



# LEGISLATIVE WRAP-UP 2009

*By Mark Hendrickson and Jaimie Ross*

**T**he last edition of the Housing News Journal focused on the essential role that affordable housing plays in Florida's economic recovery. Our two priority issues for the 2009 legislative session were repeal of the cap on the trust funds and appropriation of the housing trust fund monies for housing. The Florida Housing Coalition, the Sadowski Workforce Housing Coalition, and housing advocates around the state made the case that to accelerate economic recovery and avert the imminent increase in homelessness caused by the recession, we needed to restore the state and local housing trust funds.

We came very close to reaching our legislative priority to repeal the cap on the state and local housing trust funds. With the leadership of Representative Gary Aubuchon, the House voted to repeal the cap, but it failed in the Senate at the very end of the session.

Funding for affordable housing, on the other hand, never looked promising at all this session. The total revenue projected to be distributed to the state and local housing trust funds for fiscal year 2009-10 was \$123.01 million.

Of those projected monies, the Florida Legislature took \$91.9 million out of the trust funds to use for other purposes, leaving only \$31.11 million for housing. This means that there was no appropriation for successful existing programs such as SAIL, PLP, or the Catalyst program, that provides free training and technical assistance to nonprofits and local governments.



*Representative Ron Saunders filed HB 25 to repeal the cap on the state and local housing trust funds and has been a steadfast champion for affordable housing throughout his tenure in the Legislature.*



*Representative Gary Aubuchon, sponsored the omnibus housing bill (HB 161) and the amendment to repeal the cap on the trust funds. He won unanimous approval to repeal the cap in the House of Representatives, an historic event.*

Program	FY07-08 Funding Level— Actual	FY08-09 Funding Level— Actual before 1-09 Raid	FY08-09 Funding Level— Actual after 1-09 Raid	Governor's FY09-10 Proposed Funding Level	Final Appropriation Level FY09-10
Total Available for Appropriation	\$709,000,000	\$576,200,000	\$529,972,000	\$175,400,000	\$121,010,000
Florida Housing Basic Programs (SAIL, HAP, PLP, Catalyst Training & Technical Assistance, & Guaranty Fund)	\$ 70,500,000	\$ 70,500,000		\$45,520,000	\$0
SHIP	\$166,200,000	\$166,183,500		\$115,761,150	\$0
SHIP Monitoring	\$ 400,000	\$ 416,500		\$ 374,850	\$0
Homeless	\$ 5,900,000	\$ 5,900,000		\$ 5,900,000	\$ 5,000,000 (GR)
Florida Housing Additional SAIL	\$ 60,000,000	\$ 22,500,000			
Florida Housing Additional Down Payment (HAP)	\$ 10,000,000	\$ 20,000,000			
CWHIP	\$ 62,400,000				
Extremely Low Income (ELI)	\$ 15,000,000	\$ 5,000,000			
Preservation Rehab Pilot	-0-	\$ 10,000,000			
DCA Planning	\$ 400,000				
DCA Building Code Compliance				\$ 2,000,000	
Downpayment Assistance related to \$8,000 Federal Tax Credit					\$ 30,110,000
Public Housing				\$ 5,000,000	\$ 1,000,000
Community Contribution Tax Credit		\$ 2,500,000			
<b>TOTAL APPROPRIATED FOR HOUSING</b>	<b>\$390,800,000</b>	<b>\$303,000,000</b> <b>-\$87,800,000</b> <b>Or -22.5%</b>	<b>\$189,972,000</b> <b>-\$200,828,000</b> <b>OR -51.4%</b>	<b>\$174,556,000</b>	<b>\$ 36,110,000</b> <b>-\$153,862,000</b> <b>OR -81.0%</b>
Swept to General Revenue by Appropriation	-0-	\$250,000,000	\$340,000,000	\$0	\$ 91,900,000
Swept to General Revenue by Cap	\$ 96,000,000	\$ 87,600,000	\$0	\$0	\$0
<b>TOTAL SWEEP TO GR</b>	<b>\$ 96,000,000</b>	<b>\$337,800,000</b>	<b>\$340,000,000</b>	<b>\$0</b>	<b>\$ 91,900,000</b>
Trust Fund Monies Not Appropriated for Housing or Swept to GR	\$318,200,000	\$ 23,200,000	\$0	\$ 444,000	\$0

