

# TERMS OF ASSISTANCE





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# CHAPTER 1: Types of Assistance Terms

## INTRODUCTION

This publication outlines the terms of assistance that can be used with SHIP funds as well as best practices for outlining the terms of assistance in the Local Housing Assistance Plan (LHAP).

The SHIP program provides local governments with the flexibility to define the terms of their strategies based on program design and resident and community input. It also allows local government to change the terms of an LHAP strategy periodically. Assistance may be provided as follows:

**Grants:** When funds are provided as a grant, no repayment is required and there is no affordability period. Grants are limited to certain strategies, income groups and should not exceed \$15,000 in assistance. There are few instances where FHFC will approve grants under a purchase assistance strategy. Grants are usually limited to disaster assistance, emergency repairs, tenant rental assistance, foreclosure prevention, or repairs to remove accessibility barriers.

**Deferred Payment Loans:** This is the most common type of subordinate assistance provided with SHIP funds. The local government does not require monthly payments but instead preserves the affordability of the property by requiring the repayment of the loan if the home is sold during the affordability period. For community land trusts (CLT), or other mechanisms that keep the property affordable in perpetuity, the local government may allow a subsequent homebuyer to assume the loan rather than require repayment. This term may also be used with loans provided to developers or sponsors of affordable housing. The loan may be forgiven over several years or at the end of the term.

**Direct Payment Loans with Various Terms:** Direct loans require a SHIP recipient to make monthly payments on the loan provided. Choosing this type of loan requires an analysis of the debt-to-income ratio and the owner's or the developer's ability to make monthly payments. The SHIP office would need staff in place or hire a firm to do collections on loans. There must also be procedures in place if the client falls behind on their payments or defaults.

**Combination Direct/Deferred Payment Loans:** Local governments may choose to combine direct loans for those that can afford monthly payments and deferred loans for applicants meeting certain established criteria. The repayment amount is determined by the local government and if partial repayment or deferment of loan.

**Other Loans:** Developer strategies may offer a construction loan to a developer of homeownership or rental housing. These strategies allow loans to the developer, but local government must document benefit to the end user which is explained in Chapter 4 and 5.

## CHAPTER 2: Terms of Assistance in the LHAP

Section II of the Local Housing Assistance Plan (LHAP) includes strategies for SHIP-funded assistance. The format for a strategy includes a summary, identifies applicants who are eligible at various income levels, and lists the maximum award amount. Each strategy also includes a six-part section on terms of assistance:

### **Term 1. Loan or Grant**

The first section under terms requires the local government to state whether the assistance will be provided as a loan, deferred loan, or grant. Loans should state that they are “secured by a recorded mortgage and note”. Use the term “subordinate mortgage,” not second mortgage. A SHIP loan is in first position if there is no other first mortgage.

Considerations to determine when to make a grant versus a loan:

- In some parts of Florida, an existing home can sell for \$150,000. However, an affordable home will sell for over \$350,000 in South Florida. Further, local governments must consider income limits. Grants are most appropriate for extremely low and very low-income recipients. The SHIP program allows local governments to help households with incomes up to 140% of the area median income. However, assistance for higher-income households should not be provided as a grant since they may have the ability to repay.

Deferred loans for purchase assistance strategies may have longer terms since it is anticipated that the home values will increase over the affordability period. These loans can be forgiven, or the local government can also consider full repayment on sale.

### **Terms 2. Interest Rate**

A statement of the interest rate charged for SHIP assistance is required even if it's 0%. Avoid a range of rates like 0% - 5%. Instead, be specific about why different recipients are charged different rates if that is the case. For example, a community might charge 5% interest on a construction loan provided to a for-profit developer but charge 0% to a nonprofit developer. For grants, state N/A.

### **Terms 3. Years in Loan Term**

State the number of years for which the loan is secured. For grants, state N/A. Add a maturity date on the recorded loan that reflects the loan term. Consider maintaining consistency in the loan term even when updating the LHAP, if possible. On occasion, SHIP administrators may discover an old file for which no loan term is stated. In this instance, Section 95.281 (1) (b) of the Florida Statutes is helpful since it states that a vague loan with no loan term is a 20-year loan.

Pros and Cons of greater or lesser numbers of years of a Loan Term:

- When deciding on the length of loan terms, consider the long-term value of the assistance being provided. For example, when using funds for rehabilitation, consider the estimated lifespan of the improvements being provided over the loan term. An air conditioner may not last for more than 15 years, so consider limiting repair assistance of this type to 15 years or less. Homeowners will need to reroof the home, replace the air conditioner, or replace appliances at some point in the future. Limiting their ability to borrow from the home for future improvements may affect the ability of the home to remain decent, safe, and sanitary.
- Providing too short a term may encourage borrowers to sell the home immediately after the affordability term ends to cash out equity, terminating the intent of the assistance to provide long-term affordability.

### **Terms 4. Forgiveness**

State if any portion of the loan will be forgiven. Some communities provide terms that do not allow for forgiveness. Instead, the loan is repaid at the end of the term. Loans that are forgiven may be done at the end of the loan term, forgiven annually over all or part of the term. Do not refer to default situations in this section since there is a separate section for default.

### **Terms 5. Repayment Options**

- If a loan is forgiven over the term of the loan or at the end of the term, simply state “No payments required if loan is in good standing.”
- If payments are due during the term, clearly detail how the payment amount is determined and if there are differing criteria for various income or other applicant groups.
- If the loan has a balloon payment at the end of the term, simply state that the loan is due and payable at the end of the term.

## **Terms 6. Default**

List situations where the loan does not remain in good standing through the term. Typical actions or default includes:

- Sale, transfer, loss of homestead. For community land trusts, a local government may make an exception if the home is sold or otherwise transferred to a subsequent income-eligible homebuyer.
- Conversion to rental
- Death of homeowner(s)

If default occurs, local governments will decide if outstanding balance, full amount due or amount of loan is forgiven.

## **LONG-TERM RESPONSIBILITIES**

Every SHIP recipient requires upfront attention to determine income eligibility and coordinate assistance, but more work is required throughout the years of the loan term.

**TERMS OF ASSISTANCE IN THE LHAP:** Staff may occasionally make technical revisions to existing strategies. In addition, the entire LHAP must be updated every three years. Staff must ensure that the details of assistance terms in the local housing assistance plan continue to match the terms of the written agreement that each recipient signs.

