

OVERVIEW OF PROPOSED AMENDED AND RESTATED AFFORDABLE HOUSING DEED RESTRICTION AND COVENANT

San Miguel County, after working with representatives of Lawson Hill, San Bernardo and Aldasoro Ranch, has developed a new form of deed restriction that can be used by owners of deed-restricted property located in Affordable Housing Planned Unit Developments (PUD). The County is offering affected property owners an opportunity to enter into an Amended and Restated Deed Restriction and Covenant that would replace the series of agreements, plat notes and sections from the County Land Use Code (LUC) and applicable guidelines that historically made up the “Original Deed Restriction” that applies to their property.

The purpose of this new Deed Restriction is (1.) to ensure that the Guidelines and Rules and Regulations that apply to deed-restricted property cannot be changed without the owner’s written consent and (2.) to clarify and address specific issues and matters that were not covered or clearly addressed in either the “Original Deed Restriction” or LUC Section 5-1305, the Guidelines, Rules and Regulations Governing Affordable Housing.

The new deed restriction is being distributed to affected owners. The County, together with representatives of the Affordable Housing Homeowner Associations (HOA), will be available for a meeting that is being scheduled by your HOA, to discuss the new deed restriction. Following these discussions, the new deed restriction will be presented to the Board of County Commissioners (BOCC) for action, which staff will recommend be approved.

Following action by the BOCC, affected property owners would have the opportunity, not an obligation, to select to use the new deed restriction form, which would replace the “Original Deed Restriction” on their property. It is entirely up to each affected property owner whether they choose to enter into the new deed restriction or stay with the “Original Deed Restriction”. It is the belief of County staff that the added provisions and greater clarity offered in the new deed restriction form is preferable, but individual property owners may find the “Original Deed Restriction” to be more acceptable to them. If that is your decision or if you choose to do nothing, the “Original Deed Restriction” will continue to control.

Background

The “Original Deed Restriction” for Affordable Housing that applies to a person’s property was established and made applicable to affected property by the Deed Restriction Note found on the subdivision plat that created the owner’s lot or unit. This Deed Restriction Note was required to be placed on the subdivision plat. The language is taken directly from the County Land Use Code (LUC Section 5-1304) as it existed on the date the plat was approved by the Board of County Commissioners (BOCC) and recorded. Placing this language from LUC Section 5-1304 on the recorded subdivision plat applies this Deed Restriction to those specific lots or units created by the subdivision plat. The use, occupancy and ownership of each deed restricted lot or unit created by the subdivision are bound by the language of the Deed Restriction Note. The Deed Restriction Note on all Affordable Housing subdivision plats states that the ownership, use and occupancy of the property is subject to the Affordable Housing Guidelines, Rules and Regulations, which are found in LUC Section 5-1305 (“Housing Regulations”). The Deed Restriction established by the Final Plat is a “Covenant” that cannot be changed without the owner’s consent.

The County has amended LUC Section 5-1305 from time to time for the purpose of modifying the Housing Regulations. In some instances these changes to the LUC have imposed more restrictive requirements on the owner of a deed restricted lot or unit. In other instances, the changes have provided less restrictive requirements on the owner of a deed restricted lot or unit. This has led to some confusion and debate with affected owners in terms of what provisions of the Housing Regulations would apply to a deed restricted lot or unit. It has been the County's position that it has the legal ability under the "Original Deed Restriction" to amend the LUC, including Section 5-1305, without a landowner's permission, subject to proper notice and public hearing procedures. Many owner's have assumed or understood that they are subject to the Housing Regulations that were in effect at the time the subdivision plat that created their lot or unit was approved and recorded or when they purchased their property.

In light of the expectations of the owner's of deed restricted lots or units concerning the nature and extent of the Housing Regulations affecting their property, and the critical legal distinctions between a Deed Restriction (Covenant), which cannot be changed without the owners consent and Land Use Code provisions which may be amended by the BOCC from time to time, County staff proposed adding a provision to the Deed Restriction (Covenant) that would require the owner's consent to change the Housing Regulations as they apply to their specific property. County staff then presented a list of all of the provisions and amendments to the Housing Regulations (LUC Section 5-1305) with the understanding that the owners of deed-restricted properties could go through these Housing Regulations and identify those provisions that they interpret to be the less restrictive and that they would like to have included in their Deed Restriction (Covenant). The reason for proposing this Amended and Restated Deed Restriction and Covenant was to honor the owners' understanding of the original intent of the Deed Restriction. The new Covenant would include the Housing Regulations that were previously contained in the LUC and this Covenant and cannot be amended or modified without the prior written consent of the property owner. Additionally, if the County were to amend the LUC Sections 5-1305 or 5-1306 in the future these LUC amendments would not apply to or affect the use, ownership or occupancy of the property unless the property owner agreed to the amendment in writing.

In discussions with representatives of several of the Affordable Housing Homeowner's Association or Company Boards and their legal counsel it was agreed that the HOA Boards working with legal counsel would propose a draft Deed Restriction Covenant that would include those LUC provisions deemed to be the less restrictive and which most owners would likely find to be in their best interest. This approach was considered to be favorable to each individual owner reviewing and completing a "checklist" of amendments they would like included in their own Deed Restriction Covenant as it would promote uniformity.

