



# Closing the § 196.1978 Statutory Loophole

**T**he Florida Nonprofit Housing Advocates Network (FNHAN) supports closing a statutory loophole that could hurt the future development of affordable housing in Florida. The provision at issue is a portion of Section 196.1978, Florida Statutes, that now directs property appraisers to exempt limited partnerships provided the sole general partner is a 501 (c) (3) and limited liability companies or limited partnerships which are disregarded as an entity for federal income tax purposes pursuant to Treasury Regulations. While this provision may have been enacted for good purpose, its potential abuse is likely to undermine local government and community support for affordable housing.

The statutory language at issue (hereinafter sometimes referred to as tax provision) ostensibly would provide a benefit to nonprofits using the Florida Housing Finance Corporation's (FHFC) Housing Credit program by giving them the same property tax exemption historically only available for 501 (c)(3) nonprofits providing affordable housing when not using the Housing Credit program. Unfortunately, the consequence of the tax provision is that for-profit developers are able to transfer ownership in a way that removes properties from the local tax rolls that would otherwise have been paying real property taxes. The cost to local governments is currently estimated to be over \$11 million per year based on applications received since enactment of the tax provision in 2011.

Legislative history for the tax provision, (originally passed in 2009 via SB 360 and then reenacted in SB 176 in 2011) is devoid of analysis. But FHFC staff reported in a January, 2012 rulemaking workshop that the fiscal impact analysis by the legislative appropriations staff showed the fiscal impact anticipated to have been nominal. This leads us to believe that the legislative

appropriations staff did not envision that existing tax credit properties owned by for-profits would be reconfigured to take advantage of the tax provision. Although we have no evidence of the legislative intent beyond the nominal fiscal impact it anticipated, a reasonable justification would be the following:

This is completely unrelated to the statute sometimes referred to as the "Habitat Amendment" which permits property tax exemption to a nonprofit while affordable housing construction is underway but not yet complete. That provision is found in § 196.196, F.S.

The two prongs for a real property tax exemption are (1) ownership by a tax exempt entity; (2) using the property for a charitable purpose. When a 501 (c)(3) organization (a tax exempt entity) uses property for affordable housing (a charitable purpose) it is entitled to property tax exemption. But when a 501 (c)(3) uses Section 42 Housing Credits to finance an affordable housing development, it is unable to get its property tax exemption because it has to make an application for tax credits as a limited partnership or limited liability company. This basically penalizes an otherwise tax exempt entity which would have received its exemption but for the type of financing it is using (Section 42 Housing Credits) for providing affordable housing.

The legislative change to Section 196.1978 F.S. that now directs property appraisers to exempt a Florida-based limited partnership, the sole general partner of which is a 501 (c)(3) is not intended to provide a vehicle that enables for-profit organizations to structure its ownership entity for the purpose of receiving a property tax exemption. At this point in time no one has been able to offer a solution to close the loophole, which means repealing the section of the law that creates this loophole is what is needed. We join our local government partners in urging the Florida Legislature to do just that. [HNN](#)

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