**GRANT:** This is the exception to the rule since assistance provided as a grant comes with no conditions. No follow-up or monitoring is required.

**DEFERRED PAYMENT LOANS:** SHIP staff must track outstanding loans throughout the years of the loan term. Annually check if homes are owner-occupied. This can be done by checking the property appraisers' records for homestead exemption. Staff may also complete a physical inspection of the home to ensure it is owner-occupied. Some communities mail a post card to each SHIP recipient with a deferred payment. They inquire if the home still has a homestead exemption or if the unit is being rented to someone other than the recipient. If staff discovers that the recipient has passed away, they will work to identify heirs and determine if they are income eligible or must repay the loan.

**DIRECT LOANS:** Recipients with direct loans may be the most regularly monitored households funded by SHIP. Staff communicate with these recipients every month as they collect payments and provide monthly statements, or as they contact delinquent borrowers to notify them that payments are late. The direct loan chapter outlines a variety of long-term responsibilities associated with monthly loan repayments or assessing that a borrower's payments should be deferred.

**HOMEOWNERSHIP DEVELOPMENT:** A developer often repays the SHIP construction subsidy loan within one year of receiving it, so staff's long-term responsibilities are more focused on the SHIP-eligible buyer who purchases the home. The chapter on homeownership development explains how a portion of this loan remains as subsidy in a newly constructed and purchased home. Follow the guidance above for deferred payment loans.

**RENTAL DEVELOPMENT:** A developer often repays a SHIP rental housing construction loan within one or two years after receiving it. Rental units must be fully constructed and leased up to SHIP-eligible tenants before the SHIP funds are reported as expended. Staff's long-term responsibilities are focused on the SHIP-eligible tenants living in the rental units funded with SHIP. The chapter on rental development explains how staff must monitor SHIP rental units annually and may use a right of first refusal policy if the owner sells the rental units before the end of the affordability term.

**SHARED EQUITY:** SHIP staff must stand ready to calculate equity payments upon learning that a SHIP recipient wants to sell a home. They must identify the portion of accumulated equity that the SHIP recipient must pay to the SHIP office upon resale, as addressed in the shared equity chapter.

**COMMUNITY LAND TRUST:** Like those with SHIP direct loans, CLT homeowners are among the most regularly monitored households funded by SHIP. Staff from a CLT nonprofit regularly communicate with CLT owners to collect land lease fees and address maintenance topics. In the same way as shared equity, SHIP staff must be prepared to calculate equity payments when an owner wants to sell. CLT and city or county SHIP staff will then work to identify a new SHIP-eligible buyer for the home.

## CHAPTER 3: Direct Loans

Direct payment loans require a SHIP recipient to make monthly repayments on the assistance received. Communities that choose direct loan terms of assistance must review the debt and income of SHIP recipients to assess their ability to make monthly payments. These SHIP offices have staff in place or contract with firms to implement the direct loan program. Here are the results of direct loan programs in some Florida communities:

A County currently has 241 total SHIP mortgages and an 84% payback rate. The total mortgages include 169 current, 32 deferred, and 28 in default.

A city services its own portfolio of approximately \$50 million with a low default rate.

Another county awards all SHIP assistance as a direct loan except for rehabilitation. Repayment is deferred for rehabilitation loans. The County's loan portfolio is now around \$53 million with a low default rate.

### STAFFING CONSIDERATIONS

#### In-House Staffing

Communities that offer direct loans require additional staff time for administration of the direct loan program. Implementing a direct loan program involves a significant amount of additional staff time that often cannot easily be added on top of the current staff's responsibilities:

- Receipt and deposit of monthly payments
- Updating payment tracking spreadsheets
- Property inspections and case file notations for mortgages in default
- Notifications prepared and sent to homeowners requesting payment, property tax payment, or verification of an active homeowner's insurance policy
- Providing each new client with an upfront loan disclosure and a payment schedule
- Entering each new client into the local government's payment tracking system
- Providing all borrowers with a monthly or quarterly statement
- Providing tax forms to all borrowers each year
- Checking that property taxes are paid, and homeowner's insurance policies are active
- Periodically reassessing the ability of SHIP recipients with payment deferrals to repay
- Working with legal department staff to address necessary local government first mortgage foreclosures, bank foreclosure lawsuits, bankruptcies, probate, tax deed sale, loan-related judgments, and mortgage assignments.

#### Alternative Approach - Contract with a Servicer

Consider if contracting with a servicer to process SHIP loan repayments is a more beneficial approach. The servicer's fees may be paid by the percentage of program income available to pay for administrative tasks. Section 420.9075 (7) of the SHIP Statute addresses the amount of program income for administration:

- *5 percent of program income* for counties that are not small counties as defined in s. 120.52(19). "Small county" means any county that has an unincarcerated population of 75,000 or less according to the most recent decennial census. *10 percent of program income* for small counties and eligible municipalities that receive a local housing distribution of up to \$350,000.

If this percentage of program income is insufficient to cover the servicer's fees, the remainder must be paid from a source other than SHIP, such as city or county general revenue.

Follow local city or county procurement policies to identify a contractor. Here are key elements of an "Invitation for Bids" from Loan Servicers:

- Two-year term of service.
- The servicer will send a monthly check of funds collected to the County.
- County staff receive a list of payments daily and post these to clients' accounts.
- The loan servicer will send the SHIP recipient a coupon book and a payment schedule or a monthly statement.
- County staff track if a client is more than 60 days in arrears in payments but are not expected to perform any legal activities or hand accounts over to a collection agency.
- The Request for Proposal (RFP) includes an estimate of loan volume: "It is expected that the county will

lend more than 100 loans valued at over \$2 million.”

- The invitation for bids lists the number of existing loans and asks bidders to indicate whether there will be a charge to set up the existing loans. The Bid Form asks for the fee to complete the initial loan set-up and the fee per Account per Month.
- County staff prepare upfront loan disclosures for the SHIP loan and provide homeowners with tax forms.
- All loan payoff requests will be addressed by the County.
- The SHIP Office keeps the privilege of allowing an applicant to defer a few months due to short-term money problems. Deferred loans are not charged a late payment fee.

