



FALL 2005

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HOUSING NEWS

Volume 21, Number 3

The Journal of the Florida Housing Coalition, Inc. NETWORK

IF THEY CAN'T AFFORD A PLACE TO LIVE, THEY CAN'T...



Cook Your Meals...



Take Care of Your Child...



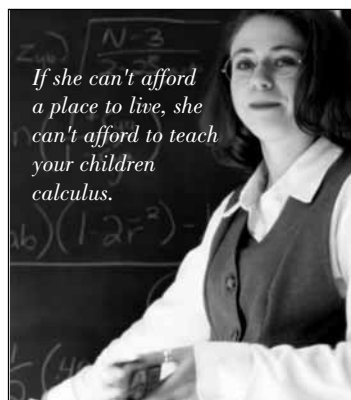
Take Care of Your Father...



Save Your Life...

Housing Florida's Workforce, Past, Present, and Future: 2006 Legislative Session

Florida can boast the best housing trust fund in the nation. But we are steadily and quickly losing ground in the fight for first time home ownership, housing our essential first-responder workforce, and providing for our most vulnerable citizens.



*If she can't afford
a place to live, she
can't afford to teach
your children
calculus.*

WHY? Because in this time of hyper-appreciation (see map on page 3), our state and local housing trust funds dedicated to providing affordable housing, have either been used for other purposes or simply not appropriated for any purpose. It is stunningly inexcusable.

Continued on page 3



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The Florida Housing Coalition is a nonprofit, statewide membership organization whose mission is to act as a catalyst to bring together housing advocates and resources so that Floridians have a safe and affordable home and suitable living environment.

The Housing News Network is published by the Florida Housing Coalition as a service to its members and for housing professionals and others interested in affordable housing issues. Address questions and comments to: Jaimie Ross, Editor, Florida Housing Coalition, Inc., 1367 E. Lafayette Street, Suite C, Tallahassee, FL 32301.

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STATE AND LOCAL HOUSING TRUST FUND

Local Government		FY2006/07 Full Funding Estimate		FY2005/06 FHFC Budget Request		Shortfall		Total Lost Economic Activity		Total Housing Units Lost		Total Jobs Lost
State Housing Trust Fund	\$	280,020,000	\$	70,500,000	\$	209,520,000	\$	1,794,943,643		15,697		35,233
Local Government Housing Trust Fund (SHIP)	\$	653,380,000	\$	166,400,000	\$	486,980,000	\$	3,701,048,000		32,628		72,560
DCF Homeless Funding	\$	6,100,000	\$	6,100,000	\$	-	\$	-		0		0
Statewide Total(s)	\$	939,500,000	\$	243,000,000	\$	696,500,000	\$	5,495,991,643		48,325		107,793

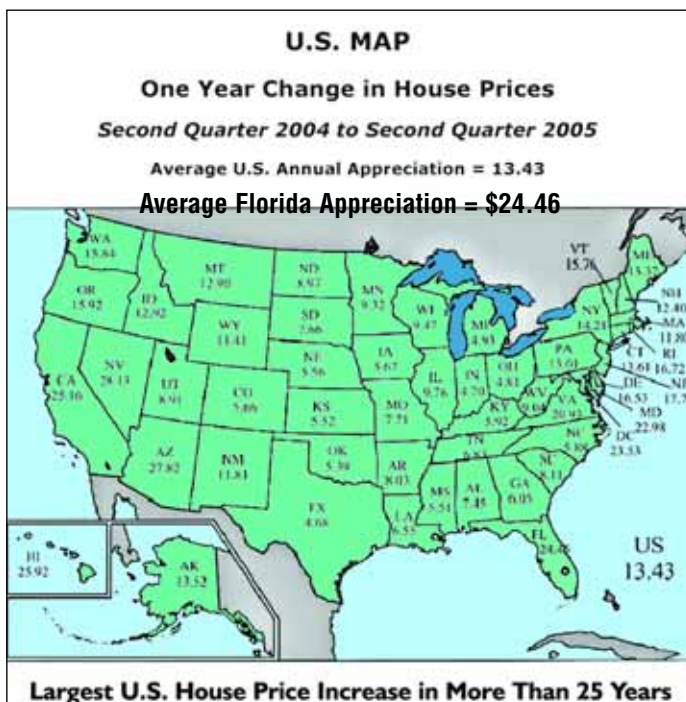
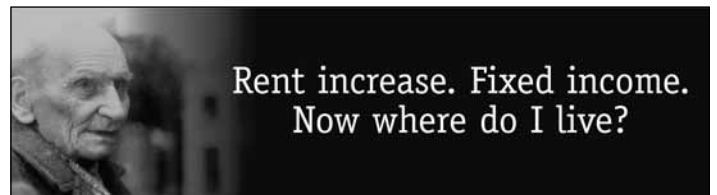
In 2006 we will have approximately \$939.5 million dollars in the state and local housing trust funds- it's time for every penny of those monies to be appropriated for housing.

Here's a snapshot of William E. Sadowski Affordable Housing Act funding:

At the end of the 2005 legislative session, approximately \$249.1 million in the state and local housing trust funds was neither appropriated for housing nor swept for other uses-- current revenue estimates now put this number at \$395.4 million. The combination of that money, earlier existing trust fund balances of \$23.3 million, and anticipated distributions into the housing trust funds of \$520.8 million during the upcoming fiscal year, combine to make the estimated \$939.5 million available for appropriation for housing from the state

and local housing trust funds for fiscal year 2006-'07. This money can and should be spent on housing Florida's workforce: past (the elderly), present (such as lower paid member of the workforce), and future (children), as well as the most vulnerable in our communities, such as persons with disabilities.

If Florida realizes only \$243 million in appropriation in fiscal year 2006-'07, SHIP Administrators will be trying to provide housing in '06-'07 with less money than they had in 2002-'03, when the appropriation was \$249 million.



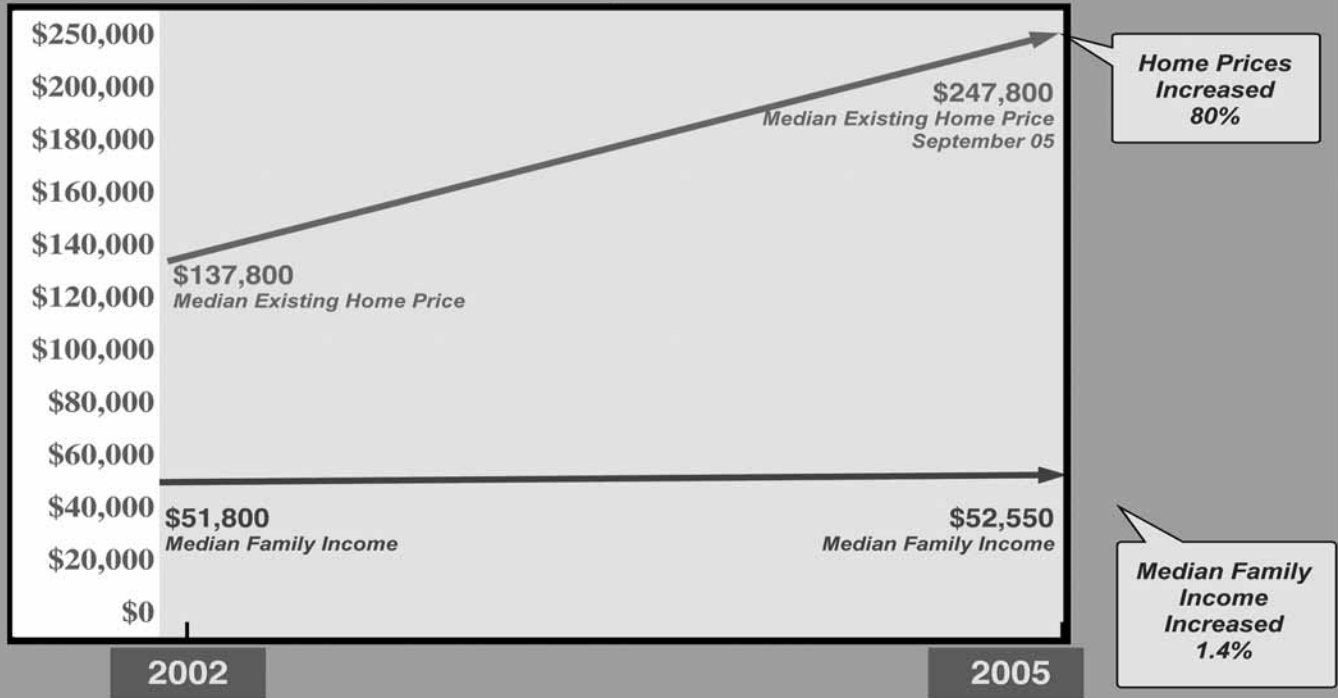
Largest U.S. House Price Increase in More Than 25 Years
Office of Federal Housing Enterprise Oversight (OFHEO)
Released September 1, 2005

A comparison of income and housing costs in 2002 compared with income and housing costs today, explains why Florida is losing ground in the fight for first time homeownership, housing its essential first-responder workforce, and providing for its most vulnerable citizens. (See chart on page 4).

SHIP Administrators are having to provide more than 1,000% more financial assistance to get today's lower income families into homeownership; resulting in an ever decreasing number of families served by the SHIP program. In many communities around the state, local government is supporting innovative programs such as community land trusts as a last resort for providing homeownership opportunities for the workforce. At the state level, the phenomenal increase in the cost of land, construction, insurance and property taxes, coupled with rent restrictions tied to nearly flat-lined incomes, is causing some of our best for-profit affordable housing developers to get out of the business of providing workforce housing for Florida's lower income families, including hospital workers, police officers, and educators.



**Median Sales Price, Single-Family, Existing Homes
& Median Family Income Comparison
2002 vs. 2005**



* HUD FY 2002 Median Family Incomes for Florida
 * HUD FY 2005 CBSA-Based Median Family Incomes for Florida
 * 2002 & 2005 Median Existing Home Prices from the Florida Association of Realtors

The Sadowski Act dedication of documentary (doc) stamp revenues to fund the state and local housing trust funds was designed to generate more dollars as the cost of housing increased. The nexus and the logic are self evident:

- Doc stamp collection is based on the purchase price of property.
- The higher the price of housing- more doc stamp monies are collected.
- The higher the cost of housing- greater subsidy is needed to fill the financial gap between what families earn and what they can afford to pay for housing
- If the increase in doc stamp revenues is not made available to fill that gap, fewer and fewer families will be able to afford housing.

