

Addressing Defaults and Foreclosures in Affordable Housing



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AFFORDABLE HOUSING CATALYST PROGRAM

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Catalyst Training Schedule



A banner for SHIP Catalyst Training. On the left, a photograph shows three people (two men and one woman) smiling and looking at a laptop screen. Overlaid on the right side of the banner is a teal background with white text. The text reads: 'Fine Tune Your SHIP Program', 'REGISTER NOW FOR', 'CATALYST TRAINING', and 'Register Now for SHIP Catalyst Training!'. The SHIP logo, which consists of a green house icon with a blue cube inside and the text 'SHIP housing a stronger Florida', is positioned on the left side of the banner.

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**HOME
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Overview of the Training

Guidance for SHIP Administrators

- Purchase Assistance
- Rehabilitation and Reconstruction
- Homeownership Development
- Rental Housing Projects

The Role of Housing Counseling

- Foreclosure Prevention Activities
- Foreclosure Prevention Resources
- Panel of Housing Counselors

Addressing Homeownership Defaults



Defaults are not Universal

- Grants don't require default terms.
- Affordability periods trigger default terms.
- Local governments (LG) determine the default provisions.
- Common defaults seen in LHAPs are death of owner, sale and/or transfer of property.

Documenting Terms of Default

- Terms of default identified in LHAP
- Written policy and procedures
- Written agreements

Sample Terms of Default

The loan will be determined to be in default if any of the following occurs during the Loan term: Loss of Homeowner's Insurance, sale, transfer, or conveyance of property; conversion to a rental property; loss of homestead exemption status; or failure to occupy the home as primary residence, failure to pay property taxes. If any of these occur, the outstanding balance will be due and payable.

In cases where the qualifying homeowner(s) die(s) during the loan term, the loan may be assumed by a SHIP eligible heir who will occupy the home as a primary residence. If the legal heir is not SHIP eligible or chooses not to occupy the home, the outstanding balance of the loan will be due and payable.

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Compliance for Default

- Annual inspection of properties
- Mail out letters to confirm residency
- Renewal letters of annual insurance
- Review of public records-review of paid taxes and current homestead

Examples of What Can Trigger Default

- Death of owner
- Sale of home or foreclosure
- Converted to rental property
- Homestead not maintained
- Insurance not maintained
- Code violation exists on property
- Delinquent on property taxes
- Failure to make payments (if payback)



Actions when Default is triggered by Death of SHIP Recipient

- Repayment of debt
- Recalculate payment on loans
- Qualifying heirs for property
- Initiate foreclosure if necessary



Homeownership Default



- Default in Purchase Assistance
- Default by Owner Occupied Rehabilitation
- Default in Demolition/Reconstruction
- Default by Homeownership Developers

Sample Default of Purchase Assistance

If the homeowner's first lien holder initiates foreclosure, the LG may elect at its discretion either of the following options:

- Negotiate the amount of the loan balance to permit a "short sale";
- 2nd mortgage holder can be entitled to surplus funds up to the outstanding balance owed on the second mortgage;
- LG can wait for the foreclosure sale and be included in the process.

Sample Default of Owner-Occupied Rehab

This loan may require repayment if the homeowner dies, leases the property, relocates, or transfers ownership during the affordability period.



Repayment will not be required unless the subject property is sold or ceases to be owner-occupied.

Default of Demolition/ Reconstruction

Loan may require repayment if the homeowner dies, leases the property, relocates, or transfers ownership during the lien period (terms are at the discretion of the LG).

In the event, of death of the original borrower and the heir meets the program's existing eligibility criteria at the demise of the homeowner; repayment of the loan is not required.

The homeowner or heir has the right to repay at any time all or any part of the principal amount of the loan without payment penalties to the program.

Sample Default of Demolition/Reconstruction

For Deferred Payable loan non-payment:

- Some LGs may require repayment of loans.
- Actions taken in the event of non-payment will vary and be limited by mortgage position, the amount of outstanding balance, and direction of administrator.
- Best practice: Send client timely letter of non-payment. Correspondence should include total amount owed, information on the instrument which secured the debt, how to dispute the debt or seek verification of the debt, and instructions on how to cure the default.

Sample Default of Demolition/Reconstruction

Transfer of Ownership:

- If the legal heir is not SHIP eligible or chooses not to occupy the home, the outstanding balance of the loan will be due. The heir will be required to legally transfer the property to a new owner, execute an assumption of mortgage agreement, and get a new homeowner's insurance policy.
- If the property is sold and transferred through a legal process, the new prospective owners or their representative will contact the LG to request a Satisfaction of Mortgage or Lien.

Sample Default of Demolition/Reconstruction

Foreclosure Actions taken by other mortgagees:

- Notices of Intent to Foreclose and other Foreclosure Notices are sent to SHIP Administration.
- Monitor the foreclosure until the judicial court orders last action.
- Staff will act based on the legal direction.