## ASSESS ABILITY TO REPAY

A SHIP community may consider different approaches to assess a SHIP recipient’s ability to repay assistance. If the assessment indicates that a recipient cannot afford to repay, a SHIP community may decide whether to help through a grant or to defer payment. To ensure that all cases are treated the same, add a policy to the Local Housing Assistance Plan (LHAP) that states scenarios when a grant is provided compared with cases in which a deferred payment schedule is established. With a secured SHIP loan against the property, repayment for deferred cases will eventually be made upon transfer of the property. Options for assessing ability to repay include:

Based on AMI: Some communities may assess ability to repay based on the area median income (AMI). While households with income at or below 50% AMI are excluded from repayment, households with higher incomes must repay. In this approach, the ability to repay is determined by the income category a household falls in and is not specifically based on a debt-to-income ratio or some other calculation.

Based on Lending Ratios: Another option is to estimate each recipient’s ability to repay based on lending ratios. One community calculates 28% of gross monthly income for housing costs, and 38% for the back-end total debt-to-income ratio. The housing assistance repayments are deferred for recipients who do not have sufficient income to pass this ratio test.

Calculate Net Residual Income: Another approach is to calculate ability to repay based on a net residual income calculation, which requires a certain amount of monthly cash flow to maintain necessary living expenses not accounted for when calculating the household’s debt-to-income ratio. Net residual income is based on monthly income, which changes as HUD publishes its annual maximums. Residual income equals gross income less the following necessary living expenses:

- Principal, interest, taxes, and insurance
- Homeowner’s association dues
- Maintenance and utilities
- Federal income and social security taxes
- Alimony, child support, or childcare expenses
- Job-related expenses (transportation, meals, etc.)
- Monthly fixed obligations (auto loans, revolving charge accounts, installment loans)
- Health insurance deductions

## SYSTEM OF DEFERMENT

A community offering direct loan should draft a policy regarding loan deferment, considering that some SHIP recipients struggle to make consistent payments, and some do not pay at all. Address this on the front end by estimating each recipient’s ability to repay and deferring repayment in cases that are warranted. The loan is not deferred indefinitely, and it is not forgiven. Periodically reassess the household’s ability to repay.

Send an annual reminder to those with deferrals three months before a recipient’s deferral ends stating that SHIP payments will soon start. Some recipients may apply for another deferral if eligible, while others begin making payments. In either case, local government staff must work with legal staff to complete a loan modification or deferral extension.

## ADDRESS PAYMENT DELINQUENCY

Local governments may need to work with a collection agency. In one community, 75% of delinquent recipients do not repay funds, even with collection efforts. Local governments will need to determine in advance whether they will foreclose on delinquencies. Staff may chose not to pursue foreclosure, recognizing that the SHIP assistance mortgage will be paid off upon the property's transfer of title or sale in the future.

Stress the importance of consistent repayment starting with the applicant's first meeting. Consider establishing a policy that offers the applicant an incentive to consistently repay on time. One option is to forgive the remaining balance for SHIP recipients who regularly repay the first half of their loan.

Here are the activities that staff in one community take to minimize delinquency:

- *Frequent Contact*: Borrowers in default receive correspondence in the mail specific to their circumstances. Staff conduct physical inspections of some properties to confirm that the borrower still resides in the unit and to inspect its physical condition.
- *Partial Payment*: Staff accepts all payments no matter the amount to reduce the mortgage balance. Although this does not fulfill the monthly payment requirement, staff document attempts to pay.
- *Deferment*: Deferments are determined by the division director. Staff often offer month-to-month deferrals as they work on individual cases.
- *Heirs*: In cases of recipient death, SHIP staff explain to property heirs the process for mortgage assumption or payoff. Some cases result in continuation of payments.
- *Approach for Nonresponsive Borrowers*: Some borrowers who are in default have not initiated contact with the SHIP staff. These borrowers will continue to receive quarterly mailings detailing all reasons related to the default.



## CHAPTER 4: Homeownership Development Strategies

The SHIP program provides funds to local governments as an incentive to create partnerships that produce and preserve affordable homeownership opportunities for low- and moderate-income households. SHIP can help fund new construction of homeownership units that can be built by local government, for-profit, or nonprofit developers, also known as sponsors. SHIP funds may be used to pay for land, infrastructure, upfront construction cost, the developer's fee, and soft costs like appraisals, permits, soil tests, title work, and more. SHIP funds awarded to sponsors must also provide a subsidy in the form of a loan or deferred payment loan to homebuyers to make the purchase of the home affordable.

### STATE THE SHIP BENEFIT TO AN ELIGIBLE BUYER

A new construction strategy must clearly state how the SHIP funds that are provided to the sponsor developer will benefit the homebuyer. The SHIP strategy should describe how the funds provided to the developer will in turn benefit the homebuyer. SHIP funds can be used to reduce building costs to the developer and allow for the home to be sold at a lower purchase price. Accordingly, the SHIP-eligible homebuyer benefits from this reduced affordable purchase price.

### DEVELOPER PAYS BACK LOAN

The strategy must detail how SHIP funds are loaned to the sponsor developer and when and how funds are paid back to the local government from the proceeds of the home sale. Often the developer borrows a large amount, pays back a lesser amount, and keeps a portion of the SHIP funds as a developer's fee.

### FHFC GUIDANCE

Florida Housing has provided guidance on how to address homeownership development in the Local Housing Assistance Plan (LHAP). Local governments must ensure that the LHAP includes the terms of assistance to both the sponsor and the buyer. The term to the sponsor is limited to the construction of the home and ends upon transfer to the buyer. The LHAP strategy must address the subjects of interest rate, amount to be repaid, and timing of loan repayment. Developers may charge a development fee for the construction of the units. It is a best practice for the repayment of the loan to the developer to occur at closing. This repayment is reported as program income to the local government.

Some loan proceeds are transferred to the buyer at closing as a subsidy to make the home affordable.

# CHAPTER 5: Awards for Rental Assistance and Rental Development

This chapter addresses the methods for expending SHIP funds for both rental assistance to an individual household and rental housing development involving the new construction or rehabilitation of units. These two distinct approaches are addressed here, starting with rental assistance awarded to or on behalf of tenants, and then including awards to developers of rental units.

