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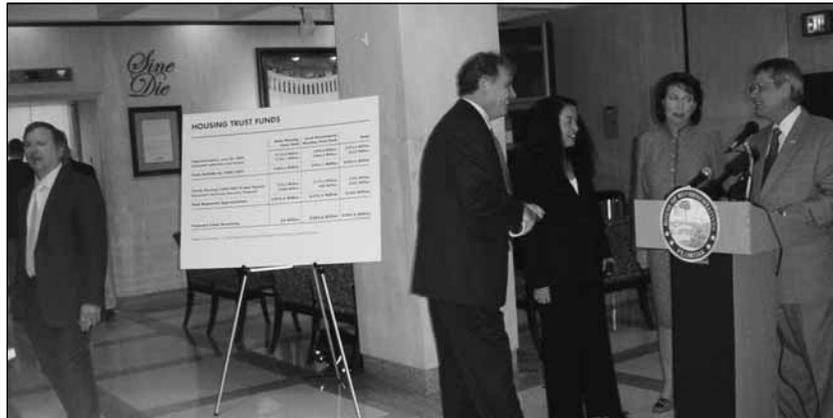
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Rep. Davis (R) and Rep. Henriquez (D), joined by Senator Bennett (R) and about 15 other lawmakers held a bipartisan press conference on March 14th to call for "scrapping the cap" and using all the funds (approximately \$945 million) in the state and local housing trust funds for affordable housing.

It's Shaping up to be a Banner Legislative Session for Housing

Affordable housing has moved front and center for the 2006 Legislative Session. In addition to the movement for full funding and repeal of the cap, lawmakers from both parties have filed a variety of affordable housing bills.

More than twenty housing bills were filed by the start of the legislative session, in both houses and by both parties. Housing initiatives range from serving the extremely low income to housing for teachers and others earning up to 150 percent of area median income.

WHAT'S IN A NAME?

"Affordable housing" has given way to "workforce housing" and similar terms such as "attainable housing" or "community housing."

So what does this change in terminology mean? Is workforce housing something different or apart from affordable housing?

Some say no. They readily acknowledge that lesser-educated or unskilled, low-income people often work two and three jobs, and are clearly members of the workforce. But is "workforce housing" code for affordable housing to serve the needs of the low-paid professional, a person who actually earns quite a bit more money than the average Floridian?

Of course, low-paid professionals are currently served by affordable housing, both in our local SHIP programs and our tax credit developments. But the combination of reduced housing appropriations and the hyper-appreciation in

Continued on page 3



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The Florida Housing Coalition is a nonprofit, statewide membership organization whose mission is to act as a catalyst to bring together housing advocates and resources so that Floridians have a safe and affordable home and suitable living environment.

The Housing News Network is published by the Florida Housing Coalition as a service to its members and for housing professionals and others interested in affordable housing issues. Address questions and comments to: Jaimie Ross, Editor, Florida Housing Coalition, Inc., 1367 E. Lafayette Street, Suite C, Tallahassee, FL 32301.

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Many thanks to Margie Menzel for her editorial assistance with this edition of the *Housing News Network Journal*.

The Florida Housing Coalition would like to recognize **BANK OF AMERICA, CITIBANK, WACHOVIA** and **WASHINGTON MUTUAL**, for their partnership, leadership and support as our **PLATINUM SPONSORS**. *We are deeply appreciative.*

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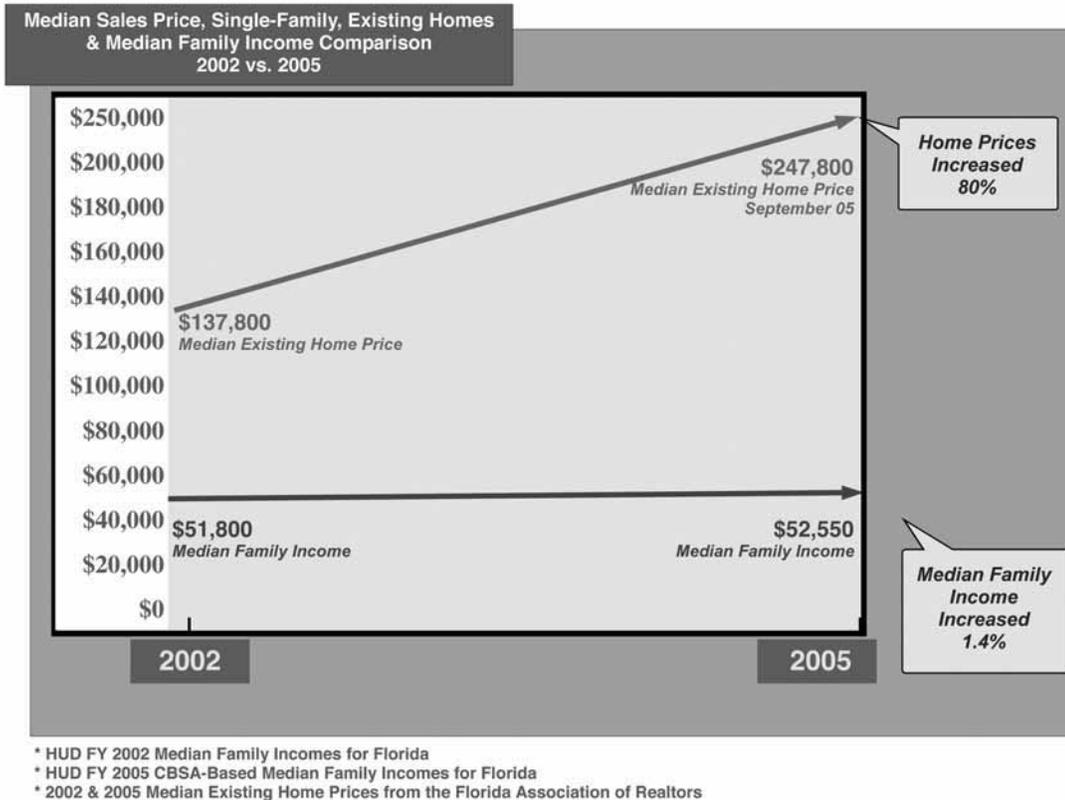


Washington Mutual

housing prices over the last three years leaves low-paid professionals, who traditionally expect to be homeowners, finding it almost impossible to realize homeownership. That's especially true in high-cost parts of the state: along the coast and in south Florida.

that all the monies in the state and local housing trust funds are, indeed, appropriated for that very purpose.

BUT WHAT ABOUT THE EXTREMELY LOW INCOME WORKFORCE?



And what about those too old or sick to work? Will they benefit from a portion of what is almost \$1 billion in state and local housing trust fund monies? The Governor's proposal of \$302 million for housing hurricane relief will focus on the extremely low income, building on the successful and vastly over-subscribed Rental Housing Recovery Program, which targets monies to developments that provide 25 percent of the units for families earning 30 percent or less of area median income. It is also likely that we will see a

definition for "extremely low income" put into statute this session, as well as an effective mechanism to fund extremely low income units through the State Apartment Incentive Loan Program. Provided there is a commensurate appropriation to fund the development of these units,

SILVER LINING: "SCRAP THE CAP" AND FULL APPROPRIATION

None of us are pleased about this housing crisis. But the silver lining may be that affordable housing, whether it is named workforce housing or not, is now a major item on almost every lawmaker's agenda.

Recognizing that funds for new programs to serve specific target groups such as teachers or "essential services personnel" will be unavailable if the "cap" on the Sadowski trust fund goes into effect, Rep. Mike Davis, R-Naples, coined the phrase "scrap the cap." Rep. Davis, charged by the House leadership with crafting a legislative response to Florida's housing crisis, is sponsoring a bill to fund a program to provide homeownership opportunities for families earning as much as 150 percent of area median income. And in addition to scrapping the cap, he and others are asking

IN THE 2005 LEGISLATIVE SESSION, A BILL WAS PASSED TO CAP THE DISTRIBUTIONS INTO THE STATE AND LOCAL HOUSING TRUST FUNDS AT \$243 MILLION PER YEAR. THAT "CAP" DOES NOT ACTUALLY GO INTO EFFECT UNTIL 2007, BUT THERE IS A COMMON MISCONCEPTION THAT THE CAP IS IN EFFECT FOR THIS SESSION -- MOST LIKELY DUE TO THE GOVERNOR'S HAVING RECOMMENDED AN APPROPRIATION OF \$243 MILLION FOR THE STATE AND LOCAL HOUSING TRUST FUNDS THIS YEAR.

Florida can boast full funding from a dedicated revenue source that meets the needs of all Floridians, from the extremely low income to the lower-paid professionals. If our legislators are given the information they need to understand the importance of full appropriation, we may

end up with an affordable housing success story this year that will rival the 1992 session, when Florida became the national leader with a combination of creative and effective programs funded by a dedicated revenue source. 



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If she can't afford a place to live, she can't afford to teach your kids.

If she can't afford a place to live, she can't afford to care for your kids.

If they can't afford a place to live, they can't afford to save your home.

Visit the Florida Housing Coalition's Website for comprehensive information on the state and local housing trust funds. www.flhousing.org

You will easily access:

- contact information for your elected officials
- data on housing need and the importance of housing dollars to your local economy
- sample/model resolutions calling for full funding and repeal of the cap
- sample talking points

Join the Florida Housing Coalition and the entire Sadowski/Workforce Housing Coalition for Housing Day at the Capitol on April 19th. A press conference will be held at 1:00pm outside between the old and new capitol buildings. Call the Florida Housing Coalition at 850/878/4219 for more information.

