loan Officer training session and pass the exam;
- Preferred Loan Officer will answer all homebuyer inquires in a timely manner.

Benefits:

- Preferred Loan Officers will have the opportunity to participate in homebuyer or realtor events coordinated by Housing Trust;
- Preferred Loan Officer will be listed on Preferred Loan Officer contact list;
- Preferred Loan Officers will have access to marketing flyers.

It is at the sole discretion of the Housing Trust's Homebuyer Programs department to select a LO/MLO as a Preferred Loan Officer and/or a Certified Loan Officer/Mortgage Loan Originator. The Housing Trust reserves the right to remove any inactive and/or non-compliant LO/MLO from the Certified Loan Officer or Preferred Loan Officer List without notice. Loan officers and mortgage loan originators are responsible to notify the Housing Trust of any changes in contact information or employment.

## V. Post-Closing Activities

### **A. PROGRAM LOAN SALE AND PURCHASE AGREEMENT**

The loan process will be as follows: The Housing Trust will review loan applications and approve loans made to eligible homebuyers based on the County's approved program guidelines. The Housing Trust will submit loan packages that includes the following documentation:

Applicant Household Income and First-time Homebuyer Eligibility Documentation- Copies of eligibility application, income documents (paystubs, verification of income and employment, or zero income certification), three years of federal and state tax returns, asset statements, and Certification of Completion for the 8 Hour Homebuyer Education class.

Senior Lender Documentation- Copies of Senior Lender's pre-approval letter, 1003-Uniform Residential Loan Application (Fannie Mae), 1008-Uniform Underwriting and Transmittal Summary (Fannie Mae), Credit Report, Loan Estimate, Automated Underwriting System/ Direct Underwriting (AUS/DU) Approval or Loan Commitment letter, Appraisal Report, Executed Purchase Contract and All Addendums/Counter Offers, and Closing Disclosure.

Title Company Documentation- Copies of the Preliminary Title Report including Wire Instructions, Earnest Money Deposit Funds/Check, Title Company's receipt for the initial deposit, Master Policy (HOA)

Closing Documents- Copies of the EMPOWER Promissory Note, Deed of Trust, Request for Notice, Note and Deed of Trust for Senior Mortgage Loan, Grant Deed, Seller and Buyer's Closing Disclosures and Estimated Settlement Statement, Receipt of Buyers closing funds, Title Company Funding Letter and Wire Instructions, Housing Trust's Escrow Instructions, Recording Order, Certificate of Hazard Insurance, Master or Blanket Insurance Policy, if applicable.

The County will then review each loan to ensure it meets the program requirements and will determine whether or not to purchase the loan. If approved by the County, Housing Trust will sell the loan to the County through an assignment and assumption agreement. Upon assignment of the note, an assignment and assumption agreement from Housing Trust to the County will be recorded. The County will then wire funds to Housing Trust and Housing Trust will deliver the collateral in the form of the original promissory note to the County. The borrower will be notified of the sale by both Housing Trust and the County.

### **B. MONITORING AND COMPLIANCE**

*1. Quality Control*- The County of Santa Clara may retain an outside firm to audit loan files on a periodic basis as needed.

2. *Loan Monitoring*- The County of Santa Clara will monitor all homebuyer loans on an annual basis to confirm compliance with program guidelines. The monitoring program will consist of a letter and questionnaire sent to all borrowers of outstanding loans.

- The EMPOWER Program requires the borrowers to:
  - Occupy the home as their principal residence; and
  - Maintain insurance coverage; and
  - Timely property tax payment; and
  - Good standing with senior mortgage loan
  - Maintain Escrow Account, if required

The purpose of the monitoring program is primarily to determine compliance with the occupancy requirement. The program also provides an opportunity for the County of Santa Clara to maintain contact with the recipients of its assistance.

