

# Surplus Land and Shared Equity for Affordable Housing

April 25, 2023  
2PM EST  
CATALYST WEBINAR



# Our Thanks to the Florida Housing Catalyst Program



## AFFORDABLE HOUSING CATALYST PROGRAM

Sponsored by the  
Florida Housing Finance Corporation



we make housing affordable™

THE FLORIDA HOUSING COALITION



# Catalyst Training Schedule

A banner for SHIP Catalyst Training. On the left, a photograph shows a group of people in a meeting, with a woman in the foreground smiling. Overlaid on the left is the SHIP logo, which consists of a green house icon with a white cube inside, and the text 'SHIP housing a stronger Florida'. On the right, a dark teal background contains the text 'Fine Tune Your SHIP Program' and 'REGISTER NOW FOR' in white, followed by 'CATALYST TRAINING' in large, bold, white letters. At the bottom left of the banner, the text 'Register Now for SHIP Catalyst Training!' is written in white. Below the banner is a white navigation bar with four small circles, the first of which is filled.

The Coalition is Florida's affordable housing training and technical assistance provider.

**Hotline: 1-800-677-4548**

[www.flhousing.org](http://www.flhousing.org)

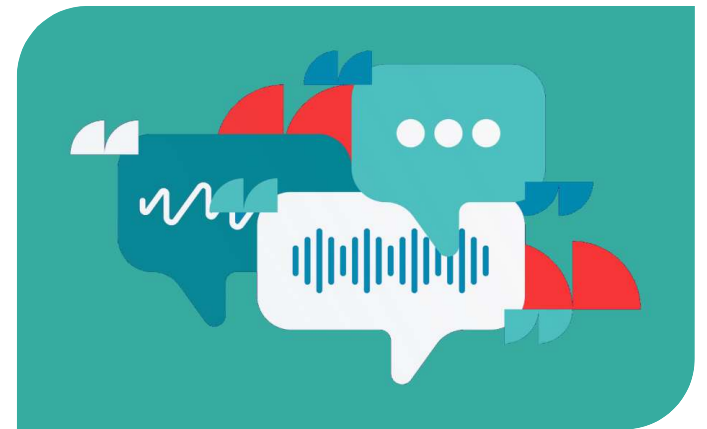
THE FLORIDA HOUSING COALITION



# Webinar Logistics

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- Participants are muted but we encourage you to post questions and comments
- There are handouts attached to this webinar, which you can download
- PowerPoint and recording will be available on our website
- Additional questions? Just email or call!



THE FLORIDA HOUSING COALITION



# Presenters

## Florida Housing Coalition



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THE FLORIDA HOUSING COALITION



# Florida Housing Coalition (FHC) Technical Assistance is Available

- FHC Staff is Available Daily
  - ✓ 1-800-677-4548
- Options for Further Assistance Include:
  - ✓ Phone and Email Consultation
  - ✓ Site Visits
  - ✓ Consultation
- Register at [www.flhousing.org](http://www.flhousing.org) for:
  - ✓ Workshops
  - ✓ Webinars
  - ✓ Previous trainings
  - ✓ Publications



THE FLORIDA HOUSING COALITION





Poll: Who's Here?

Every jurisdiction in Florida has the obligation to provide for housing its entire current and anticipated population, including the most vulnerable, such as those with special needs and farmworkers.

*- Chapter 163.3177(6)(f)*





# Webinar Agenda

## Part I

- Surplus Land & Applicable Laws
  - Land Inventory Requirements
  - Live Local Act
- Making Surplus Land Available for Affordable Housing

## Part II

- Philosophy of Shared Equity
- Shared Equity Models to Leverage Surplus Land Value
  - Deed Restrictions, Long Term Lease and Community Land Trusts
  - As part of the CLT portion
    - Support of shared equity by Lending Community
    - Birth of the Tallahassee – Leon County CLT



# Florida's “Surplus Land” Laws



## What is “surplus land?”

One of the most impactful tools the public sector has to support production of affordable housing.

The first part of this webinar will explore best practices for identifying and disposing of publicly-owned land for affordable housing.

