

AFFORDABLE HOUSING

 IN FLORIDA



TABLE OF CONTENTS

- | | | |
|----|----------------|---|
| 1 | CHAPTER ONE | What is Affordable Housing? |
| 9 | CHAPTER TWO | Who Lives in Affordable Housing? |
| 17 | CHAPTER THREE | Why Include Affordable Housing in Your Community? |
| 21 | CHAPTER FOUR | How is Affordable Housing Developed? |
| 29 | CHAPTER FIVE | How Should Neighbors be Included in the Process? |
| 33 | CHAPTER SIX | What Role Does Design Play? |
| 35 | CHAPTER SEVEN | What is the Connection Between Affordable Housing and Fair Housing? |
| 39 | APPENDIX ONE | William E. Sadowski Affordable Housing Act |
| 41 | APPENDIX TWO | Catalyst Program |
| 43 | APPENDIX THREE | Glossary of Terms and Acronyms |

ABOUT THIS BOOK:

The Florida Housing Coalition has produced this guidebook with funding from the Catalyst Program administered by the Florida Housing Finance Corporation. The views expressed throughout this book are entirely those of the Florida Housing Coalition and do not necessarily reflect the views of the Florida Housing Finance Corporation. The Florida Housing Coalition is a statewide nonprofit that provides free training and technical assistance in Florida pursuant to the Catalyst Program. Guidebooks written to assist local government with every aspect of Affordable Housing can be found at www.flhousing.org.

Photographs in this book are a sampling of single-family and multi-family affordable housing from around the state. The Florida Housing Coalition thanks the following developers for providing photographs of the housing they produced and the people who live there: Boley Centers, Carrfour Supportive Housing, Green Mills Group, Habitat for Humanity of South Palm Beaches, InVictus Development, Orlando Neighborhood Improvement Corporation, Partnership in Housing, Inc., The Richman Group Development Corporation, Sage Partners, LLC, Sarasota Housing Authority, Tampa Housing Authority, The Related Group, and the Vestcor Companies.



WHAT IS AFFORDABLE HOUSING?

Affordable housing is safe and decent housing. It differs from market-rate housing in two ways:

1. The income of the family living in the housing
2. The financing of the housing

Income Restricted

Affordable housing is defined in terms of the income of the people living in the home. The household must be income eligible. Income eligibility is defined in terms of area median income, adjusted for household size.

- Extremely low-income describes a household at or below 30% of area median income
- Very low-income describes a household at or below 50% of area median income
- Low-income describes a household at or below 80% of area median income
- Moderate-income describes a household at or below 120% (and sometimes, 140%) of area median income (at or below 100% of median income for federal programs)

The median income is determined by HUD (Department of Housing and Urban Development) by County or Metropolitan Statistical Areas (MSAs). Median incomes are updated annually by HUD; the Florida Housing Coalition posts an updated median income chart on its website www.flhousing.org. Go to SHIP FAQ, Income Eligibility.

Affordable housing is safe and decent housing. Substandard housing should not be counted as a unit of affordable housing. In general, the income eligible household is said to be living in affordable housing when it spends no more than 30% of its income on either rent or mortgage payments. There is an assumption that if a very low- to moderate-income family is spending more

In general, the income eligible household is said to be living in affordable housing when it spends no more than 30% of its income on either rent or mortgage payments.



Habitat for Humanity of South Palm Beach County (homes pictured above and below) and Habitat Affiliates throughout Florida provide affordable home ownership opportunities.

Habitat for Humanity of Florida is one of the Sadowski Coalition statewide organizations that support the use of State Housing Initiatives Partnership program (SHIP) funds to help Florida's lower-income families achieve the dream of homeownership by building and rehabilitating homes through public-private partnerships.





Developed by Carrfour Supportive Housing, Hampton Village pictured above is an attractive 100-unit affordable housing development in Miami that is designated for residents with incomes at or below 60% of the area median income.

The issue of whether housing meets the technical definition of “affordable” is no longer a societal concern when the household is high-income.

than 30% of its income on housing costs, it will be cost burdened and not have enough money left over to pay for items such as utilities, transportation, food, clothing, and healthcare.

If a high-income household spends more than 30% of its income on housing, it is not cost burdened. For example, if a household

earning \$500,000 per year chooses to spend as much as half its income on housing cost, it could do so without being cost burdened. This high-income household would have \$250,000 leftover for other necessities, after paying housing expenses. The issue of whether housing meets the technical definition of “affordable” is no longer a societal concern when the household is high-income.

Financing

What makes the housing affordable is a decrease in monthly rent so that the income eligible household, such as the lower-paid workforce or seniors living on fixed incomes, can pay less for the housing than it would otherwise cost at “market rate.” Lower monthly rent payment is a result of affordable housing financing that comes with an enforceable agreement from the developer to restrict the rent that can be charged based on the size of the household and the number of bedrooms in the unit. The financing of affordable housing is made possible through government programs such as the Low-Income Housing Tax Credit Program (referred to as the Housing Credit program by the Florida Housing Finance Corporation) and the SHIP (State Housing Initiatives Partnership) program. The major financing programs for affordable housing are covered in Affordable Housing Resource Guide, produced by the Florida Housing Coalition, which can be accessed online and downloaded at <http://flhousing1.org/ahresourceguide22> You will find a summary of each program along with contact information. You can also find information about Florida’s affordable housing finance programs by going to the Florida Housing Finance Corporation website at www.floridahousing.org.

There was a time when affordable rental housing was synonymous with public housing. Public housing was housing built and operated by the government. Oftentimes (especially in the Midwest and Northeast parts of the United States) the public housing of yesteryear was built in a large barrack type of style, easily distinguishable from market-rate housing. Generally, the government is no longer in the business of building and operating affordable housing, unless it is doing so in partnership with the private sector. And when public housing is redeveloped, it is virtually indistinguishable from market-rate housing in its architecture.

**AFFORDABLE HOUSING
RE\$OURCE GUIDE**

SPONSORED BY:
Florida Housing
Finance Corporation

Florida Housing
Finance Corporation
we make housing affordable

PRODUCED BY:
The Florida Housing Coalition
June 2020

The Affordable Housing Resource Guidebook can be found on the Florida Housing Coalition’s website at: <http://flhousing1.org/ahresourceguide22>



Developed by the Richman Group, Booker Creek in St. Petersburg offers 156 affordable rental units. It was constructed with financing from FHFC along with \$850,362 of SHIP.

Affordable rental housing is built by the private sector, often by the very same companies who also build market-rate housing. The affordable apartments are physically indistinguishable from market-rate apartments. In fact, affordable rental housing is so well built and situated in Florida that the governments providing subsidy for the development need to ensure that the property will remain affordable long term or in perpetuity. The properties can easily be sold for market-rate housing as soon as the restrictions keeping the rents affordable expire. It is incumbent on the government body providing subsidy to

ensure that government contributions are conditioned upon long-term or perpetual affordability.

In summary, affordable housing is physically indistinguishable from market-rate housing. It is built by the private sector (both for-profit and nonprofit developers) with financial subsidy from government and investment from the private sector. The government subsidy and/or the private sector investment in tax credits allows the developer to reduce rents, keeping the property affordable for the residents, whether those residents are seniors living on fixed incomes or the lower-paid workforce.



Bennett Creek is a 264-unit, multi-family housing community developed by the Richman Group to serve low-income residents in Jacksonville. Its amenities include a pool, fitness center, laundry facility, and grilling area.



Janie's Garden Phase I is an 86-unit complex developed by the Michaels Development Company and the Sarasota Housing Authority, comprising public and low-income housing along with 20 market-rate apartments.

Generally, the government is no longer in the business of building and operating affordable housing, unless it is doing so in partnership with the private sector, by providing financing.

Resident amenities and programs commonly found in Florida's affordable housing rental developments include on-site after school programs, computer labs, financial literacy training, and a down-payment assistance program to move residents toward homeownership.



Affordable Housing Facts

The only difference between market-rate housing and affordable housing is that affordable housing uses government subsidy for construction costs in addition to its conventional financing. The facts about affordable housing in Florida are that most new developments carry at least a 50-year land use restriction agreement, which requires the development to have professional management, substantial resident amenities and services, and meet strict compliance standards as to the eligibility of the residents and the condition of the units. The state monitors each site for compliance. Developments that have both low-income units and

market-rate units are identical in every way other than the income of the household living in the unit, and the restrictions on the rent that can be charged on the affordable units.

The focus of this book is on affordable rental housing. But an important piece of the affordable housing continuum is homeownership. The SHIP program in particular helps lower-income households to become first-time home buyers by providing down payment and closing cost assistance. Typically, when a household can move from renting a market-rate apartment into

an affordable home, the household has a lower monthly mortgage payment than it spent on rent each month. And the fixed-rate mortgage provides stability with a savings plan and the wealth building that comes from home equity.