Does Florida Need Full Appropriation of its State and Local Housing Trust Fund Monies?

By the most conservative estimate of the Shimberg Center of Affordable Housing, over 730,000 Florida families are both low income (less than 80 percent of area median income) and severely cost burdened (pay more than 50 percent of their income towards housing costs). Today's programs produce new rental units at a subsidy level of approximately \$30,000 per unit, while it costs up to \$50,000 of subsidy to assist each family buying a home. Using a \$40,000 average cost, it would take \$29.2 billion to serve each of the 730,000 families in need. If only one-third of these families actually need assistance, the need for state subsidy would still exceed \$9.7 billion (and growing, as construction and land costs continue to escalate).

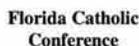
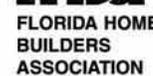
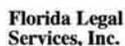
Does Florida have the Capacity to Utilize Almost One Billion Dollars for Housing?

- Funding over the last three years has been \$56 million per year less than the funding level of FY02-03—a year when all funds were easily spent and a year before the explosion in housing costs.
- Florida Housing programs have many more applicants than can be funded. For example, a recent hurricane rental cycle had requests for \$131.6 million, while only \$42 million was available. This cycle was limited to counties impacted by 2004 hurricanes—and does not include the major south Florida counties that have been impacted by Wilma. Florida Housing SAIL Program funds are routinely oversubscribed by a 2-1 margin; improvements being made to the program will increase the usefulness and demand for SAIL funds significantly.
- Local governments need 4-5 times as much subsidy per homebuyer as was required five years ago. As a result, it takes that much more money just to serve the same number of homebuyers as was served in the past.

For more information, contact Jaimie Ross, Editor, jaimieross@aol.com.

FLORIDA'S WORKFORCE HOUSING COALITION CALLS FOR A RETURN TO FULL FUNDING FOR HOUSING IN FY06-07 & A REPEAL OF THE CAP ON HOUSING TRUST FUNDS SCHEDULED FOR FY07-08

1. The Florida Legislature enacted a dedicated revenue source for affordable housing, known as the William E. Sadowski Affordable Housing Act. The funding was deliberately tied to documentary tax revenues so that as real estate costs and population increases drove up doc stamp receipts, the monies available for housing would increase proportionately.
2. Sadowski Act monies are statutorily dedicated by formula to the state and local housing trust funds with 70% of the revenue is dedicated to local governments through the SHIP program and 30% of the revenue is dedicated to the state to fund successful programs such as SAIL and HAP.
3. The Florida Legislature has closely scrutinized both the state and local housing trust funds and Florida's housing programs. These reviews have shown that **Sadowski Act monies have been an unequivocal success** in promoting home ownership, building quality rental housing, leveraging public dollars with private investments, and providing an economic boost to Florida far in excess of the amount of funds appropriated for housing.
4. Additionally, a the current shortage of affordable housing for our workforce is having a negative impact on business creation and expansion, and has many critical professions out of the market.
5. The Governor has recommended that \$302 million be spent in FY06-07 for hurricane housing recovery programs. We commend the Governor for this request. However, the Governor has recommended that only \$243 million be spent on ongoing successful and needed housing programs such as SHIP and SAIL. While this recommendation is an increase compared to FY05-06, it is actually a 2.6% decrease from the \$249.4 million funding level of FY02-03.
6. Florida used the housing trust fund monies exclusively for housing from 1992 through 2003, fully funding housing each year. The last year of full funding was FY02-03, when housing appropriations were \$249.4 million. Since that time, funding for ongoing programs was reduced to \$193 million, with housing trust fund monies either diverted or left unappropriated. At the same time, the median priced existing home has increased by 77% while the median income has risen by only 1.4%.
7. In FY06-07, over \$939.5 million will be available for appropriation from the housing trust funds (there is no cap on the housing trust funds in FY06-07). This leaves an additional \$394.5 million available for housing appropriations, even after the Governor's recommendations of \$302 million for hurricanes and \$243 million for ongoing programs.
8. Between ongoing programs and hurricanes, the Governor has recommended utilizing over \$500 million from the housing trust funds for the past two years. Combined with increasing pressure to serve additional segments of the workforce, the need for housing funding will far exceed the \$500-\$600 million per year that is being distributed to the trust funds currently.
9. Beginning in FY07-08, the doc stamp distributions into the housing trust funds will be reduced to \$243 million per year. At that time, we will be faced with attempting to force \$500-\$600 million or more of housing funding under that cap—a train wreck in the making.
10. Unlike many a crisis, Florida prepared for this one by creating an effective housing funding system. The Housing Trust Funds were designed to have more money available when housing costs escalated. Coupled with our innovative housing programs, we have enough resources to address the housing crisis—but only if they housing money is utilized for housing and the cap is repealed.





The Florida Community Land Trust Institute

While Florida's land values continue to climb, and as communities grapple with the complex issues of sustainable affordability, local governments and their nonprofit partners are examining alternative models for addressing the long term needs of residents least served by the prevailing market. A community land trust can benefit low-income families by providing access to affordable housing in high cost, service-industry dependent areas, while keeping housing affordable for future residents. Just as importantly, the CLT model can be used to capture the value of public investment for long-term community benefit.

WHAT IS A COMMUNITY LAND TRUST?

A community land trust refers to the vehicle of separating land from building (house) for the purpose of transferring title to the house without selling the land. It also denotes the nonprofit organization that holds title to the land and manages the ground leases on community land trust properties.

Homeownership becomes more affordable because the transfer of

title to the homeowner does not include a fee interest in the land; the sales price is based on the value of the improvements, without the value of the land. The land is owned by a 501(c)(3) corporation which provides a 99-year ground lease to the homeowner.

The ground lease has a resale provision which ensures the property will be affordable in perpetuity. The home must be sold to an income-eligible buyer at an affordable price. The resale provision will typically provide a reasonable return to the homeowner, but the appreciation may be far less than standard market appreciation. The resale provision will also typically provide a right of first refusal in favor of the CLT.

From the standpoint of the buyer, the CLT home provides homeownership in a market where the alternative is to rent or move away. From the standpoint of the local government, society, funders providing subsidy, and affordable housing advocates in general, the CLT provides a way of creating permanent housing stock with a single subsidy.

THE FLORIDA COMMUNITY LAND TRUST INSTITUTE PROVIDES ASSISTANCE WITH:

-  Assessing whether a community land trust is appropriate for your community and, if so, which model makes the most sense for your community
-  Understanding the terms of the ground lease and options for resale provisions
-  Start up for the nonprofit community land trust
-  Capacity building for the nonprofit community land trust
-  Homebuyer counseling for community land trust purchasers
-  Internal operations and marketing for the community land trust
-  Legal questions such as title and real property tax issues
-  All manner of real property development and financing issues

The Florida Community Land Trust Institute is a collaboration between two statewide 501(c)(3) organizations, 1000 Friends of Florida and the Florida Housing Coalition. The Florida CLT Institute is headed by Jaimie Ross, Attorney at Law, and Affordable Housing Director at 1000 Friends of Florida, a statewide nonprofit growth management organization. The training and technical assistance team is comprised of the staff of the Florida Housing Coalition, headed by Senior Technical Assistance Providers, Wight Greger and Stan Fitterman. For more information, call the Florida Housing Coalition at 850/878-4219, or email jaimieross@aol.com.



Deed Restrictions and Community Land Trust Ground Leases: Protecting Long Term Affordable Homeownership

BY DAVID ABROMOWITZ AND KIRBY WHITE

THE NATURE OF THE RESTRICTIONS

Before discussing deed restrictions and community land trust ground leases as methods of establishing affordable homeownership restrictions, let us first note the features that are common to affordable homeownership programs. In general, these programs employ public and charitable subsidies to reduce the cost of homeownership to an affordable level for lower income households. They commonly impose three types of restrictions: price, buyer eligibility, and occupancy and use. These restrictions can range in duration from as little as five years to as much as 99 years, and can, in effect, be perpetual in some cases.

Price Restrictions. Resale restrictions limit the price at which a home can be sold. The goal is to keep the price affordable for households of a designated income level (generally identified as “income-eligible” or “income-qualified” households), but in practice only control the price itself. These limitations on resale prices are usually established through formulas that allow the seller to recoup her original investment plus some amount of appreciation. What are perhaps the most common formulas – generally known as “appraisal-based formulas” – limit the price to the original purchase price plus a specified percentage (e.g., 25 percent) of total market appreciation as determined by the difference between appraised value at the time of purchase and at the time of resale.

Other types of formulas include:

- “Itemized formulas,” which add to the original purchase price such factors as the value of improvements made by the owner and adjustments for monetary inflation; and
- “Indexed formulas,” which allow resale prices to exceed the original purchase price only in proportion to increases in indexes such as the consumer price index or area median income.

Buyer Eligibility Restrictions. These restrictions focus first on the income categories of people permitted to buy a home when the owners want to sell it. Programs designed to provide homeownership opportunities for lower income households typically limit subsequent, as well as initial, buyers to those households that have incomes in the range targeted by the program (or to public or nonprofit sponsors that will see that the homes will be resold to income-qualified households). Maximum incomes for eligible buyers are usually defined in terms of percentages of median household income for the geographical area in question, adjusted for household size by the U. S. Department of Housing and Urban Development (HUD).