There isn't a newspaper, or a city or county commission in this state that hasn't been talking about the housing crisis in their community. It is time to put a stop to interference with the state and local housing trust funds. It is time to return to full appropriation of the state and local housing trust funds for affordable housing, now and forever.

THE WILLIAM E. SADOWSKI AFFORDABLE HOUSING ACT

The William E. Sadowski Affordable Housing Act was adopted in 1992. It created the local housing SHIP program for all 67 counties as well as entitlement cities, and provided monies for the Florida Housing Finance Corporation programs such as SAIL, and the PLP program, as well as the Catalyst Program for Training and Technical Assistance. Approximately 70% of all the monies are distributed to local governments through the SHIP program; 30% of the monies are used for the state programs. The Sadowski Act programs have received high accolades after substantial scrutiny over the past several years, including review by the Florida Legislature.

For more information, contact Editor, Jaimie Ross at jaimieoross@aol.com.





KATRINA, RITA, WILMA, GAMMA . . . and Saving Our Region's Affordable Housing

BY CHARLES ELSESSER, ESQ.



In 2004, Florida suffered through four major hurricanes and one tropical storm, destroying or severely damaging more than 700,000 homes and causing more than \$21 billion in damage throughout the state. Hidden within those numbers was an incalculable loss of older, affordable market rate housing and the displacement of the tens of thousands of poor households for whom that housing was their home. This year Hurricane Katrina hit the Gulf states of Louisiana, Mississippi and Alabama, followed shortly thereafter by Rita. We all watched as the news brought the unbearable suffering of the New Orleans families into our homes. Those same scenes were repeated, less visibly, in hundreds of other cities throughout the three states. More recently, Hurricane Wilma crossed Florida from Collier County through Miami-Dade, Broward and Palm Beach Counties causing a massive prolonged power outage and extraordinary damage to older housing.

While the suffering in each of these storms was widespread, the poorest families suffered uniquely and most severely. It was their housing that was least likely to withstand the pressures of the storms. Elderly homeowners often had no insurance and little or no resources to rebuild. Many, poor homeowners and tenants alike, suffered again after the storm at the hands of FEMA. And as a final insult, they now have to watch as plans for their neighborhoods and communities proceed with little or no regard for their ability to return.

After each of these storms, affordable housing advocates have been at the forefront of efforts to direct rebuilding



dollars toward those most seriously affected by the storms. In Florida earlier this year, the Governor's Hurricane Housing Work Group acknowledged those efforts by directing significant resources toward the needs of the lowest income families. However, if meteorologists are to be believed, we are entering a phase of significantly heightened hurricane activity, with a decade or more of seasons similar to the past two years. These last two seasons certainly followed those predictions. It is time that hurricane related affordable housing advocacy moves from a reactive to a more proactive approach

PROACTIVE ADVOCACY

Proactive advocacy must move beyond simply bashing FEMA. Poor families displaced by Hurricane Wilma in Florida, a much smaller storm, as well as their neighborhoods, continue to suffer from many of the same problems experienced by Katrina victims. Rather, the current disaster response system - designed to respond to time-limited "incidents" - and the totally unregulated, idiosyncratic rebuilding efforts are simply inadequate when forced to respond to regional and continuing phenomena that are influenced as much by societal factors such as poverty and racism as by natural phenomena. We, as affordable housing advocates, know better than anyone the degree to which we have failed to provide our poorest families with decent housing and infrastructure and too often isolated their communities. For whatever reason, it appears that nature will no longer tolerate substandard housing and inadequate infrastructure within 100 miles of the shoreline in the Gulf/Atlantic region. We are now on

notice. We cannot be “shocked” when hurricanes cause massive displacement and loss of affordable housing in our region. These storms and their “recovery” aftermath, particularly within this heightened period, are, and will continue to be, the most significant causes of our loss of affordable housing and the destruction of our poor communities.


FEDERAL, REGIONAL, STATE AND LOCAL RESPONSE

With respect to Gulf/Atlantic hurricanes, it is time to reexamine the entire disaster recovery system - short term, long term, federal, state and local - for its impact on our poor communities. Any such reexamination should consider that FEMA’s current disaster response system, is essentially designed to assist middle class families through the short term difficulties imposed on them by a disaster. While it has not even served those families well, it has had disastrous effects on poorer families.

When hurricanes ravage multiple states, year after year, our response cannot depend on the geographical accident as to the location of a state’s border. There are now tens of thousands of poor displaced Louisiana and Mississippi residents living in Florida. The recovery of their communities and their ability to return to their homes is vital to the region - not just to the home state. Florida, with its significant development infrastructure and expertise, could have a significant role in any regionalization of the response by sharing expertise with their counterparts in less advantaged states. The less advantaged states, for their part, must be encouraged to create both the infrastructure and the dedicated resources to respond to the needs of their residents. The federal response could assist in that process. For example, a simple change in FEMA legislation could require each state threatened by major hurricanes to create a dedicated statewide Affordable Housing Trust Fund, just as

it now requires flood insurance, as a condition of continuing disaster relief. Florida has seen the enormous value of our dedicated housing revenue from the Sadowski Affordable Housing Act in both preparing for and recovering from hurricanes.

Post Disaster Planning and the Right to Return - We must establish as a fundamental regional principle that all post disaster planning be premised on the right of all pre-disaster residents to return to their post-disaster community. These storms can never be used as an excuse for redevelopment plans that exclude, or fail to rebuild for, the poorest elements of the community. Such a principle could be more explicitly incorporated in state comprehensive planning requirements or similar land use regulations but must be done before the disaster itself creates an enormous pressure to simply “begin anew” and to plan as if the poorest displaced families simply did not exist. We have all witnessed the drama of the Ninth Ward in New Orleans and heard the highly visible debates regarding rebuilding. We must internalize in our long term planning that there is a Ninth Ward in every community and ensure that each community’s rebuilding efforts ensure that they provide a place for all the pre-storm families.

The prediction of a long term period of severe hurricane seasons threatens much of the existing affordable housing in the entire Gulf/Atlantic region. However, it also provides an opportunity to plan, not only for the recovery from the hurricanes that occurred in the past two years, but also for those that will - not might - occur in the next. 

Charles Elsesser is an attorney with Florida Legal Services, specializing in affordable housing litigation and policy advocacy. Chuck serves on the board of the National Low-Income Housing Coalition and the Board of Directors for the Florida Housing Coalition, he is also a member of the Affordable Housing Committee of the Real Property Probate & Trust Law Section of the Florida Bar.

The Florida Legislature appropriated \$242 million from the state and local housing trust funds (Hurricane Housing Recovery money) for the counties hardest hit by the 2004 hurricanes. Pursuant to the Catalyst Contract for Training and Technical Assistance, administered by the Florida Housing Finance Corporation, the Florida Housing Coalition has been working with all 28 Hurricane Housing Recovery money recipients. We are assisting local governments to design strategies to meet their hurricane housing recovery needs. The Coalition’s staff is working with these communities on implementation of effective rental strategies, with a special focus on housing for families with extremely low incomes, establishing community land trusts, and how best to handle administrative requirements.



Shared Appreciation: Balancing Wealth Building with Future Community Needs

BY STAN FITTERMAN
FLORIDA HOUSING COALITION

Housing prices have risen dramatically in Florida over the past few years, while incomes have stayed relatively flat. As a result, to assist the same income levels today as seven years ago, local government housing programs are in the position of having to provide deeper and deeper subsidies, in some cases as much as \$80,000-\$100,000 per unit. When a SHIP-assisted family decides to sell their home, (often within ten years), they do not have to sell the home to a SHIP eligible household. As a result, these SHIP assisted units are often lost from a community's affordable stock. In other words, for its \$80-\$100,000 investment, a SHIP program is helping one family purchase a unit that will only be affordable for that one family, usually for less than 10 years.



According to the Office of Federal Housing Enterprise Oversight's Housing Price Index, housing costs in Florida increased almost 111 percent between June 30, 1998, and June 30, 2005, an average annual increase of almost 16 percent. Table 1 shows an example of how this rapid increase in housing price affects subsidy level. A family purchases a home in 1998 for \$90,000 with \$10,000 worth of subsidy. At a 16 percent annual appreciation rate, that family could sell their house in 2005 for over \$254,360.

After repaying the \$10,000 SHIP loan and the remaining amount on the first mortgage, this family would receive nearly \$162,416 at the sale. During the seven years that they owned the home, the family paid \$42,500 in principal and interest, resulting in the proceeds at sale exceeding the amount of principal and interest paid by \$119,942.

This rapid appreciation in the housing market has also resulted in substantial capital gains for SHIP assisted families. While wealth building has always been a driving force behind increasing the homeownership rate in this country, some local governments are starting to ask, how much wealth should the SHIP program generate for the people it assists? And what if generating this wealth makes it virtually impossible for these programs to assist families in the future? In an effort to balance wealth building with being able to assist families in the future, some communities in Florida are starting to explore a tool known as shared appreciation. With this tool, a portion of the appreciation a SHIP assisted families realizes from the sale of their home is returned to the original subsidy provider, who in turn uses this repayment to supplement its housing trust fund so the program can continue to help somewhere near the same number of families in the future as it assists today.

