

Long-Term Affordability and Land Use Restriction Agreements

June 28, 2022





AFFORDABLE HOUSING CATALYST PROGRAM

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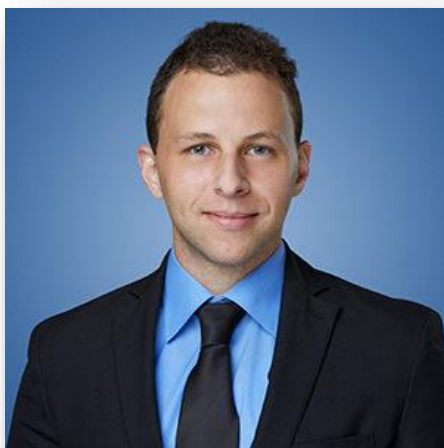
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Webinar Logistics

- All participants are on mute
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- We will not identify who has asked a question
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- PPT is provided as a handout
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Topics Covered

- I. Importance of long-term affordability
- II. Setting the term of affordability
 - Policy considerations
- III. Mechanisms for long-term affordability
 - Community Land Trusts
 - 99-year ground lease
 - Land use restriction agreements
- IV. Monitoring





I. Importance of long-term affordability

What is long-term affordability?

- An “affordability period” or “term of affordability” is a term used to describe the number of years a unit assisted by public resources must remain affordable.
- “Long-term affordability” is generally considered 50 years or more.
- Term of affordability may depend on:
 - **Total amount and type** of resources provided
 - **Scarcity** of resources
 - **Housing needs**
 - **Market trends**
 - **Public policy** considerations



Why long-term affordability?

- When using limited public resources, assisted homes should be affordable for the longest period of time possible. Long-term affordability rests on a long-term understanding that assisted affordable housing units will always be in need.
- Long-term affordability **avoids** a situation where a lucky assisted homeowner or developer receives **a windfall in profits** thanks to public dollars.

Ex) A moderate-income homebuyer receives \$40,000 in down-payment assistance but the home only has to remain affordable for 5 years. At 5 years and 1 day, the homeowner sells that home at a price a subsequent moderate-income household could not afford and does not have to repay the \$40,000 in public money. **Is that a good use of limited public dollars?**



Why long-term affordability?

- **Preserves** affordable housing units.
- Ensures **multiple households** are **stably housed** in the same assisted unit.
- Produces **long-term value** of public investments.
- Conserves limited public resources through their **most efficient use**.
- Builds communities by **preventing displacement**.



What happens when affordability terms expire?

- For rental housing, the units may be converted to market-rate at an unaffordable price that displaces lower-income households.
- For homeownership, the assisted homeowner may make a windfall upon sale and the initial subsidy cannot be recycled for other potential homebuyers.
- **Bottom-line:** An affordability period set too low will ineffectively use limited public dollars and either displace households in need or create a windfall in profits for private individuals and property owners.



Expiring affordability

- In the 2020s, there is an expected increase in the loss of assisted housing due to expiring rent restrictions. **Why?** The 30-year affordability terms for the LIHTC deals in the early 1990s (before FHFC set a 50-year affordability period) are set to expire this decade as well as other 1970s-90s programs.
- Between 2019 and 2022, the state lost 40 developments with 3,999 affordable units due to expired FHFC, HUD, and USDA Rural Development mortgages.
- By 2032, **an additional 250 developments with 24,639 affordable units face similar risks (almost 3,000 units are at risk in 2025 alone).**
- This information is found in the [2022 Rental Market Study](#) produced by the Shimberg Center for Housing Studies for FHFC.



Expiring affordability – study locally funded developments

- Now is an opportune for local government to study its own assisted affordable housing inventory and identify how many units are at risk of expiring.
- Look at projects funded by SHIP, HOME, CDBG, etc. at the local level.
- What is the status of local projects with affordability periods that have already expired? Are they still affordable or have they converted to market rate?
- This data could help you set longer terms of the affordability or otherwise improve policies moving forward.