Real estate markets fluctuate. During the Great Recession of 2008, homeownership was lost to the foreclosure crisis. Corporate investors purchased foreclosed single-family homes and turned them into rentals. By 2022, the extraordinary pressure on Florida's housing market from rent increases in market-rate apartments and corporate and out-of-state buyers bidding up the prices of homes and offering quick cash closings once again made homeownership in Florida out of reach for much of the Florida workforce.

From 2008 to 2022, some of Florida's local governments became increasingly supportive of a model of homeownership that lies between rentals and fee simple homeownership. That model is a community land trust. The SHIP program and Florida Housing Finance Corporation funding are increasingly supporting community land trusts.

The Growing Interest in Community Land Trusts

Housing, whether homeownership or rental, is priced at whatever the market will bear. In Florida, that market is not just the Florida market. It is the out-of-state and out-of-country market of buyers looking for luxury vacation homes or speculative investments. There is an enormous demand for housing that is affordable to the Florida workforce, but there is also an enormous demand for high-priced housing. Higher-priced housing is more profitable and will therefore be the housing that is built by the market-rate builders. Florida's workforce is trying to buy or rent homes to live near their jobs. They are stymied by ever increasing rent and home prices that far outpace their incomes.

FLORIDA COMMUNITY LAND TRUST BEST PRACTICES

CERTIFIED BY THE **florida** community land trust INSTITUTE

A Manual for Establishing, Sustaining and Scaling Community Land Trust Operations in Florida

Presented by **FLORIDA HOUSING COALITION**

In Partnership with **FreddieMac** We make home possible! **Fannie Mae**

The Florida Housing Coalition runs the Florida Community Land Trust Institute, which includes a certification program for CLTs piloted by Freddie Mac and now used nationally. For more information on how to start a CLT, contact the Florida Housing Coalition. Florida Community Land Trust Best Practices can be found on the Florida Housing Coalition's website at: <https://flhousing1.org/CLTManual21>



Florida's Surplus Lands Guidebook can be found on the Florida Housing Coalition's website at: https://flhousing1.org/Surplus_Lands_Guidebook

Community land trusts are a vehicle for taking land out of the speculative market by placing ownership of the land into a nonprofit entity that holds a 99-year ground lease on the land to ensure that whatever housing is built on the land will be affordable in perpetuity. Community land trust homeownership is an alternative to renting and provides wealth building opportunities for households that would otherwise be renters. Community land trusts can also be used for rental housing, and we expect to see more community land trusts used for rental housing as Florida begins to rapidly lose affordable housing rental stock with expiring use restrictions.

Preservation of Affordable Housing

Using a 99-year ground lease to ensure affordability is a way to preserve affordability in perpetuity. When government provides financing in the form of grants, loans, or donated land to make housing affordable, it is in the public's interest to keep that housing affordable forever. The 99-year ground lease is renewed every time the property is sold, providing affordability for one generation after the next.

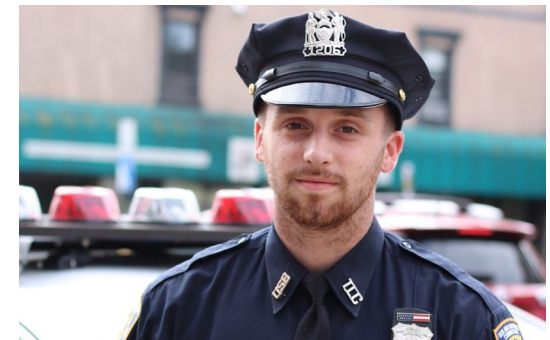
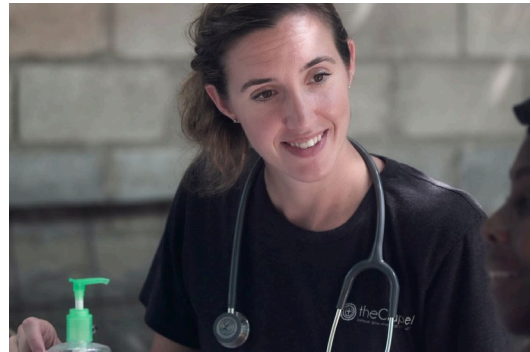
Local governments are required to make surplus lands available for affordable housing. Donating surplus lands to a community land trust is an optimal way to ensure that public resources are serving the public interest in perpetuity. In 2021, the City of Jacksonville elevated the community land trust to a "city agency" that can request government-owned land before the general public. By giving a community land trust first look at available parcels, more government-owned land is expected to be used for permanently affordable housing.

WHO LIVES IN AFFORDABLE HOUSING?

The Workforce...

Affordable housing is sometimes referred to as “workforce housing.” This is because affordable housing serves the needs of people employed in the jobs that we rely upon to make every community viable. They are people such as teachers, teacher’s aids, nursing assistants, medical technologists, retail workers, government employees, emergency services providers, and law enforcement. They are also the service workers that our tourist economy relies upon for hotels, restaurants, and all manner of essential services that pay very low wages.

A person working a 15 dollar per hour job in Florida earns approximately \$31,200 per year, assuming they work 40 hours per week, 52 weeks per year.



They are people such as teachers, teacher’s aids, nursing assistants, medical technologists, retail workers, government employees, emergency services providers, law enforcement, and service workers.



Over forty years ago, a teachers' association used HUD Section 236 funding to develop the Tampa-based 197 unit CTA River Apartments to house retired teachers living on fixed incomes. With its HUD Section 236 loan maturing, it was in a real danger of being converted to a market-rate development, which would displace over 200 low-income senior residents. Sage Partners stepped in and gutted the old, dilapidated high-rise, transforming it into Aqua - a Hillsborough Riverfront beauty. In addition to apartments with new kitchens, bathrooms, and appliances, common area amenities include community fitness and yoga rooms, an arts and crafts center, a computer lab, and a library.

The Elderly...

Approximately 10.5% of all elderly households in Florida (65 years of age and older) live at or below the poverty level (U.S. Census 5-Year ACS, 2020). Out of the 2,595,823 cost-burdened households in Florida, 769,890 or 30% are older than 65 (Shimberg Center Data Clearing House, 2019). These households are much more likely to live on a fixed income and have health needs that make the need for safe, affordable, and accessible housing particularly urgent.

Children...

The Florida Department of Education reports that in the 2020-2021 academic year there were 63,846 children experiencing homelessness. Children who are homeless, live in overcrowded housing, or are shuffled about as families search for decent housing, may suffer substantially in school.

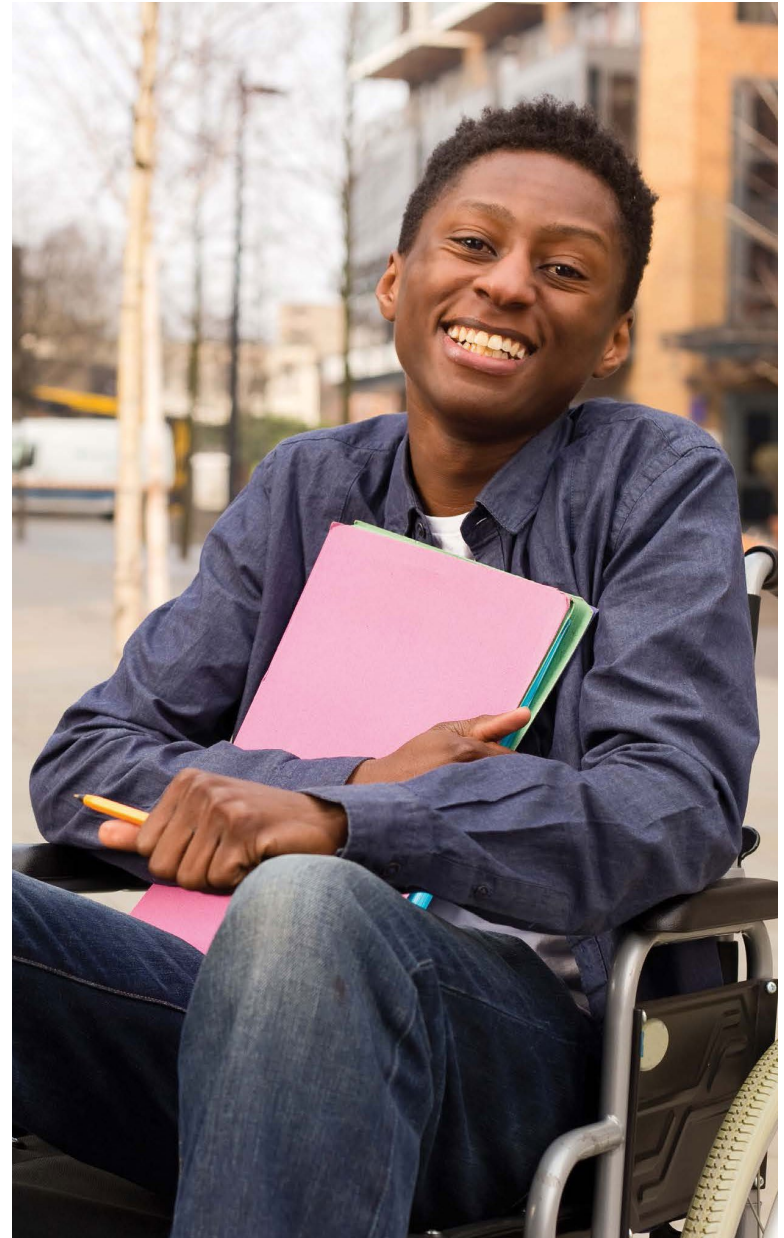


People with disabilities and those who might otherwise be homeless...