Government-owned property that is obsolete, or the continued use of which is uneconomical or inefficient, or that serves no useful function. The government, in its discretion, may classify property as surplus, and may offer surplus property to other governmental units for sale or donation, or may offer the property to private nonprofit agencies.

§274.05, Fla. Stat.



# Local Government Methods of Acquiring Properties for Housing

- Typical “surplus”
  - Tax Lien Escheatment
  - Tax Lien Foreclosure
  - Code Enforcement Foreclosure
  - Obsolete Uses
- Direct Purchase (using federal, state, and local resources)
- Inclusionary Housing Ordinance
- Donation



# Entities to Work with to Boost Land Resources

- Community Redevelopment Agency (CRA)
- School Board (F.S. 1001.43 – authorizes school board to use surplus land for affordable housing for teachers and other district personnel)
- Private Institutions
- F.S. 420.615 – Affordable housing land donation density bonus incentives
- Religious Organizations



# Required Inventory of Land Appropriate for Use as Affordable Housing

- F.S. 125.379 (counties) & 166.0451 (municipalities) Florida’s “Surplus Lands” laws
  - Requires every city and county, at least every three years, to identify publicly-owned lands that are “appropriate for use as affordable housing”
  - The Live Local Act amends the state’s “surplus land” laws to **newly apply to all dependent special districts.**
  - Lands identified as “appropriate” for affordable housing are to be placed on an affordable housing inventory list
  - Lands placed on the inventory list may be used for affordable housing purposes
- Caveats:
  - Publicly owned land does not have to be on this inventory list to be used for AH
  - Goal of the statute is **transparency/accountability** with the spirit of using more publicly owned land for affordable housing



# Live Local Act – Revisions for Surplus Land laws

- The Live Local Act amends the state’s “surplus land” laws to **newly apply to all dependent special districts.**
  - “Dependent special district” defined at s. 189.012
  - Examples of dependent special districts:
    - Community redevelopment agencies (CRAs)
    - Port authorities
    - Neighborhood improvement districts
    - Housing authorities

See handout for complete list of dependent special districts in Florida (615 in total)

## **BEST PRACTICE**

Dependent Special Districts should consider coordination of efforts with local government to evaluate parcels (zoning, building, environmental, etc.) to determine suitability, vulnerability and resilience.



# The Live Local Act

- **Requires** local governments to make the inventory list of properties appropriate for affordable housing publicly available on its website.
- **Encourages** local governments to adopt best practices for surplus land programs, including:
  - “a) Establishing **eligibility criteria** for the receipt or purchase of surplus land by developers;
  - b) Making the **process** for requesting surplus lands **publicly available**; and
  - c) **Ensuring long-term affordability** through ground leases by retaining the right of first refusal to purchase property . . . and by requiring reversion of property not used for affordable housing within a certain timeframe.”





# Placing land on the inventory: Statutory process

1. Inventory list must include the address and legal description of each property and specify whether the property is vacant or improved.
2. The governing body must review the inventory list at a public hearing and may revise it at the conclusion of the public hearing.
3. Following the public hearing, governing body shall adopt a resolution that includes an inventory list of such property.



# Land Likely Not Suitable For Housing

Reserved for Stormwater Retention

Reserved for Public Works Projects

Land was bought as part of floodplain mitigation

Environmentally Constrained

Brownfields

Adjacent to heavy industrial or toxic activities

## Does land have to be on the legally required affordable housing inventory for a local government to sell or lease the land for affordable housing?

**No.** Counties under F.S. 125.35 have the discretion to sell or lease land for the “highest and best” use regardless of if the land is on the affordable housing inventory. Municipalities, may use their home rule authority unless a state statute or county charter is in conflict.

### **BEST PRACTICE**

- All parcels that can be developed for residential purposes should be placed on the inventory.
  - If it is appropriate for market-rate housing, it is appropriate for affordable housing.



