

Effective Written Agreements



sponsored by
**Florida Housing Finance
Corporation's Catalyst Program**

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DECEMBER 2018

WORKSHOP- Affordable Housing Funding Sources

December 11 - 9:00 am - 5:00 pm

Wells Fargo Historic Springfield Community Learning Center, 1601 N. Main Street, 2nd Floor
Jacksonville, FL 32206



REGISTER This workshop is an introduction to federal and state affordable housing funding sources, including the State Housing Initiative Housing Partnership (SHIP), State Apartment Incentive Loan (SAIL), Community Development Block Grant (CDBG), HOME Investment Partnership Program (HOME), Housing Opportunities for Persons with AIDS (HOPWA), Emergency Solutions Grant (ESG), HUD Continuum of Care (CoC), and Low-Income Housing Tax Credit (LIHTC). Presenters will provide an overview of the source of the federal and state funds, how the funds are awarded, allocated and...

[Find out more »](#)

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Catalyst Trainings



TRAINING CALENDAR – If you would like to search by month, please use the SEARCH tool below. The Search tool also allows you to search for specific trainings.

Click Links below to **DOWNLOAD** the training schedule: **Catalyst Training Schedule 2018-2019**

For questions, please contact the Florida Housing Coalition at 850-833-2222. Upcoming

[Training Calendar](#)

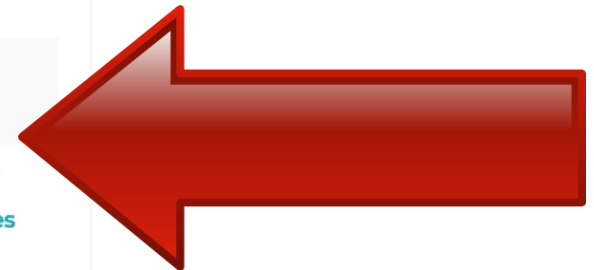
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SHIP Guidebook



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What is a Contract?

In law, a **contract** (or informally known as an agreement in some jurisdictions) is an agreement entered into **voluntarily** by two or more parties, each of whom intends to create one or more **legal** obligations between them.

- **Mutual Assent:** Each party must have a shared understanding regarding what the subject matter of the contract is.
- **Offer and Acceptance:** One party must make an offer and the other party renders their acceptance.
- **Consideration:** This where both parties mutually exchange something of value in order to make the agreement binding.



MOU

A Memorandum of Understanding (MOU) is a formal agreement between two or more parties. Organizations can use MOUs to establish official partnerships. MOUs are not legally binding but they carry a degree of seriousness and mutual respect.

The Importance of Written Agreements

A written agreement serves as a legally binding contract between the local government and any other party

Serves as a management, accountability and enforcement tool for the local government

Should be executed whenever funds or services are exchanged



Effective written agreements

- **Clearly identify the parties (who)**
- **Specify the activity to be carried out (what)**
- **Location (where)**
- **Timing (when)**
- **What the funding source is**
- **How they are carried out**
- **Roles, responsibilities and options of all parties involved**
- **What changes are allowed and process to incorporate those changes**

Effective written agreements

Provide a budget

Specify use of funds

Activity and tasks to be performed

Payment procedures and schedule

Terms of enforcement

Compliance, reporting and monitoring requirements

Parties to the Agreements

Local government

Applicant

Contractors

Sponsors

Subrecipients

Local Government

Funding Agency

- Responsible for oversight and administration
- Disbursement process outlined in agreement - Reimbursement based on documentation submitted and inspections if required
- Enforcement Agency
- Closeout and Monitoring

Applicants

- Have a vested interest in the property
- Normally identified on the title/deed to the property
- Even if the individual with the vested interested does not reside in the home, they should execute the lien documents
- *Consult with your attorney*



Contractors

- **Persons /firms entering into a written agreement/contract to perform a specific task.**
 - **Appraisal firm**
 - **Lead based paint testing firm**
 - **Title insurance company**
 - **Construction work**

They generally have no ownership or other ongoing interest in the project/job once their task is completed.

