

## PART VI

### MAINTAINING ELIGIBILITY, SPECIAL REVIEW, COMPLIANCE AND GRIEVANCE POLICIES AND PROCEDURES

#### Section 1. Maintaining Eligibility

APCHA tenants and owners must maintain the requirements for tenancy and ownership in good standing as described below unless otherwise required in the deed restriction.

##### A. Rental - Requalification every Two Years/Tenant Responsibilities

Every tenant, whether the unit is under APCHA or private sector property management, is required to re-qualify with APCHA at least every two years and verify continuous full-time employment/work in the county; primary residency of at least nine months per year; no ownership of developed residential property in the OEZ; and not exceeding the income and asset limits for that specific category unit. Requalification requires submission of APCHA forms, verification documents and other information as requested, along with a Requalification Fee.

A re-qualifying tenant receiving unemployment benefits must still meet the full-time work requirement of 1500 hours per calendar year.

An APCHA tenant under review for non-compliance shall not be eligible for requalification and shall not be permitted to renew his/her lease until compliance issues are resolved.

- At least thirty (30) days prior to the end of the qualification period, the landlord of an affordable housing rental unit, whether APCHA or a private sector property manager, shall notify tenants in writing of the requirement to re-qualify. An APCHA Rental Qualification Form shall accompany the notice.
- APCHA must approve ALL leases for affordable housing rental units before the lease is signed and prior to occupancy.
- Tenants and Owners must submit copies of the executed leases to APCHA.
- When re-qualifying, maximum gross income shall be adjusted to one hundred twenty percent (120%) of the amount regularly applicable in the respective category.
- IF INCOME OR ASSET LIMITS ARE EXCEEDED, THE TENANT WILL BE GIVEN ONE YEAR TO COME BACK INTO COMPLIANCE OR TO VACATE THE LEASED PREMISES. THE RENT WILL BE ADJUSTED BASED ON THE TENANT'S NEW INCOME AND ASSET CATEGORY.
- Tenants and property managers/landlords shall comply with all lease terms including the deed restriction. Breach of and/or non-compliance with a lease agreement, deed restriction and/or Regulations shall be deemed a violation resulting in compliance proceedings and could disqualify the tenant from future participation in the program.

## B. Ownership – Affidavits and Audits

After acquisition of a deed restricted unit, qualified owners are not required to maintain household gross income and net asset limitations, or to meet minimum occupancy requirements, but shall be required to maintain all other APCHA qualification requirements. APCHA will require all owners to complete and sign a requalification affidavit on a biennial basis.

APCHA has the right to request additional documentation through an audit or follow up on a complaint at any time to confirm compliance with the APCHA qualification requirements.

**Failure to complete the requested forms and/or submit the requested documentation will result in a Notice of Violation and appreciation will be terminated until the homeowner is brought back into compliance. Such owners are prohibited from recouping the appreciation lost during the period of non-compliance.**

## C. Death of Qualified Employee

### 1. Rental

Household members in occupancy at the time of a qualified tenant's death shall be permitted to continue to occupy the respective unit for the balance of the lease term. Subject to APCHA approval, surviving household members may be permitted to continue occupancy beyond the lease term if:

- The deceased qualified tenant had worked a minimum of four years within Pitkin county and/or
- A remaining household member becomes an APCHA-qualified employee/worker within six months.

### 2. Ownership

A qualified spouse and/or child does not have to meet the category for the unit nor the minimum occupancy requirement. A relative in occupancy at the time of a qualified owner's death shall be permitted to continue to occupy the respective unit only if the surviving relative is or becomes APCHA-qualified within six months, or a surviving household member is a dependent minor (under age 18) and is:

- Enrolled full-time in an accredited lower or high school program and/or an immediately succeeding four-year accredited higher education program not to exceed four-years and
- Verification of education enrollment is submitted to APCHA in a timely manner.