# Options for Property Placed on the Affordable Housing Inventory

1. Offer for sale and use the proceeds to purchase land for affordable housing.
2. Offer for sale and use the proceeds to increase the local government fund earmarked for housing.
3. Sell with a restriction that requires the development of the property as permanent affordable housing.
4. Donate to a nonprofit housing organization for the construction of permanent affordable housing.
5. Otherwise make available for production and preservation of permanent affordable housing.



# Surplus Land AH Program Considerations

- Tie use of surplus land into programmatic offerings...HOME, NSA, SHIP, etc!
- Request for Proposals include land and available subsidy (refer to your procurement policy)
- Preference for (details later):
  - Community Land Trusts
  - 99-year Ground lease vs. Fee simple interest transfer to purchaser (LURA/Restrictions)
- Organizational Selection Criteria-
  - Solvency
  - Legally established
  - Financial Capacity
  - Development experience
- Selection Committee
- Allows qualified homebuyers



# Conveying Title or Rights of Use

- Unrestricted Deed – sell at market rate & use proceeds to fund future affordable housing activity e.g. Housing Trust Fund
- Restricted Deed - via land use restriction agreement (LURA) and/or deed restrictions including:
  - Affordability period; Households served; Who qualifies households; Reversion clause; Transferability provisions; Compliance Monitoring; Enforcement & penalties
- Long Term Lease
  - Use provisions similar to deed restrictions and LURA, partner with an organization that can steward long-term affordability.



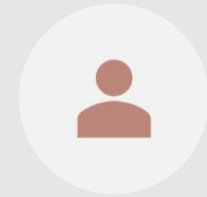
# Title Issues



TAX REVERSIONS- ESCHEATED  
LOTS- MAY HAVE LIENS OR  
OTHER ENCUMBRANCES



CODE LIENS



IRS OR DOR LIENS



MECHANIC LIENS



JUDGMENTS

ANY  
QUESTIONS  
?







# Shared Equity

What is it?

Why implement it (especially in concert with surplus land)?

How is it accomplished?

# How is equity created in homeownership?

- Investments by the homeowner
  - Paying down of mortgage debt
  - Improvements to the property
- Public Assistance
  - Down payment assistance
  - Development subsidies
- Other public investments
  - Infrastructure improvements
  - Economic development activities



# What is Shared Equity

- Sharing of equity between the seller and the community
- Sometimes used synonymously with “shared appreciation”, but not the same
- Includes **both** the amount of public assistance and increase in value of the home (appreciation)



# How does the Community benefit?

- Subsidy recapture
  - Repayment of the subsidy alone will not be enough
  - Reasonable return on public investment to provide same level of assistance to the next household
- Subsidy retention
  - One-time subsidy in [unit](#)
  - Creates [permanently affordability](#)



# Subsidy Retention and Permanent Affordability

- Uses mechanisms in legal documents to retain public subsidy in the housing unit
  - Income eligibility of subsequent purchaser, AND
  - Limits on resale price
- Can implement with all housing types
- Creates permanent inventory of affordable housing available to the community



# Why do we need Shared Equity?

- Housing prices generally increasing at greater rate than income
- Diminishing value of public assistance
- Helps meet obligations of Housing Elements in Comprehensive Plans
- Affordable housing promotes stability
  - Community
  - Family
  - Economy



# How is Shared Equity Accomplished?

- Three main models for shared equity and permanent affordability:
  - Deed restrictions
  - Long Term Ground Lease (99 year)
  - Community Land Trusts





# Deed Restrictions

Most familiar and widely used means for implementing shared equity



# Transfer by Deed with Restrictions

Transfer (surplus land) with a land use restriction agreement and/or deed restriction provisions that address:

- Affordability period
- Households served
- Compliance monitoring procedures
- Party responsible for qualifying households (developer or housing staff?)
- Reversion clause if housing is not developed within \_\_\_ number of years
- Enforcement & penalties for noncompliance



# Deed Restrictions

- Ownership properties:
  - Homeowner holds title to the land and improvements
  - Covenants stipulating resale restrictions are recorded with the deed conveying the property to the homeowner
- Rental properties:
  - Owner holds title to the land and improvements
  - Covenants stipulating income qualifications of lessees, rental rates, and resale restrictions are recorded with the deed conveying the property