Occupancy and Use Restrictions. Resale restrictions of either type are commonly accompanied by occupancy and use restrictions. Programs designed to provide homeownership opportunities for lower income households have reason to require that owners (subsequent as well as initial owners) occupy the homes they own as their primary residences. Occupancy restrictions thus prohibit absentee

ownership and require that an owner who moves out of a home must sell it. Other types of use restrictions include those that require proper maintenance and prohibit uses that would diminish the quality of the homes for future residents or that would be detrimental to the surrounding community. In the case of homes that include one or more rental units in addition to the units occupied by the owners, restrictions may require that tenants be income-qualified and that the rents not exceed an affordable amount.

VEHICLES FOR RESTRICTIONS: DEED RESTRICTIONS AND CLT GROUND LEASES

Deed Restrictions. Deed restrictions (or deed covenants) are restrictions that are written into the deed conveying a property and that “run with the land,” binding subsequent as well as present owners. The restrictions themselves can vary from very simple requirements to very elaborate and complex requirements. They can be and have been established for various types of property and to serve a wide variety of purposes. For many years, such covenants have been typical in planned communities and in subdivisions where developers prevent buyers from modifying their homes in ways that might offend the aesthetic (or at least conventional) sensibilities of their neighbors.

The same covenant technique has also become increasingly common as a means to preserve affordability and other intended effects of affordable homeownership programs. But deed restrictions are not as “self enforcing” as their drafters may assume them to be, and require someone or some organization to monitor compliance. Restrictions written into the deeds of homes developed or sponsored by such programs can give a preemptive option to the developer or sponsoring agency, allowing it to purchase the home for a limited price when the owner wants to sell or to see that the home is sold to another income-qualified household for a price not exceeding the purchase option price. The other common types of affordable homeownership restrictions noted above are also often established as deed restrictions.

CLT Restrictions. Community land trust homeownership programs allow people to buy houses on land that is leased to them by the CLT through very long-term ground leases (typically, renewable and inheritable 99-year leases). The lessee/homeowners pay a modest (usually subsidized) monthly ground rent to the CLT for the use of the land. The terms of the ground leases give the homeowners most of the rights of conventional homeownership, but also impose certain key restrictions on the use and resale of the houses.

The CLT itself as ground lessor retains a preemptive option that allows it to buy the house when the lessee/homeowner wants to sell, to assign the option to another income-qualified household, to oversee the sale of the home directly to another income-qualified household for a price not exceeding the purchase option price. The other types of common affordable homeownership restrictions are normally written into the CLT ground lease as well.

In its role of overseeing the resale of affordable homes, the CLT makes sure that the buyer is income-eligible and that the price does not exceed the limit established by the “resale formula.” Most CLTs also play an active role in helping lower income buyers to qualify for mortgage financing, and often play a role in negotiating with lenders to see that appropriate mortgage financing is available to these CLT homebuyers. CLTs may also provide a variety of training and support services to these households once they have become homeowners. The costs incurred by the CLT in carrying out this work can be defrayed in part by the lease fee that is collected, and can also be defrayed by a mark-up of the resale price or transfer fee added to the price paid by the new homebuyer.

STRENGTHS AND WEAKNESSES OF DEED RESTRICTIONS

When compared to CLT ground leases, deed restrictions are sometimes seen as the “simpler and easier” means of establishing restrictions, though not necessarily as the most effective means of implementing restrictions over the long term.

Their advantages include the following:

- They do not require the creation of separate ownership interests in land and buildings,
- They are likely to be more acceptable to homebuyers who have a preconceived idea that homeowner means wanting to “own the land as well as the house.”
- They avoid the complication of separate tax assessments on land and buildings.
- They appear, on the surface, to require less oversight. The assumption is that any resale in violation of the resale restriction (sale to a non-income-eligible buyer or for a price in excess of the stated limit) would compromise a buyer’s title to the property (and a mortgagee’s claim to the property as collateral) and would therefore not happen.

Most deed restrictions are designed to last for relatively short periods of time – typically for periods ranging from 5 to 20 years, rarely for more than 30 years. If a program strives to preserve affordability only for a relatively short

time, the deed restriction is a simple and perhaps economical way of doing so. The long-term enforceability of deed restrictions, however, is more problematic, depending on a number of factors, both legal and practical. Some states specifically limit deed restrictions to a certain period (e.g., 30 years), and in almost every state, “perpetual” deed restrictions are considered invalid as a “restraint on alienation” or potentially even a violation of the “rule against perpetuities.” Generally, the longer the duration of the restriction and the farther the party imposing the restriction is removed from the property, the less defensible is the restriction. (In many traditional English common law-influenced states, enforceability rests on meeting legal tests of “privity,” “touch and concern,” and benefit to a nearby parcel owned by the same party who is imposing the restriction). Some states have enacted laws explicitly sanctioning “perpetual” deed restrictions for purposes such as the preservation of affordable housing, but not many states have done so.

Even if all the legal obstacles to enforcement of the deed restriction are satisfied, as a practical matter, they are often not effectively enforced. The supposed self-enforcement process may not work in practice. If the difference between the allowable “purchase option price” and the subsequent market price is great, the owner of the property has a great financial incentive to seek ways to avoid the terms of the deed covenants. There may well be a speculative purchaser who would be willing to pay more than the purchase option price but less than the property’s market value, with the difference serving as either the reward for the risk that the restriction will ultimately be enforced or the incentive to spend substantial sums on a legal challenge to enforceability. Such speculative practices may also succeed if the necessary title work was not done carefully enough at the time of resale and the existence of a restriction written into a deed decades previously is missed.

Indeed, often because they are assumed to be sufficient just by clouding title, deed restrictions generally have not been actively monitored. Programs have generally not been funded or put in place to support monitoring. At least this has been true until relatively recently. As the failure of self-enforcement becomes more apparent, a growing number of programs are now being established to monitor and enforce deed restrictions established through state and municipal efforts to subsidize affordable homeownership (or to require its creation through “inclusionary” ordinances). It is important to note, too, that, although price and eligibility restrictions may be self-enforcing to a degree, occupancy and use restrictions are not self-enforcing at all. Unless these restrictions are monitored and enforced by some

authorized agency, there is nothing to prevent the owner of an affordable home from moving out and becoming an absentee landlord, or allowing the public investment in the home to be wasted by abuse and inadequate maintenance of the physical structure.

Since the sponsoring agencies that put deed restrictions in place do not usually have a continuing relationship with the homeowner, the homeowner is on her own for better and for worse. Not only will monitoring and enforcement be limited or absent; support services for the lower income, first-time homeowner will also be lacking. If the owner gets into financial trouble, the sponsoring agency will not be aware of it and will not provide assistance. If the financial trouble results in a mortgage foreclosure, any deed restriction that has been subordinated to the mortgage (as has usually been required by the lender) will be wiped out. Not only will the homeowner lose her home, but also the public will lose the investment it has made in the affordability of the home.

STRENGTHS AND WEAKNESSES OF CLT RESTRICTIONS

The CLT model is a more complicated approach to homeownership. It requires more effort by the CLT as sponsoring agency and is less familiar (and sometimes initially less acceptable) to the majority of homebuyers, but it also provides a stronger basis for the enforcement of restrictions, a better basis for the support of economically vulnerable homeowners, and a more complete set of tools for preserving the public’s investment in the home even in situations where a mortgage is foreclosed.

Restrictions established through a CLT ground lease are more enforceable for both legal and practical reasons. The fact that the lease represents an agreement between parties with continuing ownership interests in the property provides a strong legal basis for the CLT’s enforcement of resale and use restrictions. The CLT’s preemptive right to purchase the house for a restricted price (and thereby to assure that it will be passed on to another income-eligible household) is a part of this ongoing agreement. Further, its enforceability is strengthened by the fact that the house is located on land that the CLT owns and by the fact that the lessee’s ownership of the house is explicitly subject to the terms of the lease.

Although in the early years of the CLT model development theoretical questions have been raised as to whether the 99-year term of the CLT’s preemptive option might be held to violate the rule against perpetuities (potentially exceeding the traditional common law measure of a “life in being plus

21 years”), the CLT option to our knowledge has never been challenged in court in several decades of CLT operations. Moreover, there are strong reasons to believe that such a challenge would not succeed. Notwithstanding this presumed long-term enforceability of the option, most CLT ground leases contain a backup provision, which, as expressed in ICE’s Model CLT Ground Lease, states, “It is the intention of the parties that their respective options to purchase and all other rights under this Lease shall continue in effect for the full term of this Lease and any renewal thereof, and such options and other rights shall be considered to be coupled with an interest. In the event any such option or right shall be construed to be subject to any rule of law limiting the duration of such option or right, the time period for the exercising of such option or right shall be construed to expire twenty (20) years after the death of the last survivor of the following persons...” [e.g., all children born in a specified local hospital in the year the lease is executed].

The CLT ground lease also provides a strong basis for enforcing the CLT’s occupancy and use restrictions. The legal mechanism for this enforcement is the relatively familiar process of declaring a default under the terms of the lease. IF the default remains uncured, the CLT as lessor can expect to obtain judicial relief through typical landlord-tenant summary process. The exact procedural details and substantive requirements will differ from jurisdiction to jurisdiction, but much can be said of elements in common. The ground lessee’s rights of possession of the land depend upon compliance with the lease terms. Failure to comply gives rise to the right of the landlord to evict the ground lessee or seek other remedies, such as damages or injunctive relief, where appropriate.