Affordable housing is also needed by people with physical and mental disabilities. These populations may be the very lowest income in your community. For example, a person living on supplemental security income may be living on as little as \$10,092.40 per year. There are several nonprofit organizations throughout the state of Florida in the business of providing housing in partnership with others for these “special needs” populations. Whether for-profit or nonprofit, the developers of affordable housing will usually include a mix of units in a development to meet the needs of a continuum of extremely low- to low-income families. Affordable housing for special needs populations may also be provided in “intentional communities,” which may include the concept of co-housing.



Developed by Boley Centers and Pinellas Affordable Living, Butterfly Grove is a beautifully designed 20-unit one bedroom complex for individuals with disabilities who have been homeless. The units are reserved for individuals making less than 50% of the area median income. Funding was provided by Florida Housing Finance Corporation, Pinellas County, The City of St. Petersburg, and the Bessie Boley Foundation.





Lofts at Jefferson Station is a 133-unit mixed-income community in Downtown Jacksonville with studio, one-, two-, and three-bedroom apartments, adjacent to the Jefferson Station skyway, providing easy access to employment, services, entertainment, and other parts of the city. Lofts at Jefferson Station is a workforce housing community with 80 units reserved for individuals making less than 60% of the area median income and 53 units reserved for individuals making less than 140% of the area median income. Funded by Florida Housing Finance Corporation, Jacksonville Housing Finance Authority, and the Downtown Investment Authority



Vestcor's Lofts

WHO LIVES IN AFFORDABLE HOUSING?

LOFTS' RESIDENT PROFILE

Baptist Medical Center - <i>Certified Nursing Asst</i>
Bartram Academy - <i>Preschool Educator</i>
City Facilities Management - <i>Janitorial Services</i>
Coach Warehouse - <i>Warehouse Worker</i>
Cocentrix Corporation - <i>Sr. Advisor, Tech Support</i>
Conviva - <i>Medical Transport</i>
Customized Distribution - <i>Print Shop Personnel</i>
CVS (Aetna) - <i>Customer Service</i>
Dicks Wings - <i>Server</i>
Duval County Schools - <i>Educator</i>
Esquire Litigation - <i>Receptionist</i>
Evergreen Lifestyles - <i>Customer Service</i>
First Coast Security - <i>Security Officer</i>
Florida Blue - <i>Member Services</i>
Florida Care Assurance Group - <i>Office Manager</i>
Florida DEO - <i>Program Specialist</i>

WHO LIVES IN AFFORDABLE HOUSING?

LOFTS' RESIDENT PROFILE

Jacksonville TA - *Customer Service Rep*

Mayo Clinic - *Patient Care Technician*

Moon River Pizza - *Server*

MV Transportation - *Reservationist*

Nivel Parts & Manufacturing - *Accounts Receivable*

Palms Medical Group - *Patient Advocate*

Pella Custom Windows - *Maintenance Technician*

Publix - *Cashier*

Special Counsel - *Paralegal*

Spotless City - *Proprietor*

Sunrise Senior Living - *Medical Care Mgr.*

Town Beer Co. - *Server*

United Real Estate - *Clerical Associate*

University of Florida - *Extension Program Asst.*

Whole Foods - *Butcher*

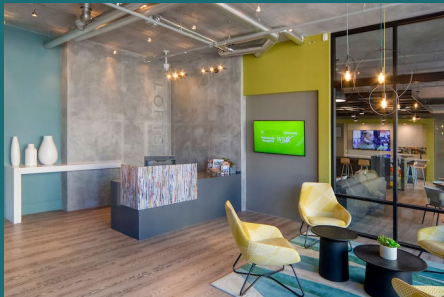
Winn Dixie - *Manager*



Lofts at Brooklyn is a 133-unit community in the Brooklyn area of Downtown Jacksonville. This workforce housing community consists of studio, one-, two-, and three-bedroom apartments. 80 units are reserved for households making less than 80% of the area median income and 53 units are reserved for households making less than 140% of the area median income. Funded by Florida Housing Finance Corporation and the Downtown Investment Authority



Jefferson Station Outdoor Amenities



Lofts at Monroe is a 108-unit affordable housing community providing quality housing in Downtown Jacksonville for individuals who make less than 60% of the area median income. Lofts at Monroe is comprised of studio, one- and two-bedroom apartments. Funded by Florida Housing Finance Corporation, Jacksonville Housing Finance Authority, and the Downtown Investment Authority



Brooklyn Lounge

Green Mills Group

WHO LIVES IN AFFORDABLE HOUSING? MIDTOWN LOFTS RESIDENT PROFILE

Amscot	- Associate
Brunch Box	- Server
Buena Vista Rehabilitation	- Certified Nursing Aide
Cannon Funeral Home	- Office Assistant
Checkers	- Cashier
Colorado Box Beef	- Sanitation Worker
Golden Gate Preparatory	- Teacher
Homes Instead	- Home Healthcare Aide
Lakeland Regional Hospital	- Janitorial / Kitchen Associates
McDonalds	- Team Associate
Metro PCS	- Sales Representative
People Ready	- Temp Work
Polk County	- Custodial Associate
Polk County Schools	- Crossing Guard
Publix	- Cashier
Rainbow	- Retail Sales Associate
Results	- Customer Service Rep.
Self-Employed	- Uber Eats
Taco Bell	- Line Cook
Walmart	- Cashier



Midtown Lofts, a property of Green Mills Group, provides 80 mixed-income rental apartments to families in Polk County earning between 40% and 60% of the area median income. An additional 10% of the apartments are unrestricted market-rate. Amenities include a gym, clubroom, game room, and public art. Prior to development, the property was a blighted vacant lot and duplex previously owned by the City of Lakeland. The area has been designated a model block under the City’s revitalization plan. Tax credit equity was provided by Raymond James, and debt was provided by Neighborhood Lending Partners and the City of Lakeland CRA.



Tampa-based Sage Partners, LLC purchased the St. Paul AME Church in downtown Tampa along with some related property and converted it into affordable workforce housing in 2011. The development features two floors of parking below four floors of residential units, which totals 120 units. Metro 510's amenities include an outdoor spray park, community garden, movie theatre area, and an outdoor museum devoted to the history of the church. The 15,000 sq. ft. church was converted into a community center that houses a fitness area, computer lab, library, and a learning and play area for children. The development is located near the Marion Transit Center facility and a block from a planned high-speed rail terminal.

Sage Partners

WHO LIVES IN AFFORDABLE HOUSING?

METRO 510 RESIDENT PROFILE

Anthem Insurance - <i>Patient Care Advocate</i>
Atlas Aviation - <i>Office Clerk</i>
Barber Shop - <i>Barber</i>
Burger King - <i>Cashier</i>
Chick-fil-A - <i>Cashier</i>
Embassy Suites - <i>Front Desk Clerk</i>
Finish Line - <i>Sales Associate</i>
Hampton Inn - <i>Front Desk Clerk</i>
Hillsborough County Schools - <i>Data Processor</i>
Hillsborough County Schools - <i>Bus Driver</i>
Mid Florida Commercial - <i>Teller</i>
Moffitt Cancer Center - <i>Medical Asst</i>
Neiman Marcus - <i>Sales Associate</i>
Progressive Insurance - <i>Claims Admin Support</i>
Publix - <i>Cashier</i>
Richman Property - <i>Leasing Associate</i>
Seminole Hard Rock - <i>Operations Intern</i>
Stadium Toyota - <i>Sales Associate</i>
Tampa Police Department - <i>Police Officer</i>
The Florida Orchestra - <i>Cello</i>
Walmart - <i>Sales Associate</i>

WHY INCLUDE AFFORDABLE HOUSING IN YOUR COMMUNITY?

Affordable housing is a legal obligation.

Every unit of local government in the state of Florida has a legal obligation to provide for the housing needs of its entire community pursuant to the Community Planning Act.

The requirements for housing are found in Section 163.3177 Florida Statutes, subsection (6)(f) as follows:

A housing element consisting of standards, plans and principles to be followed in:

1. The provision of housing for all current and anticipated future residents of the jurisdiction.
2. The elimination of substandard dwelling conditions.
3. The structural and aesthetic improvement of existing housing.
4. The provision of adequate sites for future housing, including housing for low-income, very low-income, and moderate-income families, mobile homes, and group homes and foster care facilities, with supporting infrastructure and public facilities.
5. Provision for relocation housing and identification of historically significant and other housing for purposes of conservation, rehabilitation, or replacement.
6. The formulation of housing implementation programs.