Upon the completion or end of a qualifying education program, the occupant household shall not remain eligible for ownership unless the respective student/dependent returns to reside and work full-time in the county and submits verification documents and Ownership

Application Packet to APCA within 30 days of returning to residence full time. If occupants of an APCA ownership unit become ineligible or disqualified, such unit shall be marketed and sold according to the deed restriction.

If an owner(s) dies and the property is transferred to someone who is not qualified (working at least 1500 hours per year in Pitkin County and not owning other property within the OEZ), the owner either must become qualified within six months from acquiring the property or list the property for sale as stated in the deed restriction. *Transfer within immediate family to a qualified buyer requires a \$100 transfer fee and must be approved by the APCA prior to the transfer. The qualified buyer is also required to enter into a new deed restriction during the transfer process.*

**If occupants of an APCA ownership unit become ineligible or disqualified, such unit shall be marketed and sold according to the deed restriction.**

## **Section 2. Landlord Responsibilities**

- A. ALL TENANTS MUST BE APPROVED BY APCA PRIOR TO OCCUPANCY AND PRIOR TO EXECUTING A LEASE. PROPERTY MANAGERS/LANDLORDS MAY NOT LEASE A UNIT UNTIL THEY RECEIVE APPROVAL FROM APCA.
- B. PROPERTY MANAGERS/LANDLORDS MUST PROVIDE A COPY OF THE LEASE TO APCA SHOWING INCLUDING THE RENTAL AMOUNT WHICH IS LESS THAN OR EQUAL TO THE MAXIMUM RENT ALLOWED PER THE DEED RESTRICTION AND REGULATIONS.
- C. DEED RESTRICTED RENTAL UNITS MUST BE LEASED AND OCCUPIED AT ALL TIMES. THE MAXIMUM PERIOD ALLOWED BETWEEN TENANCIES IS FORTY-FIVE (45) DAYS. THIS ALSO APPLIES TO A VACANCY BY A ROOMMATE.
- D. PROPERTY MANAGERS/LANDLORDS SHALL NOTIFY TENANTS OF THE REQUIREMENT TO REQUALIFY AT LEAST THIRTY (30) DAYS PRIOR TO THE END OF THE TWO-YEAR QUALIFICATION PERIOD.
- E. PROPERTY MANAGERS/LANDLORDS SHALL, AT THEIR OWN COST AND EXPENSE, MAINTAIN THE INTERIOR AND EXTERIOR OF THE ENTIRE STRUCTURE AND PROPERTY, INCLUDING ALL RESIDENTIAL UNITS AND ADJACENT OPEN AREAS, IN SAFE AND CLEAN CONDITION, IN GOOD ORDER AND REPAIR, EXCEPT FOR REASONABLE WEAR AND TEAR.

## **Section 3. Owner Responsibilities**

APCHA shall from time to time schedule educational programs for affordable housing purchasers and owners to review HOA responsibilities and responsibilities under these Regulations and applicable deed restrictions.

## A. Property Management

### 1. HOAs

#### a. Dues and Assessments

It shall be a violation of the Regulations for an Owner to fail to pay HOA assessments.

#### b. Capital Reserves

Every HOA is required to adopt a capital reserve policy for long-term capital repairs. All newly formed HOAs must also maintain a separate capital reserve fund to support the policy.

### 2. Affordable Housing Rendered Unaffordable

APCHA may from time to time in its discretion determine that a deed-restricted ownership unit located in a condominium or subdivision that also includes free market units has been rendered unaffordable as a result of general or special HOA assessments.

APCHA, City of Aspen, or Pitkin County may determine to purchase an employee housing unit rendered unaffordable. In that event, APCHA may at its discretion release applicable deed restrictions and sell such property at fair market value. APCHA shall be reimbursed the sale price plus the APCHA transaction fee from sale proceeds. The balance of the proceeds shall be deposited in the city and/or county Housing Development Funds to support the housing program. Any HOA assessments paid by the city, county or APCHA shall also be reimbursed from sale proceeds.