3. *Conditions of the EMPOWER Loan Repayment/Security/Default*- EMPOWER loans are separately secured by a junior deed of trust. Empower Homebuyer loans including any deferred principal and share of appreciation, if applicable, are due and payable at the earlier of the following events;

- Transfer of title and sale of residence
- Upon formal filing and recording of Notice of Default
- Thirty (30) years from the date of the Note depending on the loan's maturity date
- Failure of borrower to maintain primary residency/owner occupancy in property
- Refinancing of senior mortgage loan, except for rate and term refinances



EXHIBIT A

**EMPOWER HOMEBUYERS SCC POLICIES AND TERMS MATRIX**

|                               |  |
|-------------------------------|--|
| <b>Purpose</b>                | To assist eligible low- and moderate-income first-time homebuyers to purchase homes in Santa Clara County.   |
| <b>Method/Assistance</b>      | Eligible homebuyers may qualify for a “shared appreciation” loan to supplement the borrowers’ equity in the form of down payment. Shared appreciation loans are second mortgages which require that homeowners repay not only the initial subsidy that they received, but also a share of any appreciation.<br>No payments are required for 30 years, unless the owner sells or refinances the home, at which time the principal plus a share of the net appreciation must be repaid. Net appreciation shall mean the difference between the Original Base Price of the Property and the greater of the future sales price of the Property or the appraised value of the Property at time of future sale, less Borrower Contributions. The share of the net appreciation is based on the percentage of the principal loan amount divided by the Original Base Price of the Property. |
| <b>Projected Funding</b>      | Approximately \$25 million is expected to be made available from the first 2016 Measure A Affordable Housing Bond Issuance (approximately 5 years of funding depending on demand from eligible borrowers).   |
| <b>Expected Program Start</b> | November 09, 2018  |
| <b>Eligibility</b>            |  |
| <b>Location</b>               | Eligible homes anywhere in Santa Clara County  |
| <b>Property Type</b>          | Single-family homes (attached or detached), including condominiums or townhomes (excludes purchase of multi-unit properties, but not single units within the properties).  |
| <b>Borrower</b>               |  |
| <b>Owner-Occupancy</b>        | Owner must certify that he/she will be an owner-occupant and must maintain homeownership during the term of the loan by filing of a homeowner’s exemption with the County of Santa Clara’s Office of the Assessor. The County, on a case-by-case basis, may consider a hardship request granting a temporary exemption from this requirement.  |
| <b>First-Time Homebuyer</b>   | A first-time homebuyer, according to Title 25 of the California Code of Regulations §8201(I), is defined as an individual or individuals, or an individual and his or her spouse, who have not owned a home during the three-year period prior to the date of application. Furthermore, the individual cannot have held or shared title to a home (whether in Santa Clara County or elsewhere) for 3 years prior to Empower Homebuyers SCC Loan Closing. (This would mean that a buyer who had previously owned a home but no longer owns one (whether through divorce, sale, foreclosure, etc.) is eligible for the program so long as they have not owned a home during the prior 3 years.)  |

|   |   |
|---|---|
| <b>Household Income</b>                   | Not to exceed 120% of Area Median Income. For the purposes of this program, household income will only be used at the time of application and not on an ongoing basis. The homeowner is only required to qualify at the time they apply for the program.  |
| <b>Target populations</b>                 | Homebuyers who live or work in Santa Clara County.  |
| <b>Homeownership Counseling</b>           | Must have attended a HUD-certified 8-hour Homebuyer Education class or online course conducted by a HUD-approved non-profit counseling agency. Certificate of completion must be less than 2 years from the date of the application.  |
| <b>Loan Terms</b>                         |   |
| <b>Use of Loan Proceeds</b>               | Only for payment into escrow to purchase the property.  |
| <b>County Lien</b>                        | Second Deed of Trust on the property. When the loan is assigned to the County the lien position will remain the same.   |
| <b>Subordination</b>                      | <p>The County may agree to subordinate its security interest on a real estate loan when the following conditions have been met to the satisfaction of the Office of Supportive Housing's Director or his designee:</p> <ol style="list-style-type: none"> <li>a. After subordination, the total indebtedness evidenced by all liens against the property shall not exceed ninety percent (95%) of the appraised value of the property; and</li> <li>b. The purpose of refinance is to lower the interest rate of the senior lien, commonly known as a rate and term refinance.</li> <li>c. Cash out refinance is not allowed.</li> <li>d. The County shall have the right to review and approve all documents supporting the proposed subordination including, but not limited to, appraisals of the property.</li> </ol> |
| <b>Type of Senior Mortgage</b>            | 30-year Fixed rate, fully amortizing loan<br>(Reverse mortgages, adjustable-rate mortgages, balloon or non- amortizing mortgages are not permitted)   |
| <b>Home Equity Line of Credit (HELOC)</b> | Borrowers are prohibited from taking out a home equity line of credit (HELOC). If borrower wishes to obtain a HELOC, the County loan, including shared appreciation, must be repaid in full.  |
| <b>Title Insurance</b>                    | Required for loan.  |
| <b>Interest Rate</b>                      | No scheduled interest (shared equity loan as described above)   |
| <b>Monthly Payment</b>                    | No monthly payment required   |