- **Housing all current and anticipated residents**
- **Providing adequate sites**
- **Eliminating substandard housing**

7. The creation or preservation of affordable housing to minimize the need for additional local services and avoid the concentration of affordable housing units only in specific areas of the jurisdiction.

The purpose of this element is to provide guidance to local governments to develop appropriate plans and policies to demonstrate their commitment to meet identified or projected deficits in the supply of housing. These plans and policies address government activities as well as provide direction and assistance to the efforts of the private sector.

All current and anticipated future residents include those with special needs such as farmworkers. Local governments are expected to partner with the private sector and utilize federal, state, and local subsidy programs to meet their housing goals.

Housing Element Data and Analysis Requirements

Pursuant to the requirement that the state provide a statewide needs assessment, the Florida Housing Finance Corporation contracts with the Shimberg Center at the University of Florida in Gainesville to develop a methodology and perform the assessment. All local governments have easy access to data for their jurisdiction. The Florida Housing Data Clearinghouse provides public access to data about housing needs and supply, subsidized rental housing, and household demographics in

Florida. For all this and more information available at no cost see <http://flhousingdata.shimberg.ufl.edu/>.

Affordable Housing Improves the Economic Health of the Community and Enhances the Livability of the Community for Everyone

When a community has dilapidated housing or people living on the streets, the entire community suffers. Those who are in the dilapidated housing or without any housing certainly suffer the most. But inadequate housing affects everyone in the community. None of us want to explain to our children why one of the richest countries in the world has people living in shacks or without homes at all. Some would argue that adequate housing is a moral imperative as much as a legal obligation. A deficit of affordable housing and rising market-rate rents leads to an increase in people experiencing homelessness from the economic strain of housing costs.

In addition to the legal obligation to provide housing for the entire current and anticipated population, every local government in Florida should provide a mix of housing so that it can continue to grow economically. When new industries evaluate a prospective community, one of the factors they consider is whether adequate housing is available for employees. New industries provide jobs and a substantial ad valorem tax base. To attract new industry and raise the ad valorem tax base of your community through the

The state, through a contract with the Shimberg Center for Housing Studies, provides every local government with data showing how many units of homeownership and rental units are needed within the jurisdiction.

development of nonresidential properties, you must have an adequate inventory of affordable housing. In some communities where housing is extremely expensive, such as the Florida Keys, Naples, and any number of other waterfront communities, there is a very real threat of losing basic services such as teachers and police due to a lack of affordable housing.

Local Government is in the Driver Seat

When local government is considering a request from a private landowner for approval of a master planned or planned unit development or any other use of its authority to substantially increase the value of private property, this is the time for requiring that a certain percentage of the new development be used for affordable housing. Florida's rural areas, once used for agriculture, are increasingly developed into what amounts to new cities. Hundreds of acres of what were pastures or forests are developed for thousands of new homes but typically without any homes that would be considered affordable housing. But what about the local obligation to provide for housing the current and anticipated populations? Local government can and should condition its development approval on a written commitment from the landowner to develop or facilitate the development of affordable housing.

A requirement to include affordable housing within a market-rate development is an inclusionary housing policy, often referred to as inclusionary zoning. Florida law expressly provides local government with the authority to enact inclusionary zoning laws. It also provides that the costs to the developer must be fully offset when inclusionary housing laws are implemented. See Florida Statutes 125.01055 and 166.04151, respectively for counties and municipalities. Fully offsetting the costs to the developer is easily achieved when the inclusionary requirement is tied to the master plan or PUD approval. It is a huge economic boon to the landowner when a large tract of land that could only be used for farming can now be developed for an expansive housing development, a mixed-use development, or even the creation of a new town. Local government can also permit the developer to meet the inclusionary requirement in several ways, such as providing land





Hospitals... Schools...Technology/Business Parks all need housing for employees

To attract new industry and raise the property tax base of your community through the development of non-residential properties, you must have an adequate inventory of affordable housing.

to affordable housing developers so that they produce the units needed within the development. Developing affordable housing is a specialty. Some market and luxury apartment developers may also be tax credit developers, but that is not typical. A best practice for an inclusionary housing policy is that the affordable

housing remains affordable long term or in perpetuity. This can be accomplished by pairing a market-rate developer with an affordable housing developer and ensuring that the property remains affordable long term or in perpetuity with a recorded land use restriction agreement.

A growing number of local governments are seeding community land trusts. These nonprofit organizations are well suited to assist the developer who has an inclusionary housing requirement. Local government can facilitate that private sector partnership to create and preserve affordable housing.

HOW IS AFFORDABLE HOUSING DEVELOPED?

The legal obligation to provide for the housing needs of the entire current and anticipated population, as outlined in Chapter Three, does not mean that local government is expected to develop or construct housing. Local government is expected to use its land use authority and expertise to encourage and assist the private sector to produce affordable housing. Affordable housing is developed by the private sector with the help of construction subsidy. But oftentimes financial subsidy for construction is not enough. Local government has several tools to encourage and assist the private sector in developing affordable housing. Those tools include (1) planning, (2) financing, and (3) regulatory reform.

Planning for Affordable Housing

Planning is an essential part of producing affordable housing. In Florida, planning for affordable housing begins with comprehensive planning. In its housing element, every local government is required to plan for the needs of its entire population: existing residents, anticipated residents, and those with special needs such as farmworkers and people in need of group homes. Part of comprehensive planning for affordable housing is the designation of adequate sites for affordable housing on the future land use map. The future land use map is a required element in the comprehensive plan. Another part of planning

for affordable housing is implementation of the comprehensive plan housing element and future land use map through consistent land development regulations and development orders.

In 2020, the Florida Legislature passed HB 1339, an omnibus housing bill, which relieved local governments from all the comprehensive plan, future land use map, and zoning code requirements for affordable housing. The authority to remove the local government approval process for affordable housing applies to residential, commercial, and industrial areas. If local governments implement this authority regularly, they will save developers



Local government has a number of tools to encourage and assist the private sector in developing affordable housing.

months and perhaps years of delay and avoid potential opposition to the affordable housing development. In Chapter Five we cover neighborhood opposition more thoroughly.

Adequate Sites

Homeownership is what many favor for themselves and for others. Unfortunately, the number of persons earning wages too low to afford homeownership means that rental housing is the type of affordable housing most needed in Florida. Rental housing generally takes the form of high-rise apartments, garden apartments, townhouses, quadruplexes, triplexes, or duplexes. Providing adequate sites for such housing means that local government future land use maps and local zoning codes designate sites for multi-family housing. These sites should be within the urban service boundary, close to major employment, transportation, schools, day care, and other community and social services. To promote a mix of incomes and to avoid the concentration of low-income housing, multi-family housing could be permitted in all residential areas, subject to design standards, as well as in mixed use areas where traditional neighborhood design is encouraged.

When adequate sites are not permitted for multi-family housing the result is a deficit of housing for residents and employees within the jurisdiction. This is because developers are not likely to undertake the task of comprehensive plan or zoning changes to accommodate the multi-family housing. If the developer does brave an application for a zoning change, he or she is often subjected to abusive behavior. Police escorts from city and county commission chambers to protect developers from the Not In My Backyard (NIMBY) crowd are not atypical enough. The developer suffers substantial time delays and increases in the cost of development, which may result in higher costs to the residents.



In 2004, the Florida Legislature amended Section 163.31771, Florida Statutes to encourage local governments to allow accessory dwelling units in any area zoned for single-family residential use of the purpose of providing affordable rental housing. Land development codes that permit “pocket neighborhoods” are essential for providing “tiny houses,” which are becoming an increasingly popular product for serving millennials, veterans, and elders. Because the state has also preempted local government from regulating short term rentals (unless an ordinance was adopted prior to 2011), it is even more important that local government use the scenario laid out in Section 163.31771 to keep accessory dwelling units from becoming vacation rentals for tourists instead of affordable rentals for full-time residents.

