

Options for Partnership

Presented by:
Florida Housing Coalition

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April 30, 2018

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The Florida Housing Coalition's ten offices cover every region of the state

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Why Partner?

- Experience
- Capacity
- Funding program requirements

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Nonprofit Experience and Capacity

- Nonprofits are playing an increasingly large role in the development of affordable housing. While some have the financial resources, experience, and capacity to address affordable housing on their own, many are partnering with for-profit developers. This allows the nonprofit to build capacity while carrying out other aspects of its mission.
- The nonprofit may desire to always partner and not take on the entire responsibility alone, or the nonprofit may desire to have affordable housing development as its sole mission.



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Nonprofit Capacity and Experience

- Does the Nonprofit have the financial resources, human resources, and operational resources to fulfill its mission effectively now and over time, thereby enhancing the nonprofit's ability to have a positive impact on the lives and communities it serves

• **AND**

- Become an affordable housing developer



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Funding program requirements

Must meet the definition of "qualified non-profit organization" at 26 USC s. 42(h)(5)(C), described in IRS Code 501(c)(3) or 501(c)(4) and tax exempt under 501(a); **and**

Organized under Chapter 617, F.S., if a Florida corporation, or organized under similar state law if organized in a jurisdiction other than Florida.



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Funding program requirements

Must have Experience:

- if applying for tax credits: completed at least three (3) affordable rental housing developments through state or federally funded programs.
- if applying for funding that does not include tax credits: completed at least two (2) affordable rental housing developments through state or federally funded programs.



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Funding program requirements

Must have Financial Capacity:

- to pay upfront costs such as application fees and credit underwriting fees
- to obtain a satisfactory comprehensive financial analysis from the credit underwriter
- to offer financial guarantees (depending on funding source)



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Nonprofit Readiness



- Governance
- Board capacity
- Staff capacity

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Nonprofit Governance

How are decisions made at your organization?



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Nonprofit Board and Staff Capacity

CURRENT BOARD AND STAFF SKILL SETS

Board Member (x)	Staff (+)	Contract Law	Tax Law	Real Estate Law	Construction	Banking	Accounting	Government	Grant Writing
Mr. A							X	+	+
Ms. Q		X							
Mr. E					X				
Ms. Z									
Ms. Y									
Mr. P									

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Selecting a Partner

- Development Goals
- Mission alignment
- Reputation
- Long-term or short-term relationship

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How to Find a Partner

Seek out referrals and reputation searches to identify good potential partners.

- Ask for referrals from funders, lenders, public agencies, nonprofit peers, and nonprofit trade associations.
- Ask whether the potential partner
 - Is reasonable and respectful
 - Honors agreements
 - Is responsive
 - Keeps partners informed
 - Is a party the referral source would partner with again

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How to Find a Partner

- Search Florida Housing Finance Corporation's website (floridahousing.org) to identify developers that have completed projects in the area your organization serves and of the type of housing it wishes to develop.
- Conduct broad Internet searches to identify any bad publicity about the developer.
- Once potential developer partners are identified, schedule interviews and check references with past partners.

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Development Goals

When nonprofits and for-profit developers are considering whether or not to partner, nonprofits typically consider several key factors:

- development goals,
- mission alignment,
- reputation,
- long-term relationship.

For-profit developers typically want low cost financing, land, services.

- Nonprofit's typical development goals:

- provide housing for the people it serves or the cause for which it advocates;
- preserve existing affordable housing;
- eliminate substandard housing and provide safe, appropriate, sustainable housing;
- generate financial return to support its programs that benefit the community;
- maintain ownership of the land;
- eventually to manage the units it develops.

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Nonprofits and for-profit developers both look for partners who complement their missions.

- Make sure everyone on the development team has a clear understanding of the nonprofit's mission.
- Make sure that the program funds that will be used for the affordable housing development do not have requirements (income, demographics, affordability period, etc.) that are contrary to the nonprofit's mission.
- Make sure the potential development partner is aware of the nonprofit's mission.
- Do not allow the potential development partner to mistake the nonprofit's social mission as fair compensation for its contribution to the deal.
- It is ok to be "profit-oriented" because the nonprofit needs funds to carry out its mission and it wants the affordable housing development to be successful and sustainable.