## GUIDANCE ON RENTAL ASSISTANCE

### Method C. Rental assistance awarded to or on behalf of tenants

Rental assistance involves providing direct help to eligible tenant households. Types of SHIP rental assistance include:

- Rent Deposit: SHIP funds may be used to provide deposit assistance for a rental unit, including first and last month's rent, a security deposit, and utility deposits.
- Eviction Prevention: This is available to households who are already residing in rental housing and require SHIP funds for past due rent payments to avoid eviction. Assistance is often limited to those who have experienced a hardship but have recovered. Eligible households may be required to document their ability to continue rent payments after assistance is provided.
- Rent Subsidies: This assistance provides security and/or utility deposits and pays rent for up to 12 consecutive months. It may only be provided to very low-income households who are experiencing homelessness or in which at least one household member meets the definition of special needs.

**AMOUNT AVAILABLE:** The amount of SHIP funding that may be provided for rental assistance is limited to 15 percent of the SHIP allocation plus all program income. Set-aside requirements and administrative expenses limit the amount available for rental assistance:

100% of allocation  
-75% for Construction Set-aside  
-10% for Administrative Budget  
15% of allocation remaining for rental assistance  
+ all program income

**ABOUT TERMS:** Rental assistance is often provided as a grant. Some communities have recipients sign a forgivable loan.

### SHIP FUNDS MAY BE PAID TO:

- Landlord: The SHIP office often works with property management staff to pay for deposits, monthly rent, late fees, and utilities added to the rent.
- Service provider: SHIP may provide move-in assistance, which may involve payments to a moving company as well as utility company deposits.
- Government entity: Some tenants live in cities with a municipal utility company. This involves a SHIP payment to a government entity.
- Direct to Tenant: Direct payments are uncommon. In 2020, SHIP communities spent Coronavirus Relief Funds (CRF) on rental assistance. To expedite assistance, some communities provided CRF directly to tenants for them to pay rent to their landlords.

## AWARDS TO DEVELOPERS OF RENTAL HOUSING

SHIP-funded development projects may involve the construction of 50 or more rental units. SHIP may also be used to repair rental housing. Here are key considerations about terms of assistance:

- SHIP Benefit: As always, the benefit must flow to the SHIP-eligible user. The strategy must clearly state how the SHIP funds provided to the sponsor developer benefit the end user. The benefit is often very apparent in rental deals: SHIP funds pay for building materials and construction supervision that produce rental housing units to be occupied by SHIP-eligible tenants.
- Affordable Monthly Rents: Expending SHIP on the development of a rental unit requires the property owner to charge a monthly rent that does not exceed the SHIP rent limits published annually.
  - Rental Monitoring: Rental units newly constructed or rehabilitated with SHIP funds must be monitored annually, a task that often involves local SHIP staff. More guidance is provided below.

**TWO MAXIMUM AWARDS:** A rental development strategy must feature both a maximum award per rental unit funded by SHIP and a maximum SHIP award per property. SHIP funds are often loaned to the developer to pay for the land, upfront construction, and soft costs.

**AGREEMENT WITH THE DEVELOPER:** As it is rare for SHIP to finance repairs on only one rental unit, SHIP staff commonly enact an agreement with a rental property owner to repair all or several rental units in an apartment complex. With the development of rental housing, there may be no lien recorded on the property. Instead, there is an agreement that serves as a legal contract and outlines compliance requirements. Beyond the rental strategy, the rental agreement signed by the SHIP office and the developer addresses all terms and conditions of SHIP assistance.

See the sample rental development agreement in the appendix. It includes details about the number of SHIP-funded rental units, the income categories of the households that will occupy the units, and the timeline for constructing or repairing the units. The agreement states the affordability period upfront, which is the number of years that SHIP-funded rental units must be rented to SHIP-eligible tenants.

**SHIP LEVERAGED WITH OTHER SUBSIDY:** Construction of rental housing often comes with a large price tag, and as a result, SHIP funds are rarely the sole source of financing. In many cases, SHIP finances a portion of the construction costs, while other sources of subsidy—including HOME, SAIL, and Housing Credits—are the primary sources. When SHIP pays for only a portion of construction costs, the SHIP rental agreement often indicates that only a portion of the total units constructed are SHIP-assisted. The SHIP Statute recognizes that SHIP funds are commonly leveraged with other subsidy sources. In the case of housing credits, Section 420.9075(5)(n)3 of the Florida Statutes notes that this federal program’s requirements take precedent over SHIP policy in any cases of conflict:

If both an award under the local housing assistance plan and federal low-income housing tax credits are used to assist a project and there is a conflict between the criteria prescribed in this subsection and the requirements of s. 42 of the Internal Revenue Code of 1986, as amended, the county or eligible municipality may resolve the conflict by giving precedence to the requirements of s. 42 of the Internal Revenue Code of 1986, as amended, in lieu of following the criteria prescribed in this subsection with the exception of paragraphs (a) and (g) of this subsection.

**AMOUNT AVAILABLE:** The amount of SHIP funding that may be provided for rental development is limited to 25% of the SHIP allocation, plus all program income. Although rental development complies with the construction set-aside, it does not comply with the homeownership set-aside. This set-aside requirement and administrative expenses limit the amount available for rental development:

100% of allocation  
-65% for Construction Set-aside  
-10% for Administrative Budget  
25% of allocation remaining for rental development  
+ all program income

Many SHIP communities receive an annual SHIP allocation of \$350,000 or less. These communities may have a disincentive to focus on rental housing since relatively little of these funds may pay for rental development. Still, a significant number of SHIP communities, including many with allocations of \$750,000 to \$1 million or more, use SHIP funds on rental rehabilitation or new construction.

**15 YEAR MINIMUM TERM and RIGHT OF FIRST REFUSAL:** The “right of first refusal” is a statutory requirement that must be included in all SHIP developer agreements. This provision is included to ensure that the rental units that receive SHIP assistance remain affordable for at least the term of the agreement, which must be at least 15 years. The SHIP program states in Section 420.9075(5)(i):

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

It is historically uncommon for SHIP-assisted rental units to be sold before the end of the affordability period. However, in such a case, the right of first refusal requirement alerts local government SHIP staff who can plan to preserve the affordability of the rental units. Staff may identify nonprofit partners with the capacity to own and manage the property. The Florida Housing Coalition is available to provide

guidance about funding needed for the purchase and more.

**MONITORING RENTAL HOUSING:** Monitoring is required for all rental developments funded by SHIP with the exception stated in Section 420.9075(4)(e) of the SHIP Statute, which indicates that no monitoring is needed when rental developments receive small amounts of SHIP assistance: "Any loan or grant in the original amount of \$10,000 or less shall not be subject to these annual monitoring and determination of tenant eligibility requirements." This \$10,000 includes the total SHIP funds awarded for multiple units in one development.