During discussions concerning this proposed "Replacement Deed Restriction" between Deed Restricted Owner representatives and County staff, the owner's representatives came up with a list of additional issues and significant concerns for deed restricted owners that they thought were not adequately addressed in LUC 5-1305 or the proposed "Replacement Deed Restriction" that we had been working on. These new or additional issues included but were not limited to the Source of Money for Purchasing a Deed Restricted Unit, the Definition of Employee, Where Income is earned, Inheritance, Retirement, Beneficiaries, Family Medical Leave, Leaves of Absence, Divorce Settlement, Violations and Forced Sales, and Price Caps and Market Forces. The goal here was to more clearly address these issues in an Amended and Restated Deed Restriction and Covenant and by doing so this would create greater

certainty and may reduce the number of situations that require an Exception concerning Purchase, Rental, Ownership and Occupancy requirements.

It is contemplated that this proposed Amended and Restated Affordable Housing Deed Restriction and Covenant would be presented to and /or made available to all owners of property subject to the R-1 Housing Deed Restriction within The Aldasoro Ranch PUD, The San Bernardo PUD, The Lawson Hill PUD, Two Rivers and Sunshine Valley and the “Q” Lots within the Ilium Valley portion of the Lawson Hill PUD.

Again, if an owner finds it is in their best interest to enter into this new Deed Restriction form we would encourage they do so. However, if an owner does not wish to enter into this new Covenant and prefers to stay with the “Original Deed Restriction” that is their decision and nothing will change.

At this point, following individual meetings with the HOA’s, the County staff will schedule an action with the BOCC at a public meeting and recommend they approve this new Deed Restriction form. If the new Deed Restriction form is approved by the BOCC, affected owners wishing to enter into the new Deed Restriction would coordinate with the County to sign the new form. The County will provide information about how to go about signing the new Deed Restriction form and making it applicable to the affected owners’ property. The County will record these new documents.

SUMMARY OF AMENDED AND RESTATED DEED RESTRICTION COVENANT

Section 1. Deed Restriction

- Terminates the deed restriction in the Land Use Code and on the Plat Note and establishes this Covenant as the new deed restriction.
- Outlines administration, enforcement and termination of the Covenant.
- Provides that this Covenant shall not be amended without the prior written consent of the property owner.
- Allows HOAs an opportunity to comment on any proposed amendment to a Covenant.
- States that all sales are subject to market forces. A seller may not make a profit, and may possibly incur a loss, depending on market conditions.
- The County will not impose a price appreciation cap on any property except for the limited circumstance where the County incurs a loss when it is necessary for the County to purchase a property in foreclosure. If this happens, the owner of the property or the HOA can buy out the price cap.

Section 2. Purchasing the Property

Only “Qualified Purchasers” and their Spouses (the definition of Spouse includes same-sex couples) can purchase the Property. There are three standards for approval as a Qualified Purchaser.

A. Current Local Employee

1. The Ownership Applicant has maintained Primary Residence in the Four County Region for at least eight months of the past year.
2. The Ownership Applicant was employed in a job that required his/her physical presence in the R-1 District for at least 1032 hours of the past year and is currently employed in a job that will require his/her physical presence in the R-1 District for at least 1032 hours per year.
3. Either:
 - a. The income that the Ownership Applicant earned in the past year from employment that required his/her physical presence in the R-1 District amounts to more than 50% of his/her Total Household Income for the past year; or
 - b. The Ownership Applicant's Total Household Income for the past year minus the income that the Ownership Applicant earned in the past year from employment that required his/her physical presence in the R-1 District does not exceed 20% of the Contract Price.

B. Retired or Disabled Local Employee

1. The Ownership Applicant is Retired or Disabled.
2. For at least five of the past eight years:
 - a. The Ownership Applicant has maintained Primary Residence in the Four County Region for at least eight months of each applicable year.
 - b. The Ownership Applicant was employed in a job that required his/her physical presence in the R-1 District for at least 1032 hours of each applicable year.
 - c. The income that the Ownership Applicant earned from employment that required his/her physical presence in the R-1 District amounted to more than 50% of his/her Total Household Income for the corresponding year.

C. Alternative Standard

1. The Ownership Applicant has maintained Primary Residence in the Telluride R-1 School District for at least eight months of each of the past three years.
2. The Ownership Applicant's Total Household Income does not exceed 100% AMI (excluding gifts of up to 20% of the Contract Price).
3. The Ownership Applicant's Total Household Assets are no more than 2x the Contract Price.

Section 3. Renting the Property

An Owner must receive approval to rent the Property. An Approval to Rent allows the Owner to offer the Property for rent, but all potential occupants still must receive approval as a Qualified Tenant before they can occupy the Property.

A. Qualified Tenants

To receive approval as a Qualified Tenant, a Rental Applicant must either:

1. Be employed in a job that requires his/her physical presence in the R-1 District for at least thirty hours/week; or
2. Demonstrate an intent to be employed in a job that requires his/her physical presence in the R-1 District for at least thirty hours/week.