Poll Question

Is a developer a

A) sponsor

B) contractor

C) subrecipient

Sponsor

Means a person or a private or public for-profit or not-for-profit entity that **applies for an award** under the local housing assistance plan for the purpose of providing eligible housing for eligible persons to partially assist in the **acquisition, construction, rehabilitation, or financing of eligible housing or to provide the cost of tenant or ownership qualifications.**

420.9075 Local housing assistance plans; partnerships.--

SHIP Rule

- **(g) Eligible sponsors that offer rental housing for sale before 15 years or that have remaining mortgages funded under this program must give a first right of refusal to eligible nonprofit organizations for purchase at the current market value for continued occupancy by eligible persons.**

Allowable Income and Rents

HUD release: 3/30/2018
 FHFC Posted: 4/9/2018
 Effective: 4/1/2018

2018 Income Limits and Rent Limits Florida Housing Finance Corporation SHIP Program

County (Metro)	Percentage Category	Income Limit by Number of Persons in Household										Rent Limit by Number of Bedrooms in Unit					
		1	2	3	4	5	6	7	8	9	10	0	1	2	3	4	5
Alachua County (Gainesville MSA) Median: 71,300	30%	15,000	17,150	20,780	25,100	29,420	33,740	38,060	42,380	Refer to HUD		375	401	519	681	843	1,005
	50%	25,000	28,550	32,100	35,650	38,550	41,400	44,250	47,100	49,910	52,762	625	669	802	927	1,035	1,141
	80%	39,950	45,650	51,350	57,050	61,650	66,200	70,750	75,350	79,856	84,419	998	1,070	1,283	1,483	1,655	1,826
	120%	60,000	68,520	77,040	85,560	92,520	99,360	106,200	113,040	119,784	126,629	1,500	1,606	1,926	2,226	2,484	2,740
	140%	70,000	79,940	89,880	99,820	107,940	115,920	123,900	131,880	139,748	147,734	1,750	1,874	2,247	2,597	2,898	3,197
Baker County (Baker County HMFA; Jacksonville MSA) Median: 62,200	30%	13,100	16,460	20,780	25,100	29,420	33,740	38,060	41,100	Refer to HUD		327	369	519	681	843	989
	50%	21,800	24,900	28,000	31,100	33,600	36,100	38,600	41,100	43,540	46,028	545	583	700	808	902	996
	80%	34,850	39,800	44,800	49,750	53,750	57,750	61,700	65,700	69,664	73,645	871	933	1,120	1,293	1,443	1,592
	120%	52,320	59,760	67,200	74,640	80,640	86,640	92,640	98,640	104,496	110,467	1,308	1,401	1,680	1,941	2,166	2,391
	140%	61,040	69,720	78,400	87,080	94,080	101,080	108,080	115,080	121,912	128,878	1,526	1,634	1,960	2,264	2,527	2,789
Bay County (Panama City-Lynn Haven- Panama City Beach MSA)	30%	13,300	16,460	20,780	25,100	29,420	33,740	38,060	41,750	Refer to HUD		332	372	519	681	843	997
	50%	22,150	25,300	28,450	31,500	34,150	36,700	39,200	41,750	44,240	46,768	553	593	711	821	917	1,011
	80%	35,400	40,450	45,500	50,550	54,600	58,650	62,700	66,750	70,784	74,829	885	948	1,137	1,314	1,466	1,618

Maximum Sales Price

County	90% Average Area Purchase Price
BAKER	303,882
BROWARD	317,647
CLAY	303,882
COLLIER	415,058
DUVAL	303,882
LAKE	255,176
MANATEE	264,706
MARTIN	291,176
MIAMI-DADE	317,647
MONROE	487,058
NASSAU	303,882

Maximum Value

(Definitions 420.9071 (27))

Sales price" or "value" means

- In the case of acquisition of an existing or newly constructed unit, the amount on the executed sales contract.
- If building a unit on land they own sales price is determined by state certified appraiser based on the after construction value performed by a state-certified appraiser. The appraisal must include the value of the land must be dated within **12** months of the date construction is to commence.
- In the case of rehabilitation or emergency repair of an existing unit that does not create additional living space, the value is determined by a state-certified appraiser and dated within **12** months of the date construction is to commence or the assessed value of the real property as determined by the county property appraiser.
- In the case of rehabilitation of an existing unit that includes the addition of new living space, sales price or value is determined by an state-certified appraiser and dated within **12** months of the date construction is to commence or the assessed value of the real property as determined by the county property appraiser, plus the cost of the improvements in either case.