The SHIP monitoring requirements for rental development are included in the SHIP Rule:

Rental units constructed, rehabilitated, or otherwise assisted from the local housing assistance trust fund must be monitored annually by the local government, or to the extent another government entity or Corporation program provides periodic monitoring. The local government may rely on that entity's monitoring for 15 years or the term of assistance, whichever is longer, for compliance with tenant income and affordability requirements, except as referenced in Section 420.9075(4)(e), F.S.

The passage above from the SHIP Rule includes a time-saving measure that might pertain to some SHIP-assisted properties. If the rental development project also includes SAIL, Housing Credits, or FHFC bonds, SHIP staff may rely on the periodic monitoring information collected by the FHFC's contracted monitors for those programs. In cases where the data collected by the FHFC's contracted monitors does not cover all the elements of compliance with the SHIP rental agreement, SHIP staff will have to collect the additional data.

#### ELEMENTS OF RENTAL MONITORING:

SHIP staff must:

- Determine that the tenants living in SHIP-assisted rental units are income eligible.
- Review whether the monthly rent for each SHIP-funded unit is set at an affordable level. Guidance is provided in the SHIP Rule:
  - In determining the maximum allowable rents, 30 percent of the applicable income category divided by 12 months shall be used based on the number of bedrooms. A rental limit chart based on the above calculation adjusted for bedroom size will be provided to the local governments by the Corporation annually. 67-37.007(11), F.A.C.
- Although not required by the SHIP Statute and Rule, staff in some SHIP communities also inspect a property's physical condition.
- More guidance on rental monitoring may be found in Chapter 7 of the Florida Housing Coalition publication "Guide to Using SHIP for Rental Housing."

## CHAPTER 6: Shared Equity

Terms of assistance can include Shared Equity terms, more accurately referred to as “Shared Appreciation”, upon repayment or default. Shared equity restricts the appreciation that flows to the homeowner on the sale of the property. The Shared Equity model provides an opportunity not only to recapture the initial investment by the local government but also to gain additional dollars that would otherwise be received by the owner only. In a sellers’ market, the local government can increase their net proceeds.

The local government can use these additional resources as program income to serve additional households. It can be used to serve new buyers in the current market or for other strategies where financial resources are needed. Rather than charge an interest rate or require monthly repayments to increase program income, the shared equity model requires no upfront work from the local government or an increase in monthly payment from the homeowner.

Down payment, closing cost assistance, and gap financing help move renters who would not otherwise be able to purchase a property without financial assistance into homeownership. Despite the limits that are placed on a property’s resale and the return on the homeowner’s equity, most families who purchase a shared equity home will realize a growth in personal assets. Families in a shared equity model will get back their down payment, their repayment of the mortgage principal, and a portion of the appreciation. Some shared equity models also allow the homeowner to retain any investment in home improvements. Therefore, the homeowner will realize more wealth than if they had remained a renter.

### EXAMPLE OF SHARED EQUITY

- a. Summary: The Purchase Assistance Strategy will provide gap financing, down payment, closing cost and/or mortgage financing assistance to eligible persons and households who are first-time homebuyers to purchase a newly constructed or existing residential property. A first-time homebuyer is a person who has not owned a home in the past 3 years.
- b. Fiscal Years Covered: 2022-2023 2023-2024, and 2024-2025
- c. Income Categories to be served: Very Low, Low, and Moderate
- d. Maximum award: \$ 80,000; Residents meeting the selection criteria will be awarded a maximum amount based on the number of bedrooms as shown in the chart below. However, the amount cannot be more than \$80,000 or the amount necessary to meet the first lender’s credit criteria, whichever is lower.

Number of bedrooms	0	1	2	3
Maximum Subsidy	\$45,000	\$50,000	\$65,000	\$80,000

- e. Terms:
  1. Repayment loan/deferred loan/grant: Deferred payment loan secured by a note and mortgage.
  2. Interest Rate: 0%
  3. Years in loan term: 30
  4. Forgiveness: The loan will be forgiven at the end of the term.
  5. Repayment: None required as long as the loan is in good standing.
  6. Default: The loan will be determined to be in default if any of the following occurs during the Loan term: sale, transfer, or conveyance of property; conversion to a rental property; loss of homestead exemption status; or failure to occupy the home as primary residence. If any of these occur, the full loan amount will be due and payable.

In the case of sale or transfer of the property, the borrower will be required to repay the original loan amount, and the City will share in the equity earned by the borrower according to the following schedule:

- 0 to 3 years – 100% of the equity generated.
- Over 3 - 20 years - After the 3rd year, City receives 85% of the equity generated and the borrower receives 15%. Thereafter, the borrower receives an additional 5% of the City’s prorated share per year reducing the City’s share by the same percentage.
- Over 20 years and above: The borrower receives 100% of the equity.

The above equity sharing proposal will terminate in foreclosure; however, the City will require lenders to provide a right

of first refusal to purchase the loan at a negotiated price. In the case of a foreclosure, the City will recapture any amount of net proceeds from the sale of the property available.

In the event of death of all eligible homeowner(s), the heirs to the property can assume the obligation based on the original terms and conditions provided to the homeowner as long as the heirs qualify based on income and household size, remain owner-occupants of the property, and do not sell or rent the property for the remaining term of the mortgage and note. An heir who does not qualify based on the provisions of this strategy will be required to repay the loan amount due. If the home is foreclosed on by a superior mortgage holder, the City will make an effort to recapture funds through the legal process if it is determined that adequate funds may be available to justify pursuing a repayment.