# Common Deed Restriction Provisions for Homeownership

- Home must be occupied as primary residence
- Subsidy Recapture provisions
  - At resale, must repay amount of assistance plus...
- OR Subsidy Retention provisions
  - At resale, home must be sold to an income-eligible buyer
  - Resale price must be affordable to income-eligible buyer based on formula set out in restrictive covenants
- Not-for-profit organization or government agency may have preemptive option to purchase at resale



# Common Deed Restriction Provisions for Rental Properties

- Units must be leased to income-eligible tenants
- Rental rates must be affordable to income levels set out in restrictive covenants
- Not-for-profit organization or government agency may have right of first refusal at sale of property



# Enforcement of Deed Restrictions

- Recorded in public records, and are evident in title search
- Restrictive covenants are “self-enforcing” in theory; but not necessarily in practice
  - Property owners and sellers may attempt to circumvent restrictive covenants
- Requires active monitoring by local government or enforcing agency



# Marketable Record Title Act

- Marketable Record Title Act (MRTA) was amended in the 2022 Florida Legislative Session through Senate Bill 1380.
- The MRTA does not automatically extinguish all property interests that last beyond 30 years – there are several exemptions and notice provisions that can continue long-term use restrictions
- The MRTA, added subsections (1) and (2) to section 712.04 of the Florida Statutes to squarely address situations in which property interests would not be extinguished by the MRTA.
- Section 712.04(2) of the Florida Statutes can act to enshrine permanent affordability controls as an exemption to the Florida Marketable Record Title Act



State of \_\_\_\_\_

Rev. 133C58E

## LAND LEASE AGREEMENT

This Ground Lease Agreement (this "Agreement") is entered into as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ (the "Effective Date") by and between \_\_\_\_\_, an individual located at \_\_\_\_\_ ("Landlord") and \_\_\_\_\_, an individual located at \_\_\_\_\_ ("Tenant"). Each Landlord and Tenant may be referred to in this Agreement individually as a "Party" and collectively as the "Parties."

**WHEREAS** Landlord owns and desires to lease to Tenant, and Tenant desires to lease, the Site (as defined herein); and

**WHEREAS** Landlord and Tenant wish to enter into this Agreement for the lease of the Site for use by Tenant as per the terms of this Agreement.

**NOW, THEREFORE** for good and valuable consideration stated herein, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

- 1. Agreement to Lease.** Landlord agrees to lease to Tenant and Tenant agrees to lease from Landlord, according to the terms and conditions set forth herein, the real estate described in Exhibit A attached hereto (the "Site").
- 2. Purpose.** The Site may be used and occupied only for the following purpose (the "Permitted Use"); \_\_\_\_\_. Nothing herein shall give Tenant the right to use the Site for any other purpose without the prior written consent of Landlord. Landlord makes no representation or warranty regarding the legality of the Permitted Use, and Tenant will bear all risk of any adverse change in applicable laws.
- 3. Term.** This Agreement will be for a term beginning on \_\_\_\_\_ and ending on \_\_\_\_\_ (the "Term"). The Parties hereto may elect to extend this Agreement upon such terms and conditions as may be agreed upon in writing and signed by the Parties at the time of any such extension.
- 4. Rent.** Tenant will pay Landlord rent in advance on the Effective Date in the amount of \$\_\_\_\_\_.
- 5. Late Fee.** Rent paid after the \_\_\_\_ day of each month will be deemed as late; and if rent is not paid within \_\_\_\_ days after such due date, Tenant agrees to pay a late charge of \$\_\_\_\_\_.
- 6. Additional Rent.** There may be instances under this Agreement where Tenant may be required to pay additional charges to Landlord. All such charges are considered additional rent under this Agreement and will be paid with the next regularly scheduled rent payment. Landlord has the same rights and Tenant has the same obligations with respect to additional rent as they do with rent.
- 7. Security Deposit.** Upon signing this Agreement, Tenant will pay a security deposit in the amount of \_\_\_\_\_ to Landlord. The security deposit will be retained by Landlord as security for Tenant's performance of its obligations under this Agreement. If Tenant does not comply with any of the terms of this Agreement, Landlord may apply any or all of the security deposit to remedy the breach, including to cover