B. Rental Regulations

1. Advertisements to rent must state that all potential occupants need to receive approval as a Qualified Tenant before they can occupy the Property.
2. Owner must provide copy of lease to the Administrator (currently RHA) within 10 days after executing it.
3. The lease term cannot be less than thirty days.

Section 4. Selling the Property

The Owner must submit a Notice of Intent to Sell to the Administrator at least five days before offering the Property for sale. The Seller's 1% transfer fee is waived if moving from one County Deed Restricted Property to another County Deed Restricted Property.

Section 5. Continuing Ownership

Anyone with a present ownership interest in the Property is an "Owner." All Owners must be able to establish that they are a "Qualified Owner" at any given time.

A. Approval as a Qualified Owner

The Owner has occupied the Property as his/her Primary Residence for at least eight months of the past year, and meets at least one of the following:

1. Employed for at least 1032 hours of the past year.
2. Retired.
3. Spouse of a Qualified Owner.
4. Surviving Spouse.
5. Former Spouse.
6. Unemployed and receives unemployment benefits.

B. Exemptions

1. Beneficiary Owner. 1yr. to become a Qualified Owner or sell to a Qualified Purchaser.
2. Co-Borrower. Allows for a co-signer on a loan if necessary.
3. Absence for Less than One Year.
4. Military Service.
5. Family Medical Need.
6. Disability. This exempts the Owner from working, but still requires the Owner to occupy the Property as his/her Primary Residence.

Section 6. Continuing Occupancy

Approval as a Qualified Occupant - Anyone who has no ownership interest in the Property but occupies it as their Primary Residence, and who meets at least one of the following requirements:

1. Is under 21 years old.
2. Is a member of the Qualified Owner's Immediate Family.
3. Is Disabled.
4. Is employed in a job that requires his/her physical presence in the R-1 District for an average of at least 30 hours/week.

Section 7. Ownership of Other Residential Property Prohibited

Owners and Occupants cannot own other residential property within the R-1 District. The provisions are different depending on if the Owner owned other property at the time of purchase or if the Owner subsequently purchased other property.

A. Other Property Owned at the time of Purchase

The Owner has a one year grace period to sell the other residential property or otherwise comply with the Covenant (i.e., an exception agreement).

1. Appraisal

- a. If the other property is not sold by 9 months after the date the Owner acquired the Property, the Owner must immediately hire an appraiser and must provide an appraised value within the next month (no later than 10 months after acquiring the Property).
- b. If the County disagrees with that appraised value, the County can hire another appraiser.
- c. If the two values differ by \$10,000 or less, the average is the Appraised Value.
- d. If the values differ by more than \$10,000, the two appraisers select a third appraiser and the average of all three is the Appraised Value.
- e. If the Owner does not provide an appraised value within 10 months after acquiring the Property, the County can hire an appraiser at the Owner's expense, and that value is the Appraised Value.

2. Sale of the Property

If the Owner has not sold the other property within one year, they must list the deed restricted Property at 90% of the Appraised Value, and then lower the price by 3% of the Appraised Value every three months afterwards.

B. Other Property Acquired after Purchase

This is treated as a violation under Section 9 of the Covenant.

Section 8. Exceptions

Any person can apply at any time for an Exception from any purchase, rental, ownership or occupancy requirement, or from the prohibition on ownership of other residential property. The Administrator (currently the RHA) is the deciding body, but any affected/aggrieved person can appeal to the BOCC, and the BOCC also has call-up authority.

The standard for an exception is “compelling circumstances, which shall not include financial hardship,” and “granting the exception is consistent with the purpose and intent of the Covenant.”

Section 9. Violations and Remedies

A. Notice of Violation

If a violation is discovered, the Owner is sent a Notice of Violation, which also notifies the Owner that if they would like to request a hearing on the merits of the allegations they must do so within 15 days of receiving the Notice of Violation. The violation is considered conclusively determined if the Owner does not request a hearing.

B. Cure of Violation

The Owner has one year from the date the violation is conclusively determined to cure. If the violation is not cured within 9 months, the Owner must hire an appraiser and the same process described above for arriving at an Appraised Value and selling the Subject Property applies.

If an Occupant is in violation, the Occupant has 60 days to cure or vacate. Failure of an Occupant to cure or vacate is also a violation as to the Owner.

Section 10. Documentation and Notices

Provides for confidentiality of submitted documentation, notice provisions, and procedures on default of a secured obligation. The County may provide assistance to someone who is struggling or who has defaulted on a mortgage but is not obligated to do so.

Section 11. Rights Concerning Exercise of Option to Purchase

If the County buys a house out of foreclosure and loses money, then the County can put a 3% price cap on it, which will run with the property. But, any Owner at any given time, or the HOA, can pay off the price cap by paying the County the amount the County lost on the property plus interest at prime. This section only applies to properties on which an Option to Purchase has been executed. If there is no Option to Purchase then the deed restriction cannot be terminated upon foreclosure.

Section 12. Definitions

Section 13. General Provisions (standard contract language).