## B. Maintaining Ownership Qualification

1. Owners must remain in good standing with their HOA and maintain APCHA eligibility and qualifications (See Part III, Section 1).
2. Where one or more co-owners of a two- or three-bedroom unit vacates the unit within four years from the date of purchase, the unit must be sold in accordance with the applicable deed restriction. Unless a court order requires such.
3. All qualified owners, including multiple owners, must maintain compliance with all applicable requirements. Failure of any co-owner to do so shall constitute a violation.
4. APCHA owners must re-qualify with APCHA at least every two years by completing a Requalification Affidavit attesting to the requirements in the deed restriction and these Regulations and by submitting other information as required by APCHA. Owners selected under the Random Audit process are required to provide documentation to APCHA of continued compliance with their deed restriction and these Regulations. See Part III for requalification policies and procedures.
5. If any Owner, Owner's spouse, or a member of Owner's household acquires any other residential property within the OEZ, one of the properties MUST be sold within 180 days. If the Owner has not sold one of the properties within 180 days, the newly acquired property must

be listed for sale. This may require the Owner to move back into the older ownership property. If both units are deed-restricted, Owner must list their existing property for sale immediately upon closing or before closing. **At no time shall an owner own more than two deed-restricted properties; and, will not be allowed to enter into a lottery and/or contract for a third unit.**

6. Any other violation of the Regulations and/or deed restriction, where the sale of a unit is required as a result of a violation, and if the property has not sold within 180 days of the listing agreement, the Owner will be bound by the following:
  - On day 181, Owner must accept any valid contracts (as determined by the Colorado Real Estate Commission) of at least ninety-five percent (95%) of the **maximum sales price**.
  - If the unit has still not sold after another 30 days at or above 95% of the maximum sales price, the Owner must accept any valid contracts at or above ninety percent (90%) of the maximum sales price.
  - For each additional month the unit has not sold, the minimum bid price that must be accepted will decrease by an additional five percent (5%) of the maximum sales price.
  - For RO units that do not have an appreciation cap, the same shall apply based on the appraised market value of said unit.

### C. Property Maintenance

Owners of APCA units must maintain their units in good repair, including but not limited to the roof, boiler, water heater, appliances, and fixtures, per HOA requirements, deed restrictions and these Regulations. To achieve the Maximum Sale Price, owners must maintain their units according to the minimum standards as described below.

### D. Capital Improvements Policy and Procedure

When permitted by applicable deed restrictions, owners may make capital improvements to deed-restricted units and add the cost of such improvements to the maximum sales price.

#### 1. Added Value to Maximum Sale Price

- The cost, or present value, of specified capital improvements as permitted under these Regulations and deed restrictions and as approved by APCA staff, less depreciation, may be added to the maximum sales of a unit. Deed restrictions specific to a unit may impose a capital improvements cap in determining the maximum sale price of a unit.
- Generally, no more than ten percent (10%) of the purchase price may be added to the maximum sale price for capital improvements. However, capital improvements associated with health and safety requirements may be exempt from the cap. The value of capital improvements requiring a building permit shall be added only if the city or county Building Department has issued a Letter of Completion, a copy of which shall be submitted to APCA with verification of capital improvement costs and payments.

- In determining maximum sales price, the capital improvements shall be depreciated according to the published schedule in an approved reference, such as the *Marshall & Swift Residential Cost Handbook*. Owners are advised to consult APCHA regarding valuation in advance of making any capital improvements.
- An ownership unit remodeled to include an additional bedroom shall continue to be categorized according to the original number of bedrooms and occupancy standards; e.g., a one-bedroom unit remodeled into a two bedroom will be listed as a one-bedroom unit, allowing a single person household to meet occupancy standards.