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Reputation

- Local governments increasingly rely on nonprofits for the delivery of affordable housing.
- A nonprofit's reputation is recognized as one of its most valuable—and vulnerable—assets.
- This trend makes performance assessments of nonprofit organizations important for the allocation of government resources.
- Hence, reputation risk is a principal concern of board members, management, funders, and elected officials.



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Reputation

- ✓ Research the professional reputation of the potential partner
 - Does it honor contractual agreements regarding fee split, involvement in project, etc.?
 - Does it perform deliverables timely?
 - Has it performed prior work in your community?
 - How was its interaction with the local government officials and staff?
 - Are tenants satisfied with the management of its existing developments?
 - Are there frequent law enforcement calls to its existing developments?



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Long-term or Short-term Partnership?



All partnership negotiations should be approached with a strategic mind-set.

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Long-term Relationship

If the goal is to establish a long-term relationship, maintain focus on the cumulative end goals

- To gain as much experience as possible to become a long-term affordable housing developer;
- To joint venture on future deals to provide more units for the community the organization serves;
- To create an income stream for funds to be used to further the organization's mission;
- To develop a specific role that can carry over to other developments owned or built by the for-profit developer (i.e. property management, program and service provider).



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Short-term Relationship

If the plans are to work with this partner only once, negotiate more aggressively and maintain focus on the short-term goals

- To collect a one-time developer's fee to provide nonprofit with a short-term cash infusion.
- To provide the nonprofit with the appropriate experience to compete in specific funding cycles.
- To satisfy plans to develop one affordable housing project in nonprofit's target community.



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Do Not Burn Bridges...

There may be more to gain in a LONG-TERM relationship than in a short-term one.

Create a Negotiating Environment.



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The Partnership Structure

- Partnership Structure
- Completing FHFC's Principals of the Applicant and Developer(s) Disclosure Form
- Development Agreement Provisions

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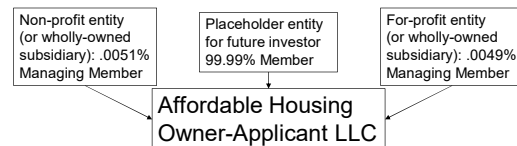
Partnership Structure

- Limited Partnership
 - Formed under Florida Statutes Chapter 620.
 - Certificate of limited partnership filed with Dept. of State.
 - Governed by partnership agreement
 - Owned by partners, general and limited, defined in partnership agreement
- Limited Liability Company
 - Formed under Florida Statutes Chapter 605.
 - Articles of Organization filed with Dept. of State.
 - Governed by Operating Agreement
 - Owned by members. Managed by members or by managers.

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Partnership Structure

Non-profit entity and For-profit partner, either directly or through wholly-owned subsidiaries, form a separate legal entity to own the affordable housing project and apply for low income housing tax credits. Eventually an investor will be added as a member of the Owner-Applicant entity. The investor provides cash investment in exchange for tax credits and other benefits.



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Partnership Structure

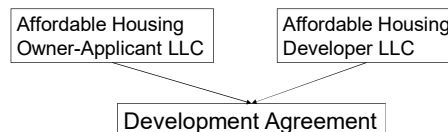
Non-profit entity and For-profit partner, as "co-developers" either directly or through wholly-owned subsidiaries, form a separate entity to serve as developer of the affordable housing project. Member interests in the developer entity are based on distribution of the developer's fee.



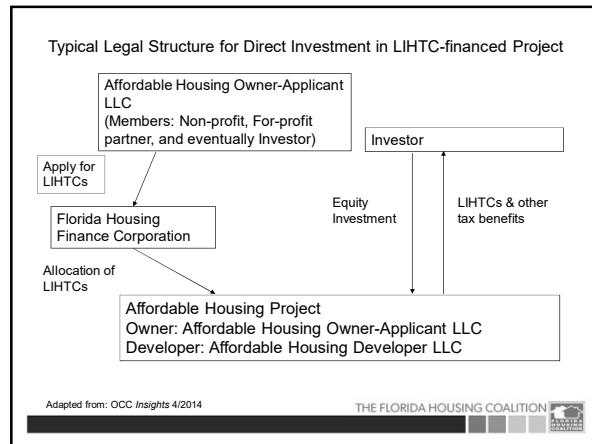
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Partnership Structure

- The owner entity and the developer entity execute a development agreement, which contains provisions that control the rights and responsibilities of the parties.