- f. Recipient Selection Criteria: Applicants will be selected on a first-qualified, first-served basis with priorities as listed in Section I (I) of this plan.  
Other selection criteria will include the following:
  - The purchase price of the home may not exceed the maximum purchase price limits (value) allowed under the SHIP Program for new and existing homes.
  - The property must meet safe and sanitary standard conditions at closing or funds must be held in escrow to bring it to safe and sanitary standards after closing.
  - . Manufactured housing constructed after June 1994 is considered eligible housing, so long as no more than 20% of the SHIP distribution is devoted to this type of housing, as referenced in Section 420.9075(S)(c), F.S.
- g. Sponsor Selection Criteria: N/ A
- h. Additional Information: N/ A

## CHAPTER 7: Community Land Trust Terms of Assistance

A community land trust (CLT) offers a vehicle to provide permanently affordable housing. Through a CLT, the CLT sells a resale-restricted home to an income-eligible homebuyer but retains ownership of land. By retaining the ownership of the land, the purchase price for the lower-income CLT homebuyer is more affordable than fee simple ownership because it does not include the price of the land. The CLT home is kept affordable in perpetuity through a 99-year ground lease between the CLT and the homebuyer. The ground lease lays out the rights and obligations of the CLT homebuyer and spells out important stewardship responsibilities of the CLT.

Due to limited public funds and the expanding gap between the price of housing and average incomes, CLTs are an important tool to meet the housing needs of residents in Florida. Not only are CLTs successful at stewarding the land and home for future generations, but they are an ideal way to preserve public subsidies. The typical down payment assistance program, for example, may require the household to pay back the full amount of the assistance when they sell their home. However, in times of rising housing prices, this recaptured subsidy will likely not be enough to move a subsequent income-eligible household into homeownership.

Instead of recapturing public subsidy when the home is sold, CLTs retain the subsidy in the home for the next homebuyer. This is done through a resale formula that caps the amount at which a homeowner can sell the CLT home and which excludes all public assistance from the purchase price. In this way, down payment assistance provided to the first CLT homebuyer can serve homebuyers of that unit for generations to come.

### PROVIDING SHIP FUNDS TO COMMUNITY LAND TRUSTS

Community land trusts provide a unique form of ownership that is different from traditional fee simple ownership. Because of this, the terms of assistance when providing SHIP funding to CLTs and CLT homebuyers are slightly different than the typical model. Here are some of the provisions that should be addressed to serve CLT homes:

**Security Interest:** When entering into a mortgage agreement with a CLT homebuyer, the security interest should be attached on the fee simple interest of the home and improvements but only to a leasehold interest in the land. The local government should not attach a security interest to the land the CLT owns. In a CLT transaction, the homebuyer receives fee simple interest in the home and improvements but only leases the underlying land. Therefore, the local government must only attach a security interest to the interest of the homeowner – namely, the fee simple interest in the home and improvements and lease on the land.

**Allow loans to be assumable:** Ensuring that homes are permanently affordable is one of the primary benefits of a Community Land Trust. When the initial homebuyer goes to sell their CLT home, the ground lease between the homeowner and the CLT caps the purchase price at an affordable rate so a subsequent income-eligible homebuyer can purchase the home. The purchase price excludes all government subsidy initially provided to the home. Because of this resale restriction, local governments can feel secure that their initial investment will be to the benefit of subsequent homebuyers. To successfully retain the subsidy in the home, the local government should allow loans made to CLT homebuyers to be assumable by income-eligible subsequent homebuyers. In this way, the initial homebuyer will not pay back the balance of the loan on resale, which is to the benefit of the next homebuyer.

**Default:** Each local government may have different definitions of what constitutes a default under the LHAP but all state that a sale, transfer, or conveyance of property constitutes a default. There should be an exception here for CLTs. If a CLT homeowner sells their unit to an income-eligible homebuyer as approved by the CLT, and the SHIP loan is assumed, the sale should not be grounds for default.

**CLT's Right to Cure:** One of the CLT's most important stewardship responsibilities is their right to cure a default to prevent foreclosure. The agreement between the SHIP office and CLT or CLT homebuyer should reference this Right to Cure which should include a provision that requires the local government to provide notice to the CLT in the event of default.

**Inheritance:** The ground lease between the CLT and the CLT homeowner have its own terms regarding what happens if the homeowner passes away. The terms are usually slightly different than what is contained in a local government's LHAP. Be aware of the differences between the ground lease and LHAP and act accordingly in the event a SHIP-assisted CLT homeowner dies.

**Priority:** CLTs are a valuable tool to preserve public subsidy by keeping assisted units affordable in perpetuity. Local governments should consider prioritizing or otherwise providing a preference to CLTs when providing construction subsidies or down payment assistance.

Local governments should include language in their purchase assistance or construction strategy that allows CLTs and CLT buyers to receive assistance under the SHIP program. The sample Down Payment Assistance strategy below can be used to include a CLT purchase under the program and includes the terms of assistance related to CLTs.



## CHAPTER 8: Seller Financing

Another less utilized, but potential method of providing assistance to homebuyers is seller financing. The most typical form of seller financing is the Habitat for Humanity model. Habitat will provide first mortgage financing to its buyers in a manner similar to an institutional lender. In addition to Habitat for Humanity, there may be other opportunities for private seller financed mortgages. For example:

1. Buyers that can afford monthly payments but are not approved by a first mortgage lender due to low credit scores.
2. Buyers who need no interest or low interest loans to afford the payments.
3. Buyers who are purchasing housing not approved by a first mortgage lender such as container housing.

### PURCHASE MONEY MORTGAGE

A seller financing agreement, also called a “purchase money mortgage,” is a real estate agreement in which the seller finances the purchase of property for the buyer instead of a third-party lender. Instead of applying for a conventional bank loan, the buyer signs a mortgage and promissory note with the seller. Seller financing can help buyers purchase a home when they have had a difficult time qualifying for a conventional loan.

### GUIDELINES

Seller-financing has inherent risks, especially for homebuyers who may not understand the full details of the transaction. It is recommended that guidelines be established to protect homebuyers from common pitfalls such as balloon payments and excessively high (predatory) interest rates. Administrators should consult with their city or county attorney prior to assisting seller-financed transactions. In addition to all other state or local SHIP requirements, local governments should follow the guidelines below to use SHIP funds on seller-financed affordable units.

**1. Fixed-Rate, up to 30-year term.** The seller-financed mortgage must provide for equal monthly payments on principal and interest for a term of up to 30-years. No balloon payments are allowed, and there cannot be prepayment penalties.

**2. Local government must set a reasonable maximum interest rate** based on an established index such as, but not limited to, the 30-Year Fixed-Rate published by Fannie Mae, the MIRS Transition Index for the most recent month prior to closing as published by the Federal Housing Finance Agency, or the Wall Street Journal Prime Rate.

**3. Property must be sold in fee simple.** The term fee simple ownership describes the property owners complete and total ownership of the property. The owner can do anything they wish with the property if it falls within established easements and zoning laws.