## 2. Permitted Capital Improvements

Only the cost of the capital improvements permitted under these Regulations or applicable deed restriction and as approved in writing by APCHA staff may be added to the maximum sale price. Permitted Capital Improvements may include:

- Fixtures constructed, installed or attached as permanent, functional, non-decorative improvements to real property;
- Improvements for the benefit of seniors and/or disabled persons;
- Completion of unfinished living space;
- Addition or completion of permanent, fixed storage space;
- Certain landscaping;
- Addition or extension of outdoor decks, porches, and balconies; and
- Improvements associated with health and safety, including radon detection, energy efficiency, water conservation and green building products.

The cost of capital improvements which are not permitted and shall not be added to the maximum sale price. Permitted Capital Improvements *shall not include*:

- Maintenance required by normal wear and tear;
- Repair, replacement and/or maintenance of existing appliances, plumbing, and mechanical fixtures and installations;
- Jacuzzis, saunas, steam showers and similar amenities; and
- Improvement or addition of decorative treatments, including painting, electrical and light fixtures, carpet, window coverings and similar items.

## 3. Application for Permitted Capital Improvements

APCHA owners must apply to APCHA for approval to make Permitted Capital Improvements the costs of which they intend to add to the Maximum Resale Price.

## E. Roommate Rental Policy

APCHA owners are permitted to rent bedrooms to roommates under the following terms and conditions:

- Deed restrictions and/or covenants applicable to the respective ownership unit must expressly permit rental of unoccupied bedrooms;
- Owner(s) must continue to maintain all APCHA qualification requirements;
- Roommates must qualify for rental through APCHA as a qualified tenant; income and asset limits do not apply – see Regulations Part III for eligibility and qualification. All tenants for deed restricted rental units must qualify through APCHA prior to moving in and/or executing a lease;
- Lease terms must be at least one month;
- Roommate rental rates must be prorated according to the maximum rental rate applicable to the unit category and size. One roommate in a two-bedroom unit shall pay no more than one half the rate; in a three-bedroom unit, no more than one-third the rate.
- Roommates are subject to all rules, regulations, and covenants applicable to the property;
- Owners are not permitted to lease their units for short-term rentals unless qualified and approved by APCHA as stated in these Regulations. Owners are not permitted to rent their units as income producing properties; and
- Owners must be in good standing with their Homeowner Association in order to obtain approval.

## F. Owner Leave of Absence Policy and Procedure

Owners of deed restricted housing units who wish to leave their unit for a limited period of time, resulting in non-compliance with the nine-month residency requirement and employment requirement, may request a Leave of Absence (LOA). The owner must be up to date with their HOA dues to request a LOA. Upon APCHA approval of a LOA Request and all other applicable requirements, owner's residency and employment requirements for maintaining ownership qualification shall be temporarily waived.

### 1. Leave Request

Owners shall submit a LOA Request form. The form shall be completed and submitted to APCHA after the form has been reviewed, approved and signed off by the HOA at least thirty (30) days prior to the start of the leave. Should APCHA or the HOA deny the leave request, the owner(s) may request Special Review with both APCHA and an HOA representative present. See Section 4 below for Special Review procedures.

LOA's ARE NOT GUARANTEED TO BE APPROVED.

### 2. Approved Leave Period

An APCHA owner may request a Leave of Absence for up to one year. An owner may request a LOA for a second year, but it is not guaranteed. **Under no circumstances will owners receive any appreciation on the sales price of the unit during the second year.** At no such time shall a LOA be approved for longer than two years. Owners seeking to extend an approved LOA shall

submit an additional LOA Request form to APCHA at least thirty (30) days prior to extension of the leave. If the LOA is requested **AFTER** the owner has VACATED THE UNIT, the appreciation of the sales price of the unit terminates retroactively to the date the owner vacated the premises. Appreciation will not be recouped once the homeowner is back in compliance and back in the unit. **A household on a LOA cannot bid on any other property until such time they are back in compliance working in Pitkin County and living in their deed-restricted unit.**

### 3. Rental during Approved Leave Period

If the deed restriction applicable to a unit permits an APCHA owner to take an approved LOA, the owner may rent his/her unit subject to APCHA approval to qualified households as stated in the Regulations Section 3, subsection F above.