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|----------------------------------|---|
| <b>Amount Due</b>                | <p>Original EMPOWER principal plus a share of the appreciation in the price or value of the property at refinancing, equal to the same percentage that the program loan was of the Original Base Price less any Borrower Contributions. Borrower Contributions are the documented out-of-pocket closing costs for the Borrower's acquisition of the Property and any documented amounts paid by Borrower for Qualifying Capital Improvements made to the Property during the term of the Loan, plus simple annual interest on such Borrower Contributions from the date such Borrower Contribution was paid by Borrower until the Maturity Date at the then prevailing rate.</p> <p>For example, borrower purchases a home for \$500,000 with \$25,000 of equity, \$50,000 of EMPOWER funds (10% of purchase price/original base price), and senior mortgage of \$425,000. Borrower sells the home for \$600,000.</p> <p>Net Appreciation is \$100,000 (representing the appreciation from \$500,000 to \$600,000) less Borrower Contributions of \$500 in acquisition closing costs and \$10,000 for Qualifying Capital Improvements which equals \$89,500. EMPOWER payment due is: \$50,000 (representing the original EMPOWER loan), plus \$8,950 (representing 10% of the net appreciation). Total due: \$58,950.</p> <p>Note, however, that the amount received by the County for the shared appreciation shall be capped at 100% of the County loan amount for the first 10 years of the loan. After the initial 10-year period, there is no cap on the County's share of net appreciation.</p> |
| <b>Maturity</b>                  | Thirty (30) years from the date of the Note, or upon sale or transfer, assignment, or default; or prepayment or refinance of the senior loan; or change to non-owner occupancy status, whichever occurs first.  |
| <b>Loan Due</b>                  | Thirty (30) years from the date of the Note, or upon sale or transfer, assignment, or default; or prepayment or refinance of the senior loan; or change to non-owner occupancy status, whichever occurs first.  |
| <b>Assumability</b>              | Not assumable.  |
| <b>Administration</b>            |   |
| <b>County Oversight</b>          | County staff, in conjunction with Housing Trust Silicon Valley, will oversee the Program and all reporting on a quarterly basis.  |
| <b>Referrals</b>                 | Borrower may refer themselves to the Program directly or may be referred by a realtor, lender, or others.   |
| <b>Eligibility Determination</b> | To be determined.   |
| <b>Determination of Equity</b>   | Appraisal ordered by senior mortgage lender.  |



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|-------------------------------------|--|
| <b>Loan Closing</b>                 | Loans will be originated by the Empower Homebuyers SCC Program administrator, Housing Trust Silicon Valley. On a monthly or quarterly basis depending on the volume of activity, Housing Trust Silicon Valley will forward to the County a list of eligible loans to be assigned to the County. County staff will review each loan and recommend eligibility for 2016 Measure A Affordable Housing Bond reimbursement. Once a determination is made, the loan will be reassigned to the County and the County will purchase Housing Trust Silicon Valley loan. |
| <b>Disbursement</b>                 | Funds will be disbursed to Housing Trust Silicon Valley once a loan being sold to the County is deemed in compliance with program requirements of the 2016 Measure A Affordable Housing Bond.  |
| <b>Servicing / Asset Management</b> | By the County of Santa Clara (County)  |
| <b>Compliance/Monitoring</b>        | The County will monitor annually to ensure the home has remained the program participant's primary residence. This monitoring may require contacting the homeowner annually to provide information regarding compliance with the program, including providing an annual signed self-certification to the County.   |