II. Setting the term of affordability

Factors when setting the term of affordability

1. **Total amount and type** of resources provided
2. **Public policy** considerations
3. **Housing needs & market trends**

Always start with perpetuity and work backwards from there.



Providing publicly-owned land

- **Housing built on publicly-owned land should be affordable in perpetuity.**
- Publicly-owned land is scarce resource and when used for housing, it should remain affordable. Otherwise, you'd create a windfall for a private actor thanks to a publicly-owned good.
- Local government can utilize a 99-year ground lease or partner with a Community Land Trust for housing built on publicly-owned land.



Providing financial subsidy

- The greater the subsidy, the longer the term of affordability.
- If the affordability period is too long v. benefit provided, may discourage involvement
- There is no clear answer, but always start with the longest period possible – don't bargain against yourself.
- Always tinker – if a program isn't generating interest, only then should local government consider lowering the affordability term.



Examples – Affordability terms

Entity	Type of Resource	Information	Affordability Term
Pinellas County	Infrastructure Surtax	Land acquisition	99 years
FHFC	Tax Credits	9% and 4% credit against tax liability	50 years
St. Petersburg	Land use approval for affordable developments in commercial & industrial zones	Land use flexibility & expedited development	30 years
Orlando	Impact Fee Waiver w/SHIP funds	Max \$5,082 per unit	15 years



Program examples

- Most affordability periods for state and federal programs are merely *minimums*. Always strive for a longer term.
- For locally-sourced programs, avoid automatically following another funding source's term. There are different policy decisions to consider for each program!

Funding Source	Compliance and Affordability Period
Low Income Housing Tax Credits (LIHTC)	50 Years (Florida)
Historic Tax Credits	5 years
State Apartment Incentive Loan (SAIL)	50 years
State Housing Initiatives Partnership (SHIP)	15 years min.
HOME Investment Partnerships Program (HOME)	< \$15,000 5 years \$15k - \$40k. 10 years More than \$40,000 15 years New construction of rental housing 20 years Refinancing of rental housing 15 years



Public policy considerations - Homeownership

- Balance wealth-building with long-term affordability. **Ask:** How can you allow a homeowner to build wealth but also ensure others can receive the benefit of an affordable home with the subsidy provided?
- Depending on subsidy provided, 30-year deferred loan is the typical term.
 - LG ensures the unit is occupied by initial homeowner for a lengthy period of time or must repay the assistance upon sale.
 - Upon sale, homeowner gains appreciation but repays amount due on initial subsidy to potentially help a subsequent homebuyer as program income.
- **99-year shared equity model is the gold standard for affordable homeownership programs**



Public policy considerations - Rental

- Balance need for permanently affordable units with capital improvements needed to keep homes habitable long-term.
- Publicly-owned land? Perpetuity.
- Strive for 50+ years, but typical term is 30 years.
- Examples:
 - Hillsborough HFA (Perpetuity)
 - Palm Beach County Workforce Housing Program (30 years)
 - HOME (20 year minimum)
 - SHIP (15 year minimum)



Other public policy considerations

- Local government may want different affordability terms based on neighborhood & individual characteristics.
- Is a neighborhood a low-income or concentrated area of poverty? Then investments other than housing will be needed to maximize the stabilizing effect of increased homeownership and make permanent or long-term affordability more beneficial
- Generally, the hotter & more unaffordable the housing market, the more important permanent or long-term (50 years+) affordability





III. Mechanisms for long-term affordability

There are several methods of ensuring long-term affordability

- Community land trusts
- 99-year ground lease
- Land use restriction agreement
- Deed restriction



What is a Community Land Trust?

- The vehicle of separating ownership of the land from the buildings & improvements.
- Also, the nonprofit organization that holds title to the land, sells or rents housing on the land, and administers a ground lease.
- **Bottom line:** A CLT removes the cost of the land from the purchase price making a home more affordable for homeownership, usually in perpetuity.
- CLTs can also be used for permanent rental housing.



How does a CLT work for homeownership?