Tenants must meet all APCHA qualifications otherwise applicable to tenants except for income and asset limits. All tenants must qualify through APCHA prior to moving in and/or executing a lease.

#### A. Rental Rate

If the deed restriction does not establish a rental rate, the permitted maximum monthly rental rate shall not exceed the total of owner's normal monthly expenses including mortgage payments, HOA dues, utilities in owner's name, insurance and property taxes not included in mortgage payment, plus fifty dollars (\$50) per month; or the maximum rental amount stated in Table III of these Regulations for the category and bedroom size of the unit, whichever is greater. Owners may not charge any additional amount for furniture, use of a garage, use of a storage unit, or any other cost associated with the unit or any other cost.

#### B. Lease Requirements

Tenants must acknowledge in writing receipt of an agreement to applicable HOA covenants, APCHA deed restrictions, rules and regulations of the association, lease terms and these Regulations. A copy of the executed lease shall be submitted to APCHA and the respective HOA. Approval of a tenancy pursuant to this section does not establish any right or priority for the purchase of the unit if the owner elects or is required to sell during or at the end of the LOA and termination of the tenancy.

**LEASE TERMS MAY NOT EXCEED THE DURATION OF THE APPROVED LEAVE OF ABESENCE**

**OWNERS MUST NOTIFY APCHA AND PROVIDE APCHA PROOF OF EMPLOYMENT UPON RETURN. APCHA WILL CONDUCT A SITE VISIT UPON EXPIRATION OF LOA.**



## G. Retiring in APCA Ownership Housing

Provided that such owner meets the requirements of a “qualified retiree in APCA housing” as specified in Part VIII, Definitions, of these regulations, an owner may retire and retain ownership of the unit exempt from the APPLICABLE requirements of employment. Retirees must:

- Receive approval by APCA by demonstrating to APCA that they meet the qualified retiree criteria as defined in these regulations;
- Occupy the unit as their primary residence by living in the unit at least nine months per year, unless the owner has received an approved LOA to rent the unit as stated in paragraph F above;
- Continue to not own other developed residential property in the ownership exclusion zone.

APCHA qualified retirees must complete and sign a Requalification Affidavit at least every two years. The owner may request a LOA to rent the unit for up to six months each year. See paragraph H below for the specific requirements pertaining to this leave of absence.

## H. Rental Policy for Approved Retirees who Own Deed-Restricted Housing

A qualified retiree in APCA Housing, who has met the definition of “qualified retiree in APCA housing” as specified in Part VII, may be absent from the unit for up to three months per year without a requirement to lease the unit. The owner may, request a LOA for up to six months per calendar year; during which time, the unit must be rented to an APCA qualified employee, please see Section 3, paragraph E.

**If any of the above conditions are not met as detailed above, the lease shall terminate, and the appreciation will stop until the homeowner is brought back into compliance. Such owners are prohibited from recouping the appreciation lost during the period of non-compliance.**

## Section 4. Special Review Policy and Procedure

An applicant for a rental or ownership unit, in accordance with Part III, Section 1, may request a Special Review approval for a variance from the strict application of the Regulations, excluding cases involving compliance and enforcement, if the following can be shown:

- Unusual hardship; and
- Consistency with APCA policies and purposes.

### A. Special Review Procedure

A Special Review for a variance from the strict application of these Regulations may be requested if an unusual hardship can be shown, and the variance from the strict application of the Regulations is consistent with the Housing Program intent and policies. To request a Special Review, a letter must be submitted to the APCA stating the request, with documentation regarding the unusual hardship. The applicant shall submit any additional information reasonably requested by the APCA and a Special Review meeting will be scheduled with a Hearing Officer in a timely manner.