On the practical level, the likelihood that the CLT’s restrictions will be enforced in practice is supported by the necessary ongoing interaction between the parties. The homeowner is responsible for making monthly lease fee payments to the CLT. If payments are not received, the CLT will contact the homeowner and, in so doing, may learn of other violations or problems (e.g., the homeowner may no longer occupy the home and may have rented it to others, or may have lost a job and may be approaching a mortgage default.) When the homeowner eventually wants to sell, the possibility that the sale could be carried out in

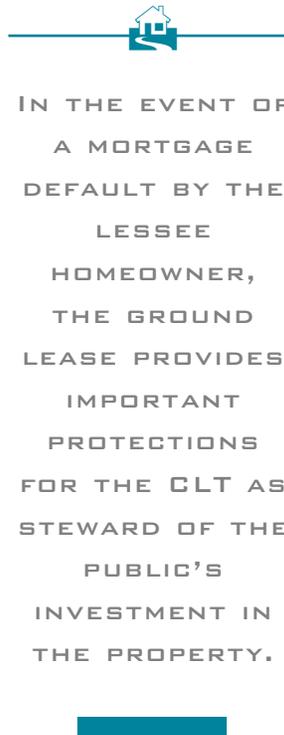
violation of the lease’s resale restrictions is extremely limited. Any but the most woefully ill-informed and ill-advised buyers would understand that they could not buy the land from the existing homeowner and would have to deal with the CLT landowner. In this sense, ground-lease-based resale restrictions are more truly self-enforcing than are deed restrictions.

In the event of a mortgage default by the lessee homeowner, the ground lease provides reasonable protections of the lender’s interests, but also important protections for the CLT as steward of the public’s investment in the property. Although different terms may be negotiated with different lenders, CLT ground leases typically provide for notification of the CLT in the event of a mortgage default and, thereupon, give the CLT an opportunity to cure the default (as well as to help the homeowner herself to work out the problem). In the event that the problem does result in foreclosure, the CLT often has an option to buy the house back from the mortgagee. In the worst case scenario, if the house is not repurchased by the CLT subsequent to foreclosure and the resale restrictions are removed from the lease (as CLT leases normally permit in such situations), then the CLT normally has the right to charge a higher ground rent to the new owner of the now-less-restricted home. Thus, the property will continue to provide significant support for the CLT’s affordable homeownership program.

It should also be noted that the CLT ground lease provides an opportunity for flexibility and adaptability that is usually lacking with long-term deed restrictions. If, at some point in the future, certain ground lease restrictions no longer serve the community’s interest, the parties to the lease can negotiate reasonable modifications. And if, at some point, the community’s interest is better served by an altogether different use of the property, then when the then-current owner wants to sell, the CLT can exercise its option and dedicate the property to that different use.

Finally, it should be said that the CLT’s approach to ownership brings a kind of perspective and understanding to CLT homeownership programs that is less clearly and emphatically present with homeownership programs that utilize deed restrictions. The community land trust model embodies a commitment to

Continued on page 24





Employer Assisted Housing

BY STAN FITTERMAN
FLORIDA HOUSING COALITION

As housing costs have risen in Florida, housing advocates have been searching for new ways to provide affordable housing. Some are watching, intrigued, as employer assisted housing is implemented in Philadelphia, Cleveland, and Chicago. This article will explore the history of employer assisted housing, how the programs are structured, and how they might look in Florida.



Cleveland's Case Western Reserve University is also focusing its employer assisted housing program on improving the neighborhood surrounding the university. Employees are eligible to receive \$10,000 toward the purchase of a home in certain neighborhoods. Those who take advantage of this assistance are also eligible to receive an additional \$1,000 per year for the next five years, bringing the total amount of assistance available to \$15,000. Employees purchasing a home outside of the targeted neighborhoods are eligible for a maximum of \$10,000 -- \$5,000 in the first year and \$1,000 per year for the next five years. If recipients leave Case Western's employment within two years of receiving the assistance, the amount provided must be repaid.

When one thinks of employer assisted housing, the image of the old company town often leaps to mind – substandard housing and excessive employer control. When opening a business in an isolated area, such as starting up a mine, employers had no choice but to provide some type of housing for their workers. By the 1920's, however, company towns began to disappear. Changing patterns in metropolitan area growth, as well as changes in mobility, led to the decline of company towns. These changes and others greatly diminished the need for housing close to one's place of work or for employers to play a role in worker housing (Jennings, 2000).

Employer assisted housing started to reappear in the mid-1980's. The University of Pennsylvania guaranteed mortgages for employees who purchased homes in neighborhoods surrounding the University. In exchange for this guarantee, lenders eliminated the down payment requirement, allowing the employees to buy a home with little or no money down. One of the main goals of this program was to help revitalize neighborhoods near the University by offering employees an incentive to purchase there.

WHEN ONE THINKS
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The Chicago area has a well-publicized employer assisted housing program. Fueled by a state income tax credit for participating employers, in 2004 this program assisted 70 households, representing the employees of nine employers. The average amount of assistance was \$5,000 per applicant, with the maximum assistance amount being \$7,500. Data for the first half of 2005 showed 72 employees of five separate employers purchasing homes with an average of \$5,000 of subsidy. Again, the maximum subsidy amount was \$7,500. Over 75 percent of the employees purchasing a home in the first half of 2005 worked for just two employers – the University of Chicago and the Chicago Public

School System. The median household income for participants was \$51,000, 100 percent of median income for the Chicago Metropolitan Service Area. Another notable feature of the Chicago program is that the participating

employers are all headquartered in Chicago. That is, decisions to participate in the Chicago program are made by CEO's based in Chicago for employees based in Chicago.

EAH'S APPLICABILITY IN FLORIDA

With the increasing disparity between housing costs and income in Florida, the subsidy amounts associated with employer assisted housing, on their own, would do very little to assist the state's very-low-, low- and – in many cases – moderate-income families. While our purchase assistance programs in Florida are, of necessity, offering deeper and deeper subsidies, there are always going to be some buyers who do not quite make enough to qualify. In these instances, combining existing subsidy programs with an employer's extra \$5,000 could make a unit affordable to a previously unqualified buyer. In addition to direct subsidies, another role Florida employers can play is to make their employees aware of existing programs for which they could qualify. Florida is extremely fortunate to have a dedicated revenue source for housing that is active in every county and large city in the state. Employers can take a more active role in making employees aware of these programs and what their employees can do to qualify.

EMPLOYER ATTITUDES TOWARD EMPLOYER ASSISTED HOUSING

There have been two major studies of employer attitudes toward employer assisted housing: a 1990 American Affordable Housing Institute study and a 1998 Fannie Mae study. The questions asked in the second survey were not identical to those asked in the first, so a strict comparison of change over time cannot be made. However, some comparisons can be made. In the 1990 survey, 79 percent of employers responding indicated that availability of affordable housing had no negative impact on the recruitment and retention of labor. The 1998 Fannie Mae study found that 84 percent of the employers surveyed saw no connection between recruitment and retention problems and lack of affordable housing. The 1990 survey found that employers with more than 1,000 employees were more likely to have an interest in providing any housing benefit by a statistically significant margin of 14 to 24 percent for smaller employers.

The 1998 Fannie Mae survey also found a correlation between the number of employees that a firm has and the level of employer interest in providing some form of housing assistance. Collapsing those who were offering a benefit with those who were actively considering this idea as a single category, the Fannie Mae survey found that 14 percent of employers having 1,000 to 4,999 employees had an interest in employer assisted housing, a level of interest similar to that of employers with fewer than 1,000 employees. However, for firms with 5,000 to 14,999, the level of interest grew to 18 percent. Of firms with 15,000 or more employees, 23 percent expressed an interest in having a housing benefit program (Hoffman).

Since most of the interest in employer assisted housing is concentrated among large employers, the lack of major corporations headquartered in Florida could hinder a major employer assisted housing effort. Only 14 Fortune 500 companies are headquartered in Florida, with Miami and Jacksonville each having the most, at three. In contrast, the Chicago area alone is home to 30 Fortune 500 companies.

EMPLOYER ASSISTED HOUSING IN FLORIDA

Employer assisted housing has a track record in Florida. In 2002, the Florida Housing Coalition assisted Bonita Springs Area HDC with a development in which the Bonita Bay Group provided their employees with an extra \$5,000 in down payment assistance when purchasing a unit in the HDC's development.

Now a nonprofit developer in southeast Florida receiving assistance from the Florida Housing Coalition has been approached by the local school board to reserve 30 units in a proposed development for school board employees. The school board has agreed to pay \$60,000 to the nonprofit to reserve these units for their employees. While this doesn't necessarily increase the affordability of the units, it is providing the nonprofit with some much-needed operating money. The Florida Housing Coalition is also in the early stages of assisting a southwest Florida nonprofit with designing an employer assisted program that will work in conjunction with a

Continued on page 24



THERE ARE ALWAYS GOING TO BE SOME BUYERS WHO DO NOT QUITE MAKE ENOUGH TO QUALIFY... COMBINING EXISTING SUBSIDY PROGRAMS WITH AN EMPLOYER'S EXTRA \$5,000 COULD MAKE A UNIT AFFORDABLE TO A PREVIOUSLY UNQUALIFIED BUYER.



Dayatra Orduna and her son Da'Sean, at the front door of their new home.