SHIP Monitoring Rules

- Tenant income of projects that receive more than \$10,000 must be monitored annually
- May rely on monitoring report of another entity even if periodic
 - “...to the extent another governmental entity or corporation program provides periodic monitoring and determination, a municipality, county, or local housing financing authority may rely on such monitoring and determination of tenant eligibility.”
- Does not require utility allowances

Sub Recipient

Any local government receiving SHIP funds which **administers any portion of the SHIP program through a Sub Recipient** shall bear responsibility for actions of the sub recipient and shall monitor all sub recipients to insure compliance is maintained on all SHIP funded activities. Any **contract or agreement** between the local government and sub recipient shall detail the **policies and procedures that shall be adhered to in the management of the SHIP activities.**

67-37.019 Compliance Monitoring for Housing Developed With SHIP Local Housing Distribution Funds.



✓ Sub Recipient

Any **contract** or document establishing the relationship between a SHIP eligible local government and a non-state organization which is a Sub Recipient receiving SHIP funds shall contain the standard audit language on Form DFS-A2-CL (Effective 7/05) of the **Florida Single Audit Act** in the document.

<https://apps.fldfs.com/fsaa/statutes.aspx>. Update

**67-37.019 Compliance Monitoring for Housing
Developed With SHIP Local Housing Distribution Funds.**

Upcoming Webinar

Working with Nonprofits, Sponsors and Subrecipients

- Description
- **Several SHIP communities outsource implementation of one or more of their strategies. Learn what types of groups may serve as sponsors and sub recipients and hear firsthand from the staff of groups that provide SHIP services. The presenters will highlight key examples of how SHIP work is effectively outsourced, addressing details of LHAP selection criteria and suggested language for a Request for Proposals. The webinar will address service delivery fees and other details in a sub recipient agreement. Key topics include the elements of monitoring and effective communication.**
- **Thu, Nov 29, 2018 2:00 PM - 3:30 PM EST**

Read Technical Bulletin

SHIP Technical Bulletin 2016-01

Sub-Recipients Administering SHIP

Any local government participating in SHIP that uses a Sub-Recipient to administer all or part of the SHIP program should be aware of the following facts:

1. The SHIP rule defines a Sub-Recipient (see below) broadly as any person or non-state entity. This would include any non-profit, consultant or other entity actively performing any administrative function of the program including application intake, income verification, contract oversight, counseling, etc. The term Sub-Recipient should not be confused with the statutorily defined Eligible sponsor (see below) which refers to an entity that receives a funding award. There may be situations where it is difficult to determine when an entity is “awarded” funds, but in practice carry out the administration function for those funds. In these cases, the entity should be considered as a Sub-Recipient.
2. Regardless of the use of Sub-Recipients, the local government is responsible (67-37.019 (10)) for monitoring the SHIP funds being expended through the Sub-Recipient. The responsibility for compliance with the requirements cannot be

<http://www.floridahousing.org/FH-ImageWebDocs/Housing%20Partners/Local%20Governments/SHIP%20Technical%20Bulletins/015-2016-01%20Sub-recipients.pdf>

Indirect Recipients

Such as subcontractors of the

- Sponsors
- Developers
- Contractors
- Non-profit
- For-profit

Should also execute contracts

Different Agreements

Depending on the

- Funding source
- Parties to the agreement
- Roles and Responsibilities

Who Prepares the Written Agreement

- SHIP Staff
- City/County Attorney
- Paid Consultant

Remember: If are not an attorney, you should always have an attorney review your documents for legal sufficiency and form.

Poll Question

Who prepares your written agreement?