Note: Total sweep to GR over three year period is the sum of FY07-08 (\$96 million) plus FY08-09 (\$340 million) plus FY09-10 (\$91.9 million) = \$527.9 million

\$30.11 million was appropriated to a program which will provide down payment assistance loans to first time homebuyers who are eligible to receive the tax credit of up to \$8,000 provided in the federal economic stimulus bill (see page 9), and \$1 million is appropriated for public housing repairs.

The \$91.9 million diversion of housing trust fund monies to general revenue is in addition to the \$250 million that was diverted to general revenue in 2008 and another \$190 million in January, 2009-making \$531.9

million the one year total of housing monies diverted from housing. \$531.9 million of state funding for housing would have produced:

- \$2.257 billion of housing
- \$4.074 billion of total economic activity, of which \$1.585 billion is earnings/income
- 40,956 jobs

Affordable housing is a key driver in Florida's economic recovery, but that message did not prevail in the 2009 legislative session.



# Legislative Wrap-Up 2009: Community Land Trusts

**We did it!** It's taken several years, but we finally have statutory direction for property appraisers to assess community land trust properties in a sensible way—in accordance with the resale restricted value, not the price the property could fetch were it not a community land trust property. This statute simply codifies what the county property appraiser is already doing in many communities, but some property appraisers took the position they could not take the resale restriction into consideration without this statutory change. So here it is:

## 193.018

Land owned by a community land trust used to provide affordable housing; assessment; structural improvements, condominium parcels, and cooperative parcels.—

- (1) As used in this section, the term “community land trust” means a nonprofit entity that is qualified as charitable under s. 501(c)(3) of the Internal Revenue Code and has as one of its purposes the acquisition of land to be held in perpetuity for the primary purpose of providing affordable homeownership.
- (2) A community land trust may convey structural improvements, condominium parcels, or cooperative parcels, that are located on specific parcels of land that are identified by a legal description contained in and subject to a ground lease having a term of at least 99 years, for the purpose of providing affordable housing to natural persons or families who meet the extremely-low-income, very-low-income, low-income, or moderate income limits specified in s. 420.0004, or the income limits for workforce housing, as defined in s. 420.5095(3). A community land trust shall retain a preemptive option to purchase any structural improvements, condominium parcels, or cooperative parcels on the land at a price determined by a formula specified in the ground lease which is designed to ensure that the structural improvements, condominium parcels, or cooperative parcels remain affordable.
- (3) In arriving at just valuation under s. 193.011, a structural improvement, condominium parcel, or cooperative parcel

providing affordable housing on land owned by a community land trust, and the land owned by a community land trust that is subject to a 99-year or longer ground lease, shall be assessed using the following criteria:

- (a) The amount a willing purchaser would pay a willing seller for the land is limited to an amount commensurate with the terms of the ground lease that restricts the use of the land to the provision of affordable housing in perpetuity.
- (b) The amount a willing purchaser would pay a willing seller for resale-restricted improvements, condominium parcels, or cooperative parcels is limited to the amount determined by the formula in the ground lease.
- (c) If the ground lease and all amendments and supplements thereto, or a memorandum documenting how such lease and amendments or supplements restrict the price at which the improvements, condominium parcels, or cooperative parcels may be sold, is recorded in the official public records of the county in which the leased land is located, the recorded lease and any amendments and supplements, or the recorded memorandum, shall be deemed a land use regulation during the term of the lease as amended or supplemented.