The Critical Role of Housing Counselors: My Personal Story

BY: DAYATRA ORDUNA
FLORIDA HOUSING COALITION
TECHNICAL ASSISTANCE ADVISOR

This journey began at the age of 29. I was working full-time, performing various side jobs to earn extra cash, and renting a modest house for my family. Although I had previously worked for five years within the housing realm, I had never desired to own a home. Perhaps this was a result of a previous employment position in which I assisted working homeowners constantly faced with the rising cost of living, continued home deterioration, and not enough wages to live and maintain their homes. Questions about homeownership, commitment, cost and home maintenance overwhelmed me. Why would anyone in his or her right mind ever want to be faced with those situations?

Despite these potential hindrances, I made a decision to improve the quality of life for me and my son, which meant improving our living conditions. Call me crazy but I wanted a home of my own.



A NEW DAY IS DAWNING: REMOVING DEBT AND CREDIT BARRIERS

Once I had made this decision, it occurred to me that I needed to go back to the basics, to a time when I provided credit and debt counseling to others. I recalled working with applicants who needed short-term counseling to correct minor credit blemishes and advice on utilizing a budget. There were also applicants who were in need of long-term counseling, which included improving debt management, budgeting, spending plans and credit blemishes. I would often refer these individuals to a local Consumer Credit Counseling Service where they could begin taking steps towards improving their financial future.

I was helping to improve the lives of others, but what about me? What about my credit? I had to take control of my life



and finances. I decided to start by reducing my debt and repairing my credit while furthering my career.

To ensure that I was on the right path, I asked for help and advice from Jeff Bagwell, President of Keystone Challenge Fund, a non-profit corporation organized to advance the development and financing of affordable housing within the Polk County, Florida area. After many discussions, Jeff helped me realize I needed to eliminate my debt load, which meant the world of credit cards was no longer one for me. I made up my mind that if I could not pay for what I wanted with cash, via directly or layaway, I did not need it. This was very difficult especially because I had a small child who wanted toys. Many nights I would explain to him that mommy could not afford extra expenses and we had to be thankful for what we did have. On some of those nights he would cry...and so would I.

With a plan to manage my debt underway, I then took a step towards improving my career. After much hard work and persistence, I was selected to become part of the Technical Advisor team of the Florida Housing Coalition. Despite challenges that were a result of this new position, including moving away from my hometown, I was determined to stick to the path leading to homeownership.

It was now time to repair my credit. After reviewing my official credit reports, I immediately found incorrect information listed and remaining balances on accounts that I had paid off.

At this point I knew I needed additional guidance, so I sought the assistance of Cora Fulmore, President of the Mortgage & Credit Center, a for-profit organization that provides pre-purchase, credit rebuilding, debt management, and foreclosure counseling located in Winter Garden, Florida. Cora counseled me in generating dispute letters against my credit report inaccuracies, showed me how to effectively communicate with credit bureaus, and recommended I follow up with the bureaus to ensure the false blemishes were corrected.



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FOR ME.

I had worked diligently to improve my credit, however, my loan processor also informed me that my credit score needed to increase. I established a shared pledge account, which allowed me to make monthly loan payments in installments, thus improving my score. During these months of refining my credit standing, I began to work with Chief Cornerstone, an affordable housing contractor. Chief Cornerstone helped me design a home with maximum living space within a budget that still allow for my own expression and style.

**THE RESULT: A PLACE TO
CALL MY OWN**

After three years of eliminating debt, increasing my income, and improving my credit, I applied for a FHA loan and was approved. On December 29, 2005, four and a half years from the beginning of my journey, I attended my real estate closing for a newly constructed three bedroom, two bath, single family home with garage on



an acre of land located on the outskirts of Leon County. My son and I are ecstatic with our new home. However, the journey has not ended. I will need to continue to apply the same debt reduction, budgeting and credit managing methods that I once provided to my former applicants and that were shown to me during my home buying journey. I could not have made it this far without the help and direction of the housing counselors that assisted me.

**A UNIQUE HORIZON:
THE REACH TOWARD
POTENTIAL
HOMEOWNERS**



Dayatra receives the keys to her new home.

There are many individuals who have the desire to own a home. I understand that homeownership may not be for everyone. However, owning a home can give one a sense of

pride, build wealth, and provide a safe haven to live and thrive within. Unfortunately, there are many who lack the knowledge to achieve their dream of homeownership. Additional hurdles may include lack of credit, bad credit or credit blemishes. To help those desiring to own homes reach their goal, it is vital they are given effective budget, credit, homebuyer and debt counseling. However, not all counseling agencies are created equal.

In hopes of improving the counseling agencies throughout our state, the Florida Housing Coalition will provide a Florida-specific version of NeighborWorks America to counselors throughout the state. In the end, we hope

counseling agencies will be able to provide Floridians with the type of direction and guidance that led me to the title of “homeowner”



THE FLORIDA HOUSING COALITION AND NEIGHBORWORKS AMERICA WILL BE OFFERING A 5-DAY HOMEBUYER COUNSELING CERTIFICATION COURSE IN JUNE 2006. THIS PROGRAM WILL TRAIN YOU TO PROVIDE ONE-ON-ONE COUNSELING SESSIONS AIMED AT OVERCOMING SAVINGS, CREDIT AND DEBT BARRIERS THROUGH USE OF THE INDUSTRY’S LATEST TOOLS, TECHNIQUES AND RESOURCES.

THIS CERTIFICATION IS A VITAL PART OF THE HOMEBUYER COUNSELOR’S PROFESSIONAL CREDENTIALS, AND IS A RECOGNIZED AND ACCEPTED

CERTIFICATION BY U.S. HUD AND THE FLORIDA HOUSING FINANCE CORPORATION. THERE WILL BE A FEE FOR ATTENDING THE CERTIFICATION TRAINING, AND PARTICIPANTS WILL BE EXPECTED TO ATTEND THE FULL 5-DAY OFFERING AND MAKE A PASSING SCORE ON THE CERTIFICATION EXAM IN ORDER TO RECEIVE CERTIFICATION.

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FLORIDA HOUSING COALITION'S 19th ANNUAL STATEWIDE AFFORDABLE HOUSING CONFERENCE
“EFFECTIVE ADVOCACY”

OMNI ORLANDO RESORT AT CHAMPIONSGATE

SEPTEMBER 5 - 7, 2006



FEATURING • State of the State Address • **Steve Auger**, Executive Director, Florida Housing Finance Corporation

EFFECTIVE ADVOCACY includes:

- Showcasing successful developments and the impact of those homes on the families who live there.
- Research and data supporting housing initiatives and the consequences of not having affordable housing.
- Best practices for implementing homeownership and rental housing programs.
- Preservation of existing affordable housing.
- Developing creative ways to address housing needs, such as community land trusts, and inclusionary housing programs.
- Bringing the whole of a community into the affordable housing effort, including employers, with tools such as linkage fee ordinances and employer assisted housing programs.
- Meeting the needs of the workforce, including the extremely low income, and those with special housing needs who may be unable to work.
- Delivering the housing message.

KEYNOTE SPEAKER



Jason DeParle is a Senior Writer for The New York Times and a frequent contributor to The New York Times Magazine. A graduate of Duke University, DeParle won a George Polk Award in 1999 for his reporting on the welfare system and was a two-time finalist for the Pulitzer Prize. He is well known for writing on issues of poverty and the need for affordable housing. He lives in Washington, D.C.

WE WILL ALSO FEATURE: Expo, Success Stories, Affordable Housing Study Commission, SHIP and PHA Breakfast Roundtable, Bus Tour, and the fabulous Raffle!

An afternoon session on legislative advocacy will be led by **Jack Levine**, founder of Advocacy Resources, a communications and public policy consultant. Prior to his work with Advocacy Resources, Levine served for 25 years as President of Voices for Florida's Children. His expertise is in developing and delivering



messages to the media, public officials, and advocates on effective public policy action, direction and leverage. He holds a master's degree in child development and family studies from Purdue University and a degree in English literature from Hunter College, City University of New York.

The Florida Housing Coalition's 19th annual Statewide Affordable Housing Conference is the premier training and networking opportunity for affordable housing professionals in Florida, with more than 600 housing professionals in attendance.

THANK YOU

Our annual conference would not be possible without our Partners for Better Housing at all levels. We especially recognize our

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Florida Housing Coalition's Report from Washington: The Federal Housing Budget; Section 8 and Public Housing Authorities; Disaster Relief

Hurricanes, past and future, were on everyone's mind as Michael Davis, the Florida Housing Coalition Executive Director and Chuck Elsesser, Florida Housing Coalition Board member and National Low Income Housing Coalition Board member attended NLIHC Annual Conference in Washington, D.C. on Monday, February 27, 2006. The initial plenary, moderated by Chuck Elsesser, was a moving discussion of the continuing havoc visited on the communities in the gulf. Pat Robinson and Derrick Evans, leaders of two low income housing organizations in Louisiana, and Mississippi described the the difficulty of low income families trying to have input in the replanning of their communities after being scattered throughout the country. Both expressed fears that, despite an initial acknowledgement of the right of all residents to return, much of the redevelopment was being focused solely on the needs of homeowners, despite more than 50% of former New Orleans residents being poor renters. As so often happens in any redevelopment effort, the needs of the poorest residents can be quickly forgotten in the drive to create the redeveloped community. Derrick Evans, quoted Gus Newport, who was providing technical assistance in Mississippi, as saying the rebuilding of the Gulf is just a "dry run" for the fight to maintain low income neighborhoods in each of our communities.