A) Staff

B) Attorney

C) Consultant

When should the Agreement be Executed

- When the applicant has been deemed eligible
- When the project is ready to start and all funding sources are in place
- All required pre-contract program steps have been completed
- Before any funds are disbursed to the third party

Poll Question

Who in the local government is authorized to execute the written agreement?

- A) SHIP Administrator**
- B) Mayor/City or County Manager**
- C) Clerk**
- D) More than 1 of the above**

SHIP Rules

- **10% admin/5% PI**
- **30% very low**
- **60% very low and low**
- **65% homeownership**
- **75% construction**
- **20% cap on manufactured housing**
- **20% special needs**
- **Rental 15 year affordability if more than 10,000**

LHAP Text for Written Agreements

Section B. Purpose of the program:

- “To meet the housing needs of the very low, low and moderate...”

Section F. Leverage

- “by combining local resources and cost saving measures into a local housing partnership”

Section I. Waiting List and Priorities

- “A waiting list will be established when there are eligible applicants for strategies that no longer have funding”

LHAP Text for Written Agreements

Section J: Discrimination

- “In accordance with ss.760.20-760.37, it is unlawful to discriminate on the basis of...”

Section L. Purpose of the program:

- “The sales price or value... may not exceed 90% of the average area purchase price...”

Section M. Income Limits, Rent Limits & Affordability

Section O. Monitoring and First Right of Refusal:

- “In the case of rental housing, the staff... that has administrative authority... shall annually monitor...”

Program requirements

- Advertising requirements
- Administration caps
- Maximum per unit award
- Mortgage payment should be affordable
- Loan terms
- Number of affordable units
- Lease requirements
- Over income tenants

Program Requirements

- Maintenance of units
- Marketing requirements
- Energy improvements
- Program income
- Reporting requirements
- Record keeping
- audits

General Provisions

- Funding sources
- Use of funds
- Amount of funds
- Roles and responsibilities
- Performance Standards
- Program requirements
- Project requirements
- Insurance

MORE General Provisions

- Affordability
- Duration of agreement
- timeline
- Disbursement of funds/payment
- Record retention and reports
- Reversion of assets
- Default
- monitoring
- Close out requirements

Owner Occupied Rehabilitation Construction Contracts

- When does the project start and end
- Who gets the permits & pays for them
- Who pays for utilities needed during construction
- Tool/material storage
- Site clean-up
- Sanctions for non-performance of contractor
- Who may issue a stop-work order
- Conditions for termination of contract
- How disputes will be handled
- Warranty information

Rehab - Owner's Responsibilities

- Provide access to home during normal work hours
- Provide water and electricity to contractors
- Keep pets and children contained
- Store and protect valuables
- Let contractors do their job
- Communicates problems as soon as they occur
- Evaluates contractor

Contractor's Responsibilities

- **On job during normal work hours**
- **Clean up each day after they are done**
- **Avoid damage to owners personal property**
- **Advise the owner in a timely fashion if they are going to be late or not show up**
- **Advise the City/County as soon as possible of disputes**
- **Supply storage, sanitation unit, and dumpster**
- **Warranty and Guarantee**

Contract signing

How long should the contract signing take?

- A) 15 minutes
- B) 30 minutes
- C) 1 hour or more

Homebuyer Program Details in Written Agreements

Eligibility

- Income Categories served
- Local Policy-Define First Time Homebuyer

Affordability restrictions

- Income targeting
- Eligibility determination

Maximum award

Homebuyer contribution requirements

Rehab or No Rehab?