Rep. Fitzgerald

First and foremost, we have Representative Keith Fitzgerald to thank for this new statute. He has championed this effort for the past three years and successfully carried the CLT bill (HB 267) through every committee in the House. Ultimately, the bill was amended to Representative Aubuchon's omnibus housing bill (HB 161) and passed in the Senate as part of Senator Bennett's amendment to SB 360.

**CLTs- remember to record your 99 year CLT ground lease or memorandum of the ground lease in the public records!**



# Legislative Wrap-Up 2009: Property Tax Relief for Nonprofits

**W**hen nonprofit corporations own land that is in use for affordable housing they are entitled to property tax exemption in Florida. But “in use” means that the property is actually occupied by income eligible persons, such as when a nonprofit owns housing that is rented to income eligible people.



The problem that “in use” poses for nonprofits in the business of providing home ownership opportunities is that from the time the nonprofit takes title to land until it sells that property to the income eligible homebuyer, it is saddled with a property tax bill.

The 2009 Legislature addressed this issue with this statutory change contained in SB 360: Section 196.196

Property owned by an exempt organization qualified as charitable under s. 501(c)(3) of the Internal Revenue Code is used for a charitable purpose if the organization has taken affirmative steps to prepare the property to provide affordable housing to persons or families that meet the extremely-low income, very-low-income, low-income, or moderate-income limits, as specified in s. 420.0004. The term “affirmative steps” means environmental or land use permitting activities, creation of architectural plans or schematic drawings, land clearing or site preparation, construction or renovation activities, or other similar activities that demonstrate a commitment of the property to providing affordable housing.

If property owned by an organization granted an exemption under this subsection is transferred for a purpose other than directly providing affordable homeownership or rental housing to persons or families who meet the extremely-low income, very-low-income, low-income, or moderate-income limits, as specified in s. 420.0004, or is not in actual use to provide such affordable housing within 5 years after the date the organization is granted the exemption, the property appraiser making such determination shall serve upon the organization that illegally or improperly received the exemption a notice of intent to record in the public records of the county a notice of tax lien against any property owned by that organization in the county, and such property shall be identified in the notice of tax lien. The organization owning such property is subject to the taxes otherwise due and owing

as a result of the failure to use the property to provide affordable housing plus 15 percent interest per annum and a penalty of 50 percent of the taxes owed.

Such lien, when filed, attaches to any property identified in the notice of tax lien owned by the organization that illegally or improperly received the exemption. If such organization no longer owns property in the county but owns property in any other county in the state, the property appraiser shall record in each such other county a notice of tax lien identifying the property owned by such organization in such county which shall become a lien against the identified property. Before any such lien may be filed, the organization so notified must be given 30 days to pay the taxes, penalties, and interest.

If an exemption is improperly granted as a result of a clerical mistake or an omission by the property appraiser, the organization improperly receiving the exemption shall not be assessed a penalty or interest.

The 5-year limitation specified in this subsection may be extended if the holder of the exemption continues to take affirmative steps to develop the property for the purposes specified in this subsection.

## Additional Property Tax Relief

Section 196.1978 has provided a real property tax exemption for nonprofits owning property that is used for affordable housing (extremely low to moderate income). The 2009 Legislature expanded the exemption to apply to Florida-based limited partnerships, the sole general partner of which is a nonprofit 501 (c) (3) corporation. This means that a tax credit development with a nonprofit general partner can claim tax exemption even though the limited partnership that owns the property is a for-profit entity. While benefiting truly non-profit developments, a caveat is that this provision can be abused if a for-profit developer uses a compliant nonprofit (who plays no meaningful role in the development's construction or long-term operations) to gain tax exemption for what is truly a for-profit operation.



# Legislative Wrap-Up 2009: Changes to SHIP

**W**hile the Legislature failed to fund SHIP, it did go forward with a number of changes; the more significant provisions are summarized below:

## Manufactured Housing

Manufactured housing is now eligible for SHIP funds – provided it is constructed after June 1994 and installed in accordance with the installation standards for mobile or manufactured homes contained in ruled of the Department of Highway Safety and Motor Vehicles. A maximum of 20% of SHIP funds may be used for manufactured housing.