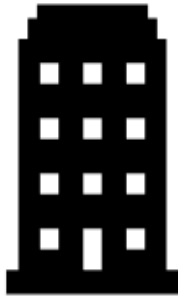
An eligible household
buys the home at
below market price



But leases the land
from the CLT



CLT permanently
owns the land



CLT

The homeowner pays a
nominal monthly ground
lease fee

The Ground Lease contains a "Resale
Formula." This keeps the home affordable
forever.

The current resident sells
their house to an income-
qualified buyer



The new buyer purchases the
house at an affordable price and
agrees to the same requirements
for resale



How does a CLT work for rental?

- Same as any other developer of affordable rental housing except the units are ensured to be affordable in perpetuity.
- Rental income can be used to build more permanently affordable units.



When should you use a CLT for your housing programs?

- CLTs are an ideal tool for any program that requires **permanent affordability, especially when using government-owned land.**
- A CLT can be utilized as part of an inclusionary housing policy.
- For permanently affordable homeownership, a CLT will steward the property by monitoring resales, ensuring the home is in good repair, & through other counseling functions.
- A CLT can also be used to ensure any length of affordability as a third-party monitor.



Why a CLT?

Community land trusts are ideal partners for using public subsidy for owned land for affordable housing.

1. Through ground lease restrictions, CLT homes are required to be affordable in perpetuity.
2. CLTs are adept at long-term stewardship of land resources.
3. If using down-payment assistance or other government subsidy, CLT homes retain subsidy in the unit. Because the subsidy is retained in the unit instead of recaptured when a CLT home is sold, little to no additional subsidy is needed to house the next homebuyer.



Utilizing a CLT

- **Publicly-owned land for affordable housing.**
 - Local government could donate the land or sell at a discount to a Community Land Trust.
 - Local government could also retain ownership of land and lease the land to the CLT under a 99-year ground lease.
- **Using public subsidy.**
 - For homeownership, CLTs retain public subsidies in the unit for the benefit of the next buyer.
 - Publicly-assisted units will be affordable in perpetuity regardless of the funding source's term of affordability.
- **Inclusionary housing & monitoring.**
 - A CLT can be used to monitor long-term affordability and incorporated in an IHO policy.



99-year ground lease

- A key way to ensure permanent affordability is through a 99-year ground lease.
- Local government retains ownership of land and leases land to affordable housing developer.
- Typically, only need to record a memorandum of ground lease stating any resale restrictions (for ownership).
- The 99-year ground lease lays out fundamental responsibilities such as affordability requirements, penalties for noncompliance, & default.



Typical elements of a 99-year ground lease

1. Use provisions
 - # of units, allowable rents/sales prices, term of affordability, households served
2. Care of the property
 - Taxes, liability insurance, financing restrictions, repairs
3. Development requirements
 - Timelines, phasing, inspections
4. Compliance & transferability provisions
 - Annual reports, income monitoring, notice requirements
5. Right of first refusal
6. Default & Penalties
7. Anything else bargained for by the parties (defer to Legal Counsel)



99-year ground lease – sample provisions

Right of First Refusal. In the event Lessee shall enter into a commitment, or receive an offer which Lessee wishes to reasonably accept, with respect to an assignment of this Lease or a Sublease for the entirety of the Demised Premises (a “Commitment”), Lessor shall have a period of thirty (30) days after receiving written notice and a copy of such Commitment from Lessee, in which to agree to match such Commitment on the same reasonable material terms and conditions as set forth in the Commitment, whereupon, in the event Lessor elects to match such Commitment terms, the parties shall use all commercially reasonable efforts to enter into a definitive agreement consistent therewith, as soon as practicable thereafter.

Assignment/Sublease by Lessee. Without the written consent of Lessor, Lessee shall not assign this Lease or enter into a Sublease for any portion or all of the Demised Premises which consent may be unreasonably withheld at the sole and absolute discretion of the Lessor.