**4. Purchase price cannot exceed the current SHIP purchase price limits.**

**5. Property must meet the definition of “eligible housing” at Section 420.9071, Florida Statutes.** The SHIP office must ensure the assisted units are safe and sanitary based on local policies and in accordance with SHIP requirements.

**6. Purchase agreement must expressly denote the terms of financing.** This includes the interest rate, term, payment, and default provisions.

**7. Local government must provide assurances about which party is responsible for paying any applicable taxes or insurance.** Local policies will dictate whether escrow is required and what documentation needs to be provided to provided assurances that taxes and insurance will be paid in a timely manner.

**8. At time of closing, property must be free and clear of all outstanding liens and encumbrances.** This is to protect a Buyer from purchasing property that the Seller has encumbered.

**9. Local government should ensure that the buyer has the ability to afford the monthly payments.** The SHIP staff should review the income of the applicant to ensure that they are qualified to make the purchase and can afford to make the monthly payments on the home.

**10. Seller must convey deed to Buyer at closing.** No land installment contracts or contract for deeds that only

convey legal title upon full satisfaction of the mortgage.

**11. Local government must ensure the Buyer and Seller understand the nature of the transaction.** The SHIP office can require the transaction to occur at a title company or real estate attorney's office with real estate professionals present to ensure both parties understand the nature of the transaction.

**12. Parties must determine the financing complies** with the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank) requirements related to seller financing of residential dwellings and relevant Florida laws regarding loan origination.

# Appendix

## SAMPLE RENTAL DEVELOPMENT AGREEMENT

Chapter 5 describes the written agreement for rental developments involving SHIP. With the development of rental housing, there may be no lien recorded on the property. An agreement like this sample serves as a legal contract to outline compliance requirements.

The County, by ordinance, has adopted a Local Housing Assistance Plan (the LHAP) in accordance with Rule Chapter 67-37, Florida Administrative Code, as a part of the SHIP Program, which contains a Special Needs Housing strategy (the Strategy) to provide funding for the purchase of new construction housing or existing housing and the rehabilitation of or additions to existing housing used for special needs housing groups as referred to in Section 420.0004, Florida Statutes, including persons with disabilities.

### SCOPE OF SERVICES

The DEVELOPER operates group homes that provide housing to persons with developmental disabilities and will expend SHIP assistance for the **construction/ purchase/ rehabilitation** of group home units in **(Property Name)** to be used as special needs housing for persons with developmental disabilities.

The total amount of **construction/ purchase/ rehabilitation** will be **One Hundred Thousand and 00/100 Dollars (\$100,000.00)**, and shall be provided to the DEVELOPER

The SHIP funds that have been committed are for **(number)** clients whose income is below \_\_\_% AMI and accumulate from \_\_\_ separate allocation years, which each have a separate expenditure deadline. The dollar figures and expenditure deadlines are as follows:

<b>2021/2022</b>	<b>\$ _____</b>	<b>June 30, 2024</b>
<b>2022/2023</b>	<b>\$ _____</b>	<b>June 30, 2025</b>

Funds are considered expended when the assisted rental units have been **built or repaired** and are occupied by SHIP-eligible tenants. The names and demographics of the SHIP-assisted tenant must be provided to the SHIP Office, including annual income, number of household members, and age and race of the head of household.

### GOALS AND PERFORMANCE MEASURES

The units that shall be **built or repaired** shall be limited to households under **fifty (50) percent** of the area median income and will provide affordable housing for SHIP-eligible individuals with special needs. Activity shall be completed within **five (5) months** of the issuance of the notice to proceed.

### TERMS OF ASSISTANCE

This SHIP assistance is a forgivable loan with a term of **30 years**. As required by Section 420.9075 (5)(i) of the Florida Statutes, a DEVELOPER that offers rental housing for sale before the **30-year period** must give a first right of refusal to eligible nonprofit organizations for purchase at the current market value for continued occupancy by eligible persons.

The DEVELOPER will pay when due all taxes assessments, water rates, and other governmental charges, fines, and impositions, of every kind and nature whatsoever, now and hereafter imposed on the mortgaged property, and will pay when due every amount of indebtedness secured by any lien of which the lien of this Mortgage is expressly subject. The DEVELOPER will keep all buildings now existing, or which may hereafter be erected or installed in the land mortgaged hereby, insured against loss by fire and other hazards, casualties, and contingencies

### COMPLIANCE MONITORING

All projects must comply with the rules and regulations of 24 CFR Part 5 (Income Limits, Annual Income, Rent, and Examinations for the Public Housing and Section 8 Programs) and the State Housing Initiatives Partnership Program as authorized by Florida Statutes, Chapter 420.907 and the Florida Administrative Code 67-37, and in particular related to:

- a. Income limits
- b. Definition of Affordability
- c. Maximum rent
- d. Non-discrimination

The manager of \_\_\_\_\_ must remain in contact with the SHIP Office during the 30-year SHIP affordability period and must remain in compliance with SHIP requirements. The manager must stay updated on income qualification training by completing re-training at least once every three years.

Once annually on (date) staff from the SHIP office will conduct a monitoring visit to review income compliance and affordability of rent/housing costs, as well as complete an inspection of the physical condition of the SHIP assisted units and the overall property.

30 Days prior to this monitoring visit, the DEVELOPER will provide the following:

- A completed annual re-certification of income eligibility for each SHIP-assisted rental unit using the attached residential income certification form and including required verification of household income and assets.
- Proof of Affordability of Units
- Certificate of Hazard Insurance naming the SHIP Office as co-insured

**ATTACHMENTS:**

1. Applicant Intake Forms, including Release of Information/Acknowledgment of SHIP terms signed by beneficiary
2. SHIP Resident Income Certification
3. Income Verification Forms
4. SHIP Manual

**SIGNATURES**

\_\_\_\_\_  
SHIP Office

\_\_\_\_\_  
Developer

## **COMMUNITY LAND TRUST STRATEGY**

Model Community Land Trust Add-On Language for Down Payment Assistance Strategies

*This document is an example of a SHIP Purchase Assistance Strategy and is provided as a guide. Review the model strategy and revise, as necessary, to ensure that it is consistent with local program guidelines before incorporating into the Local Housing Assistance Plan.*