MORE Homebuyer Program Details

- **Maximum purchase price/value**
 - Reference FHFC website for most updated limits (currently IRS Rev. Proclamation 2017-27)
- **Eligible properties**
- **Counseling**
- **Property standards**
- **Insurance requirements**
- **Default**

Rental Program Details in Written Agreements

- Award amount per unit/per project
- Activity
- Project description
- address
- Required # of SHIP units set aside/total units
- Unit Sizes (1 bed, 2 bed, etc.)
- Timeline for expenditure/completion
- **Security documents- LURA- Land Use Restriction Agreement + Mortgage/Note if loan**

Rental Program Details in Written Agreements

- Fixed/floating
- Marketing
- Beneficiaries
- Income targeting (ELI, VLI, LI, MI)
- Special needs
- Tenant rent and utility allowance
- Lease provisions if any

MORE Rental Program Details

- **Affordability Period (minimum 15 years, 50 years best practice)**
- **Annual verification of eligibility**
- **Over income**
- **Details of Annual Monitoring**
 - **Required annually if more than \$10,000 project and no one else is doing it**
- **Property standards**
- **Use of Program income**

Local government provides

- Rent limits
- Income guidelines
- Maximum value limits
- Maximum subsidy limits
- Tenant/homebuyer selection
- Marketing requirements

Can be exhibits to the agreement and updates if applicable, are provided regularly.

How much information

- Enough that roles and responsibilities are clear
- Specific program requirements
- Performance expectations
- Measureable benchmarks
- Default provisions

Only include the items that you will enforce

Consistency in Agreements

- Use templates
 - Standard format for variable information
 - Required provisions included
- Consistent language
 - Facilitates and expedites process
 - Minimizes staff errors
 - Makes monitoring easier

This works for terms and provisions that are the same for every project

Enforcement

- **Mortgage, Note or Restrictive Covenants must be recorded covering the affordability period.**
- **Send letters and notify the third party of new income limits, rents, etc. that affect compliance.**
- **Ensure that household/organization provides annual report data required under the agreement.**
- **Regularly monitoring to ensure that the individual or organization is complying.**
- **Provide training to facilitate compliance.**

Amendments

- **Process should be outlined in the agreement and should be followed**
- **Should be executed by all parties who executed original agreement**
- **State that other provisions remain in effect**
- **Have the attorney review the amendment for legal sufficiency and form**

Expiration

- Agreement normally remain in effect during the affordability period.
- Most are recorded to ensure compliance during the affordability period.
- If funds are paid back then agreement has ended and a release is filed.
- Records should be retained for 5 year after the affordability period ends.
- Could be longer depending on local requirements

Review and Updates

- Read it in its entirety
- Have staff and legal review regularly to ensure it complies with any program changes
- Update when program or LHAP changes
- Have your attorney review updates and changes for legal sufficiency and form
- Review in detail with affected party before it is executed and answer questions

Encumbered

means that deposits made to the local affordable housing trust fund have been committed by **contract, or purchase order, letter of commitment or award** in a manner that **obligates** the county, eligible municipality, or interlocal entity to expend the amount upon delivery of goods, the rendering of services, or the conveyance of real property by a vendor, supplier, contractor, or owner.

67-37.002 Definitions.

Expended

- **“Expended” or “Spent” means the affordable housing activity is complete and funds deposited to the local affordable housing trust fund have been transferred from the local housing assistance trust fund account to pay for the cost of the activity.**

Reporting Requirements

420.9075 Local housing assistance plans; partnerships.

- The number of households served by income category, age, family size, and race, and data regarding any special needs populations in addition to farmworkers, homeless persons, persons with disabilities, and the elderly.
- Counties shall report this information separately for households served in the unincorporated area and each municipality within the county.
- The number of units and the average cost of producing units under each local housing assistance strategy.
- The average area purchase price of single-family units and the amount of rent charged for a rental unit based on unit size.
- By income category, the number of mortgages made, the average mortgage amount, and the rate of default.

Best Practices

- Use Separate Agreements for each funding source
- Keep separate files
- Reference in your agreements that when more than one funding source is used the strictest rule will apply
- Create policies and procedures that can apply to any of your funding sources to reduce compliance issues
- Allows for expenditures to be transferred across different funding sources

Management Tool

- **Written agreements are a management and enforcement tool**
- **It is legally binding**
- **It minimizes the risk of the local government**
- **Allows for corrective action**
- **Identifies specific requirements**
- **Allows for monitoring and compliance**

QUESTIONS?

Thank you for joining us

- Please e-mail your questions to:
- Andujar@flhousing.org