Successors in Interest. It is hereby acknowledged and agreed between the parties that all covenants, conditions, agreements, and undertakings contained in this Lease shall extend to and be binding upon the respective successors and assigns of the respective parties hereto, the same as if they were in every case named and expressed.



Land use restriction agreement

- A land use restriction agreement (LURA) is a legal document that restricts the use of a piece of property in exchange for public benefits.
- Very similar to a 99-year ground lease except the local government does not own the land and so typically LURAs are much shorter than 99-year ground leases.
- Full document should be recorded in the public records to put third parties on notice. LURA should be clear that the restrictions run with the property and bind any subsequent owner(s).
- Terms include (key items very similar to ground lease):
 - Use restrictions
 - Households served
 - Compliance monitoring (who is responsible for annual income certification, etc.)
 - Notice provisions (in the event of a sale, transfer, etc.)
 - Right of first refusal
 - Defaults & remedies for noncompliance (monetary fines, specific performance, blacklisting)



Sample penalty provision

“ if the Owner defaults in the performance of obligations under this Agreement, and if such default remains uncured for a period of sixty (60) days after notice thereof has been given by _____ County, _____ County may elect, at its sole option, to be paid the amount of \$12,000.00 (a) per Dwelling to a maximum of twenty five percent (25%) of all dwelling units, less any units rented as Affordable Units and (b) any units rented as Affordable Units that are not in compliance with the above requirements, which Owner and the County agree on as a proper measure of liquidated damages for each calendar year for which a violation of the aforementioned Sections occurred. In addition, the Owner shall be required to repay to the County any partial or full refund of any fees received by, or on behalf of, the Owner, for failure by Owner to comply with Section 2.1 of this Agreement. Every violation of either Section 3.1 or 3.6 shall be considered a violation for all Dwelling Units within the Project. Any such payment under this Section shall be made by cashier's check, deposited in the County's Affordable Housing Trust Fund, or other cost center utilized for aiding in the development of Affordable Housing. Sums paid under this Section shall not represent payment of a penalty.



Deed restrictions?

- Functionally the same as restrictive covenants. Mode of last resort - opt for a land use restriction agreement or 99-year ground lease instead when transferring property.
- What is the difference between a deed restriction and LURA? A deed restriction is language contained in the transferring deed while a LURA is an additional recorded contract. Deed restrictions are most common in HOAs.
- If an assisted homeowner sells a home to a third-party in violation of a deed restriction (i.e. at an unaffordable rate, without paying back assistance, or without providing notice to the local government), it will be difficult to void that sale in court.





IV. Monitoring

Enforcing long-term affordability

- Affordability restrictions are only as good as they are enforced.
- No matter which option is chosen (99-year ground lease, land use restriction agreement, deed restriction, etc.), affordability controls without enforcement are just pieces of paper.
- Local government must have staff dedicated to monitoring affordability requirements and should consider legal enforcement to deter bad behavior.
- Check out the Florida Housing Coalition's past trainings on monitoring.



Guest Speakers



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Alessandra Tasca,
Deputy Director –
Neighborhood Services
City of Port St. Lucie





PSL Homeownership Program

Neighborhood Services Department

Background & Housing Analysis

Pop. 200,000+ (full built out 400,000+)

7th largest City in Florida surpassing Tallahassee

3rd largest City in South Florida surpassing Ft. Lauderdale

Exponential increase in population and single-family home (SFH) construction (avg. 300 new SFH permits per month)