## **B. Special Review Hearing Officer**

Special review is conducted by a Hearing Officer appointed by the APCA Board for that purpose.

## **C. Decision**

The Hearing Officer may grant the request, with or without conditions, if the approval will not cause a substantial detriment to the public good and without substantially impairing the intent and purpose of these Regulations, and if an unusual hardship is shown.

## **Section 5. Enforcement Policies and Procedures**

### **A. Compliance with Applicable Deed Restrictions and APCA Regulations.**

All owners and occupants of deed restricted rental and ownership housing administered by APCA must comply with the requirements of applicable deed restrictions, the APCA Regulations as amended from time to time, and applicable federal, state and local laws. All violations of such requirements are subject to enforcement as provided herein.

### **B. Enforcement Procedures.**

Enforcement procedures may be initiated by an APCA investigation or a complaint from a third party.

#### **1. Notice of Investigation (NOI)**

At the discretion of the APCA, before issuing a Notice of Violation (NOV), the APCA may issue a notice to the person under investigation that APCA is seeking information in order to determine if a violation has occurred and providing such person at least fifteen (15) days from the date of the notice to provide information in accordance with the notice. notice shall be provided by certified mail, regular mail, e-mail, text message, phone to the extent that APCA has been provided with current and accurate mailing address, e-mail address, and phone number. It is the responsibility of program participants (i.e., owners, renters, landlords, homeowners' associations, property managers and property owners) to provide APCA with up-to-date contact information at all times.

#### **2. Notice of Violation (NOV)**

a) In the event that APCA, as a result of an independent investigation or based upon a third party complaint as described in Section 4, paragraph A, below, or for failure to comply with a compliance request, audit or affidavit requirement, determines that a violation has occurred, APCA shall serve a Notice of Violation ("NOV") on the person(s) deemed to be in violation. The NOV may be served by regular mail, certified mail, e-mail, text message and phone, to the extent that APCA has been provided with current and accurate mailing address, e-mail address and phone number, or as otherwise provided by the applicable deed restriction or by law for service of process. The NOV shall state the following:

- i. identify the name of the alleged violator, and
  - ii. the date(s) of the violation if known, and
  - iii. the actions or inactions constituting the violation, and
  - iv. the requirement(s) which have been violated.
- b) The NOV shall, at the discretion of APCHA, require one or more of the following:
  - i. the violation be cured within fifteen (15) days of the NOV;
  - ii. the lease (if a rental unit) shall be terminated within a specified period of time;
  - iii. the unit shall be listed for sale (if an ownership unit) within a specified period of time;
  - iv. the owner will forfeit appreciation from the date that the violation occurred, until the violation is cured or the unit is sold, whichever first occurs; and/or
  - v. a fine be paid in accordance with the Schedule of Fines found in the appendices of these Regulations.
- c) The NOV shall provide that the person charged in the NOV may, within fifteen (15) days of the date of the NOV, request in writing a hearing before the APCHA Hearing Officer. The hearing may be requested to appeal the finding(s) that a violation has occurred and/or to appeal the relief demanded in the NOV.
- d) If the alleged violator does not comply with the requirements of the NOV and does not request a hearing before the Hearing Officer within the fifteen (15) day period, the violation identified in the NOV and the relief demanded shall be deemed final. In the event of litigation, the failure to request a hearing as provided above shall be deemed by APCHA to constitute a failure to exhaust administrative remedies for the purpose of judicial review. At the conclusion of the fifteen (15) day period, APCHA may pursue all remedies as provided by law or in equity, including, where applicable, a requirement that the subject property be sold in accordance with the deed restriction.
- e) If, within the fifteen (15) day period, a hearing is requested before the Hearing Officer, such hearing shall be scheduled to commence no later than thirty (30) days from the date of the request. At such hearing, APCHA staff, the person requesting the hearing, and interested members of the public, including witnesses, shall be permitted to present evidence in the form of testimony and documents to the Hearing Officer.
- f) The Hearing Officer shall base its decision upon the evidence in the record and it shall make its decision in writing within thirty (30) days of the conclusion of the hearing. The Hearing Officer may uphold the NOV in whole or in part, or it may dismiss the NOV. In taking any such action, the Hearing Officer may impose a remedy appropriate to the case, which may include a requirement for the owner to pay a fine and/or sell the subject property or require the occupants to vacate the premises in accordance with paragraph 2(b) above. Where a sale is required, the procedures identified in the applicable deed restriction shall be followed. The determination of the Hearing Officer may direct that legal action be taken