## Foreclosure

SHIP statute is revised to create a permissible use for SHIP funds that may not be in the local HAP- specifically, it may provide a one-time relocation grant to SHIP income eligible tenants who are being evicted due to the foreclosure of the rental property they are living in. The tenant's rent payments must be current and the grant is limited to \$5,000. But this new eligible use of SHIP funds is only good through July, 1, 2010.

## Green Provisions

The local HAP shall describe initiatives to encourage or require innovative design, green building principles, storm-resistant construction, or other elements that

reduce long-term cost relating to maintenance, utilities, or insurance.

## Preservation

Each county and each eligible municipality is encouraged to develop a strategy within its local HAP which provides program funds for the preservation of assisted housing. (Definitions are added for “assisted housing” and “preservation”). If and when preconstruction /due- diligence activities for preservation show that preservation of the units is not feasible, the SHIP funds (not to exceed 3% of the annual local housing distribution) are deemed a program expense rather than an administrative expense of the SHIP program.

## Prohibition of Use of SHIP funds as a Grant

A new section is created that provides the SHIP jurisdiction may award funds as a grant for construction, rehabilitation, or repairs as part of disaster recovery or emergency repairs or to remedy accessibility or health and safety deficiencies. Any other grants must be approved as part of the local housing assistance plan.

## Miscellaneous

- The FHFC is authorized to withhold up to \$5 million for disasters, and another \$5 million to purchase properties subject to SHIP liens that are in foreclosure.

Of course, these provisions are of no consequence this year, as the Legislature chose not to fund SHIP, except for the \$30 million appropriation for down payment assistance for the federal tax credit Homebuyer program (see article on next page).

- 420.9071- amends the definition of “annual gross income” to permit the definition by standard practices used in the lending industry as detailed in the local housing assistance plan and approved by the corporation”
- Local housing assistance plans are now required to specifically address persons with disabilities and include information on the number of persons served with disabilities in the annual report.
- The upper limit of income eligibility is raised to 140% of area median income. There is, of course, no requirement to assist persons or households with such high incomes, but it is now permissible, regardless of whether it is a high cost area.
- The AHAC requirement to have one member from local planning agency is changed to provide that if the local planning agency is comprised of the governing board of the county or municipality, it may appoint a designee who is knowledgeable in the local planning process. (This avoids having an elected official from having to serve on the AHAC). **HNN**



# Legislative Wrap-Up 2009: Florida Homebuyer Opportunity Program Federal Tax Credit for Homebuyers

**T**he federal stimulus legislation (ARRA) created a tax credit for persons who purchase a home before December 1, 2009. The value of the credit is the lesser of \$8,000 or 10% of the purchase price of the home. The credit can be claimed on either 2008 or 2009 taxes (amended return for 2008).

Unlike many tax credits, the value is the full \$8,000. If the credit takes the homebuyers tax liability below \$0, they receive a refund. Because many first-time homebuyers have withholding taxes that equal or exceed their actual tax liability, they are likely to receive a refund check in the \$6,000 to \$8,000 range.

The problem is that getting a tax credit at some later point in time does not help the homebuyer purchase the home. They need assistance with downpayment and/or closing costs—particularly first-time buyers. The value of the tax credit is maximized when it is capitalized as downpayment assistance.

Several states and local jurisdictions are working to capitalize the tax credit—including the State of Florida. If one looks at this from a risk perspective, the prospects of repayment in a timely manner are much higher than a typical HFA DPA loan (which is usually due when the property is sold or refinanced). For most recipients of the tax credit, repayment is possible within one year. The tax credit DPA would be secured by the same level of mortgage/note that secure other HFA DPA loans. Most SHIP DPA loans are secured by notes and mortgages, and have a 0% interest rate, due on sale or refinancing.