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Partnership Structures

• Roles and Responsibilities

- Engage in upfront negotiations to determine roles and responsibilities, risks and rewards.

• Be...

- Realistic
- Specific
- Reasonable
- Consistent with the organization's strengths
- Sure that responsibilities are commensurate with compensation
- Sure that roles and responsibilities are clearly delineated in written agreement signed by all parties
- Unmistakably clear on profit sharing
- Persistent about level of notification and involvement throughout process
- Certain to incorporate a conflict and resolution provision in the written agreement



Make sure it is in writing!

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Principals of the Applicant and Developer(s) Disclosure Forms



- Required for the majority of FHFC Requests for Application
- Must be submitted for the Principals of the Applicants and for **each** Developer
- FHFC takes at least 14 days to review the form.
- Goal is to receive your forms back from FHFC with "Approved" stamped on the Principal of the Applicant Disclosure Form and the Developer Principal Disclosure Form (separate forms).
- Form can be used in multiple applications if there are no changes
- Interactive Form to assist in submitting the right information

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Principals of the Applicant and Developer(s) Disclosure Forms



- Key to Completing Correctly
- Read all of the Frequently Asked Questions
- If your question is not already answered, submit it prior to all deadlines stated in the RFA.
- Read all of the Advance Review Process Instructions and Examples
- List all Board Members separately (even if there are 100 Board Members)
- If a trust or a member is consider a joint tenant (owning together) you must still list each person separately on the form.
- If some board members have titles that are not listed in the drop down options of the form, select the title that is most applicable.

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FHFC offers an open Courtesy Continuous Review... So submit forms **EARLY AND OFTEN**



- Purpose of Form
- To make sure Applicant, Developer and all Principals are in good standing with other state agencies and have not been prohibited from applying for funding;
- To give Advance Review Funding Preference;
- To award points for development experience where no Developer, Co-Developer, or any Principal of the Developer(s) participated in a withdrawn application;
- To possibly apply a point reduction in scoring development experience in future applications where the Developer, Co-Developer, or any Principal of the Developer participated in a withdrawn application.

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Development Agreement Provisions

• What does the nonprofit desire to achieve as a result of the partnership?

- **Ownership of the land and improvements**
- **Developer's fee split**
- **Involvement in development process**
- **Control of operations**

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Elements of the Joint Venture Agreement

This information is not all inclusive and is not intended for the purpose of legal advice. Seek the advice of an attorney with respect to all agreements and tax concerns.

- The agreement should include provisions that outline the business deal and afford legal protections for the parties.



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Provisions that outline the business deal:

- Scope: number of units; demographics served; affordability period; use restrictions.
- Changes to scope: How changes will be decided.
- Ownership: type of entity; split of ownership; how and if partners can acquire interest from the other partner; rights of first refusal; term of partnership; buy out provisions.
- Decision-making: by majority vote; consensus; specified partner makes final decision.
- Equity requirements: whether each partner must make an equity contribution or capital advance and under what circumstances.
- Division of roles and responsibilities: clearly defined roles and responsibilities; procedures for handling disputes or breach of duty where a partner fails to uphold its responsibilities.
- Split of developer's fee: percentage; when and how fees will be paid.
- Guarantees: which partner is responsible for guarantees to lender; whether consideration or indemnity given for guarantee.

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Legal protections for the parties:

- Joint approval of partners required for all major decisions.
- Regularly scheduled partnership meetings.
- Right to examine books and records.
- Receipt of monthly and annual reports.
- Dual signatures on checks and other documents.
- Disclosure requirements.
- Dispute resolution: mediation and arbitration.

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Protecting the Nonprofit's Tax Exempt Status



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ANY QUESTIONS?

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The Nonprofit Capacity-Building Team

Our Vision: At least one active, viable community-based organization plays an important role in delivering affordable housing and related services in each community.

Meet the Team!



Gladys Cook



Pamela Jo Hatley



Ashon Nesbitt



Jaimie Ross

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FHC Resources



COMING SOON:

Guide to Credit
Underwriting for
Affordable Housing
Projects in Florida

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