The discussions of the federal response to Katrina and the federal housing budget generally throughout the conference reminded us of the importance of the fight to retain a fully funded Housing Trust Fund in Florida. The precarious position of public housing authorities in Florida will see no relief as the proposed Section 8 Housing Choice Voucher budget essentially remains flat. In addition, representatives of Housing Authorities as well as tenant advocates cautioned that the requirement that Housing Authorities implement an asset based management system could lead to significant losses of viable public housing. Under the asset based management system, each public housing project is required to maintain a separate budget. While initial information indicated the Public Housing Authorities in

Florida would receive more HUD operating funding under the asset based management system, the proposed federal budget would significantly reduce that funding. Since Housing Authorities will no longer be permitted to switch funds between projects, there will be enormous pressure on Housing Authorities to demolish the "least well performing projects," i.e. the - those projects with the most poor people.

We took our concerns about the budget to the Hill in meetings with the staff of Senators Nelson and Martinez. We quickly learned that, with elections looming, this

was going to be a very short legislative year. However, we described the past several years of a superheated real estate market and toll that it was taking on affordable housing. When combined with flat or decreasing federal assistance it spells disaster for many of our poorest communities.

Senator Martinez has a powerful and central role with respect to housing issues. As a member of the Housing and Transportation Subcommittee of the Senate Committee on Banking, Housing and Urban Affairs, he has direct oversight over HUD and housing related legislation. Thus, Reagan Anderson and Jennifer Gallagher of Senator Martinez' office were extremely attentive to our concerns about affordable housing in Florida. We discussed the Fannie Mae, Freddie Mac oversight bill which, in the version that passed the House last October, HR 1461, contained an Affordable Housing Fund that uses profits from Fannie and Freddie to build low income housing targeted to extremely low income households. Unfortunately, the Senate has not yet acted on a companion bill, S. 190, which is delayed because of an unrelated dispute over portfolio limits for Fannie and Freddie. The Senate bill does not contain the Affordable Housing Fund but Ms. Anderson said that Senator Martinez would be supportive of the Fund if the other issues could be overcome. Unfortunately, she was somewhat pessimistic of the chances of reaching a resolution given the shortness of the session and the other pressing priorities.

We also described the pressing need for Congress to appropriate sufficient funds to maintain the existing Section 8 vouchers and Public Housing. We tried to impress on them that even the most pessimistic visions of the budget's impacts do not seem to reflect how bad the situation really is - with Housing Authorities forced to impose draconian measures or reduce the number of families assisted. In addition we discussed



Florida Housing Coalition Executive Director, Michael Davis and Florida Housing Coalition Board Member, Chuck Elsesser made legislative visits in DC as part of the National Low Income Housing Coalition's Advocacy Day in March.

the concerns raised at the conference by Public Housing authorities and tenant advocates over the new asset based management budgeting system.

Ms. Anderson explained that the Senator was committed to making housing central to his term as Senator and was committed to working with Florida Housing Coalition and others in Florida toward this end.


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Senator Nelson, as a member of the Senate Budget Committee, can powerfully and directly impact housing budget related issues. Ms Susie Perez Quinn of Senator Nelson's office was similarly attentive and supportive. In fact, Ms. Perez Quinn attended the NLIHC Conference and spent the breakfast with Michael Davis, learning about the Florida Housing Coalition and the affordable housing crisis in Florida.

With respect to the Fannie Mae oversight legislation, while Senator Nelson is extremely supportive, Ms. Perez Quinn expressed the same concerns that Senator Martinez' staff had expressed with respect to moving the bill in such a short session. She also understood very well the Section 8 budgeting issues and promised to carry that message to the Senator. She said it may be possible to undertake some substantive changes to the Section 8 budgeting process as part of the appropriations process. We also explained to her our concerns with the asset based management budgeting system. Finally we provided her with a list of changes proposed by the NLIHC to the proposed CDBG allocations for Katrina.

One final discussion we had with both Senators' staffs dealt with disaster relief. Both expressed concern that the current system was not working and that they thought Congress was open to considering changes. While this is a longer conversation, probably over several years, it may well open the door for some serious consideration for improving the current process. 



Public Housing Authorities: Looking More to the State and Developers, Less to HUD

BY HANA ESCRA
FLORIDA HOUSING COALITION

During the past two years, Florida's public housing authorities have increasingly re-developed or created new housing units by looking beyond their standard source of funding for capital projects – the U.S. Department of Housing and Urban Development. Local housing authorities and their related non-profits competed successfully in the Florida Housing Finance Corporation's 2005 Universal Cycle for housing credits; they have approximately ten projects competing for HOME and low-income housing tax credit funding in the 2006 Universal Cycle. Due to local government contribution requirements for the Universal Cycle, it can be assumed that all of these projects are receiving local funding as well, primarily from SHIP or the Hurricane Housing Assistance Program. In the Predevelopment Loan Program, FHFC's initiative to assist non-profits and housing authorities with pre-development construction expenses, more than 20 percent of active projects - 11 of 50 - are housing authority developments. Before May 2004, only one housing authority had requested funding from this program.

HUD FUNDING DECLINE

Housing authorities have traditionally been subsidized solely by HUD via two grants, one for operating and one for capital improvements. However, in recent years the amount allocated by HUD for public housing authorities has decreased. From Fiscal Year 2005 to Fiscal Year 2006, operating subsidies for housing authorities decreased by approximately \$25 million, according to the National Low Income Housing Coalition. FY06 funding levels support only 89 percent of the public housing authorities' actual need. During the same period, the HUD allocation for capital improvements decreased by \$252 million. Approximately 70 percent of Florida's 39,000 public



housing units are more than 30 years old and in need of progressively more expensive repairs and major systems upgrades – just as the capital funding for these improvements is declining.

NEW PARTNERSHIPS

Low-income housing tax credits are particularly attractive to public housing authorities for the same reasons they appeal to other developers. While public housing authorities have requested a variety of funding from FHFC, the vast majority is applying for the competitive 9 percent housing credit through the Universal Cycle. Housing credits can provide 65 percent or more of the financing for a project in the form of equity as well as create reserves and a developer fee to help offset the decreased amount of operating subsidy from HUD. While housing credits are complex for any developer, housing authorities have additional challenges imposed by their HUD contracts, which can add time and expense. If a public housing authority is planning to re-develop a property that has an Annual Contributions Contract -- the contact between the housing authority and HUD for operating subsidies – the housing authority must obtain several approvals from HUD for the project. These include demolition/disposition approval, mixed finance approval, and approvals to transfer and encumber the property. In addition, although housing credit syndicators require financial guarantees -- commitments by developers to investors to ensure that the project is constructed, leased-up, and operated as promised -- housing authorities often cannot assume any guarantee liability.

RESPONDING TO CHANGE

Because of the complexities associated with developing projects with housing credits, public housing authorities are procuring for- and non-profit developers to partner

with them. Experienced affordable housing developers have become interested in working with public housing authorities because housing authorities own large tracts of land that are properly zoned, with infrastructure in place, centrally located and close to services – an increasingly scarce commodity as Florida land values have escalated and the remaining, available, buildable land is being developed into market rate projects. Over the past two years, at least half a dozen affordable housing developers have partnered with public housing authorities to re-develop Florida properties, something that was nearly unheard-of before.

When completed, many of these re-developed projects will have an increased number of units on the same property and will still utilize the existing ACC to subsidize some of the units. Rent levels of the remaining units will typically be at 60 percent of area median income. Public housing authorities have traditionally been seen as providing housing for extremely low-income families, those earning below 30 percent of area median income. However, because of the economics of these projects, the additional units being created will not be affordable to ELI families. Without increased operating subsidy, these additional units must be rented to higher-income families to keep the project financially viable.

The increased interest in financing re-development with FHFC funding correlates with the increased number of housing authority applicants in the Predevelopment Loan Program. As the Technical Assistance Provider for this FHFC program, the Florida Housing Coalition is working with housing authorities to increase their development capacity. Our technical advisors have helped housing authorities understand the development process, educated them on how housing credits work and the risks involved, and assessed development and operating budgets using alternative funding sources.



One of the public housing authorities which is receiving technical assistance from the Florida Housing Coalition in conjunction with the Predevelopment Loan Program is the Arcadia Housing Authority, located in DeSoto County. The Arcadia PHA operates 130 units known as The Oaks and The Palms, of which 60 were damaged beyond repair during Hurricane Charley. The remainder of the units suffered significant damage from the back-to-back storms in 2004 and 2005 and will require substantial rehabilitation. The Arcadia PHA is utilizing the funding and technical assistance resources during the predevelopment phase of this project to create a financially feasible redevelopment plan, conduct engineering studies, and create architectural plans to renovate and rebuild so that DeSoto County's low income families will have access to affordable housing. The development is currently assembling financial resources and commitments to implement the plan, which include county HHRP funds, Federal Home Loan Bank funds, insurance proceeds, HUD funds, and tax credit equity.

By financing re-development with housing credits, public housing authorities are taking on additional risks that can have serious financial consequences. Housing credits require that construction completion and lease-up happen within a short time, usually less than 24 months, or the project is required to pay back some or all of the equity invested. This requirement can be onerous. However, housing authorities can mitigate these risks by partnering with a qualified co-developer who, for a larger split of the developer fees, will sign the guarantee. Housing authorities should also take care to procure a strong, experienced development team, including an architect, engineer, and contractor who have the ability to finish the project on time and within the budget. While there are added risks for public housing authorities when developing housing with non-traditional funding sources, they can, by using housing credits, gain re-developed units, sophisticated development experience, and long-term financial stability. They can also increase their capacity to acquire additional units. This

capacity is critical, as the affordability period of thousands of units in Florida is ending in the next two decades. Housing authorities are located in nearly every community in Florida, and given their mission to serve lower-income families, their ability to put together the complex financing needed to acquire these expiring use projects and keep them affordable will be crucial to their future preservation.