Implementation Through Land Development Regulations

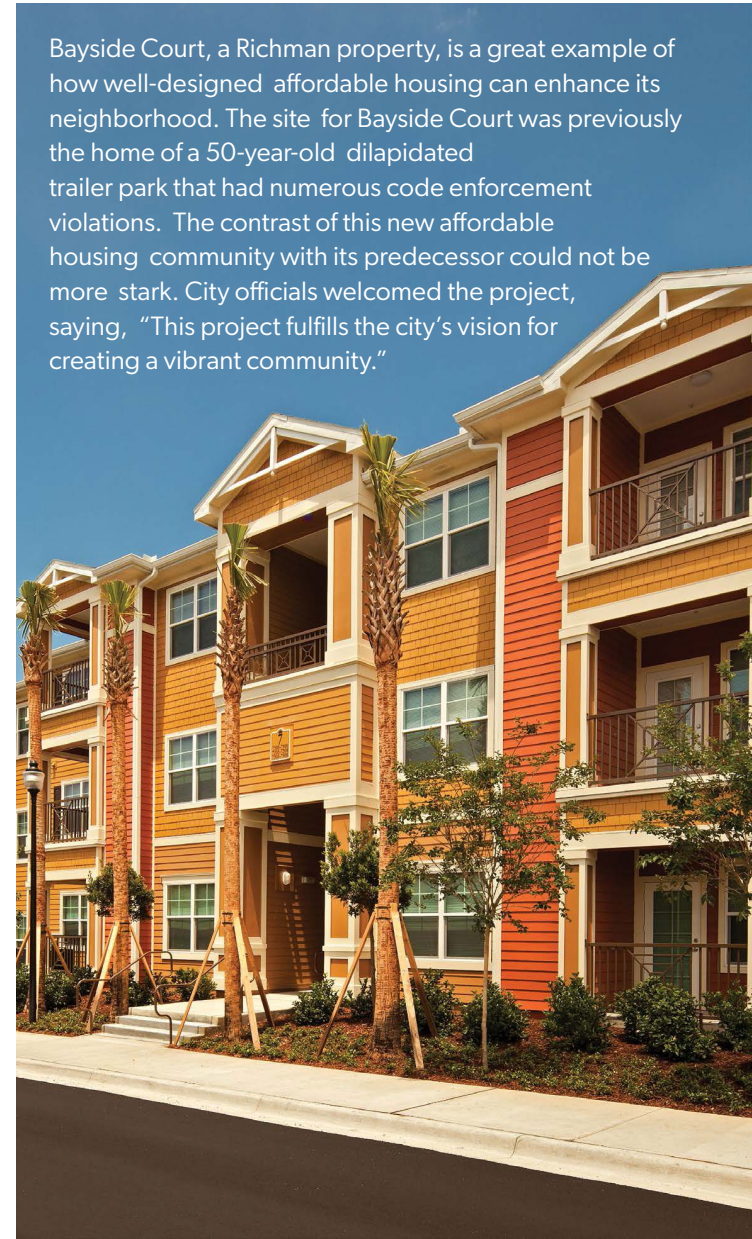
Even in instances of good comprehensive planning, evidenced by a housing element with measurable goals, objectives, and policies based on reliable data and analysis, an affordable housing development may be tied up in the development or permitting process by vehement opposition from the community because of inadequate land development regulations. For example, zoning codes that provide a density bonus as a special exception rather than as a conditional use in exchange for affordable housing or permit all types of residential uses within each residentially zoned area would go a long way toward speeding up development approvals and avoiding NIMBYism.

The adoption of a zoning code that implements the future land use map and the goals, objectives, and policies of the housing element is the first step in avoiding this problem. For example, zoning codes that provide a density bonus as a special exception rather than as a conditional use in exchange for affordable housing or permit all types of residential uses within each residentially zoned area would go a long way toward speeding up development approvals and avoiding NIMBYism. Another progressive move toward expediting permitting and averting NIMBYism is to delegate to staff those matters that are not required by local charter or bylaws to come before the city or county commission. Eliminating unnecessary public hearings will expedite the development of affordable housing and reduce opportunities for nonproductive community opposition.

All local governments receiving SHIP funds must:

1. Expedite all permits for affordable housing; and
2. Have an ongoing process of review of all land development regulations, comprehensive plan amendments, and ordinances that increase the cost of housing, prior to adoption.

Bayside Court, a Richman property, is a great example of how well-designed affordable housing can enhance its neighborhood. The site for Bayside Court was previously the home of a 50-year-old dilapidated trailer park that had numerous code enforcement violations. The contrast of this new affordable housing community with its predecessor could not be more stark. City officials welcomed the project, saying, "This project fulfills the city's vision for creating a vibrant community."





Railroad Avenue Apartments: The City of Winter Park provided over one million dollars from a combination of local government funds generated from a linkage fee ordinance and other local government initiatives to leverage Federal HOME funds and provide new construction rental housing for low-income families developed by Orlando Neighborhood Improvement Corporation. Partners included the Winter Park Housing Authority (which is leasing the land from the city), the nonprofit developer, Orlando Neighborhood Development Corporation, the Orange County Housing Finance Authority, Florida Community Partners, Florida Community Capital Corporations, and the Orange County SHIP program. Twelve units house very low-income families; ten units house low-income families; and eight units are market-rate, no income restrictions.

Financing

Most of the financing for affordable housing will come directly from the federal government or from federal and state programs administered by the Florida Housing Finance Corporation. In some of these programs, developers are competing in a process that rewards those who can leverage state dollars with local contributions. Local governments may have HOME, CDBG, SHIP, or other sources for local government contributions. Making these awards in a timely manner can be critical to the developer's success in securing the private sector conventional financing that often constitutes over half the funds needed to finance the development. Local government can also contribute financially through several other means, including the following: waiver, payment, or reduction in water and sewer, transportation, or impact fees; contribution of infrastructure; or use of general revenue to supplement the financial subsidy in the development. Developing affordable housing is accomplished through the joint efforts of the private and public sectors.

Regulatory Reform

Reforming regulations that add to the cost of housing is an essential local government tool. But housing quality must be maintained while costs are reduced. If too many reliefs from regulation are granted simultaneously, such as reduced setbacks, combined with narrow streets, and on-street parking, the quality of the development will be reduced, giving the neighborhood a legitimate reason for opposing the development. But regulatory reforms that are balanced and provided as a matter of right will increase the delivery of affordable homes.

Regulations that have no positive effect on the health, safety, and welfare of the community and have a detrimental effect on affordability have no legitimate place in the zoning code. An example of this would



Parramore Oaks, an InVictus Development property, is a 120-unit mixed-income family development in the historic Parramore neighborhood of the City of Orlando, Florida. When the second Phase of this two-phase development is completed in April of 2023 it will provide 91 additional units for a total of 211. This is a true mixed-income development serving households at 30, 40, 50, 60, and 80 percent of area median income, as well as market rate. The first phase was financed with 9% LIHTC equity from Truist and Local Area of Opportunity funding from the City of Orlando with permanent debt provided by Freddie Mac. Phase Two is being financed with 4% tax credit funds as well CDBG Disaster Recovery funds and City of Orlando CRA funding. Permanent debt on Phase Two will be provided by Churchill Stateside Group.

be a minimum square footage requirement or a requirement that all homes have two car garages. Such an ordinance adds to the cost of housing without providing a counterbalancing public purpose.

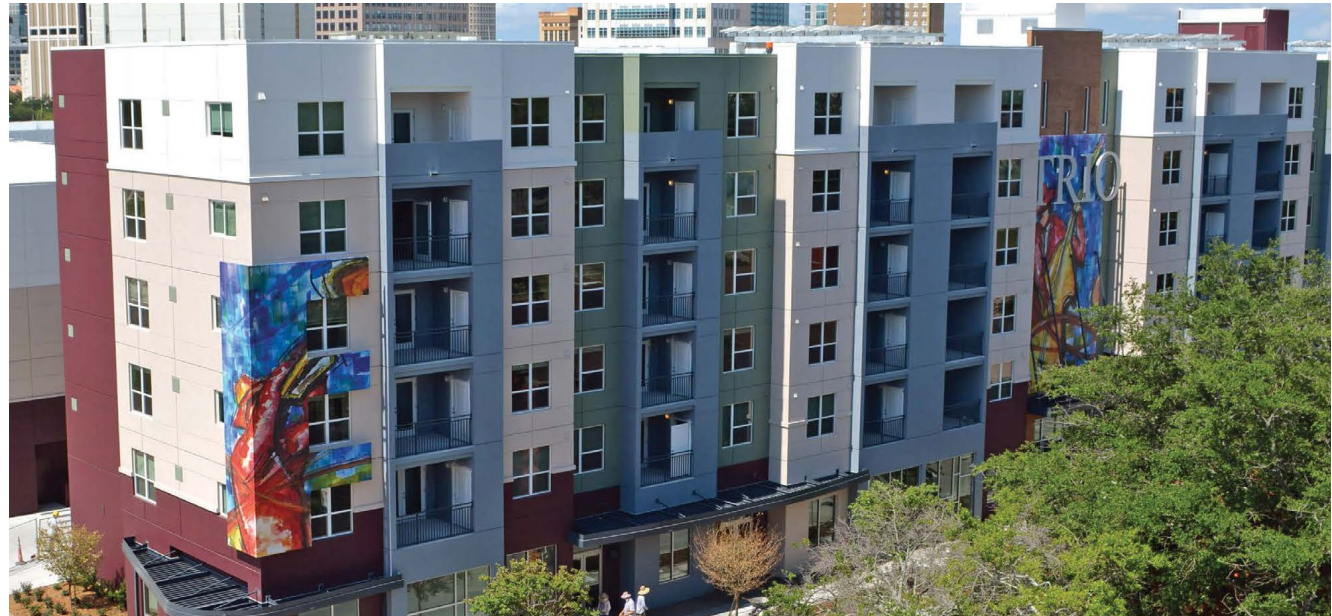
The SHIP program was created in 1992 (see Appendix 1, William E. Sadowski Affordable Housing Act), providing over \$100 million annually, distributed on a population-based formula, as grant monies to local government for the production of affordable housing. It also came with the condition that local government do its part to reduce the cost of housing by

expediting permits specifically for affordable housing. “Permits” are defined in accordance with Section 163.3164 (7),(8), Florida Statutes:

“A permit is a development order which means any order granting, denying, or granting with conditions an application for a development permit. A development permit includes any building permit, zoning permit, subdivision approval, rezoning, certification, special exception, variance, or any other official action of local government having the effect of permitting the development of land.”