TABLE 1 SKYROCKETING HOME PRICES + SLUGGISHLY GROWING WAGES = EXPONENTIAL GROWTH IN SUBSIDIES NEEDED		
	1998	2005
Home price, appreciating at 16% annually	\$90,000	\$254,360
Family income, 76% median, increasing at 3 percent annually	\$32,275	\$40,000
Subsidy needed	\$10,000	\$137,000

Continued on page 8

TABLE 2
SHARING THE EQUITY EXAMPLE

Annual Housing Price Appreciation 10%		
	2005	2012
Home price	\$180,000	\$350,769
Family income, 76% median (3% annual increase)	\$40,000	\$49,195
Subsidy needed for family at 76% of median	\$90,000	\$181,000
Appreciation distributed to buyer at sale (if 50-50 split)		\$94,448
Appreciation distributed to subsidy provider at sale (if 50-50 split)		\$85,384
Subsidy repaid to subsidy provider		\$90,000
Funds available for subsidy provider to assist the next family		\$175,384

In 1998 a \$90,000 home was affordable to a family earning 76 percent of median (\$32,275) with just \$10,000 worth of subsidy. In 2005, 76 percent of median income is \$40,000. Given a 111 percent increase in housing cost during that time a family at 76 percent of median income level would need over \$137,000 in subsidy to buy that same house, now valued at \$254,360. The \$10,000 repaid to the SHIP program at the time of the sale is barely 7 percent of the total amount of subsidy needed for the next family. Even with a more modest annual appreciation rate of 10 percent, this same home would sell for over \$175,000, in 2005, requiring \$70,000 in subsidy for that family with a similar income level.

It is these types of numbers that are causing housing staffs around the state to ask the question of whether purchase assistance programs should continue to allow the purchaser to realize 100 percent of a home's appreciation. Under a shared appreciation policy, the assisted family repays the initial subsidy and returns a predetermined portion of the proceeds to the subsidy provider. These funds are then used to assist future home buyers. Table 2 shows an example of how a shared appreciation approach works. A family buys a home in 2005 for \$180,000, and receives \$90,000 in subsidy. At resale, the housing program requires the repayment of all of the initial subsidy plus 50 percent (or whatever pre-determined percentage) of the appreciation. If the family sells at the end of year 7, and there has been a 10 percent annual appreciation rate, this home would sell for \$350,770. At sale, the first

mortgage is repaid and the initial \$90,000 in subsidy is repaid, leaving \$170,770. With a 50/50 split between the seller and the local government, the seller receives \$85,384 of this appreciation, along with the \$9,063 in principal paid over the seven years. At sale, the seller receives a total of \$94,448, more than twice the \$47,784 paid in principal and interest over the seven year life of the loan. The subsidy provider receives the \$90,000 for repayment of the initial subsidy, plus 50 percent of the appreciation, for a total of \$175,384.

In 2005, \$40,000 is 76 percent of the state's median income. Given a 3 percent annual increase, a family earning 76 percent of median in 2012 will make \$49,195 per year. In order to purchase this \$350,770 house, this 2012 family will need about \$181,000 in subsidy, or just over the \$175,384 repaid from the sale of the unit that was assisted in 2005. The shared appreciation tool does not insure that assisted units stay affordable. Instead, recaptured funds from the sale of assisted units are used to help another family purchase a home in the market.

Subsidy recapture has long been a feature of virtually every SHIP-funded purchase assistance program. Historically, programs have been structured to provide the difference between the cost of a house and what an income eligible family can afford. When the family eventually sold their house, the amount of the initial subsidy was repaid to the SHIP program and then used to assist another family. As prices have risen, the amount being repaid is nowhere near the amount needed to assist subsequent families. Shared appreciation offers a way to provide SHIP recipients with opportunities for wealth building while still enabling local government programs to continue to help more families in the future than its SHIP allocation would ordinarily permit.



Stan Fitterman is a Senior Technical Advisor with the Florida Housing Coalition. Mr. Fitterman's areas of expertise include financing affordable housing, and financial management. Mr. Fitterman is recognized throughout the state as one of the foremost authorities on Florida's State Housing Initiatives Partnership (SHIP) program.

JUST RELEASED

Out of Reach Report for Florida Florida Housing Wage \$15.68

In Florida, the Fair Market Rent (FMR) for a two-bedroom apartment is \$816. In order to afford this level of rent and utilities - without paying more than 30% of income on housing - a household must earn \$2,718 monthly or \$32,621 annually. Assuming a 40-hour work week, 52 weeks per year, this level of income translates into a Housing Wage of \$15.68.

For the Complete Report go to www.nlihc.org

Courtesy: National Low Income Housing Coalition



Michael Sloss, Vice President for Product Innovation at Enterprise Housing Financial Services, discusses implementation of the Green Communities Initiative during the "Creating Green Affordable Housing for Florida" workshop.

Green Communities

BY MARY SORGE

Lower housing life cycle costs are especially important to individuals and families with limited income. Cheap housing that is of poor quality or lacks energy efficient is not affordable.

With increasing populations of families with limited income moving to Florida, there is an affordable housing crisis and an even greater one when life cycle affordability is considered.

The Bonita Springs Area Housing Development Corporation was approached by the Enterprise Foundation inquiring if we would like to participate with them on an initiative to build an affordable "Green Community" in SW Florida. Our first question was **"What is a Green Community?"**

Over the past several months, I have learned more than I thought I ever wanted to know about Green Community criteria. The information we have learned has served to enlighten us to take our developments of workforce housing to the next level.




The Green Community concept is addressed in several facets of a subdivision:

1. Growth management issues are addressed through a community's proximity to schools, alternative transportation, such as buses, shopping and recreation facilities. Our community "Renaissance at Rosemary Park" is located .6 miles from a bus stop; .6 miles from a convenience store; 1 mile from a school, library, recreation center, and swimming pool; and 2 miles from a shopping plaza with restaurants, a major discount store, a major grocery store, doctor's offices, and various specialty shops. Emphasis is placed on creating walkable, livable neighborhoods with sidewalks that benefit residents and communities by causing fewer sprawl-related transportation impact.
2. There is a cost savings through long-term reduction in operating costs as well as a benefit to the community in preserving energy for future generations through improved energy performance and water conservation.

3. Green building integrates materials and methods that promote environmental quality into their designs. Adopting green building practices will redouble our contribution to the physical health and well being of our citizens.

Green or sustainable design can significantly lower life cycle costs while only increasing the initial investment costs by 5% to 7% assuming the green features are integrated into the overall design as the dwelling is planned. Green designs if integrated into dwellings from the beginning, can reduce energy use by 50% to 70% and water use by even more. Healthy home design features that improve indoor air quality and discourage mold growth can substantially lower medical expenses especially in children and older adults.

The Renaissance at Rosemary Park is layered with numerous partnerships. The city of Bonita Springs lent Bonita Springs Area Housing Development Corporation \$200,000 at 0% interest along with a low interest rate loan from the Florida Community Loan Fund for the land acquisition. The city partnered with the Renaissance Group of Bonita Springs, a philanthropic group of residents, to provide the infrastructure and predevelopment on the project. The city of Bonita Springs will also provide impact fee waivers and water and sewer connection credits amounting to approximately \$325,000 for the community

and maintain affordability. The Enterprise Foundation has offered a grant for the implementation of the “Green Community” concept, as well as a \$15,000 loan at 0% interest to hire an architect to integrate the green design. Additionally, they have entered into a contract with Florida Solar Energy to provide technical assistance to our organization. The Bonita Springs Area Housing Development Corporation is partnering with a local “green architect” and sustainability/green-building experts at Florida Gulf Coast University to build a community of green/sustainable homes in the warm and humid subtropics. This project will not only provide much needed affordable workforce housing for one of the fastest growing regions of Florida but will also be an invaluable demonstration project for building green/sustainable affordable housing. 

Mary Sorge is the Executive Director of the Bonita Springs Area Housing Development Corporation. Prior to her position with the BSAHDC, she was a senior vice president of the Bank of America Community Development Corporation office in Jacksonville. Ms. Sorge is a past Chairperson of the Florida Housing Coalition, and currently serves as Secretary on the Executive Committee of the Florida Housing Coalition's Board of Directors. She also serves on the Developmentally Disabled Council Affordable Housing Task Force.

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Preservation of Multifamily Affordable Housing: the Focus of Affordable Housing Study Commission's 2005 Final Report

BY ODETTA MACLEISH-WHITE

Pick up any Florida newspaper you will probably read about the increasingly urgent issue of affordable housing, and how quickly housing options are moving beyond the reach of Floridians. For low income families who rely on rental housing, the situation is even more precarious. In its 2004 final report, the Affordable Housing Study Commission noted that, by 2008, tens of thousands of affordable multifamily units in the United States may be converted into market rate units. Adding to the problem, federal funding for programs that maintain affordability has decreased over the years.

Further compounding the urgency of addressing preservation is the fact that rental assistance provided to some 27,000 units, through Section 8 contracts and other rental assistance programs, will slowly disappear as HUD's budget is cut. These units are most likely to house Florida's extremely low income families, who often struggle with housing costs that overburden their income.



In the May 2005 edition of the Housing News Journal, Nancy Muller, Florida Housing Finance Corporation's Policy Director explained the preservation pressures that are making it ever more difficult to keep and maintain sorely needed rental housing and outlined the aging issues facing Florida Housing's portfolio and federally subsidized units.

With the release of the Study Commission's 2005 Report in July 2005, specific data on aging and expiration for Florida's rental housing is available. This article highlights some of that data and briefly outlines the obstacles that stand in the way of preservation deals.

WHAT IS THE AGING AND EXPIRATION DATA FOR FLORIDA?

A variety of HUD programs finance affordable multifamily housing in Florida including Section 221(d)(3), Section 236 and Section 202/811 in addition to the Section 515 and 514/516



Helen Hough Feinberg, Chair of the Governor's Affordable Housing Study Commission. Helen is the manager of the housing group for RBC Dain Rauscher, and serves on the Florida Housing Coalition's Advisory Council.

programs from USDA Rural Development (RD). Both the HUD and RD programs face serious expiration issues; HUD programs face peak losses in the next 10 years (12,553 units) and again in 2030 (13,078) while RD programs will face a loss of 13,409 units over the next fifteen years.

Even as we consider the impact of permanently losing these units, the issue of aging also demands our attention. Almost 39,000 units of Florida's rental housing are public housing. Approximately 70% of this stock is over 30 years old, making it some of the oldest in the state. Maintenance and upgrades, rather than expiring affordability, is the issue for these units.

Next, let's consider the housing financed through Florida Housing Finance Corporation programs. Over 40 percent of Florida's affordable housing stock is 1 to 10 years old, with 95 percent of these newer units financed through Florida Housing's programs. Still, over 40,000 of the units in Florida Housing's portfolio are 11 to 20 years old, and another 3,100 units are in the 21 to 30 year old range.