Purchase Assistance

Code 1, 2

a. Summary: Funds will be awarded for down payment and closing costs for new and existing homes, including homes purchased from a community land trust (CLT). Home rehabilitation is also an eligible use, as needed when purchasing existing homes. To be eligible, existing homes must be in need of and receive at least \$2,500 in rehabilitation paid within 12 months by SHIP, CDBG, HOME, the seller, the buyer or another source.

b. Fiscal Years Covered: 2019-2020, 2020-2021, 2021-2022

c. Income Categories to be served: Very low, low and moderate

d. Maximum award \$ 55,000

e. Terms (see "Additional Information" for special terms for CLT home purchases)

1. Repayment loan/deferred loan/grant: Funds will be awarded as a deferred subordinate loan secured by a recorded subordinate mortgage and note

2. Interest Rate: 0%

3. Years in loan term: 10 years (very low and low), 30 years (moderate)

4. Forgiveness: For very-low and low-income categories, the funds will be forgiven on a prorated bases so that 10% of the principal is forgiven annually. Funds for moderate-income recipients will be forgiven on a prorated

basis so that 1/30th is forgiven annually.

5. Repayment: For those who comply with SHIP rules, assistance will be forgiven by the end of the loan term and no repayment will be required.

6. Default: The loan will be determined to be in default if any of the following occurs: sale, transfer, or conveyance of property; conversion to a rental property; loss of homestead exemption status; or failure to occupy the home as primary residence. If any of these occur, the outstanding balance will be due and payable. In cases where the qualifying homeowner(s) die(s) during the loan term, the loan may be assumed by a SHIP eligible heir who will occupy the home as a primary residence. If the legal heir is not SHIP eligible or chooses not to occupy the home, the outstanding balance of the loan will be due and payable.

f. Recipient Selection Criteria: Applicants will be ranked for assistance based on a first-qualified, first-served basis. Homebuyers must complete an approved homebuyer education class from a HUD certified agency and obtain a certificate of completion. CLT homebuyers must attend a homebuyer education class that contains a community land trust component and/or session with the CLT in addition to a homebuyer education class that requires CLT buyers to demonstrate and attest to a clear understanding of the terms of community land trust homeownership.

g. Sponsor Selection Criteria: N/A

h. Additional Information: Loan will be awarded in the amount required for the homebuyer to purchase the property up to the maximum award permitted.

Terms for CLT home purchases: This SHIP assistance is assumable to an income-eligible purchaser. The terms of the Note and Mortgage shall allow subsequent purchasers to assume the loan with approval by the CLT. Otherwise, no repayment required during the term of the loan, provided the loan remains in good standing. Please see Exhibit \_\_\_ for additional instructions and information for CLT purchases.

#### CLT Strategy EXHIBIT

*This exhibit will be included in the LHAP and provides some of the terms and conditions of the CLT ground lease.*

Instructions and Information for Down Payment Assistance for Community Land Trust Purchases:

To qualify, homes must be purchased from a city/county-approved community land trust (CLT). The CLT will execute a 99-year ground lease with the homebuyer. A memorandum of that ground lease is recorded in the public records immediately following the deed. The terms of the ground lease restrict the resale of the property to an income eligible household and provide a right of repurchase to the CLT in the event of default. The CLT must approve the subsequent homebuyer. In the event of a default, the CLT must notify the City/County whether it intends to exercise its right of repurchase. In the event the CLT is not willing or able to exercise its right of repurchase, it shall transfer its right of repurchase to City/County, giving City/County the right, but not the obligation to purchase the property.

The assistance shall be treated as a development cost pay-down to further reduce the sales price to the homebuyer. The assistance amount shall be excluded from the Base Price and Formula Price as defined in the ground lease. The balance of the assistance must be included in the Purchase Option Price as defined in the ground lease to repay the funds to the City/County in the event of default. If the maximum subsidy was not provided to the first homebuyer, the City/County may provide additional assistance to the subsequent buyer to ensure that the property remains affordable, up to the amount of the maximum subsidy allowable at the time of subsequent purchase minus the original subsidy amount provided to the first homebuyer. Any additional SHIP investment will extend the original loan term. At the end of the loan term, the loan will be forgiven, and the lien released. However, the CLT ground lease will remain in effect and the requirements for residency, resale price, and subsequent buyer's income eligibility will continue. The CLT may request satisfaction of a loan and release of the lien during the term of the loan on behalf of a homeowner or seller, and under certain defined circumstances, with approval granted by the City/County on a case-by-case basis.

When selling a CLT home, the seller must notify the CLT. The CLT will then enter into a purchase and sale agreement with the seller, that will get assigned to the subsequent homebuyer. The Purchase Option Price for the CLT will be calculated as follows:

$$\text{Purchase Option Price} = \text{Formula Price} + \text{Payoff Amount of Deferred Payment Loans}$$

The Formula Price is calculated using a Base Price calculated by subtracting the amount of down payment assistance from the purchase price. For example:

Purchase Price: \$185,000

MINUS Assistance Provided (maximum): - \$55,000

EQUALS Base Price (sales price) for first buyer: \$130,000

Base price is the amount the buyer would need to finance (plus transaction costs) and is used to calculate the Formula Price in the ground lease.

Suppose the Formula (re-sale) Price in the ground lease is calculated by a 1% annual increase to the Base Price, compounded. Suppose the home is sold after 5 years. To calculate the Purchase Option Price (price that will go in the purchase and sale agreement between the CLT and the seller), first calculate the Formula Price:

Formula Price = Base Price x Compound Rate

Calculated as follows:

Year 1 =  $\$130,100 \times 1.01 = \$131,300$

Year 2 =  $\$131,300 \times 1.01 = \$132,613$

Year 3 =  $\$131,613 \times 1.01 = \$133,939$

Year 4 =  $\$133,939 \times 1.01 = \$135,379$

Year 5 =  $\$135,379 \times 1.01 = \$136,631$

Formula Price = \$136,631

Purchase Option Price =  $\$136,631 + \$55,000 = \$191,631$

The price to the subsequent buyer equals the Purchase Option price minus the assumed down payment assistance:

Purchase Option Price: \$191,631

DPA assumed: - \$55,000

Sales price for subsequent buyer: \$136,631 (New Base Price for Formula Price)

The new price should be affordable to the subsequent buyer without additional subsidy.

At the end of the loan term, the value of the Purchase Option Price will be equal to the Formula Price.