The Tampa Housing Authority's vision for Encore:

The aging Central Park Village public housing complex was torn down to transform the 28-acre site into a \$450 million mixed-income village center with apartments, shops, a grocery store, bank, offices, and a Black History Museum.



Located in Tampa, the Trio is part of the downtown Encore Development and is made up of one 6-story, and two 4-story buildings totaling with 141 units of one-, two-, three- and four-bedroom floor plans that are rented at market rates and subsidized rates based on the tenants' incomes. Developed by the Tampa Housing Authority, the Trio's amenities include a state-of-the-art fitness center, media theater, internet café, lobby gallery, and pool. The Trio was built in what was once considered a blighted neighborhood, and now it is located near Waterfront Park, Ybor City, and the Channelside District destinations.

Local government planners, engineers, and others in the land use permitting loop are not in the business of administering the SHIP program and are frequently unfamiliar with its legal parameters. But unless a preference in timing is given to affordable housing development in all aspects of land use permitting, as defined above, the local program is not conforming to the requirements of the SHIP statute. And, if corrective action is not taken to implement expedited permitting for affordable housing, the grant of SHIP funds to the local government can be terminated.

The 2020 omnibus housing bill, HB 1339, added the statutory requirement for one elected official from each jurisdiction receiving SHIP funds to serve on the local Affordable Housing Advisory Committee (AHAC), codified in Section 420.9076 (2), Florida Statutes. The elected officials on the AHAC are in the land use permitting loop. This should result in better implementation of the requirement for expedited permitting and the requirement for an ongoing process of review of all land development regulations, comprehensive plan amendments, and ordinances that increase the cost of housing, prior to adoption.

When a local government submits its annual SHIP report to FHFC, it must include a dollar estimate for the increase in housing costs associated with the adoption of land development regulations during the preceding year. To accomplish this, local government will need a housing economic impact assessment each time it adopts

an ordinance so that an annual tally can be made. This process does not prevent local government from adopting ordinances that increase the cost of housing, but it does insist upon an awareness of the consequences for affordable housing from the various changes to the land use and permitting processes.



The Use of Landscaping

An example of a land development regulation that adds to the cost of construction but is good for affordable housing is a landscaping and tree protection ordinance. Curb appeal is most significantly impacted by trees and landscaping. Trees and landscaping enhance pride in the home, provide a sense of community, and reduce NIMBY complaints. Trees can also provide a buffer between uses. For example, multi-family affordable housing can be nestled in a cluster development adjacent to a large-lot single-family neighborhood without any break in the scenic flow, provided adequate landscaping is used. The use of landscaping and natural buffers will allow the development to go forward and thrive as a community asset. Moreover, trees which provide shade and reduce the need for air conditioning may render a home more affordable due to lower utility costs. But no requirements, including landscaping and tree ordinances, can single out affordable housing without running afoul of fair housing laws. The exception to this, of course, is that affordable housing is singled out for receiving the benefit of expedited permitting. See Chapter Seven on the connection between affordable housing and fair housing.

Landmark Land Use Reform Legislation for Affordable Housing

House Bill 1339, the omnibus housing legislation from the 2020 legislative session, added new language to sections 125.01055 and 166.04151 of the Florida Statutes for counties and municipalities, respectively, which reads as follows:

(6) Notwithstanding any other law or local ordinance or regulation to the contrary, the board of county [or city] commissioners may approve the development of housing that is affordable, as defined in Florida Statute 420.0004, on any parcel zoned for residential, commercial, or industrial use.

What Does This Mean?

A local government can approve an affordable housing development on a parcel with zoning requirements that do not currently allow for such development. In other words, this new provision grants permission to local governments to override their own comprehensive plan and zoning code to approve an affordable housing development on land zoned for residential, commercial, or industrial use.

This new land use reform can:

- Remove months and possibly years from the rezoning process for affordable development.
- Increase the amount of land available for use as affordable housing.
- Facilitate missing-middle housing such as duplexes and small-scale multifamily housing
- Facilitate adaptive reuse of commercial buildings or failed shopping malls.
- Avoid NIMBY battles that typically arise during rezonings.

Considerations For Implementation

1. Adopt an ordinance to provide clear standards for when an affordable housing development can be approved and what setbacks and densities would be permissible.
2. Avoid siting homes near toxic uses.
3. This is an opportunity to create housing for households with extremely low, very low, and low incomes, in addition to serving moderate-income households that will remain affordable long term or in perpetuity.

In the 2022 Legislative Session, F.S. 125.01055(6)/166.04151(6) were amended to extend this land use reform to mixed use projects. At least 10% of the units must be affordable. The law provides this as an option for local governments; it is not a requirement. If a local government chooses to use this option it could place additional restrictions in the public interest, such as a much higher percentage of affordable units and that the housing remains affordable long term to help meet the critical need for affordable housing in the community.

HOW SHOULD NEIGHBORS BE INCLUDED IN THE PROCESS?

In the context of this book, the Not In My Backyard syndrome refers to the objections of community residents to siting affordable housing. The term NIMBYism, as used in this context, connotes objections made for reasons such as fear and prejudice. This is in contrast, for example, to objections over the real threat of an incompatible neighboring use, such as a hazardous waste facility near a residential area. Affordable housing NIMBYism arises from fear about the loss of property value and quality of life due to perceptions about the people who will be living in the affordable housing and the affordable housing itself.

Prior to the public hearing

When land use changes are proposed, nearby property owners are notified and invited to participate in the public hearing. Although affordable housing is no different in land use type from luxury housing, it may evoke a highly charge reaction within the neighborhood. The legitimate concerns of neighbors to a proposed development must be addressed.

Best practices for addressing community opposition prior to public hearing

General education about affordable housing and its place of importance in the community should ideally take place long before public hearings on a specific development. Local government is able to assist in this effort by taking a leadership role through the words and actions of its elected officials and staff. If the community has heard positive messages about affordable housing, is generally aware of the need for affordable housing, and has enough evidence that there is no reason to fear affordable housing, community opposition need not emerge.



NIMBYISM

The Not In My Backyard Syndrome (NIMBYism) presents a particularly pernicious obstacle to producing affordable housing. Local elected officials are regularly barraged by the outcry of constituents' concerns over siting and permitting affordable housing. Consequences of NIMBYism include lengthy, hostile, and unpleasant public proceedings, frustration of local comprehensive plan implementation, increased costs of development, property rights disputes, and inability to meet local housing needs. Local government elected officials are the linchpin in the NIMBY battle; it is essential that you get the information you need to avoid and overcome the negative impacts of NIMBYism.



To avoid the NIMBY battle during a public hearing, it is best if the developer can meet with the neighbors ahead of time to answer any questions they may have about the proposed development.

- One school of thought is that it is best for the developer to meet with neighbors before having a set plan for development to give the neighbors the opportunity to join in the planning and design of the affordable development. In this way, neighborhood “buy-in” is the greatest. But many believe this is not the way to go, as it sends a message to the neighborhood that there is something different about affordable housing that justifies it being treated in a different manner than market-rate housing. After all, it would be highly unlikely that a developer of luxury or market-rate housing would ever solicit community input for the design or plan of the proposed luxury development.
- To avoid the NIMBY battle during a public hearing, it is best if the developer can meet with the neighbors ahead of time to answer any questions they may have about the proposed development. Many times, the developer will discover that opposition to the development is based on misinformation. This can be rectified by explaining the plan for development or showing the development plans to the neighboring property owners. There is some difference of opinion as to whether the developer should outreach to neighbors. Some believe it is extremely productive, while others find it creates a forum for building opposition momentum. Making this decision on a case-by-case basis is most likely how this will be resolved.
- Neighboring property owners are often concerned that the affordable housing development will not look good. The developer could respond best to these concerns by taking the neighbors on a tour of developments similar to the proposed development and arranging for the neighbors to speak with residents who live nearby an affordable development. Oftentimes, if neighbors get a chance to see an affordable housing development, they are so surprised by how attractive it is that they no longer object to the proposed development. But if the opposition is based on prejudice tied to negative perceptions about the “type of people” who will be living in the affordable housing, it will not matter how attractive the building is.