to enforce its decision. The costs of such action, including reasonable attorney's fees, shall be assessed against the proceeds of the sale, or tenant's security deposit. In the event that the decision has been made by a Hearing Officer, that decision is subject to administrative appeal to the APCHA Board as provided in Part E below.

- g) APCHA staff and the alleged violator shall exchange the documentary evidence they wish to present at the hearing at least one (1) week prior to the hearing. The Hearing Officer may accept additional documentary evidence at the hearing for good cause shown and may continue the hearing if it is deemed necessary in the interest of fairness.

### 3. Complaint Based Investigation

- a) Any person may submit to APCHA a complaint that a violation has occurred. Within thirty (30) days of the receipt of any such complaint, and if sufficient grounds are found to exist, APCHA staff shall commence an investigation and notify the alleged violator of the receipt of such complaint. For good cause and as authorized by law, APCHA may withhold the identity of the complainant.
- b) In connection with its investigation of the complaint, APCHA shall proceed in accordance with Part VI, Section 5B, and shall request that the alleged violator provide written information as may be reasonably necessary for its investigation, and the alleged violator shall be required to provide such information within fifteen (15) days from the date of the request, or such additional time as permitted by APCHA. APCHA shall maintain the confidentiality of any financial or other information provided by the alleged violation which is not required to be disclosed by the Colorado Open Records Act.
- c) APCHA staff shall complete its investigation as soon as possible, and within ninety (90) days from the receipt of the complaint whenever possible. Upon completion of its investigation, APCHA staff shall either notify the parties in writing that there are not reasonable grounds to determine that a violation has occurred, or it shall issue an NOV and proceed in accordance with the subsection 5.B.2 above and follow those procedures.

### 4. Investigations and Site Visits

In responding to a complaint or in the conduct of any other investigation, APCHA may inspect the subject premises. Any such inspection shall be preceded by at least 24 hours' written notice to the owner and occupants, either by mail or posted on the premises in a conspicuous place. Except in an emergency, all such inspections shall occur between 8:00 a.m. and 5:00 p.m., Monday through Friday.

## **F. Appeals of Hearing Officer decisions**

### **1. General Procedures**

- a. Any person adversely affected or aggrieved by a decision of the Hearing Officer may appeal such decision to the APCHA Board as provided herein.
- b. Notice of appeal and a written summary of the grounds for the appeal must be submitted to the APCHA executive director within fifteen (15) days of the date of the Hearing Officer's decision.
- c. No appeal shall be considered by the APCHA Board until the appellant, at its expense, presents the executive director with a transcript of the proceedings before the Hearing Officer, which must occur no later than sixty (60) calendar days after the Hearing Officer's decision unless extended by the APCHA Board for good cause shown.
- d. Upon receipt of the transcript, the Board shall schedule the appeal for a public hearing at the earliest date possible, with the consideration to the interests of all parties.

### **2. Scope of review**

- a. The appeal to the Board shall be based solely on the record of the proceedings before the Hearing Officer. The Board shall consider the arguments of the appellant, APCHA staff, and other interested parties based on the record.
- b. Based upon the arguments made at the hearing, the Board may affirm, modify or reverse the decision of the Hearing Officer. In addition, the Board may determine that additional evidence is necessary and remand the matter to the Hearing Officer for the receipt of additional evidence and reconsideration based thereon. The Board's decision shall be made in writing and shall include findings of fact and conclusions of law.