Sample Default of Homeownership Developer

Developer: Failure on the part of the developer to receive a certificate of occupancy and transfer ownership to an income eligible buyer within 18 months of receiving the award will constitute a default.

All grant funds awarded shall be immediately revoked and any approvals related to the project shall immediately be deemed revoked and canceled.



Sample Default of Homeownership Developer

Homebuyer: If any of these occur, the outstanding balance will be due and payable. In the event of default, which is defined as not meeting the occupancy, eligibility and/or ownership requirements, the entity may foreclose to recover funds made available for assistance which is secured by a mortgage and note on the property.



Recommended Actions

- Coordination with Attorney's office
- Preparation of default letters
- Preparation of payoff letters
- Creation of subordination agreements
- Assumption of mortgage agreements
- Satisfactions of mortgages



Defaults in Rental Projects



Recapture and Default

- A recapture occurs when a loan is provided to a sponsor and the funds are not used in accordance with the agreement and no eligible person occupies eligible housing.
- Funds are reported in the annual report as recapture since they never met the objective of the strategy. Funds remain subject to set asides.
- Default is a violation of the terms of assistance during the affordability period.

Default and First Right of Refusal

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.

Long Term Affordability

- Rental units constructed, rehabilitated or otherwise assisted from the local remain affordable for no less than 15 years.
 - Investments of \$10,000 or more trigger
 - 15-year affordability period
- SHIP Rule: 67-37.007(11), F.A.C.



Affordability Defaults

Full repayment of loan and any other repayment conditions as per the written agreement, Deed Restrictions, or Declaration of Restrictive Covenants.



Tax Credit Properties

- If both an award under LHAP and LIHTC are used to assist a project and there is a conflict:
 - **Resolve the conflict by giving precedence to the requirements of the tax credit rules.**
 - If LG has conditions that are stricter than those imposed by the LIHTC agreement, there could be a default of SHIP funds.
- Get a copy of the FHFC monitoring report to confirm program compliance.
- Document the file that the report has been reviewed and the project is in compliance.

Suggested Text for SHIP Agreements with Developers of Tax Credit Properties

The developer agrees that, in consideration of the SHIP funds provided for this development, **it will engage the compliance monitoring firm assigned to this project by FHFC to also monitor for compliance with the set-aside requirements for the SHIP funded units.** The term for compliance monitoring will be concurrent with the term required under the extended use agreement that is recorded in the public records.

Examples of Rental Defaults

- Not complying with income set-asides.
- Not complying with special needs set-asides.
- Failure to income qualify SHIP assisted units on an annual basis in accordance with 24 CFR 5.609.
- Not charging SHIP rents.
- Not maintaining units in decent, safe and sanitary condition.
- Fair Housing Violations.
- No insurance.
- Other conditions stipulated in the written agreement.

Income Eligibility Defaults

- Is the project owner using the correct income limits to determine eligibility of tenants?
- Are tenants income-eligible at the time of initial occupancy?
- Is the project owner recertifying tenant income annually?
- As tenants vacate, are they replaced by tenants of the same income category?

What if Tenant Income Increases?

Low Income Definition in SHIP Statute: “While occupying the rental unit, a low-income household’s annual income may increase to an amount not to exceed 140 percent of 80 percent of the area’s median income adjusted for family size.”

Example

\$55,000 = 80% AMI

\$77,000 = 140% of 80% AMI ($55,000 \times 1.4$)

Applies to very low and moderate

SHIP Rent Limits

Maximum Rent on Income Limits Chart

30%	12,060	16,240	20,420	24,600	27,450	29,500	31,500	33,550	Refer to HUD	
50%	17,800	20,350	22,900	25,400	27,450	29,500	31,500	33,550	35,560	37,592
80%	28,500	32,550	36,600	40,650	43,950	47,200	50,450	53,700	56,896	60,147
120%	42,720	48,840	54,960	60,960	65,880	70,800	75,600	80,520	85,344	90,221
140%	49,840	56,980	64,120	71,120	76,860	82,600	88,200	93,940	99,568	105,258

Rent Limit by Number of Bedrooms in Unit						
	0	1	2	3	4	5
30%	301	353	510	650	737	813
50%	445	476	572	660	737	813
80%	712	763	915	1,057	1,180	1,301
120%	1,068	1,144	1,374	1,585	1,770	1,951
140%	1,246	1,335	1,603	1,849	2,065	2,276

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Property Physical Condition Defaults

BEST PRACTICE, but not required by SHIP

- If included in the written agreement as a condition of default, LG shall
 - Inspect the units
 - Request copy of inspection report
 - Notify the developer if the units are in non-compliance



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Next Steps for Rental Housing Defaults

- Notify developer in writing of default and penalties for non-compliance
- Provide a time frame to bring project back into compliance
 - Confirm the developer has brought project back into compliance or
 - If developer fails to bring project back into compliance, notify LG attorney of the default and follow next steps based on the written agreement
- Document file throughout the process