The relative youth of Florida Housing's portfolio means expirations will not pick up speed until 2030. The bad news is that over 13,000 units have already expired, mostly from the Bond program, and in the next five years, another 7,200 units (mostly from the 9% Housing Credit program) will also lose their affordability.

WHAT ARE THE OBSTACLES TO PRESERVATION?

The Study Commission's 2005 report also outlines the barriers that complicate preservation and rehabilitation deals.

FINANCIAL BARRIERS

Many in the affordable housing industry believe that the exit tax is the single largest barrier to maintaining the affordability tax credit developments. Exit taxes often exceed what the seller

receives in cash proceeds and keeps owners from transferring their older properties. Decreased federal funding for Section 8 subsidies and other rental assistance programs means that owners who do manage to restructure the debt on their properties may be forced to pass on higher rents to residents.

INFORMATIONAL BARRIERS

There are no widely available standardized risk analysis tools to assist states and local governments in identifying properties that may be facing expiration. Notice requirements for owners wishing to end Section 8 contracts or prepay their federal mortgages do not provide enough time to find new owners who will maintain permanent affordability. Finally, state and local government officials and community leaders must be educated about the aging stock in their communities and the impact of losing this housing.

CAPACITY BARRIERS

The enhanced capacity of nonprofits and public housing authorities to execute preservation deals could greatly decrease the rate of loss of these properties. These entities tend to target their housing activities to meet the needs of lower income families, and seek to create housing in neighborhoods that are facing multiple challenges on the road to revitalization. Most nonprofit developers maintain a small staff, and have neither the capital nor the expertise to expedite these transactions. Attention to a variety of community issues may reduce the time spent by an already limited staff on the complicated task of developing and financing preservation deals.

GOVERNMENTAL BARRIERS

State and local governmental regulations, such as code and design requirements, can make preservation transactions more expensive although some updated code features are necessary, especially those related to wind safety and other environmental factors.

CONCLUSION

The Study Commission has started to develop specific recommendations to address the barriers listed above and plans to propose a statewide preservation policy by July 2006. To read the 2005 Report in its entirety, please visit <http://www.floridahousing.org/ahsc/AnnualReports/2005AnnualReport>.



Odetta MacLeish-White is the Director of the Affordable Housing Study Commission. She joined Florida Housing Finance Corporation after four years as a developer and holds degrees from Harvard University and Duke University School of Law.



Community Land Trusts: Creating Permanent Affordable Homeownership in Florida's High Cost Areas Title and Tax Issues

BY JAIMIE ROSS, ESQ.

The median price of existing homes throughout Florida has increased by almost 80% over the last five years. In the coastal areas we have seen land and house prices double and triple. Yet over that same five year period, the average income in Florida has risen by less than 1.5%.¹

The enormous gap between the income of Florida's workforce and the cost of homes causes local governments and affordable housing developers, as well as the private and public employment sector to look for new tools to meet the housing needs of Florida's lower paid workforce. Communities throughout Florida are losing essential workforce such as teachers and emergency workers and some are finding it difficult to attract desirable industries as prospective employers discover that their workforce will be unable to afford local home prices.

COMMUNITY LAND TRUSTS.

The tool that an increasing number of higher cost communities are looking to is "community land trusts."² Community land trusts bear no relation to Florida Land Trusts (Chapter 689, Florida Statutes) in which land may be held in trust for the benefit of another. Indeed, there is no statutory construct for community land trusts, although there is a federal definition found in the 1992 Cranston - Gonzales Act.³ Generally, a community land trust will be a Community Housing Development Organization (CHDO), with the specific purpose of acquiring parcels of land to hold in perpetuity, transferring ownership of the structural



improvements subject to the terms of the long term ground lease which provides a preemptive option to purchase back the improvement at a price determined by formula that is designed to ensure perpetual affordability for low and moderate income families.

A community land trust refers to the vehicle of separating land from building (house) for the purpose of transferring title to the house without selling the land. It also denotes the nonprofit organization that holds title to the land and manages the ground leases on community land trust properties.

There are two primary purposes for using a community land trust (CLT):

- 1. to make homeownership more affordable; and**
- 2. to keep the home affordable forever.**

Homeownership becomes more affordable because the transfer of title to the homeowner does not include fee simple interest in the land; the sales price is based on the value of the improvements, without the value of the land. The land is owned by a 501(c)(3) corporation which provides a 99 year (renewable) ground lease to the homeowner.

The ground lease has a resale provision which ensures the property will be affordable in perpetuity. The owner of the home is not permitted to sell the home on the open market.⁴ The home must be sold to an income eligible buyer at an

affordable price. The resale provision will typically provide a reasonable return to the homeowner: a price that includes whatever monies the homeowner paid to buy the home as well as appreciation based on a formula in the ground lease. The appreciation will usually be far less than standard market appreciation. The resale provision will also typically provide a right of first refusal in favor of the CLT.

From the standpoint of the buyer, the CLT home provides homeownership in a market where the alternative is to rent or move away. From the standpoint of local government, funders providing subsidy, and affordable housing advocates in general, the CLT provides a way of creating permanent housing stock with a single subsidy. From the standpoint of the employment sector, the CLT provides a stock of employee housing.

Without the use of a community land trust, affordable housing is typically created through financial subsidy either to the developer for construction or to the homebuyer for down payment and closing cost assistance, or to both the developer and the purchaser. When the affordable home is sold the government or other subsidy provider may recapture the subsidy to assist another first time home buyer. But due to the extraordinary appreciation in market prices, the recaptured subsidy falls far short of the amount needed to get a new buyer into a home. The community land trust vehicle is a remedy for this losing proposition of ever increasing need for higher and higher subsidies.

SEVERING THE HOME FROM THE LAND.

Separating improvements from the land (where the owners of the buildings have a long term leasehold estate in the land) is not an unknown concept in Florida in the context of sophisticated commercial transactions. But the concept is a new one in the arena of homeownership in Florida. Typically, in a homeownership transaction, it is customary for title to improvements to transfer via a deed transferring fee simple interest in the land. The initial question then, is what instrument is best used to transfer title to improvements severed from the land. Is it appropriate to transfer title to improvements through a bill of sale, or through a deed?


The intent of creating affordable homeownership opportunities through the community land trust vehicle is to provide as

much indicia of fee simple homeownership to the purchaser as possible. The homebuyer expects to enjoy the mortgage interest deduction on federal income taxes as well as the Florida ad valorem homestead exemption. The ground lease also provides that the homeowner has no right to remove the home from the land. In accordance with the rules for determining whether a building is personalty or realty as set forth by the Florida Supreme Court in Stiles v. Gordon Land Company and Commercial Finance Company v. Brooksville Hotel, it is most appropriate to use a deed rather than a bill of sale.⁵

AD VALOREM TAXES.

There are several questions to be addressed in regard to ad valorem taxation in Florida. The community land trust model envisions that the land will have one assessment and the improvements will have another. The first question is will the 501(c)(3) that owns the land be exempt from ad valorem taxes pursuant to Section 196.1978, Florida Statutes. It appears the answer to that question will be “no.” Although the Community Land Trust ostensibly meets the criteria of Section 196.1978, Florida Statutes, as a 501 (c)(3) providing housing to income qualified individuals, the CLT will most likely not be exempt from ad valorem taxes on the land. This is because the homeowner has a 99 year leasehold interest in the land, which the courts have held to be the functional equivalent of ownership.⁶ Fortunately, pursuant to a similar line of reasoning, as well as Section 222.05, Florida Statutes, the homeowner will enjoy homestead exemption on its leasehold property.

But how will the value of the home be assessed? This is the thorniest issue for community land trust homeowners. The fair market value of the community land trust home should clearly consider the resale formula which substantially restricts the value of the home upon sale by the owner. The owner has bought the house subject to the terms of the resale restriction and is therefore unable to sell the community land trust home for a price similar to the selling price of an identical home next door, not subject to a resale restriction. While it makes a great deal of legal and common sense for appraisers to reduce the assessed value of the home based on the resale restriction, it is likely that some county appraisers will, and some appraisers will not.



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Without legal clarity on this issue, it would be prudent for the community land trust homebuyer to prepare for the possibility of receiving a property tax bill based on the value of a house well beyond the sales price the homebuyer could realize under the terms of the resale restriction. Because of this uncertainty in the law and the detrimental effect of an assessment that is not adjusted based on the resale restriction, this is an area that may ultimately need to be addressed in the law. Fortunately, the Save Our Homes Constitutional Amendment will protect homeowners during the time they own their CLT home from increase in assessment by more than 3% per year.


LEGAL MANUAL FOR COMMUNITY LAND TRUSTS.

The Institute for Community Economics is widely accepted to be the founder of the community land trust model. The Institute for Community Economics (ICE), is a national nonprofit organization, headquartered in Springfield, Massachusetts. The Institute for Community Economics produced the seminal guide for community land trusts in 2002, The Community Land Trust Legal Manual, a Handbook for Community Land Trusts and Their Attorneys.² Counsel for a community land trust, the homebuyers of community land trust property, or community land trust lenders would greatly benefit from having a copy of the manual. The ICE Legal Manual covers such topics as designing a resale formula, designing a ground lease, financing homes on CLT land, and enforceability of the CLT's preemptive right.

Because state laws differ in regard to corporate, real property, and tax issues, the ICE Legal Manual is best supplemented with Florida specific information. To this end, the Affordable Housing Committee of the Real Property Probate & Trust Law Section of the Florida Bar is presently developing a Florida Legal Manual for Community Land Trusts to supplement the ICE Legal Manual. It will address the topics discussed above as well as a variety of other Florida specific issues. One area of focus in the Florida Legal Manual will be the heightened need for legal counsel to represent the interests of the community land trust homebuyer in this novel form of homeownership and one that, although clearly designed to



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benefit the community land trust homebuyer, comes with unfamiliar restrictions on a homebuyer's right to sell at any price on the open market. The Affordable Housing Committee of the RPPTL Section is pleased to report that the Pro Bono Committee and the Affordable Housing Committee of the RPPTL section are already working together to facilitate representation of community land trust homebuyers. 

Jaimie Ross is the Affordable Housing Director at 1000 Friends of Florida, a statewide nonprofit growth management organization. She is president of the Florida Housing Coalition, chair of the Affordable Housing Committee of the Real Property Probate & Trust Law Section of the Florida Bar, and a 2004 -'05 Fannie Mae Foundation James A. Johnson Community Fellow.