## EXHIBIT B

### **Eligibility Application and Purchase Transaction Timeline**

- Buyer meets with the Housing Trust staff by appointment and submits complete Eligibility Application and all required documents including credit reports from all three credit bureaus. (14 business days for eligibility determination)
  - Housing Trust staff contacts Senior Lender and reviews Senior Lender's Pre-Approval including loan structure, interest rate and any PMI payment. Borrowers Authorization is requested. Senior Lender will forward to Housing Trust a copy of the credit report for the borrowers.
- Buyer receives an EMPOWER Program Eligibility (Pre-approval) letter, identifies a home, and signs purchase contract.
- Senior Lender downloads and completes a Purchase Loan Application with Buyer and prepares the required documentation (within seven (7) calendar days of ratification of purchase contract).
- Housing Trust receives the Purchase Loan Application package and issues loan disclosures to borrowers (within three (3) business days).
- Within 3-5 business days, Housing Trust staff will send an email to the Senior Lender for any outstanding conditions or documentation. Upon receipt of all conditions and documentation, loan application is submitted for final review.
- Upon Approval, notification is sent to the Senior Lender and the borrowers.
- The Senior Lender will receive a loan documents request. Borrowers (including non-borrowing spouses) will attend a one-on-one counseling with Housing Trust staff to review and sign loan documents.
- Signed EMPOWER Program loan documents are sent to Title Company.
- Funding package to Housing Trust staff for review- funding will be within 24 hours (or sooner, if possible) of receipt of all required funding conditions.

## EXHIBIT C

### **Part 5 (24 CFR 5.609) REV-1 06/07**

#### **INCOME INCLUSIONS**

(1) The full amount, before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips and bonuses, and other compensation for personal services;

(2) The net income from operation of a business or profession. Expenditures for business expansion or amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation of assets used in a business or profession may be deducted, based on straight line depreciation, as provided in Internal Revenue Service regulations. Any withdrawal of cash or assets from the operation of a business or profession will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested in the operation by the family;

(3) Interest, dividends, and other net income of any kind from real or personal property. Expenditures for amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation is permitted only as authorized in paragraph (2) above. Any withdrawal of cash or assets from an investment will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested by the family. Where the family has net family assets in excess of \$5,000, annual income shall include the greater of the actual income derived from all net family assets or a percentage of the value of such assets based on the current passbook savings rate, as determined by HUD;

(4) The full amount of periodic amounts received from social security, annuities, insurance policies, retirement funds, pensions, disability or death benefits, and other similar types of periodic receipts, including a lump-sum amount or prospective monthly amounts for the delayed start of a \*\*periodic amount (e.g., Black Lung Sick benefits, Veterans Disability, Dependent Indemnity Compensation, payments to the widow of a serviceman killed in action). See paragraph (13) under Income Exclusions for an exception to this paragraph;\*\*

(5) Payments in lieu of earnings, such as unemployment, disability compensation, worker's compensation, and severance pay, except as provided in paragraph (3) under Income Exclusions;

(6) Welfare Assistance.

(a) Welfare assistance received by the family.

(b) If the welfare assistance payment includes an amount specifically designated for shelter and utilities that is subject to adjustment by the welfare assistance agency in accordance with the actual cost of shelter and utilities, the amount of welfare assistance income to be included as income shall consist of:

(c) The amount of the allowance or grant exclusive of the amount specifically designated for shelter and utilities; plus

(d) The maximum amount that the welfare assistance agency could in fact allow the family for shelter and utilities. If the family's welfare assistance is ratably reduced from the standard of need by applying a percentage, the amount calculated under this paragraph shall be the amount resulting from one application of the percentage.

(7) Periodic and determinable allowances, such as alimony and child support payments, and regular contributions or gifts received from organizations or from persons not residing in the dwelling; and

(8) All regular pay, special pay, and allowances of a member of the Armed Forces, except as provided in paragraph (7) under Income Exclusions.