### **3. Judicial review**

The decision of the APCHA Board shall constitute final agency action subject to judicial review in accordance with CRCP Rule 106(a)(4).

5. Aspen Municipal Code and Pitkin County Code

Enforcement by APCA as provided herein does not constitute a waiver by the City of Aspen or Pitkin County of any authority they may have pursuant to their respective ordinances for enforcement with respect to the events described in an APCA NOV.

**C. Grievance Procedure**

A “grievance” is any dispute, claim, or request a person may have with APCA, not covered by Section 5B above, arising out of a deed restriction or the APCA Regulations.

1. Any person with a grievance shall first submit such matter to APCA staff. APCA staff shall attempt to resolve such matter informally with the aggrieved party, but in doing so, APCA staff is not authorized to make any determination contrary to a deed restriction, APCA Regulations, APCA policies, or established precedents.
2. At such time as APCA staff or the aggrieved party determines that the procedure identified in Section C.1 above will not resolve the matter, or by agreement of APCA staff and the aggrieved party, the grievance may be submitted to the Hearing Officer for a determination. All such grievances shall be submitted in writing and shall include the following information:
  - Name, address, telephone number and e-mail address of the aggrieved party; and
  - A summary of the grievance, the relief requested, and identification of the provision of the applicable deed restriction and APCA Regulations at issue.
3. Upon receipt of a grievance in accordance with subsection C.2 above, the matter shall be set for a public hearing before the APCA Hearing Officer, at which time the Hearing Officer shall consider the testimony and other evidence presented by APCA staff, the aggrieved party, and members of the public.
4. APCA staff and the aggrieved party shall exchange the documentary evidence they wish to present at the hearing at least one (1) week prior to the hearing. The APCA Hearing Officer may accept additional documentary evidence at the hearing for good cause shown.
5. The APCA Hearing Officer shall base its determination regarding the grievance upon the evidence in the record and it shall make its determination in writing within thirty (30) days of the conclusion of the hearing. Such determination shall be considered a final administrative determination by APCA.

#### **D. APCHA Eligibility and Qualification – Trusts (Part II, Section 2 (d))**

Applicants for rental and ownership units who are trust beneficiaries may apply to APCHA for an exception to the requirement that trust assets shall be included when considering the maximum net assets of the applicant in accordance with Part II, Section 2 of these regulations. The determination shall be made by the Hearing Officer appointed by the APCHA Board.

#### **E. Hearing Officer**

##### **1. Establishment**

There is hereby established within APCHA the position of Hearing Officer.

##### **2. Appointment**

The Hearing Officer shall be appointed by and serve at the discretion of the APCHA Board. The Board may appoint more than one Hearing Officer if deemed necessary, based on conflict of interest, availability, or for other good reason. No employee of APCHA or member of the APCHA Board shall serve as Hearing Officer. The Hearing Officer shall be subject to the same code of conduct/code of ethics as the members of the APCHA Board.

##### **3. Powers and duties**

The Hearing Officer shall hear and consider those matters specific in these Regulations. All matters considered by the Hearing Officer shall be conducted in a public hearing and all such hearings shall be recorded. Notice of all such hearings shall be given in the same manner as meetings of the APCHA Board. In addition, personal notice shall be given in writing to the appellant and all other persons known by APCHA staff to have an interest in the matter.

##### **4. Decisions**

The Hearing Officer may approve, approve with conditions, or deny any matter subject to his/her review. The decisions of the Hearing Officer shall include findings of fact and conclusions of law, and shall be made in writing, signed and dated. All such decisions shall be deemed final after 15 days of the date of the decision unless appealed to the APCHA Board as provided below. An unappealed decision of the Hearing Officer is not subject to judicial review in accordance with CRCP Rule 106(a)(4), based on the failure to exhaust administrative remedies.