¹ Florida Sales Report released each year by the Florida Association of Realtors and the University of Florida Real Estate Research Center.

² Community Land Trusts have already been established in Key West, the Middle Keys, and in the city of Winter Park. CLTs are in the process of

being established in Sarasota County, Martin County, and Lee County, and a number of communities in the Panhandle.

³ See Section 233 of the Cranston-Gonzales National Affordable Housing Act (42 U.S.C. 12773).

⁴ Typically, a ground lease will provide that the home may be sold on the open market, if the CLT fails to exercise its right of first refusal and the owner has tried to sell the home unsuccessfully for a certain period of time, such as 120 days.

⁵ See Stiles v. Gordon Land Company, 44 So. 2d 417 (Fla. 1950), "agreements for the sale of buildings already erected upon land rest in part, if not altogether, upon the individual facts". The facts to be considered, according to the Court in Commercial Finance Company v. Brooksville Hotel, 123 So. 814 (Fla. 1923) are actual annexation to the realty; appropriateness to the use or purpose of the realty to which it is connected; and the intention of the party making the annexation that it shall be a permanent accession to the freehold.

⁶ See Mikos v. King's Gate Club, Inc., 426 So.2d 74 (Fla.2nd DCA, 1983); Leon Co. Educational Facilities v. Hartsfield, 698 So. 2d 526 (Fla.1997).

⁷ The ICE Legal Manual is available from the Institute of Community Economics, 57 School Street, Springfield, MA 01105-1331 www.iceclt.org



The Florida Community Land Trust Institute

While Florida's land values continue to climb, and as communities grapple with the complex issues of sustainable affordability, local governments and their nonprofit partners are examining alternative models for addressing the long term needs of residents least served by the prevailing market. A community land trust can benefit low-income families by providing access to affordable housing in high cost, service-industry dependent areas, while keeping housing affordable for future residents. Just as importantly, the CLT model can be used to capture the value of public investment for long-term community benefit.

WHAT IS A COMMUNITY LAND TRUST?

A community land trust refers to the vehicle of separating land from building (house) for the purpose of transferring title to the house without selling the land. It also denotes the nonprofit organization that holds title to the land and manages the ground leases on community land trust properties.









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title to the homeowner does not include a fee interest in the land; the sales price is based on the value of the improvements, without the value of the land. The land is owned by a 501(c)(3) corporation which provides a 99 year ground lease to the homeowner.

The ground lease has a resale provision which ensures the property will be affordable in perpetuity. The home must be sold to an income eligible buyer at an affordable price. The resale provision will typically provide a reasonable return to the homeowner but the appreciation may be far less than standard market appreciation. The resale provision will also typically provide a right of first refusal in favor of the CLT.

From the standpoint of the buyer, the CLT home provides homeownership in a market where the alternative is to rent or move away. From the standpoint of the local government, society, funders providing subsidy, and affordable housing advocates in general, the CLT provides a way of creating permanent housing stock with a single subsidy.

THE FLORIDA COMMUNITY LAND TRUST INSTITUTE PROVIDES ASSISTANCE WITH:


-  Assessing whether a community land trust is appropriate for your community and, if so, which model makes the most sense for your community
-  Understanding the terms of the ground lease and options for resale provisions
-  Start up for the nonprofit community land trust
-  Capacity building for the nonprofit community land trust
-  Homebuyer counseling for community land trust purchasers
-  Internal operations and marketing for the community land trust
-  Legal questions such as title and real property tax issues
-  All manner of real property development and financing issues

The Florida Community Land Trust Institute is a collaboration between two statewide 501(c)(3) organizations, 1000 Friends of Florida and the Florida Housing Coalition. The Florida CLT Institute is headed by Jaimie Ross, Attorney at Law, and Affordable Housing Director at 1000 Friends of Florida, a statewide nonprofit growth management organization. The training and technical assistance team is comprised of the staff of the Florida Housing Coalition, headed by Senior Technical Assistance Providers, Wight Greger and Stan Fitterman. For more information, call the Florida Housing Coalition at 850/878-4219, or email jaimieross@aol.com.





The Obligations of the Community Land Trust to the Homebuyer

BY CHARLES ELSESSER, ESQ.


 There are a number of reasons why the Community Land Trust (and its attorney) must be far more concerned than the normal seller in ensuring that the buyers in a Community Land Trust purchase are fully informed and counseled prior to the purchase transaction.




 The legal structure of the Community Land Trust purchase and sale is different from that which most residential buyers had ever previously experienced. As opposed to the transfer of a fee simple interest with which most buyers, even first time buyers, are generally familiar, the CLT purchase and sale involves the transfer of a leasehold interest in the land and a fee simple transfer of the improvements alone. Many attorneys may have difficulty understanding this concept; unsophisticated buyers will undoubtedly need a great deal of explanation.

 In a Community Land Trust purchase buyer is severely restricted in the resale price through the option to repurchase and resale restrictions incorporated in the long term lease. During an economic period in which one's investment in their own home is also seen as a major wealth building and retirement vehicle, it is extremely difficult for many potential buyers to grasp the idea of limited return on equity.

As a result of the expectation of asset growth, one of the greatest threats to the stability of a CLT can come from within as purchasers, who were not fully aware of the CLT structure at the time of purchase, may want to cash out their equity in a rapidly escalating real estate market.

 By the nature of the transaction, the CLT is providing purchasers with an opportunity to own a home which would otherwise have been unaffordable to them. The purchasers, by virtue of the CLT marketing efforts, may be less educated or less sophisticated than wealthier purchasers of market rate real estate. The opportunity to own their own can often cause purchasers to overlook or ignore “the details” of a transaction, regardless as to how well it is explained. This can result in buyers, fairly or unfairly, feeling taken advantage of - post purchase - when they fully understand the details of the CLT process.

 Given that the CLT's goal is the long term benefit of the initial and subsequent purchasers through a non-speculative residential real estate market, and that the long term involvement of the purchasers in the CLT itself is a vital element of the process, it is extremely important that the purchasers emerge from the purchase and sale transaction fully informed and satisfied with all aspects of the purchase transaction.

CLT USE OF STANDARDIZED PURCHASE AND SALE DISCLOSURES

Protection for the CLT begins with a standardized set of disclosures which must be read and reviewed by the purchaser. The CLT attorney should recommend that those disclosures, or any adapted version utilized by the CLT, not only be utilized as standardized disclosures but also as a fundamental part of any pre-purchase counseling process.

PRE-PURCHASE INFORMATION AND COUNSELING

For the reasons mentioned above it is vitally important that there be extensive pre-purchase materials explaining the nature of the program and that CLTs require purchasers to participate in a pre-purchase orientation and counseling program. However, this pre-purchase process raises a number of legal concerns for the Community Land Trust and its attorney. Community Land Trusts in Florida are selling an extremely novel and complex form of ownership with severe limitations on appreciation to unsophisticated buyers. Consequently, the CLTs can run into difficulty either for failing to fully disclose the nature of the transaction or for disclosing it inaccurately.

ATTORNEY REVIEW OF WRITTEN MARKETING AND ORIENTATION MATERIALS

In addition to the utilization of standardized disclosures, Community Land Trusts will commonly use many other printed materials in its marketing and orientation efforts. All of these must be carefully reviewed by the attorney for the Community Land Trust as they must accurately reflect the transaction that the purchaser *in Florida* is entering into. Materials copied from CLTs in other states (or even from other parts of Florida) may not accurately reflect the transaction as it is structured for another CLT. It must be remembered that, for most purchasers, all that they know about the Community Land Trust transaction is what they have learned from the Community Land Trust itself. This creates a relationship in which the accuracy of the representations of the CLT, particularly the written representations, are extremely important.

REFERRAL OF THE BUYER TO COUNSEL

The Community Land Trust itself is not required to refer an unrepresented buyer to an attorney. However, given the disparate levels of sophistication and the unfamiliarity of most buyers with the Community Land Trust vehicle, it would be good practice for any

Community Land Trust to ensure that all purchasers are represented in the purchase. However, the Community Land Trust must keep in mind two potential areas of concern. First, any actual referral system creates a possible conflict of interest if the attorney representing the purchaser, in any way, depends upon the CLT for payment. Second, relatively few attorneys in Florida are going to be familiar with the CLT vehicle and that unfamiliarity may translate into concerns which either delay the transaction or cause unwarranted misgivings on the part of the purchaser. One possibility which obviates both concerns is a pro bono project in which the local real estate bar provides attorneys willing to represent low income households in these transactions and these attorneys are, in turn, provided with Continuing Legal Education in the mechanics of the Community Land Trust.

While independent representation by a knowledgeable attorney certainly assists greatly in ensuring that the buyer is fully informed and knowledgeable concerning the transaction he/she is entering into, we would continue to recommend that the Community Land Trust independently ensure that the buyer is fully informed through thorough orientation or some similar process.

POST-PURCHASE COUNSELING

Although not legally required, an ongoing program of post-purchase counseling is vital to a successful CLT. Many of the elements of the CLT structure, particularly the resale restrictions, do not affect the buyer until years after the purchase. If the concepts and benefits of the CLT structure are not reinforced through post-purchase counseling/training, the CLT community can suffer when, years later, members are suddenly reminded that they cannot sell their homes for the same amount as their neighbors across the street.



Charles Elsesser is an attorney with Florida Legal Services, specializing in affordable housing litigation and policy advocacy. Chuck serves on the board of the National Low-Income Housing Coalition and the Board of Directors for the Florida Housing Coalition, he is also a member of the Affordable Housing Committee of the Real Property Probate & Trust Law Section of the Florida Bar.

Homebuyer Training for the Prospective CLT Homebuyer

The Florida Housing Coalition is presently developing a comprehensive training module to be used as a supplement for existing homebuyer training/ pre-purchase and post -purchase counseling programs - specifically for the prospective Community Land Trust Homebuyer. Once the materials are developed we will hold "train the trainer" seminars around the state for distribution of the materials and to teach best practices for CLT homebuyer education both pre and post purchase.