## Florida Homebuyer Opportunity Program

The Florida legislature appropriated \$30,110,000 to capitalize the tax credit. The funds will be distributed to SHIP jurisdictions for use according to a local strategy to be adopted by each local government (meaning the exact structure will not be the same in every city or county). The state is requiring each locality to adopt a SHIP strategy to implement the program.

### The following exceptions to SHIP guidelines apply:

- (a)** The maximum income limit shall be an adjusted gross income of \$75,000 for single taxpayer households or \$150,000 for joint-filing taxpayer households, which is equal to that permitted by the American Recovery and Reinvestment Act of 2009;
- (b)** There is no requirement to reserve 30 percent of the funds for awards to very-low-income persons or 30 percent of the funds for awards to low-income persons;
- (c)** There is no requirement to expend 75 percent of funds for construction, rehabilitation, or emergency repair; and
- (d)** The principal balance of the loans provided may not exceed 10 percent of the purchase price or \$8,000, whichever is less.

The Florida legislation states that the homebuyer is expected to use their federal income tax refund to fully repay the loan. If the county or city receives repayment from the homebuyer within 18 months after the closing date of the loan, the county or eligible municipality is required to waive all interest charges. A homebuyer who fails to fully repay the loan within the earlier of 18 months or 10 days after the receipt of their federal income tax refund, shall be subject to repayment terms provided in the local housing assistance plan, including penalties for not using his or her refund for repayment. Penalties may not exceed 10 percent of the loan amount and shall be included in the loan agreement with the homebuyer.

In order to maximize the effect of the funding, the counties and cities are encouraged by the legislation “to work with private lenders to provide additional funds to support the Initiative”. However, in all instances, the counties and eligible municipalities shall make and hold the subordinate loan. **HNN**

Note: As this issue was going to press HUD released an updated Mortgagee Letter on using the first time buyer tax credit. For more information go to the Coalition’s SHIP Blog at <http://flhousing.blogspot.com/>.



# Legislative Wrap-Up 2009: The Federal Government Steps Up

**T**he American Recovery and Reinvestment Act (ARRA), also known as the Economic Stimulus Bill, was signed into law on Feb. 17, 2009, by President Obama to boost the nation's employment and the economy. With housing remaining a top issue in the nation's overall economic recovery process, the ARRA provides several substantial affordable housing provisions. From the state and local government perspective, the two most significant programs are the Neighborhood Stabilization Program (NSP), which is funded from the Housing and Economic Recovery Act (HERA), and the Weatherization Assistance Program funded by the ARRA.

## Neighborhood Stabilization Program

Created by HERA in 2008, the Neighborhood Stabilization Program's (NSP) goal is to provide targeted emergency assistance to state and local governments to acquire and redevelop foreclosed and abandoned properties within their communities. To the greatest extent feasible, this redevelopment should provide green and long term affordable housing. Using community land trusts to purchase and steward these properties is a natural fit with the NSP program.

Florida is receiving \$541 million in NSP funds through direct allocation to 48 communities hardest hit by foreclosures and through an allocation of \$91 to 25 other communities administered through the Florida Department of Community Affairs. The Florida Housing Coalition is providing free technical assistance to all of the communities receiving NSP monies through the DCA.

In 2009, ARRA provides \$2 billion in additional funding nationwide for the NSP (known as NSP 2), which will include money for technical assistance and program implementation. The FHFC and the Florida

DCA are applying as a Consortium to have the Florida Housing Coalition provide technical assistance throughout the entire state. The technical assistance and the implementation funds from NSP 2 will be distributed on a competitive basis. Applications for NSP 2 implementation monies are due to HUD on July 17, 2009.

## Weatherization Assistance Program

ARRA will also provide additional funding for direct spending on green initiatives and green tax incentives. At the top of ARRA's green building provisions is \$5 billion in funding for the Weatherization Assistance



*The Florida Housing Coalition conducts workshops and site visits with local government staff and their private sector for profit and nonprofit partners*

Program (WAP). Florida is marked to receive more than \$175 million in weatherization funding, which will help reduce energy costs for Florida's low-income families by increasing the energy efficiency of their homes.