The Role of Housing Counseling

Also Known As:

- Foreclosure Prevention Counseling
- Forbearance Counseling

Presenter:

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First Step: Forbearance

- **CARES Act Forbearance Rule:** A forbearance of reduced or suspended payments shall be granted for up to 180 days
 - Borrower must make request verbally (or in writing, by email, chat, or servicer web portal)
 - May be extended at borrower's request for an additional 180 days
- During forbearance, servicer cannot charge fees, penalties

Forbearance: Types of Hardships

- Still employed but expenses have increased
- Underemployed
- Temporarily Laid Off
- Unemployed



Options After Forbearance Period

If Borrower can Pay:

- **Pay:** the suspended payments all at once
- **Repayment Plan:** Pay over short time
- **Partial Claim:** *For FHA Loans only*- Interest free soft second on borrower's mortgage repayable when house is sold, refinanced or paid off

COVID Protections Chart:

https://www.nclc.org/images/pdf/special_projects/covid-19/COVID19_Mortgage_Chart.pdf

Options After Forbearance Period

If Borrower cannot Pay:

Use regular loss mitigation 'waterfall' of options

Extend Modification: Tack on number of missed payments to end of loan

Cap and Extend Mod: Capitalize missed payments and increase number of payments

- May help those with many months of missed payments

Flex Mod: Lower interest rate and/or extend loan term to lower monthly payments

Counseling Agencies Can Help

- Answer initial questions from concerned homeowners
- Provide online forbearance classes
- Offer one on one counseling by phone or remote meeting platform
- Counselors help borrowers prepare: Interest continues to accrue, escrow must be replenished
- After Forbearance: Complete a loss mitigation package to expedite modification/other options for lender and homeowner

Foreclosure Prevention Resources



- Coronavirus Local Fiscal Recovery Funds (CLFRF)
- DEO's Homeowner Assistance Fund
- SHIP financial assistance and counseling
- Counseling Agencies: Housing Stability Counseling Funding

Coronavirus State & Local Fiscal Recovery Fund (SLFRF)

- All counties and 77 cities in Florida received SLFRF dollars through the American Rescue Plan; can be spent on a variety of activities to address COVID-19
- Eligible affordable housing activities include:
 - Rent and mortgage assistance
 - Housing vouchers and relocation assistance
- Upcoming Webinar and Publication on SLFRF

Affordable Housing Highlights: SLFRF Proposals

- **St. Petersburg** – 76% of its SLFRF for “housing affordability/support”
- **Broward County** – Up to \$26.23 million for affordable housing development
- **Jacksonville** - \$4 million for aid for two vital affordable housing organizations
- **Orange County** - \$2 million for homeless prevention and diversion & expansion of homeless outreach
- **Alachua County** - \$6 million for affordable housing development & energy efficient upgrades

Homeowner Assistance Fund



- Implemented by FL Dept of Economic Opportunity
- HAF funding is \$679 million
- Register at:
<https://deosera.force.com/floridahaf/s/registration>
- DEO is considering \$20 million for counseling
- Servicer is not involved in HAF process, which uses client-supplied mortgage statement
- No assistance with HOA payments

SHIP Foreclosure Prevention

SHIP Counseling: Classes and one-on-one counseling. Communicate and negotiate with lender.

SHIP Foreclosure Prevention Strategy: Pays past due amounts:

- Delinquent mortgage payments (principal, interest, taxes and insurance),
- Attorney's fees,
- Late fees and other customary fees

SHIP helps Homeowners with Hardships

- Recovered from temporary hardship
- Can maintain housing payments
- Sample Text
 - "There must be a reasonable prospect that the applicant will be able to resume full mortgage payments to the primary lender."
 - "The applicant must show their ability to continue to maintain their mortgage payments after assistance is given."

SHIP Pays for Housing Counseling



- Pay with SHIP Program Funds—not Administrative Budget—when contracting for counseling services
- Pay counselors offering counseling, even if no direct payments provided to homeowners
- Does not have to be connected to a SHIP Strategy

SHIP may Partner with Counseling Agency

- SHIP pays a service delivery fee
- Counseling is a Program Delivery Cost
- Best Practice: Work with a HUD approved housing counseling agency

<https://www.hud.gov/states/florida/homeownership/hsgcounseling>

Limit to SHIP Housing Counseling

Limited by the Income Set-aside

100% Allocation and Program Income

- 75% Construction Set-Aside
- 10% Admin



15% available for Housing Counseling

Foreclosure Counseling Panel

HANDS:

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Keystone:

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Suncoast Housing Connections:

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What are examples of the COVID-related issues your clients are currently facing?



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Describe an aspect of foreclosure prevention counseling



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What funding sources support your counseling work in general and foreclosure counseling specifically?



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Have your applicants applied for DEO's Homeownership Assistance Fund?



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Questions?



Please complete the evaluation!

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