Hana Eskra is a Technical Advisor for the Florida Housing Coalition. Before joining the Coalition, Ms. Eskra assisted non-profit developers by providing financial packaging, feasibility analysis and project management for affordable multi-family and single-family housing projects totaling nearly \$40 million. She has a Master of Public Administration from the University of North Carolina at Chapel Hill.



For Sale By Owner: Great Location, Shared Appreciation?

BY GLADYS SCHNEIDER
FLORIDA HOUSING COALITION

After three years as the Director of Operations for Habitat of Lee County, I recently rejoined the staff of the Florida Housing Coalition to work primarily on community land trusts. Retaining subsidy to pass on to subsequent homebuyers is the keystone of community land trusts and represents what we learned through experience at Habitat.



refinance for at least five years. Because income levels have not increased in proportion to property values, a much greater SHIP mortgage will be required. This mortgage will be recaptured in the event of a sale, but not in a foreclosure unless the SHIP program participates in the bidding at foreclosure. Remember, there is no Fannie Mae lender involved, just the Habitat no-interest mortgage positions.

Habitat for Humanity organizations in Florida, both large and small, have traditionally taken measures to require a certain amount of shared appreciation for two reasons. First, their zero-percent-interest mortgages allow the homeowner to rapidly gain equity. If homeowners sell out to reap a windfall profit, future donations would be very unlikely from community sponsors who give their cash and time to build the homes. In a barn- or house- raising approach, there is a reality in the shared community appreciation. Second, the rapidly increasing equity position that Habitat homeowners enjoy is a target for predatory lenders who will gladly repay the Habitat and SHIP mortgages, throw in some cash for the buyer, and then saddle them with a sub-prime interest-bearing loan with all sorts of fees. Before Habitat began placing a strong second mortgage on the homes, too many were lost to foreclosure when the very-low-income buyers could not keep up with the new loans.

In the 1990's, a second or third mortgage was a poison pill that held off the desire to cash out or to refinance with a sub-prime lender. Then rapid appreciation occurred. Habitat mortgages were positioned so that the first mortgage, upon which payments are made, was based on the actual cost of the home, with a term formulated to make the monthly payments roughly 30 percent of household income. The second or third mortgages, including SHIP, would add up to the total amount of the appraised value. Since the appraisals reflect the trend of escalating prices, there is a disincentive to sell out or

But what about retaining affordability of the unit? Habitat has traditionally had a right of first refusal in its mortgage deeds. A bona fide offer must be presented to Habitat to match or refuse. Most owners who needed to move for ordinary reasons were able to sell their homes back for all of their equity, plus a modest gain. Given today's mega-prices, Habitat organizations are not prepared to buy out homes at great profit to the homeowner – nor should they. Buying homes at market prices is not their mission. This dilemma will also be shared by community land trusts that promise to retain affordability by purchasing homes back for resale to other lower income buyers. However, community land trusts should be in a better position if they have a shared appreciation formula embedded in the ground lease that specifies how much the buyout will be. Habitats are now at that same juncture if affordability is to be preserved.

It seems ironic that the folksy, gospel-based homebuilders have had the tools in place all along to preserve affordability and retain the housing stock. Now other housing providers are seeking ways to do the same plus recapture subsidies that must increase. But there are lessons to be learned everywhere – once it is recognized that affordable housing is a community resource and a valuable part of our infrastructure. Shared appreciation mortgages, land trusts, and other repayment formulas will keep the hammers pounding on homes for Florida's low income housing stock.





Frequently Asked SHIP & Hurricane Housing Recovery Questions

TRACKING AND ANNUAL REPORTING

Q: *Last September, I had my first experience creating the SHIP annual reports for our county. It took a lot longer than I thought it would to compile the data. What can I do now to prepare for the next reports due in the fall?*

A: The key to creating timely and accurate annual reports is maintaining an accurate SHIP tracking system. The creation of an annual report actually begins 15 months before you have to turn it in. When you first receive a new SHIP allocation on July 1st, create a system to track how this money will be encumbered and then expended. The SHIP administrator in each jurisdiction is required by Florida Housing's Compliance Rule to maintain a SHIP tracking system (Rule 67-53.005, FAC). You cannot simply rely on data provided by your finance department. Although they maintain detailed records of SHIP expenditures, finance department staff may not track SHIP encumbrances—and they almost certainly do not track compliance with SHIP set-asides. It is essential for you to track this information, and to do so on a very regular basis. You will need to update your tracking system more often than once a month. Florida Housing's SHIP staff has indicated that your tracking system should be updated often enough that they can call you on any given day if they need to know how much of your jurisdiction's SHIP funding is currently expended, encumbered and unencumbered.

Entering updated data into the tracking system is at least a two-step process. After determining an applicant's eligibility, you provide an award letter

that commits SHIP funds specifically to this applicant. This is when you should first enter information about the applicant into your tracking system, along with the amount of the SHIP commitment. It is only later, however, that you start expending these SHIP funds—for example, it is several weeks or over a month later when a home buyer applicant receives SHIP payment assistance at the time of closing. At this time, you should update your tracking system; the funds that had been committed for the applicant are now officially expended.

Each SHIP jurisdiction should document that the annual report it generates reconciles with the general ledger maintained by the jurisdiction's finance department. This helps document compliance with the Florida Single Audit Act (FSAA), which directs auditors to "determine whether required reports include all activity in the reporting period". The State Projects Compliance Supplement outlines several suggested audit procedures that an auditor can use to determine whether or not the SHIP reports contain all required activity (and reconcile to the general ledger), including the following: "Select a sample of reports and test specified line items for accuracy and completeness." (from State Projects Compliance Supplement Part 3, Section H. "Reporting"). Work with your finance department to ensure your compliance with the FSAA. Set up a way to periodically meet with finance staff to reconcile the general ledger with your SHIP tracking system. Consider suggesting a system to communicate to the finance department whether an expense should be charged to the 04/05 SHIP distribution, for example, or to the 05/06 distribution.

There are many ways that the Coalition can help you reach the goal of creating

complete and accurate SHIP annual reports. First, the Coalition has designed an Excel-based SHIP tracking system. It has been used by many SHIP jurisdictions for years, and is available to you at no charge. Similarly, the Coalition has recently created another tracking system to assist those Florida communities expending Hurricane Housing Recovery Program funds. You may also want to call the Coalition's technical assistance telephone line, 1(800) 677-4548, to receive guidance on properly setting up a tracking system, accurately updating information, or using the tracking system to create the annual reports that you will submit to Florida Housing. Some questions require more assistance than others; the Coalition may need to visit you in your community to assist you with your tracking and reporting questions. After all, some SHIP administrators have inherited a faulty, unorganized or inaccurate SHIP tracking system from their predecessor on the job. The Coalition can assist you with getting your tracking system back on track, working with your finance department to reconcile your system with the general ledger.

DETERMINING THE CASH VALUE OF AN ASSET

Q: *Please help me calculate the annual income from a SHIP applicant who has a 401K retirement account. The applicant is retired and she withdraws \$1500 monthly from the retirement account. The current account balance for the 401K is \$30,000. Is this the figure I should use for the cash value of the 401K asset? Or should the cash value be less, to take into account that \$18,000 will be paid to the applicant over the course of a year?*

Have you got a question about the SHIP program? Free telephone technical assistance is available to help you successfully implement your SHIP funded work. Call the Florida Housing Coalition's SHIP telephone line at (800) 677-4548.



Michael Chaney

A: The cash value of this 401K asset is the anticipated balance of the account at the end of the year, including interest earned. The answer to this question comes directly from Chapter 5 of HUD Handbook 4350.3, which outlines the income qualification process for the SHIP program. The Coalition can provide you with a free electronic copy of the HUD Handbook, if you would like to request this lengthy document. Section 1, Part 5-7 of the Handbook addresses the calculation of income from assets. In this section, item G. “Calculating Income from Specific Assets” provides the answer to your first question about the cash value as part of the following example: “Stephen King is retired. Each month he withdraws \$1,000 from his IRA account. The balance in his IRA account is \$200,000. The balance in his IRA at the end of the year, including interest earned, will be \$194,000. That is the amount that should be counted as an asset” (HUD Handbook, Section 1, Part 5-7, G. 2. b. (2)). Remember to also subtract any early withdrawal penalty fee from the asset’s cash value.

DISPOSITION OF LAND

Q: *I know that the Florida Statutes include rules on how a city or county sells land that it owns. Does this prevent my city from donating land for the development of affordable housing?*

A: Your city is most definitely not prohibited from donating land. Section 125.35 of the Florida Statutes outlines the way city or county-owned land is to be sold: “No sale of any real property shall be made unless notice thereof is published once a week for at least 2 weeks in some newspaper of general circulation published in the

county, calling for bids for the purchase of the real estate so advertised to be sold.” However, Section 125.35 (3) addresses the issue of providing land in any manner **other than selling it for the highest price:** “the board of county commissioners may by ordinance prescribe disposition standards and procedures to be used by the county in selling and conveying any real or personal property”. With adoption of an ordinance as indicated in this Statute, a local government may outline a procedure for providing land at no-cost or low-cost for the development of affordable housing.