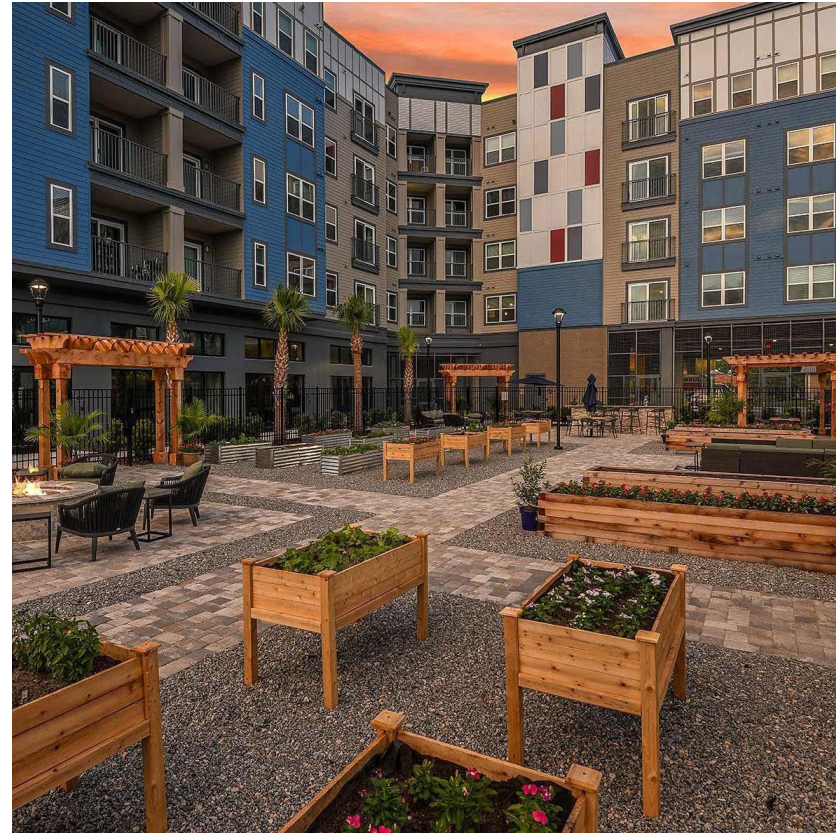
- A reduction in property value is usually the primary concern heard from community opposition. Dispelling the myth that affordable housing reduces property values is a must. Fortunately, many studies have been done nationwide to provide us with the evidence we need that affordable housing does not reduce property values, and indeed, in some instances increases neighboring property values.
- Distinguishing between legitimate concerns that may be easily addressed and opposition based on fear, ignorance, or bigotry is critical. A tip-off that community opposition is not grounded in legitimate concerns is when the developer addresses one issue, only to find another issue is raised; when that issue is addressed, yet another issue is raised, and so on.

During the public hearing

Nearly every hearing regarding a particular development approval will be quasi-judicial in nature. This means the county or city commission must conduct the hearing in a courtroom-like manner to ensure the due process rights of the citizen requesting a land use permit. The quasi-judicial nature of the proceeding requires that the comments made to the commissioners be treated as testimony and that decision-makers base their decisions on substantial competent evidence.

For example:

The crowd opposing the development makes vehement claims of traffic concerns but does not produce a traffic study to support its position. The developer submits a credible traffic study that shows the traffic impacts to be negligible. In this case, the local government would not have substantial competent evidence upon which to deny the development due to traffic impacts.



Burlington Post, developed by the Green Mills Group, is a stunning 86 unit mixed-use, urban infill development in St. Petersburg. With onsite management, community amenities include a clubhouse, community garden, and fitness center. Rents and incomes are restricted for seniors earning between 40% and 60% of the Pinellas County area median income. The tax credit equity was provided by Raymond James.

Best practices for addressing community opposition during the public hearing

- Affordable housing should be treated exactly as any other housing. The one exception to this rule is that affordable housing permits must be expedited. Delaying or continuing a land use or permitting hearing based on neighborhood opposition undermines the legal requirement for expediting affordable housing permits. The most extreme example of delaying an affordable housing development based on neighborhood opposition would be the adoption of a moratorium, which has the effect of stopping the development. Moratoriums are clearly an inappropriate response to permitting affordable housing development.
- Treating affordable housing as you would treat any other housing means there should be no consideration given to the “type” of people who will be living in the housing when making a land use decision. If a permitting decision is made based on the fact that the development is affordable, the local government will be violating Section 760.26, Florida Statutes (see Chapter Seven, The Connection Between Affordable Housing and Fair Housing).
- Everyone who speaks about the development at the public hearing should be treated as witnesses. They should state their name and address for the record, and speak into a microphone as the hearing is taped. This means it is inappropriate to allow anyone to yell out comments from their seats or the back of the room. After the testimony from the community opposition is heard, the party requesting the development permit should



have an opportunity for response or rebuttal to that testimony. If, for example, a public hearing is held in a manner that allows the petitioner to make a five- or ten-minute presentation and that presentation is followed by five minutes of community opposition testimony from 75 people, the hearing has taken on a decidedly lopsided flavor, where decisions appear to be made by majority (or some might say “mob”) rule rather than a fair evaluation of the facts.

WHAT ROLE DOES DESIGN PLAY?

Before the community at large will embrace affordable housing, it must know that affordable housing will be as attractive as market rate housing. The education process begins with design. If neighborhood opposition has nothing to do with perceptions about the people who will be living in the housing, the concern over property values is more than likely a concern over design. The opposition is bottomed on the belief that affordable housing is somehow cheap or ugly and does not fit within a community of market-rate housing.

Why is there a perception that affordable housing is cheap or ugly?

Many Floridians moved here from the Midwest or Northeast, where they may have had personal experience with large government housing projects causing a deleterious effect in their area. They have moved to Florida for its beauty and want to make absolutely sure that what they experienced “up north” is not going to happen here.

Another reason for the perception of affordable housing as cheap or ugly is the assumption that all cheap and ugly housing in the community is affordable housing. If, as you drive around town, you ask a passenger unfamiliar with affordable housing to point out which developments are affordable housing, he or she would most likely point to the unattractive and run-down housing and say, “that’s affordable housing.” But in fact, the housing which is pointed to as “affordable” is actually market-rate housing (housing that is built without financial subsidy) that is rented or sold to low-income people. All low-cost housing is not affordable housing. Affordable housing is safe and decent housing (not substandard), which is made affordable to low-income persons through financial subsidies in the construction or down payment and closing cost assistance to the homeowner and generally requires the resident or homeowner to spend no more than 30% of income on housing costs.



Developed by the Richman Group, Bayside Court is located in Clearwater and offers two- and three-bedroom floor plans, gourmet kitchens, a fitness center, business center, and a beautiful sparkling pool. Bayside Court developers leveraged federal, local and private funding to create a unique community which includes 58 low-income units.



“People who know contemporary affordable housing are aware that developers have incorporated valuable lessons from the overly publicized failed public housing ‘projects’ and no frills apartment complexes...a new cohort of architects has created attractive, well-functioning buildings that are often more attractive than market-rate developments. Yet, the broader public and most decision-makers are unaware of this well-kept affordable housing secret”

– Tim Iglesias
Expert in Property Law

Located in Miami’s Liberty City neighborhood, Parkview Gardens is a Carrfour Supportive Housing development comprised of 60 apartments designated for low-income families/individuals earning at or below 60% of the area median income (AMI), with six units set aside for those earning less than 33% of the AMI. With units ranging in size from one- to three-bedroom apartments, the development includes six three-story residential buildings, a community center, parking garage, playground, gym, computer lab, library, and picnic area.

WHAT IS THE CONNECTION BETWEEN AFFORDABLE HOUSING AND FAIR HOUSING?

When opponents of affordable housing pressure a governmental entity to make a land use decision which treats one person or group of persons differently from another person or group without a legitimate rationale, the issue of prohibited discriminations is flagged. A decision is actionable whether it is an act of intentional discrimination against a protected class or whether it is an act taken without an intent to discriminate but which has a disproportional impact on a protected class.



It is not uncommon for settlements and verdicts to run as high as several hundred thousand dollars.

Both the Federal Fair Housing Act, 42 U.S.C. §§3601-3631, and the Florida Fair Housing Act, Chapter 760, Part II, §§760.20-760.37, Florida Statutes, prohibit discrimination in housing based on race, color, national origin, religion, sex, handicap, and familial status. These are the “protected classes.” Each provides for sanctions, including damages, penalties, injunctive relief, and attorneys’ fees, which can be imposed for violation of fair housing law by governmental bodies, organizations, and individuals for fair housing violations. A person who suffers a fair housing violation may seek administrative or judicial review. Administrative complaints filed with HUD raising land use issues are handled by the Federal Department of Justice, a formidable

adversary. Litigation of a fair housing claim in a losing cause can be very expensive; it is not uncommon for settlements and verdicts to run as high as several hundred thousand dollars.