FHFC and Local Government Funding to Facilitate Community Land Trusts in Florida

BY WIGHT GREGER
FLORIDA HOUSING COALITION

The Florida Community Land Trust Institute (see page 16 for info on the FCLT Institute) has been diligent in its efforts to educate state and local government housing staff regarding the CLT model. We have been addressing a variety of CLT issues to provide greater access to state and local funding, as well nontraditional sources of funds. The aim has been to open the doors for state and local financing and funding to community land trust homebuyers, as well as nonprofit community land trusts in Florida.

FLORIDA HOUSING FINANCE CORPORATION.

Following our in-house community land trust workshop for key Florida Housing Finance Corporation (FHFC) staff, we provided ongoing education and information on all aspects of the CLT model, addressing lender concerns, including the secondary market, resale formulas, and legal issues such as title and taxes. Early in 2005, we reviewed all of the FHFC homeownership programs which are currently available for the purpose of developing affordable housing and providing downpayment assistance and gap financing for new homebuyers.

After reviewing all program rules and objectives, it became apparent that some of the FHFC's programs that are so necessary for supplementing the end financing for the CLT homebuyers were not structured to accommodate the community land trust model. To address this



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IN FLORIDA

barrier, the Florida Housing Coalition drafted recommendations for administrative rule revisions to the Homeownership Loan Program (HLP) which were subsequently approved by the FHFC and adopted in August 2005. Specifically, the rule change adds a definition of community land trust and allows a subsequent buyer to assume a HLP loan. Without this change, FHFC would have recaptured the loan at sale preventing the community land trust from realizing its goal of long term affordability. This program redesign now paves the way for CLT homebuyers in Florida to access HOME and other Homeownership Loan Program monies from the FHFC.

Having opened access to the CLT homebuyer in Florida, the FHFC then explored ways of making funds available to the CLT for land acquisition. During the summer of 2005, the Florida Community Land Trust Institute assisted FHFC with the development of an RFP to make funds available to community land trusts for land acquisition. Making land acquisition grant funds available to promote community land trusts evidences FHFC's clear understanding of the CLT model (the need to take land costs out of the equation) and its commitment to support the community land trust model in Florida. See page twenty.

The following is a list of the existing FHFC homeownership programs which may be used in the production of community land trust housing.




 HOME INVESTMENT PARTNERSHIPS PROGRAM (HOME)

 HOMEOWNERSHIP for STATE AND NON-PARTICIPATING JURISDICTIONS

 HOMEOWNERSHIP ASSISTANCE PROGRAM (HAP) CONSTRUCTION/PERMANENT LOAN

 HOMEOWNERSHIP ASSISTANCE PROGRAM (HAP) DOWN PAYMENT ASSISTANCE

 SINGLE-FAMILY MORTGAGE REVENUE BOND PROGRAM (SFMRB)

More information is available on each program from the Florida Housing Finance Corporation, www.floridahousing.org or from the Florida Housing Coalition, www.flhousing.org. You may also request a free copy of Creating Inclusive Communities in Florida, 2005 edition, from the Florida Housing Finance Corporation for a summary of each program.

FLORIDA COMMUNITY LOAN FUND


Our partner, the Florida Community Loan Fund (Loan Fund) is also a good resource for nonprofits who want to develop affordable housing. The Loan Fund specializes in flexibility in its loan products and in early commitments to projects that do not have all other funding sources in place. This makes it particularly suited to assisting in the acquisition and infrastructure phases of projects.

For more information go to www.fclf.org/floridaSolutions.cfm.

LOCAL GOVERNMENT INTEREST.

We are receiving inquiries from local governments in Florida's high cost areas every week. Local governments in Florida are frustrated over their inability to provide homeownership as land prices escalate and salaries and SHIP dollars remain stagnant.

We respond to these inquiries by working with local government SHIP programs to provide technical assistance on how to design and implement programmatic changes which will complement the community's efforts to produce housing which is both initially affordable and protects the public investment in the long term. We are working closely with numerous SHIP program administrators, elected officials, and lender partners to assist with evaluating local market characteristics

and developing financing strategies which make sense in communities with rapidly appreciating land values. 

Wight Greger is a Senior Technical Advisor for the Florida Housing Coalition and is currently serving as lead staff for the Florida Community Land Trust Institute. Ms. Greger's expertise includes project development, organizational development, nonprofit capacity building and implementation of all aspects of affordable housing programs.

FLORIDA HOUSING FINANCE CORPORATION FUNDING FOR COMMUNITY LAND TRUSTS

Florida Housing Finance Corporation has determined that there is a need in Florida for affordable housing provided via Community Land Trust (CLTs) in order to preserve and maintain the affordability of housing in perpetuity for low to moderate income families. Florida Housing is soliciting sealed proposals from qualified Offerors that will commit to provide housing in accordance with the terms and

conditions of the Request for Proposals (RFP) posted on its website at www.floridahousing.org

Funding under this RFP can be used for acquisition of vacant land or the acquisition of land with improvements. Offerors are limited to a funding request based on the cost for ten (10) housing units; however, land banking is not an eligible activity under this RFP. If the Offeror is contemplating

purchasing vacant land, construction activities must begin within 12 months of award of funding. Up to \$10 Million in HOME funds will be made available, with up to \$4 Million of this funding available to support housing in the Florida Keys.

Proposals will be accepted up until 2:00pm. Tuesday January 31, 2006



Preserving Mobile Home Parks for the Residents Who Live There

BY JAIMIE ROSS

Mobile home parks provide affordable housing for a significant part of Florida's elderly population and low income workforce. According to the Department of Business and Professional Regulation, there are over 2,600 mobile home parks in Florida. But these mobile home parks are being lost at an astounding rate as local governments say "yes" to a change in land use/re-zonings as the park owners sell the land for high end development.

One of the features at this year's conference was a symposium sponsored by the Fannie Mae Foundation on preserving mobile home parks for the residents who live there.

The conference panel examined whether it makes sense to preserve mobile home park living. This examination included an understanding of the extent of mobile home park living in Florida, a look at the value of today's manufactured housing, and the arguments in favor and against dismantling mobile home parks. It also included a discussion of legal issues related to land use changes and



the sale of mobile home parks. This examination included an understanding of what happens when a land use change or sale is looming; including eviction, relocation, the role of mobile home park home owner associations and the right of first refusal for residents to purchase the park.

We explored strategies for preserving mobile home parks for the residents who live there. This focused on the opportunities for acquisition, financing, and ownership by a nonprofit or a community land trust to preserve permanent affordability and provide financial stability and the security of homeownership without fear of displacement.

With the help of the Shimberg Center for Affordable Housing's research and analysis, and a panel of industry experts, lawyers, and advocates for mobile home park residents, we now have a core effort underway to stop the loss of this affordable housing stock. Our conversation about further work needed, and next steps to preserve mobile home parks in Florida focused on Florida Statute 723.083.

Don Hazelton, president of Federation of Manufactured Home Owners of Florida (FMO) speaking about the crisis in mobile home park closings, at the Mobile Home Park Preservation Symposium at the Florida Housing Coalition statewide conference.

Pictured to the left of Don is Justin Joseph, legal counsel for the FMO. Seated to Don's right is Bill O'Dell from the Shimberg Center for Affordable Housing; at far right is Ken Shouse from the Florida Manufactured Homes Association.



FLORIDA STATUTE 723.083- GOVERNMENTAL ACTION AFFECTING REMOVAL OF MOBILE HOME OWNERS.

No agency of municipal, local, county, or state government shall approve any application for rezoning, or take any other official action, which would result in the removal or relocation of mobile home owners residing in a mobile home park without first determining that adequate mobile home parks or other suitable facilities exist for the relocation of the mobile home owners.

History. —s, 1, ch. 84-80

Because Florida is in an affordable housing crisis, with little or no land available for very low income residents, it would appear that this statute would stop all mobile home park land use changes. Unfortunately, the experience of the panelists and reports from around the state, tell a different story. Local governments are agreeing to land use changes that close mobile home parks and result in the dispossession of the residents at an alarming rate. The common response from local governments is that the statute protecting mobile home park residents from park closures due to land use change is too vague. But some legal research uncovers remarkable clarity offered from an Attorney General Opinion issued in 1986 in response to an inquiry from Pinellas County as to the meaning of Florida Statute 723.083.

THE MEANING OF ADEQUATE MOBILE HOME PARKS OR OTHER SUITABLE FACILITIES.

In response to the Pinellas County inquiry as to the meaning of the phrase “adequate mobile home parks or other suitable

facilities,” the Attorney General Opinion is replete with extensive legal and legislative research including references to the legislative committee tapes relative to the legislative language at issue. The Attorney General Opinion states that because the factors to be considered by the zoning authority in determining the “suitability” of relocation facilities are not expressly set forth in the statute, the legislative intent as to the application of these terms must therefore be determined from “the evil to be corrected, the intention of the lawmaking body, and the purpose sought to be accomplished.”

“The evil to be corrected, the intention of the lawmaking body, and the purpose sought to be accomplished” in the case of changing the mobile home park land use is to provide actual housing for the current residents. The first factual situation posed by the Pinellas County inquiry was when the local zoning board determines that vacancies exist in other mobile home parks but the affected mobile home owners would not be accepted into such parks by virtue of the characteristics, age, or size of their mobile homes. The Attorney General reports that this factual situation was specifically discussed by members of the legislative committee in connection with the adoption of the statute and that the tape recordings make clear that displaced mobile home owners may effectively be precluded from relocating in a mobile home park due to the lack of financial resources which would be required to comply with the park’s rules and regulations.

The Attorney General concludes that “in making a determination as to whether or not the mobile home parks are adequate, **the zoning authority would necessarily have to consider the financial abilities of the mobile home owners who may have to relocate, repair, or replace their mobile homes.**” In the final summary provided by the Attorney General, he emphasizes the importance of making a determination about the financial

abilities of the mobile home park residents: “[U]nless and until legislatively or judicially determined otherwise, I am of the opinion that the phrase ‘adequate mobile home parks or other suitable facilities’ in Section 723.083, F.S. includes all alternative housing which is appropriate to the needs, **primarily financial, of the specific population** of mobile home owners to be displaced.”

THE HOUSING ELEMENT REQUIREMENT FOR ADEQUATE SITES AND RELOCATION HOUSING.