# Long Term Ground Leases

Expected to grow to be the most widely used means for implementing shared equity

# Long Term Ground Lease

- Partner with an organization that can steward long-term rental affordability.
- 99+ years is the best practice v. expiring Land Use Restriction Agreement
- Key provisions discussed for deed restrictions as applicable such as:
  - Income Qualifications of Lessees
  - Ground Lease Rate
  - Rental Unit rates
  - Quantity of units to be affordable
  - Compliance provisions
  - Tax Responsibility – LLA
  - Resale restrictions (discussed in next)
  - Transferability Provisions





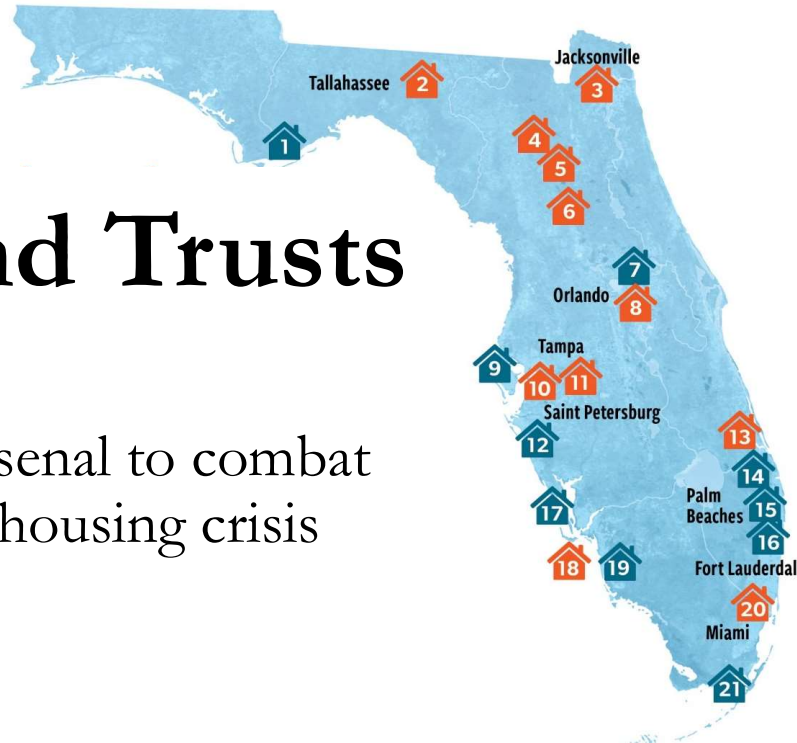
# NEW TAX EXEMPTION

- THANKS Live Local Act
- New s. 196.1978(1)(b)
- Property tax exemption applies to **land** owned entirely by a nonprofit that:
  - 1) is leased for a minimum of 99 years
  - 2) is predominately used to provide affordable housing to households up to 120% AMI
- Land is considered “predominately used” for affordable housing if the square footage of the improvements on the land for affordable housing is greater than 50% of all the square footage of the improvements
- Tax exemption is for the **land** only – not the improvements



# Community Land Trusts

A BEST PRACTICE in the arsenal to combat the forces of the affordable housing crisis