Approx. 120 sq. miles, 50 miles north of West Palm Beach

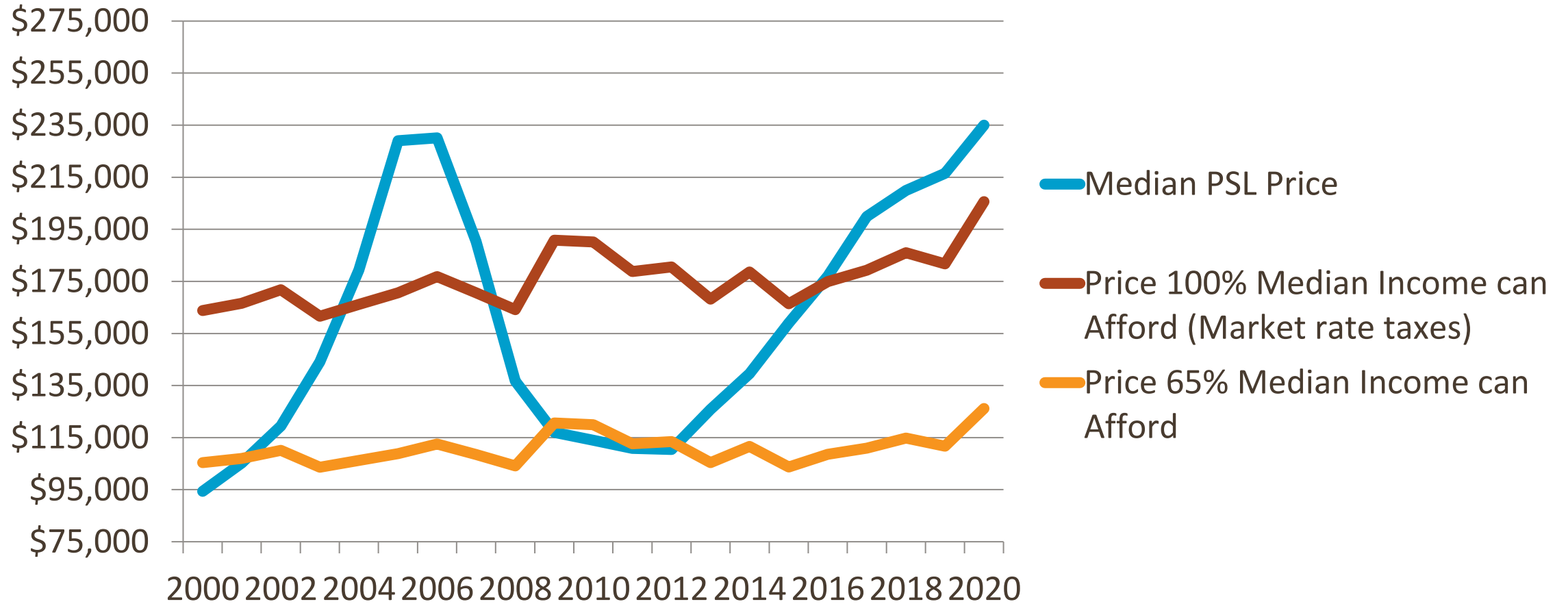
Growing community, growing business and economic development

75% homeownership rate!