Implementation of Florida Statute 723.083 in accordance with the Attorney General’s Opinion is consistent with the local government’s duties pursuant to Section 163.6177, Florida Statutes, (the Comprehensive Plan Housing Element) which provides that every jurisdiction meet the housing needs of its entire population, and specifically requires that there be adequate sites for affordable housing, mobile homes, and relocation housing. Section 723.083, Florida Statutes, speaks to land use changes made by the local government and sensibly requires that such a land use change not be made unless there are adequate mobile home parks or other suitable facilities for the residents. To interpret Section 723.083, Florida Statutes otherwise is to

permit local governments to use their land use authority to deplete the supply of affordable housing while charged in Florida Statute 163.3177 with using their land use authority to increase the supply of affordable housing.

A LEGISLATIVE FIX.

Whether local government’s failure to comply with Section 723.083 is due to a lack of understanding or an intent to choose the higher real property tax base and aesthetic value of alternative development such as luxury condominiums is not be as important as the need to finally put a stop to the loss of homes for Florida’s low income elderly and low paid workforce. Putting this issue to bed may best be accomplished through statutory amendment to Florida Statute 723.083 to incorporate the cogent language used in the Attorney General’s Opinion.



Jaimie Ross is the Affordable Housing Director at 1000 Friends of Florida, a statewide nonprofit growth management organization. She is president of the Florida Housing Coalition, chair of the Affordable Housing Committee of the Real Property Probate & Trust Law Section of the Florida Bar, and a 2004 -’05 Fannie Mae Foundation James A. Johnson Community Fellow.



Chuck Elsesser moderated.



Vicki Robinson, Rob Williams



Bryan Bell

The Migrant Farmworker Housing workshop at the Florida Housing Coalition’s annual statewide conference brought exciting news about a program developed through the work of Rob Williams at Florida Legal Services and architect, Bryan Bell, Design Corps., Raleigh, NC, pictured above, using manufactured homes designed specifically for this hard to house population. Florida Housing Finance Corporation staff, Vicki Robinson, Nancy Muller, and executive director, Steve Auger unveiled an exceptional opportunity for financing: a \$10 million dollar 0% interest forgivable loan for nonprofits to house migrant farmworkers. These monies are made available through RFP 2005-05 and applications will be accepted until February 28, 2006. For more information go to www.floridahousing.org and click on “business and legal”, or contact the Florida Housing Coalition at 850 878-4219.



Steve Auger



Nancy Muller



Frequently Asked SHIP & Hurricane Housing Recovery Questions

Q: *My community has recently received Hurricane Housing Recovery funds. Until now, SHIP was our only housing program. I know that SHIP and HHR have separate and distinct program and administrative budgets, but my co-worker and I will work with both programs. What system should we use to account for the program and administrative expenses associated with each grant program?*

A: Many cities and counties across Florida receive more than one type of housing grant. Each community has devised some system of distinguishing between the expenses associated with each grant. At a minimum, this cost allocation system must help you account for the time you devote to implementing each of the SHIP and HHR programs. On some occasions, you will spend both SHIP and HHR funds on the same housing unit. Your cost allocation system must first identify the direct program costs paid by each program used to rehabilitate, purchase, construct or otherwise assist the housing unit. The system must next account for the staff time that was devoted to completing that unit. The HHR and SHIP grants will pay for staff expenses in the same proportion as the amount of direct program costs for which each grant paid. For example, you may spend \$28,000 of Hurricane funds and \$12,000 of SHIP funds to rehabilitate a house. Some staff activities like the initial inspection and work write-up are program expenses, while other activities like applicant intake will be paid for from your two administrative budgets. In both cases, however, you will charge 70 percent of your staff expenses to the HHR program and 30 percent to SHIP. To receive

additional assistance creating a cost allocation system for your community, contact the Florida Housing Coalition at 1(800) 677-4548.

FOLLOW-UP QUESTION: TRACKING HHR EXPENDITURES

Q: *I know that Hurricane Housing Recovery Program funds must be tracked separately from my community's SHIP funds. What tips do you have as I set up a tracking system? Are there differences in how SHIP and HHR funds must be tracked?*

A: For all of its similarity to the SHIP program, the new HHR program is a distinct funding source that requires a separate housing assistance plan, as well as separate tracking and annual reporting. There are several differences between SHIP and HHRP that will affect the HHRP tracking system that you create. One readily apparent difference is related to the income levels of households assisted. Each HHRP community has received a portion of money to specifically assist “extremely low income (ELI) households” with incomes below 30 percent of the area median income. Your ELI funds must be tracked separately from your Collaboration Funds and your Base HHRP allocation, since only the latter two sources must be expended in compliance with the traditional SHIP “income set-aside”. ELI funds must also be tracked separately since they do not have to be expended in compliance with the “homeownership set-aside”. While you must track how Collaboration Funds and your Base HHRP allocation comply with the homeownership and income set-

asides, remember that all HHRP funds are exempt from compliance with the “construction/ rehabilitation set-aside”. Section 4 of the HHRP Rule states “with the exception of the income requirements and home ownership requirements, counties and eligible municipalities shall be allowed to apportion their funds across their housing strategies as dictated by local needs.”

The HHRP Rule also departs from the SHIP program in one aspect of its annual reporting requirements. Section 6(2) of the HHRP Rule indicates that you “must provide a list of recipients by strategy including names and addresses”. Make sure your tracking system collects the full address of each household assisted—and remember to include the zip code.

Also consider the other minor differences between SHIP and HHRP tracking. There are no HHRP carryover funds, since you have received a one-time-only allocation of these funds. The HHRP administrative budget is 15% of the total of all HHRP funds, in contrast to the 10% budget that SHIP communities commonly take. Since HHRP is a one-time-only allocation, your program income and recaptured funds will build up gradually over three years. Most likely, the amount of program income and recaptured funds you report will grow larger over the course of the three HHRP annual reports you submit to the state. Finally, the HHRP allocation in many communities is much larger than any annual SHIP distribution they have ever received. Get used to accounting for large amounts of money.

The Florida Housing Coalition has just finished creating a HHRP tracking system that uses an Excel spreadsheet. Based on the SHIP tracking spreadsheet used by many SHIP communities, this HHRP

Have you got a question about the SHIP program? Free telephone technical assistance is available to help you successfully implement your SHIP funded work. Call the Florida Housing Coalition's SHIP telephone line at (800) 677-4548.



Michael Chaney

HHR Program Tracking Spreadsheet													
As of June 30, 0 For State Fiscal Year :													
ACTUAL NUMBERS													
Expended Funds/Units													
A	B	C	D	E	F	G	H	I	J	K	L	M	N
Strategy	Amount of Total Funds per Strategy	% of Total Funds	Amt. Expended as of 6/30	Dollar Amount Home Ownership	Dollar Amount Construction	ELI No. of Units	ELI Dollars	VLI No. of Units	VLI Dollars	LJ No. of Units	LJ Dollars	Mod No. of Units	Mod Dollars
		#DIV/0!	\$0.00		\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00
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		#DIV/0!	\$0.00		\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00

“FHC HAS CREATED A NEW TRACKING SYSTEM FOR THE HURRICANE HOUSING RECOVERY PROGRAM. REQUEST YOUR FREE COPY TODAY.”

spreadsheet has been enhanced with the changes outlined above. While this HHRP Excel spreadsheet is not a standard system required for use by all HHRP communities, we encourage you to try it out. Email me (chaney@flhousing.org) at the Florida Housing Coalition office to receive a free electronic copy. Call the Coalition at (850) 78-4219 if you have further questions about this topic.

AND SPEAKING OF DISASTERS....:
THE USE OF AN EMERGENCY RULE
DURING A DISASTER

Q: We are responding to assistance requests from those affected by Hurricane Wilma. Our current Local Housing Assistance Plan (LHAP) includes a disaster assistance strategy that only indicates that we may provide emergency repair assistance to affected, income-eligible households. We are now noticing, however, that many displaced households require rent and utility deposit assistance—an activity that is not mentioned anywhere in our current LHAP.

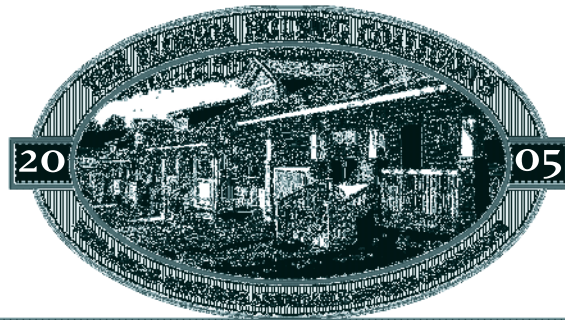
I noticed, however, that the general disaster strategy that Florida Housing Finance Corporation has adopted into the SHIP Rule allows for the following assistance: “security deposit, rental assistance for the duration of a Florida Office of the Governor Executive Order”. May we, therefore, start providing rent and utility deposit assistance to applicants without making any changes to our LHAP?

A: Yes you may begin to immediately provide rent and utility deposit assistance, while also beginning to advertise the availability of this assistance. Starting with the hurricane disasters during 2004, Florida Housing Finance Corporation created a general disaster assistance strategy for the SHIP program (available on their website). This language is referenced in the regular SHIP Rule and is also adopted into any Emergency SHIP Rule authorized by the Governor during a disaster. For the period when an executive order or emergency rule is active, any jurisdiction may provide the

disaster assistance outlined in the emergency rule—even if no such strategy or language currently exists in the jurisdiction’s current LHAP and even if the jurisdiction does not have a disaster strategy.

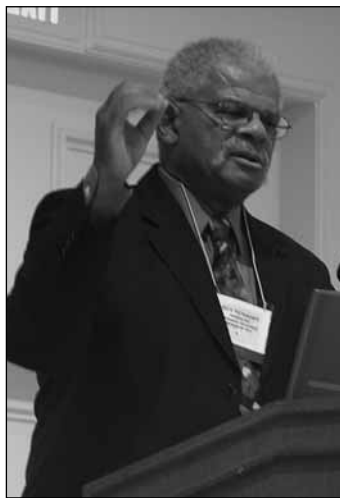
After the disaster has passed and you have provided assistance, adopt a disaster strategy into your LHAP, just in case there is a future disaster. Section 67-37.005(7) of the SHIP rule now provides that each local housing assistance plan shall include a disaster strategy. Consider adopting Florida Housing’s standard strategy language, or a strategy that offers multiple types of disaster assistance. Make sure not to include in your plan any emergency rule language about assistance that is not normally allowed under the regular SHIP Rule or Statute. For example, one recent emergency rule provided authorization for “homeownership and rental activities, including activities related to manufactured housing”—yet the regular SHIP Rule does not allow us to offer any assistance on manufactured housing (mobile homes).