Community Land Trusts Throughout Florida



Newly Formed or Organizing



florida community land trust INSTITUTE

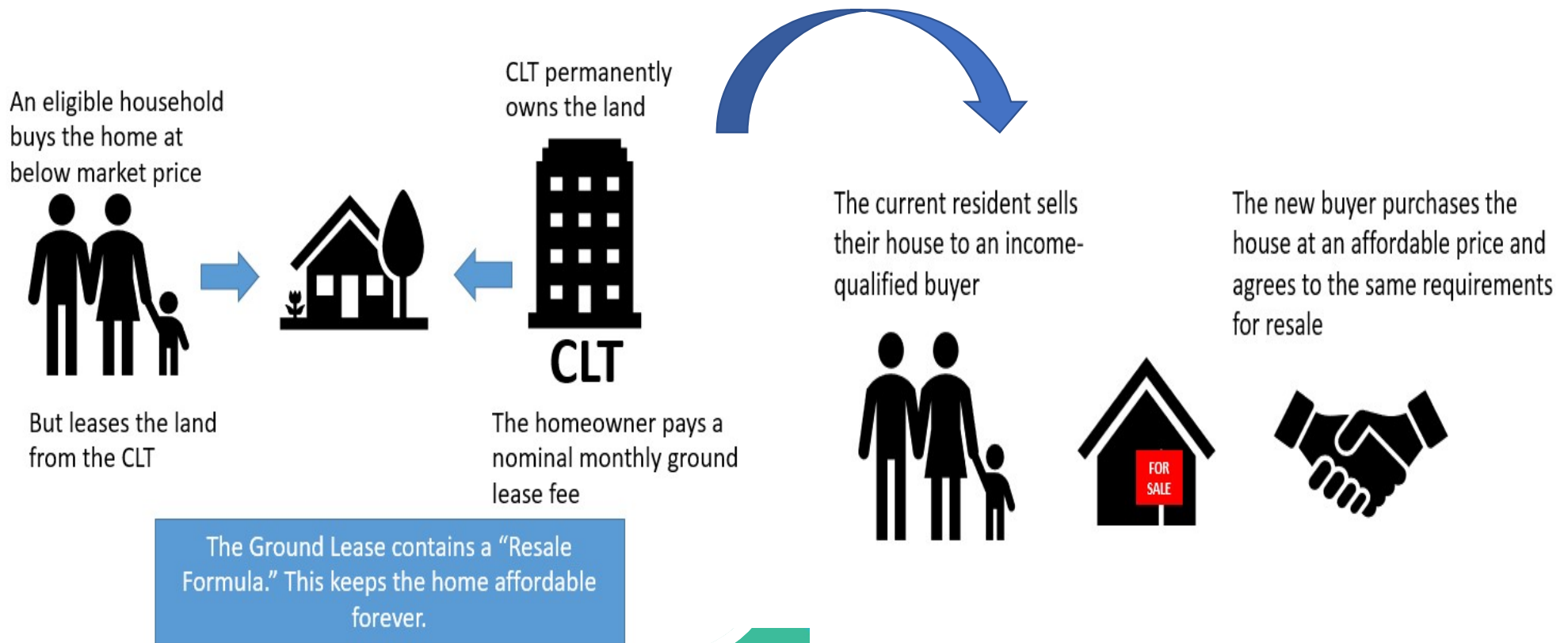
# What is a CLT?

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- The vehicle of separating ownership of the land from the building
- Captures public investment and retains it with the housing unit for permanent affordability using a ground lease
- Also, nonprofit organization that holds title to the land, sells the home on the land, and administers the 99-year ground lease that keeps the home affordable for one family after the next.



# How does CLT work for homeownership?



# MORTGAGE



## Community Land Trust Lending

© 2013 HOUSING COALITION



# CLT Lending - Specifically

- Major advantages to CLT loans
  - Extremely low foreclosure rate
  - Right of repurchase
- Major challenges:
  - Reluctance of lender involvement (lack of understanding and program uniformity)
    - Pool of interested lenders and appraisers is growing
  - Lack of scale



# Growing number of Lenders that work with CLTs in Florida



SYNOVUS®



IBERIABANK



# CLT SHIP Strategy Considerations

## Perpetually Affordable Development or CLT Development

- Funds to construct affordable single-family units for eligible homebuyers.
- Convert all subsidy to a subordinate assumable mortgage via a 99 year Ground Lease, Land Use Restriction Agreement (LURA), deed restriction, and/or other affordability restrictions or covenants to ensure homes remain affordable in perpetuity.
- Carefully consider default provisions for sponsor
- Specify who will determine buyer eligibility
- Preference shall be given to CLTs if strategy allows non-CLT sponsor participation
- CLT specific loan must be assumable to an income eligible buyer
  - Mortgage and note should specify loan assumption is required and not default
  - Require documentation of CLT specific homebuyer education