(9) For Section 8 programs only and as provided in 24 CFR 5.612, any financial assistance, in excess of amounts received for tuition that an individual receives under the Higher Education Act of 1965 (20 U.S.C. 1001 *et seq.*), from private sources, or from an institution of higher education (as defined under the Higher Education Act of 1965 (20 U.S.C. 1002)), shall be considered income to that individual, except that financial assistance described in this paragraph is not considered annual income for persons over the age of 23 with dependent children. For purposes of this paragraph “financial assistance” does not include loan proceeds for the purpose of determining income. \*(Note: This paragraph also does not apply to a student who is living with his/her parents who are applying for or receiving Section 8 assistance.)\*

#### **INCOME EXCLUSIONS:**

(1) Income from employment of children (including foster children) under the age of 18 years;

(2) Payments received for the care of foster children or foster adults (usually persons with disabilities unrelated to the tenant family, who are unable to live alone);

(3) Lump-sum additions to family assets, such as inheritances, insurance payments (including payments under health and accident insurance and worker’s compensation), capital gains, and settlement for personal or property losses, except as provided in paragraph (5) under Income Inclusions;

(4) Amounts received by the family that are specifically for, or in reimbursement of, the cost of medical expenses for any family member;

(5) Income of a live-in aide, as defined in 24 CFR 5.403;

(6) The full amount of student financial assistance paid directly to the student or to the educational institution (see Income Inclusions (9), above, for students receiving Section 8 assistance);

(7) The special pay to a family member serving in the Armed Forces who is exposed to hostile fire (e.g., in the past, special pay included Operation Desert Storm);

(8) (a) Amounts received under training programs funded by HUD (e.g., training received under Section 3);

(b) Amounts received by a person with a disability that are disregarded for a limited time for purposes of supplemental security income eligibility and benefits because they are set-aside for use under a Plan to Attain Self-Sufficiency (PASS);

(c) Amounts received by a participant in other publicly assisted programs that are specifically for or in reimbursement of out-of-pocket expenses incurred (special equipment, clothing, transportation, child care, etc.) and which are made solely to allow participation in a specific program;

(d) Amounts received under a resident service stipend. A resident service stipend is a modest amount (not to exceed \$200 per month) received by a resident for performing a service for the owner, on a part-time basis, that enhances the quality of life in the project. Such services may include, but are not limited to, fire patrol, hall monitoring, lawn maintenance, and resident initiative coordination. No resident may receive more than one such stipend during the same period of time; or

(e) Incremental earnings and benefits resulting to any family member from participation in qualifying state or local employment training programs (including training programs not affiliated with a local government) and training of a family member as a resident management staff person. Amounts excluded by this provision must be received under employment training programs with clearly defined goals and objectives, and are excluded only for the period during which the family member participates in the employment training program.

(9) Temporary, nonrecurring, or sporadic income (including gifts);

(10) Reparation payments paid by a foreign government pursuant to claims filed under the laws of that government by persons who were persecuted during the Nazi era. (Examples include payments by the German and Japanese governments for atrocities committed during the Nazi era);

(11) Earnings in excess of \$480 for each full-time student 18 years or older (excluding the head of household and spouse);

(12) Adoption assistance payments in excess of \$480 per adopted child;

(13) Deferred periodic amounts from supplemental security income and social security benefits that are received in a lump-sum amount or in prospective monthly amounts;

(14) Amounts received by the family in the form of refunds or rebates under state or local law for property taxes paid on the dwelling unit;

(15) Amounts paid by a state agency to a family with a member who has a developmental disability and is living at home to offset the cost of services and equipment needed to keep the developmentally disabled family member at home; or

(16) Amounts specifically excluded by any other federal statute from consideration as income for purposes of determining eligibility or benefits under a category of assistance programs that includes assistance under any program to which the exclusions set forth in 24 CFR 5.609(c) apply. A notice will be published in the *Federal Register* and distributed to housing owners identifying the benefits that qualify for this exclusion. Updates will be published and distributed when necessary.