ARRA changes to the existing WAP include an increase in the maximum amount to be spent per dwelling unit to \$6,500 (up from \$2,500 in current program) and flexibility to serve up to 200 percent of the federal poverty guidelines (up from 150 percent in the current program). The WAP application sent from the DCA to the Department of Energy on May 12, 2009 includes a strategy to use Weatherization funds to preserve multifamily affordable housing in addition to single family homes. For further information regarding the NSP program or

the WAP program contact the Florida Department of Community Affairs at [www.dca.state.fl.us/](http://www.dca.state.fl.us/)

## Conclusion

While the federal stimulus monies for Florida are substantial, the programs funded by the federal government do not serve the same purposes or take the place of our excellent local and state housing trust fund programs, like SHIP and SAIL. Housing advocates will continue to pursue funding for those programs, while we work diligently to use these significant federal housing economic stimulus dollars in an expedient and effective manner to create green construction jobs, prevent homelessness, and improve housing for low income and extremely low income Floridians. **HNN**

## ADDITIONAL ARRA HOUSING MONIES ARE:

### Community Development Block Grant (CDBG)

\$64.5 billion to undertake a wide range of activities intended to create suitable living environments, provide decent affordable housing and create economic opportunities, primarily for persons of low and moderate income.

[www.hud.gov/recovery/cdblock.cfm](http://www.hud.gov/recovery/cdblock.cfm)

### Homelessness Prevention and Rapid Recovery Housing Program (HPRP)

\$1.5 billion to prevent individuals and families from becoming homeless and help those who are experiencing homelessness to be quickly re-housed and stabilized

[www.hud.gov/recovery/homeless-prevention.cfm](http://www.hud.gov/recovery/homeless-prevention.cfm)

### Elderly, Disabled and Section 8 Assisted Housing Energy Retrofit

\$89.9 million to return the program to full funding for the existing contracts.

[www.hud.gov/recovery/pbrassistance.cfm](http://www.hud.gov/recovery/pbrassistance.cfm)

### Public Housing Capital Funds

Competitive -

[www.hud.gov/recovery/phcapfundh.cfm](http://www.hud.gov/recovery/phcapfundh.cfm)

Formula - [www.hud.gov/recovery/phcfund.cfm](http://www.hud.gov/recovery/phcfund.cfm)

Formula FAQ -

[www.hud.gov/offices/pih/programs/ph/capfund/ocir/rcryact-faq.pdf](http://www.hud.gov/offices/pih/programs/ph/capfund/ocir/rcryact-faq.pdf)

### Low Income Housing Tax Credit

Grant money for "gap" called TCAP from HOME program. Exchange program called TCEP- both administered in Florida by the Florida Housing Finance Corporation. [www.floridahousing.org](http://www.floridahousing.org)

### Energy Efficiency and Conservation Block Grant and /State Energy Program

Both administered out of Governor's Energy Office

[www.eecbg.energy.gov/grantalloc.html](http://www.eecbg.energy.gov/grantalloc.html)

Resources and Information

HUD [www.hud.gov/recovery/](http://www.hud.gov/recovery/)

DOE [www.energy.gov/recovery/index.htm](http://www.energy.gov/recovery/index.htm)

## Legislative Wrap-Up 2009 Co-Authors



**MARK HENDRICKSON**, president of The Hendrickson Company, is a past Chair and serves as an Executive Committee member for the Florida Housing Coalition. He served as Executive Director of the Florida Housing Finance Agency from its inception in 1981 to 1994. As its first Chief Executive Officer, he led the way in creation of the Sadowski Act.



**JAIMIE ROSS**, is the Affordable Housing Director at 1000 Friends of Florida and the president of the Florida Housing Coalition. She initiated the Sadowski Coalition in 1991 and continues to facilitate the Sadowski Workforce Housing Coalition. today.