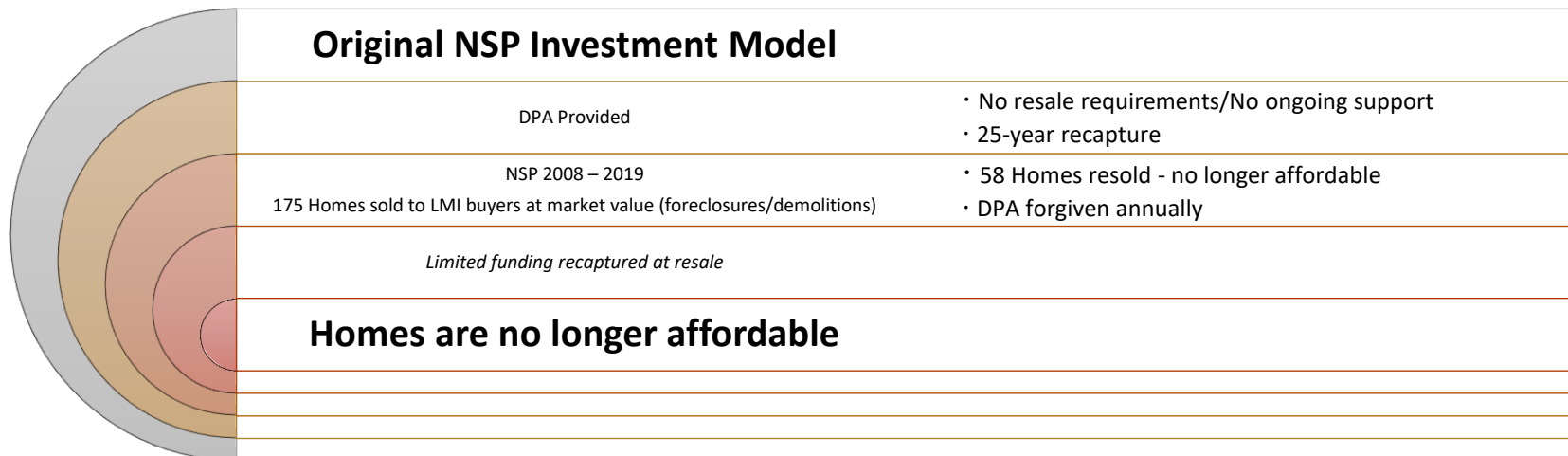
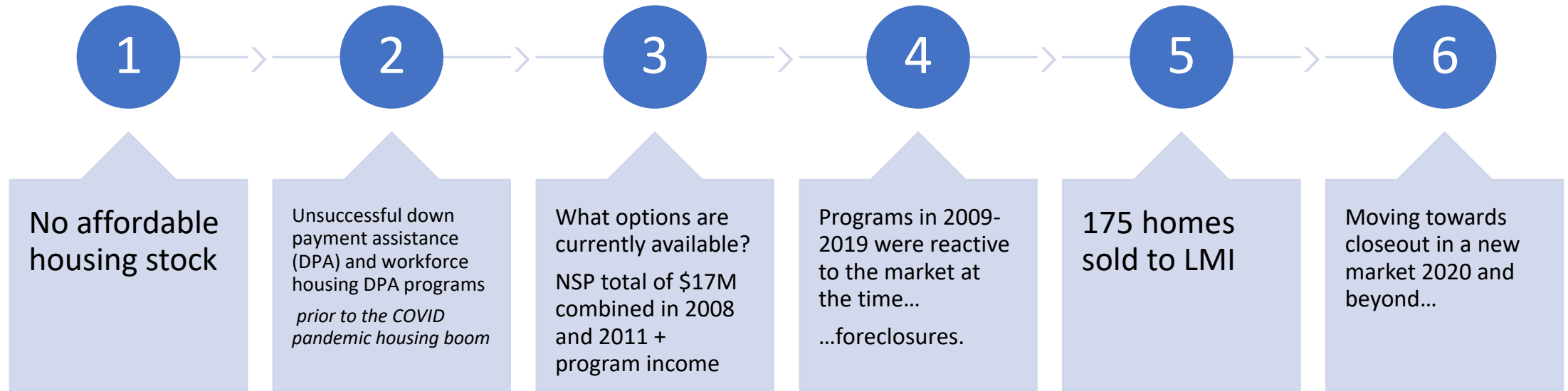
Existing Programs

- SHIP = strong focus on owner occupied repair and rehabilitation
- CDBG entitlement community = strong focus on infrastructure improvement
- Neighborhood Stabilization Program (NSP 1 & 3 from 2008 & 2011)
- Strong support for Water and Sewer connections
- Strong support for Economic Development
- What is next?

PSL Affordability Gap



Growing Affordability Issue



NSP 2011 Example

- \$97,000 Cost to City
 - -\$25,000 Developer Subsidy
 - To get to \$72K Appraised Value/Price
- \$72,000 Value/Price
 - \$41,000 1st Mortgage
 - \$31,000 PSL DPA
- \$56K = Total 2011 Investment
 - \$25,000 in Developer Subsidy
 - \$31,000 in DPA

- \$97,000 Cost to City
 - \$72,000 Value/Price
 - **2011 Investment = \$56K**
 - \$25,000 in lower price
 - \$31,000 in DPA
- ↓
- 2016 – sold \$145,000
 - **\$26,000 recaptured**
 - **\$78,000 appreciation to seller**
- ↓
- 2021 – \$228,000 Est. Value
 - \$26K – DPA Available
 - **\$128K – New \$ Needed**
 - 50% AMI Buyer