# CLT SHIP Strategy Considerations

## Purchase Assistance

- Funds for down payment and closing costs for new (focus for surplus land) and existing homes, including CLT.
- Large amount could substitute for development funding
- CLT specific loan must be assumable to an income eligible buyer;
  - Mortgage and note should specify loan assumption is required and not default
  - Require documentation of CLT specific homebuyer education
- If provided outside of CLT or ground lease:
  - Consider longer term for moderate income
  - Forgive or repay at the end of the term



# Tallahassee & Leon County Community Land Trust



**Karen Miller**  
**Executive Director**

**Tallahassee Lenders' Consortium**

**Dr. Thomas Kimball, Director**  
**Housing & Community Resilience**  
**City of Tallahassee**

- Birth of a CLT
- Keys to success
- Pitfalls to avoid



# THERE'S NO PLACE LIKE HOME...

## There's No Place Like A CLT Home



**Karen Miller**  
Executive Director  
Tallahassee Lenders' Consortium



**Dr. Thomas Kimball, Director**  
Housing & Community Resilience  
City of Tallahassee



# Who is TLC?

- TLC was founded in 1993 by the City of Tallahassee, Leon County and local financial institutions to provide affordable housing products to low-income homebuyers.
- TLC is a (501-c3) non-profit organization that is funded by grants & contracts from various funders. This allows us to eliminate and/or greatly reduce cost to our clients.
- NeighborWorks America Network Agency and a NeighborWorks America's Homeownership Center. (HOC)
- HUD Approved Counseling Agency & HUD Instrumentality of Government Designee
- **COMMUNITY LAND TRUST**



# Community Land Trust

- The Tallahassee Lenders' Consortium was designated as the City and County CLT in 2019
- Went through CLT Certification with the Florida Housing Coalition
- Created requirements, policies and procedures for the land trust.
- Partnered with the City of Tallahassee, Leon County, and Florida Housing Coalition

# CLT New Home Construction

- ▶ 4 Lots
- ▶ 5 - 9 Units Total
- ▶ 1-3 Single-Family Detached
- ▶ 4-5 Two-unit Duplex-Style Homes or Paired Townhomes
- ▶ 1 Single Family Floor Plan







# COMMUNITY LAND TRUST

Griffin Heights  
Griffin Street

Lakewood  
Shoreline Drive

Four Points  
Ridge Road

# You must use an approved Community Land Trust Lender



**The City of Tallahassee Will Provide  
Down Payment Assistance**





# Key Benefits for the Homebuyer

- ▶ **Price of home is now more affordable**
- ▶ **Mortgage payments instead of rent payments**
- ▶ **Mortgage interest payments are deductible; homestead exemption**
- ▶ **Return of equity upon resale**
- ▶ **Financial stability – ability to save without fear of rent increases**
- ▶ **Create Generational Wealth**



# CLT Homebuyer Responsibilities

- **Monthly ground lease payment to CLT (typically \$25-\$40/month)**
- **Monthly mortgage payment**
- **Paying tax bill for land improvement (on resale restricted value)**
- **Making repairs – as in fee simple ownership**
- **Receiving CLT approval before making certain improvements**
- **Notifying CLT when you intend to sell**

# Final Summary

- Use surplus land suitable for market rate housing for housing that is affordable and attainable as an incentive to be offered via procurement to build and/or obtain additional funding (FHFC, etc.)
- Conduct inventory review at least tri-annually and post your list online
- Shared Equity – Restrict resale values
  - CLT best practice combining permanent affordability, resale restrictions, and stewardship
  - 99-year Ground Lease equivalent to ownership
- Permanent Affordability – Leverage resources
  - Remove land value
  - Tax Implications
  - Subsidy retention



# Please complete EVALUATION

## More questions? Need help with a project? Just ask!

- Technical Assistance Hotline  
800-677-4548  
[www.flhousing.org](http://www.flhousing.org)

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