Additional justification for this activity is provided in Section 125.38 of the Florida Statutes. It notes that a local government, “if satisfied that such property is required for (the purposes of promoting community interest and welfare) and is not needed for county purposes, may thereupon convey or lease the same at private sale to the applicant for such price, whether nominal or otherwise, as such board may fix, regardless of the actual value of the property”.

Each city or county may create its own procedure for providing land for affordable housing. This procedure must be clarified and enacted in an ordinance. Manatee County, for example, references the Florida Statutes in a key section of its ordinance:

“WHEREAS, from time to time, pursuant to § 125.38, Florida Statutes, the Board of County Commissioners of Manatee County may determine that property owned by the County is not needed for County purposes and could best be used for multi- or single-family housing, and is authorized to convey such property to a not-for-profit organization organized for the purpose of promoting community interest and welfare, and is authorized to convey or lease the

same at private sale to an applicant for such property at a price, whether nominal or otherwise, as such Board may fix regardless of the actual value of such property to be put to use to serve the community interest and welfare.”

Manatee County’s ordinance continues on to explain that nonprofit organizations must complete an application to be considered for donated land, and land may only be used to develop affordable rental housing. Similarly, the ordinance adopted in Hillsborough County indicates that any group receiving donated land must use it “exclusively for charitable, educational, religious, scientific, character building or patriotic uses and purposes that are also without profit, including the erection thereon of buildings and other improvements necessary to carry out the nonprofit purposes and objects of such organizations”.

Q: Watching the recent Winter Olympics has made me wonder—which one of Florida’s housing administrators has most recently participated in an Olympic sport?

A: That distinction goes to Carl Freeman, the Redevelopment Manager at the City of Sunrise. Although Florida’s climate makes it impossible for any of our housing professionals to enjoy the rush of bobsledding or the thrill of a ski jump, Carl has recently competed in the (Summer) Olympic sport of the Marathon. Carl ran in the recent Miami Marathon, which is 26.2 miles long. He is pleased with his total time of 6 hours and 8 minutes. 

Employer Assisted Housing *Continued from page 8*

The Bonita Bay Group, a large employer in Lee County, supplemented SHIP down payment and closing cost assistance with \$5,000 so that ten employees were able to purchase homes in Silverado East, a single family subdivision developed by the Bonita Springs Housing and Community Development Corporation.

proposed condominium development. While the development will have both state and local subsidies, the initial plan is to request that the employers provide additional subsidy to employees wishing to purchase a home in the development. This will make the homes affordable to lower income households.

Although employer assisted housing will not solve Florida's housing affordability problems, it brings employers into the public-private partnership that every community relies upon to deliver affordable housing. It can be a great benefit to the employer as an important piece of its incentive package to recruit employees. Employer assisted housing can also provide a program for retaining employees through the stability created by homeownership or a secure housing environment. 

References

Hoffman, Daniel. "How Employers View Employee Assisted Housing". <http://policy.rutgers.edu/eah/employers.html>

Jennings, Stephanie. "Reinventing the Company Town", in Housing Facts and Findings, Summer 2000.

Housing America's Workforce Act of 2005

The Housing America's Workforce Act of 2005 was introduced in Congress last June. Its Senate sponsors are Senators Hillary Rodham Clinton (D-NY), Gordon Smith (R-OR), and Mel Martinez (R-FL); its House sponsor is Rep. Nydia Velázquez (D-NY). The Act provides incentives to increase private sector investment in housing solutions in three important ways.

First, this legislation offers a tax credit of 50 cents for every dollar that an employer provides to eligible employees, up to \$10,000 or six percent of the employee's home purchase price (whichever is less) or up to \$2,000 for rental assistance.

Second, to ensure that employees receive the full value of employers' contributions, the Act defines housing assistance as a nontaxable benefit, similar to health, dental and life insurance.

Finally, the Act establishes a competitive grant program available to nonprofit housing organizations that provide technical assistance, program administration, and outreach support to employers undertaking Employer Assisted Housing initiatives.

The last action on the Senate's version of the bill (S. 1330) was on June 29, 2005, when it was read twice and referred to the Committee on Finance. The last action on the House bill (H.R. 3194) was on Aug. 24, 2005, when it was referred to the Subcommittee on Housing and Community Opportunity.

Deed Restrictions and Community Land Trust Ground Leases *Continued from page 10*

the principle that a community has an interest in the way that its land base is used and in the way that its land is allocated to individual members of the community. The CLT directly expresses and acts upon this principle when it enters into a ground lease as steward of the community's land and guardian of the community's interests. Through the ground lease, the community's interests are affirmatively stated and are balanced with the stated interests of the individual. Deed restrictions are more likely to be perceived as negative. The community is not as visibly and affirmatively present in the deed-restricted deal. 

David Abromowitz is a partner and member of the Executive Committee of Goulston & Storrs, a law firm with national real estate finance and development expertise. He has been working with long term affordability issues for community land trusts, neighborhood organizations such as the Dudley Street Neighborhood Initiative, and for-profit and non-profit developers for over 20 years.

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Kirby White is a founder of the Capital District Community Loan Fund and the Albany Community Land Trust and has written numerous manuals and publications to support Community Loan Funds and Community Land Trusts across the country. Kirby is a staff member of the Equity Trust, based in Greenfield, Massachusetts. www.equitytrust.org.



The Condo Conversion Craze: What Can be Done about the Loss of Rental Housing in Florida?

An all too familiar sight in Florida: a thirty year old rental development providing housing for lower income families is converted to a condominium, displacing virtually all its residents, as they are financial unable to become homeowners. According the Florida Housing Finance Corporation, in 2005 alone, the state Department of Business and Professional Regulation approved the conversion of 26,717 rental units to condominiums (see sidebar on county by county breakdown). Some of the rental units that have converted to condominiums were formerly rent restricted affordable units with use agreements that had expired; others were market rate units that were providing lower-income residents with rental housing at the lower end of the market.

The November 30, 2005, *Slatkin Report* states that “Last year’s busiest city [nationally], Miami, which saw \$1.7 billion in condo-conversion sales (11,524 units), dropped 29 percent to 8th place with \$1.2 billion for 8,693 units. The rest of Florida is making up for it, though: Broward County, Orlando, and Tampa are second, third and fourth this year,

with Tampa activity rising a dramatic 483 percent. Adding Jacksonville, Palm Beach and Southwest Florida gives the state seven of the top 20 markets nationwide.”

The number of units approved for conversion in Florida by county:

Dade	5,887	Lee	496
Broward	5,208	Duval	476
Orange	3,773	Brevard	422
Palm Beach	2,840	St. Lucie	380
Hillsborough	1,500	Leon	214
Pinellas	1,216	Flagler	178
Manatee	832	Seminole	160
Osceola	822	Alachua	132
Volusia	774	Monroe	52
Sarasota	713	St. Johns	13
Martin	621	Charlotte	8



Measures Used to Prevent or Offset the Loss from Condo Conversions

What some communities throughout the nation are doing to stop, slow down, or mitigate the effects of condo conversions.

BY NINA DASTUR

Some jurisdictions, such as San Francisco, have adopted ordinances to severely limit the number of conversions permitted each year and/or require that a percentage of units remain affordable to low- and moderate-income residents, often in perpetuity. These conditions may be required under an existing inclusionary zoning policy or as a precondition to approval of the conversion.

Condo Conversion Fees are not common, but are collected in:

Berkeley, CA
 Santa Monica, CA
 East Palo Alto, CA
 Montgomery County, MD
 Washington, DC

In jurisdictions where conversion is permitted and strengthening the conversion ordinance is unlikely, it makes sense for advocates to seek the imposition of a conversion fee dedicated to affordable housing. This would generate some value from the conversion and mitigate its effect on the availability of affordable housing. The use of condominium conversion fees to generate

significant revenue for housing trust funds only makes sense in hot markets where conversions are financially desirable to property owners.

In jurisdictions without existing conversion ordinances, advocates should assess the value of preserving affordable housing by preventing conversions and consider the extent to which a preemptive conversion ordinance would be politically feasible.

KEY ELEMENTS OF STRONG CONDOMINIUM CONVERSION ORDINANCES

Ordinances regulating condominium conversion that seek to preserve affordable housing include some or all of the following elements:

1. Stringent eligibility threshold requirements or triggers, including:

- a. Limiting projects that can be converted according to size (# of units)
- b. Imposing a cap on the number of conversions permitted in a given time period
- c. Permitting conversion only when the rental vacancy rate is below an established level
- d. Requiring building inspection and compliance with building and housing codes, as well as existing zoning requirements
- e. Requiring submission of reports of tenant history and repair history
- f. Establishment of a homeowner's reserve fund

2. Tenant safeguards, including:

- a. Adequate advance notice of the conversion
- b. Tenant approval of the conversion
- c. First right to purchase, perhaps at a discounted price or with financial assistance from the jurisdiction
- d. Protection from eviction and rent increases, including long-term protection and right to remain for certain populations (typically the elderly and disabled)
- e. Relocation assistance, financial and otherwise

3. Affordable housing set-asides, typically on-site

4. One-for-one replacement of any affordable units lost as a result of the conversion

5. Providing discretion to the government agency that has authority to approve conversions to consider the impact of the conversion on the availability of housing affordable to low- and moderate-income residents



Nina Dastur, a former Equal Justice Works Fellow at the Center for Community Change, is currently the Grassroots Policy Specialist at CCC, a national nonprofit. Prior to joining CCC, she was a teaching fellow in a poverty policy clinic at Georgetown University Law Center. She graduated with honors from Duke University and Harvard Law School.



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