Challenges with old model

- Have not met NSP 50% AMI targets
- Today's market – HOT
- No new NSP funding
- Planning for tomorrow

The Future



Subsidy Retention and Subsidy Recapture

*White Paper Prepared by the Florida Housing Coalition
November 6, 2018*

The **community land trust model employs a subsidy retention** approach to homebuyer assistance. This is different from the **subsidy recapture approach** most local governments use to provide homebuyer assistance. While the traditional *subsidy recapture* approach aims to recapture the funds provided to the new home buyer through a loan, the *subsidy retention* approach aims to keep housing permanently affordable. The next few paragraphs will explain how each approach works, and **why subsidy retention is more effective.**

Subsidy Retention

Hypothetical 2011 example under a Community Land Trust (CLT) Model

- 2011 – Sold for \$72,000
 - > Restricted Resale Values
- ↓
- 2016 – \$76,500 Price
 - Seller PITI = \$430/Month
 - Seller Cash = \$9K
- ↓
- 2021 -- \$81,281 Price
 - Seller PITI = \$430/Month
 - Seller Cash = \$21K

Remains affordable to future 50% AMI buyers!

New Best Practice = CLTs

CLTs across the country

- USA CLTs > 40 years
- Dramatic Expansion - 15 years
- Best practices – Learn from others
 - Model Ground Lease (Freddie/Fannie approved)
 - Model Deed Restriction (Condos)
 - CLT Technical Manual
 - Model Stewardship Manual
- Down markets = protects homeowners
- Hot markets = protects affordability

CLTs in Florida

- FL home to 26 CLT Programs
- South Florida CLTs
 - CLT of PBCTC
 - Habitat for Humanity SLC (NEW)
 - Habitat for Humanity SPBC
 - Delray Beach CLT
 - South FL CLT
- Florida Housing Coalition
 - Community Land Trust Institute
 - Statewide CLT Certification Program
 - Statewide support and advocacy
- State legislation re: CLTs + property taxes
- New programs every year!

Community land trust organizations acquire, own and steward land **permanently** for the common good by providing affordable housing, resale restrictions, long term stewardship



About Us

- Created by Palm Beach County (2006)
- 63 HO Perm Affordable Homes
- +30 In the Pipeline
- +80 Dev Perm Affordable Rentals



Benefits and CLT Best Practices

- Stewardship
 - Pre purchase AND post purchase
 - Resale oversight
 - Support: inspections, respond to code violations
- Foreclosure crisis
 - 4% Foreclosure rate nationwide
 - Only .4% amongst CLT homeowners
- Compliance
 - Initial LMI buyer in place satisfies Funder
 - But CLT creates opportunity for FUTURE buyers too!
- Statewide CLT Certification from FL Housing Coalition



Community Land Trust of Palm Beach County, Inc.


has successfully completed the Community Land Trust Institute training and certification program, a training presented by the Florida Community Land Trust Institute, a program of the Florida Housing Coalition, and has earned designation as a

CERTIFIED COMMUNITY LAND TRUST

On

May 17, 2021


Jamie Ross
CEO
Florida Housing Coalition


Asha Nesbitt
CHIEF PROGRAMS OFFICER
Florida Housing Coalition

Future Funding in PSL

City of Port St. Lucie CLT Funding Options

“PSL Homeownership Program”

- Current homes subsidized by NSP Program Income (PI)
- Each CLT sale produces more NSP PI that can be used to create more CLT homes
 - \$130,500 from each 80% home
 - \$74,000 from each 50% home
- SHIP Funding – New Construction for additional CLT homes
- New funding – Recovery Dollars?

Other partnerships

- Habitat for Humanity 2018, lot acquisition and donation
- Adding to the CLT or “PSL Homeownership Program”
- Developer partnerships for furthering incentives



Questions?



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