HOUSING PRESERVATION

SEPTEMBER 12-14 • OMNI ORLANDO RESORT at CHAMPIONSGATE



The Florida Housing Coalition enjoyed the generous support of **FLORIDA POWER AND LIGHT CORPORATION** for its sponsorship of the keynote luncheon featuring Gus Newport, Executive Director of the Institute for Community Economics, in addition to its support as a Gold Level Partner for Better Housing. Many thanks.



Pat Braas, Community Development Consultant for WAMU (far right) presents WAMU's \$1,000 raffle check to Broward Housing Solutions, a nonprofit that builds and manages affordable rental units for people with disabilities. Accepting the check on behalf of the Broward Housing Solutions CDC is an elated Lisa Hoffmeyer, Broward Housing Solution's Project Development Director.



Washington Mutual

CONFERENCE HIGHLIGHTS



The Florida Housing Coalition presented an award to Orlando Cabrera after he delivered his farewell address as Executive Director immediately before leaving for Washington DC to begin work as HUD Deputy Secretary for Public Housing and Indian Affairs.



The Florida Housing Coalition welcomed Steve Auger, the new Executive Director of the Florida Housing Finance Corporation. Orlando Cabrera and Steve Auger honored the Florida Housing Coalition by choosing our statewide annual conference as their "changing of the guard" event.



An impromptu meeting of conference attendees, sharing ideas about community land trusts.



More than 600 housing professionals and advocates attended the Florida Housing Coalition's 2005 statewide annual conference.



The Expo was a big success from the standpoint of the exhibitors who enjoyed the interaction with conference attendees, and the attendees who made personal connections with exhibitors, and sometimes won a boatload of prizes.

CONFERENCE HIGHLIGHTS



*Above: Nancy Muller,
Policy Director at FHFC.*

*The engaged participation
of conference attendees is a
critical part of the success
of our workshops.*



THE FLORIDA HOUSING FINANCE CORPORATION sponsored Breakfast with the Affordable Housing Study Commission for Florida's SHIP Administrators and the Florida Housing Coalition's conference attendees. It was a terrific event and we greatly appreciate Florida Housing's support.



*Michael Chaney,
"song and dance man
and raffle buddy,"
entertained the crowd.*



*A good time was had by all at
the conference reception.*



Success Stories and Tours.



*Networking is an important
and fun time at every
conference.*



SAVE THIS DATE

The Florida Housing Coalition's
19TH ANNUAL STATEWIDE AFFORDABLE HOUSING CONFERENCE
September 5th– 7th, 2006

Omni Orlando Resort at ChampionsGate



Kelo v. City of New London: Eminent Domain and Affordable Housing

JANET BOWMAN, ESQ

The recent United States Supreme Court opinion in the case of Kelo v. City of New London, 125 S.Ct. 2655 (2005) has ignited a debate both at the federal and state level over the exercise of eminent domain authority by local governments to further urban redevelopment projects. In Kelo, the court addressed the issue of whether the condemnation of several individual homes to accommodate a redevelopment plan approved by the City of New London qualifies as a “public use” within the meaning of the Taking Clause of the United States Constitution. The City of New London approved a development plan for approximately 90 acres, that was “projected to create over 1,000 jobs, to increase tax and other revenues, and to revitalize an economically distressed city, including its downtown and waterfront areas,” and authorized the New London Development Corporation (NLDC) to exercise the power of eminent domain to obtain the land for the project.



promote economic development. The court held, in a 5-4 opinion, that the City’s proposed condemnations for the purpose of economic development were for a “public use” within the 5th Amendment. Moreover, the court deferred to legislative judgments regarding the determination of what public needs justify the use of the takings power.

THE FLORIDA RESPONSE

In response to the ruling, Florida House Speaker Allen Bense appointed a Select Committee to Protect Private Property Rights, chaired by Rep. Marco Rubio, to evaluate the effect of the Kelo case on Florida eminent domain law. The charge of the committee is to take appropriate steps “to ensure that, in Florida, eminent domain is only asserted in situations where the public necessity and public benefit are very clear.”

The NLDC initiated condemnation proceedings over some property owners who were longtime homeowners in the area and whose homes were not considered to be blighted. These homeowners challenged the condemnation arguing that the taking of their property would violate the “public use” restriction in the Fifth Amendment of the United States Constitution because the property was not going to be put to a use for the general public, but to facilitate economic development by providing land for various commercial uses, and for the location of a research and development facility to be operated by the Pfizer company. Under Connecticut law, cities are authorized to use eminent domain power to

Under Florida Law, the applicability of Kelo, will focus on the eminent domain authority granted to community redevelopment agencies under Florida’s Community Redevelopment Act. Pursuant to s. 163.375, F.S.,

Any county or municipality, or any community redevelopment agency pursuant to specific approval of the governing body of the county or municipality which established the agency, as provided by any county or municipal ordinance has the right to acquire by condemnation any interest in real property, including a fee simple title thereto, which it deems necessary for, or in



connection with, community redevelopment and related activities under this part.

In order to exercise community redevelopment authority, the county or municipality must make a legislative finding that “slum” and “blight” conditions, exist. The resolution must state that: 1) one or more slum or blighted areas, or one or more areas where there is a shortage of housing affordable to residents of low or moderate income, exist in the county or municipality and 2) the rehabilitation of such areas is necessary to public health and safety. The definitions of both slum and blight are very broad under the Act. The definition of “blighted area,” for example, is based on whether two or more of a list of fourteen factors is present or can include an area where only one of the factors is present and all taxing authorities agree to the designation.

These factors include:


- (a) Predominance of defective or inadequate street layout, parking facilities, roadways, bridges, or public transportation facilities;
- (b) Aggregate assessed values of real property in the area for ad valorem tax purposes have failed to show any appreciable increase over the 5 years prior to the finding of such conditions;
- (c) Faulty lot layout in relation to size, adequacy, accessibility, or usefulness;
- (d) Unsanitary or unsafe conditions;
- (e) Deterioration of site or other improvements;
- (f) Inadequate and outdated building density patterns;
- (g) Falling lease rates compared to the remainder of the county or municipality;
- (h) Tax or special assessment delinquency exceeding the fair value of the land;
- (i) Residential and commercial vacancy rates higher in the area than in the remainder of the county or municipality;
- (j) Incidence of crime in the area higher than in the remainder of the county or municipality;
- (k) Fire and emergency medical service calls to the area proportionately higher than in the remainder of the county or municipality;
- (l) A greater number of violations of the Florida Building Code in the area than the number of violations recorded in the remainder of the county or municipality;

THE CHARGE OF
THE COMMITTEE IS
TO TAKE
APPROPRIATE
STEPS “TO ENSURE
THAT, IN FLORIDA,
EMINENT DOMAIN IS
ONLY ASSERTED IN
SITUATIONS WHERE
THE PUBLIC
NECESSITY AND
PUBLIC BENEFIT
ARE VERY CLEAR.”

- (m) Diversity of ownership or defective or unusual conditions of title which prevent the free alienability of land within the deteriorated or hazardous area; or
- (n) Governmentally owned property with adverse environmental conditions caused by a public or private entity.

In contrast to the Connecticut law cited in the Kelo case, Florida’s CRA statute does not allow the purpose of economic development, by itself, to justify the exercise of eminent domain; however, the “blight” criteria are flexible enough that some will argue that the results of the application of the criteria may allow the takings of private property for the sole purpose of economic development. Accordingly, the focus of the House Select Committee has been on: 1) whether changes to Florida law are necessary to prohibit takings of

private property for the sole purpose of economic development; 2) whether the threshold definitions of slum and blight in Florida’s Redevelopment Act need to be narrowed or changed; and 3) what is the appropriate judicial standard of review of both the creation of a community redevelopment agency and the burden necessary to establish a public purpose and reasonable necessity of the taking.

What impact will the debate over Kelo have over the provision of affordable housing? First, changes to the definition of slum and blight could make it more difficult for CRAs to condemn existing affordable housing units that are in the path of a proposed hotel, convention center etc. if the definition of slum and blight is narrowed. Second, if new affordable housing units were a significant component of a redevelopment plan, limitations on the exercise of eminent domain authority by a CRA could make the provision of such affordable housing more difficult. Unfortunately, the creation of CRAs does not usually result in the provision of more affordable housing. Perhaps affordable housing advocates should use the debate over the scope of Florida’s Community Redevelopment Act to suggest ways that the act could be changed to facilitate the provision of affordable housing. 

Janet Bowman is the Legal Director at 1000 Friends of Florida, a statewide nonprofit growth management organization located in Tallahassee. Before coming to 1000 Friends, she was the attorney for the Florida Senate, Committee on Comprehensive Planning, Local & Military Affairs and was also staff attorney for the Legislative Committee on Intergovernmental Relations where she focused on local government issues.



MEMBERSHIP APPLICATION

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Partners for Better Housing Membership is for those who wish to support the work of the Florida Housing Coalition by making a tax deductible donation of \$500 or more. Partners for Better Housing members receive subscriptions to *Housing News Network*, free job vacancy posting service on the Coalition's web page and unlimited membership rates for registration at the conference. Partners at the Patron Level or higher receive one or more complimentary conference registrations (comp, indicated below). Partners also receive recognition at the conference, in all conference-related publications, the Coalition's Web page and in each quarterly issue of *Housing News Network*.

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BASIC MEMBERSHIP

Basic membership is for those who wish to subscribe to *Housing News Network*, post job vacancy announcements free of charge on the Coalition's Web page and receive membership rate registrations at the annual conference. An individual member receives one subscription and one member rate registration. Organizational members receive up to five subscriptions and five member rate registrations. All memberships are on a unified membership cycle and are due on August 1st, and expire on July 31st of each year. (Please indicate additional names, addresses and phone numbers on an attached sheet.) Each membership is entitled to be represented by one voting member at the annual meeting as designated below.

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