Effective July 2000, the Florida Fair Housing Act was amended to create section 760.26, Florida Statutes, as follows:

*It is unlawful to discriminate in land use decisions or in the permitting of development based on race, color, national origin, sex, disability, familial status, religion, or, except as otherwise provided by law, the source of financing of a development or proposed development.**

If the only reason the land use or permitting request is denied is because the housing is subsidized, the decision will be in violation of the Florida Fair Housing Act.



The genesis for the “source of financing” amendment to the Florida Fair Housing Act was the experience of affordable housing advocates in securing appropriate zoning for Pueblo Bonito, a proposed farmworker housing development intended to draw residents primarily if not exclusively from the Hispanic population. In this instance, the power of the Florida and the Federal fair housing laws protecting against discriminatory acts based on race, national origin, and color was more than sufficient to force a rethinking of the denial and the resultant reversal allowing the change in zoning and the project to proceed.

In many instances, it is not possible to know for certain whether the prospective residents of the affordable development will be members of the protected classes. Prior to the enactment of Section 760.26 in 2000, fair housing laws may not have protected the prospective low-income residents of the development if the developer could not show that members of a protected class would be living in the development.

With this statutory change all affordable housing is now covered by the Florida Fair Housing Act. If the only reason the land use or permitting request is denied is because the housing is subsidized, the decision will be in violation of the Florida Fair Housing Act. Low-income persons have effectively become a protected class for purposes of land use decisions that impact affordable housing.

*That portion of the statute which states “It is unlawful to discriminate in land use decisions... except as otherwise provided by law” recognizes that there are some laws that discriminate in favor of affordable housing, such as the requirement that all development permits be expedited for affordable housing. The language “except as otherwise provided by law,” makes clear that this type of “discrimination” in expediting permits is lawful.



When NIMBY Pressure Overtakes Sound Land Use Decisions PUEBLO BONITO - A CASE STUDY

A faith-based nonprofit sought a rezoning in Bonita Springs, Lee County, for a 26-acre site that it had under contract for the purpose of developing farmworker housing. The site was zoned to allow mobile homes; the nonprofit, Partnership In Housing Inc., wanted to build duplexes. The local government comprehensive plan detailed the need for farmworker housing, and the rezoning was consistent with the future land use map.

Partnership In Housing held several community meetings to discuss its development plans with the residents of the neighboring mobile home park and anyone else in the area who might be interested. The meetings brought together a vocal group of opponents. Before the matter was heard by the County Commission, the planning department had been deluged with letters from Bonita Springs residents decrying the horrors which they associated with the type of people who would be living in the development. Substantial pressure was brought to bear on the County Commission by the opposition; protests were held with signs promising to oust in the next election those

— Bert Harris Act —

Chapter 70, Florida Statutes, “Relief From Burdens On Real Property Rights”, includes in Section 70.001 the “Bert J. Harris, Jr., Private Property Rights Protection Act” which creates a separate and distinct cause of action from the law of takings to provide for relief, or payment of compensation, when a new law, rule, regulation, or ordinance unfairly affects real property. Section 70.51, known as the “Florida Land Use and Environmental Dispute Resolution Act” provides for a special master process when an owner of real property believes that a development order is unreasonable or unfairly burdens the use of the owner’s real property. “Development order” is defined as any order or notice of proposed action, which is or will have the effect of granting, denying or granting with conditions an application for a development permit and includes the rezoning of a specific parcel. “Development permit” is defined as any building permit, zoning permit, subdivision approval, certification, special exception, variance, or any other similar action of local government....”

Commissioners who would permit the development to go forward. The County Commission gave way under the NIMBY pressure and denied the rezoning request.

Through its land use attorney, Partnership In Housing filed a petition for relief under the Bert J. Harris, Jr., Private Property Rights Protection Act, § 70.001, Florida Statutes, explaining that the denial of the rezoning request was unreasonable and unfairly burdened the use of the property. At the same time, Florida Legal Services, Inc. filed a housing discrimination administrative complaint with the federal government on behalf of the farmworkers. While the special master process was underway in the property rights case, the Department of Justice began laying the groundwork for judicial intervention through a fair housing lawsuit by investigatory fact finding; of particular focus in the document review was the three-inch stack of NIMBY letters and on site interviews with the Lee County government staff and officials.

The special master report came in with findings that the denial of the rezoning request was unreasonable and did unfairly burden the use of the property at issue. The Lee County Commission then wisely settled with Partnership In Housing permitting the development to proceed. In consideration of the settlement, the Department of Justice closed its fair housing file thereby alleviating the very real danger to the County that it would be on the losing end of a judgment for substantial damages, penalties, and attorneys’ fees.



Before the matter was heard by the County Commission, the planning department had been deluged with letters from Bonita Springs residents decrying the horrors which they associated with the type of people who would be living in the development.

THE WILLIAM E. SADOWSKI AFFORDABLE HOUSING ACT

The Florida Legislature enacted the William E. Sadowski Affordable Housing Act in 1992, creating a dedicated revenue source by increasing the documentary stamp tax paid on the purchase price of all residential and commercial deeds. A strong coalition of diverse interest groups banded together to support this legislation. The Sadowski Coalition has grown to more than 35 statewide organizations as shown on the next page, now including a greater number of business groups, such as the Florida Chamber of Commerce, Associated Industries of Florida, and more special needs, veterans, and elderly advocates, including The Arc of Florida, and Florida AARP.

The monies from the documentary stamp are split between all counties and entitlement municipalities and the Florida Housing Finance Corporation. The monies are split approximately 70/30 between local government and the State, respectively.

The Sadowski Act created the State Housing Initiatives Partnership Program (SHIP), Section 420.9072, Florida Statutes. Local governments receive annual allocations based on population, distributed periodically throughout the year. These monies are to be used to implement the housing element of the local comprehensive plan, consistent with the SHIP plan adopted by the local government. Certain legal parameters apply to SHIP plans, including that 65% of the monies are to be used for home ownership related activities; 75% of the monies are to be used for construction related activities. Local government is required to implement regulatory reform in the form of expedited permitting

for affordable housing and an ongoing process of review of all land development regulations, comprehensive plan amendments, and ordinances that increase the cost of housing, prior to adoption.

The Catalyst Program was also created by the Sadowski Act. This program is administered by the Florida Housing Finance Corporation and is used to provide free technical assistance and training to local governments and nonprofit organizations. The Florida Housing Finance Corporation uses the Florida Housing Coalition to provide workshops and on-site technical assistance throughout the state on a broad range of housing issues.

The portion of the Sadowski Act monies that are distributed to the state are used by the Florida Housing Finance Corporation to fund its programs, which are largely low-interest loan programs for the development of rental housing for low and very low-income families. The

SAIL program existed prior to the Sadowski Act, but had to rely upon general appropriations for funding. With the Sadowski Act, SAIL receives annual funding from the dedicated revenue source created by the Sadowski Act. The Florida Housing Finance Corporation operates like a public interest bank. It makes loans based on a highly competitive process which generally requires an experienced development team with immediate ability to proceed on a project that uses the least amount of government subsidy and offers maximum resident services and amenities, with units set aside for 50 years of affordability.



SADOWSKI HOUSING COALITION MEMBERS

BUSINESS/ INDUSTRY GROUPS

- Associated Industries of Florida
- Coalition of Affordable Housing Providers
- Federation of Manufactured Home Owners of Florida
- Florida Apartment Association
- Florida Bankers Association
- Florida Chamber of Commerce

ADVOCATES FOR THE ELDERLY/ VETS/ HOMELESS/ SPECIAL NEEDS

- AARP of Florida
- Florida Association of Centers for Independent Living
- Florida Association of Housing and Redevelopment Officials
- Florida Coalition to End Homelessness
- Florida Housing Coalition
- Florida Legal Services

GOVERNMENT/ PLANNING ORGANIZATIONS

- American Planning Assoc., Fla. Ch.
- Florida Association of Counties
- Florida Association of Local Housing Finance Authorities
- Florida Housing Finance Corporation
- Florida League of Cities
- Florida Redevelopment Assoc.
- Florida Regional Councils Assoc.
- 1000 Friends of Florida

BUSINESS/ INDUSTRY GROUPS

- Florida Green Building Coalition
- Florida Home Builders Association
- Florida Manufactured Housing Association
- Florida Realtors
- Florida Restaurant and Lodging Association
- Florida Retail Federation
- Mortgage Bankers Association of Florida

ADVOCATES FOR THE ELDERLY/ VETS/ HOMELESS/ SPECIAL NEEDS

- Florida Prosperity Partnership
- Florida Supportive Housing Coalition
- Florida Veterans Foundation
- Florida Weatherization Network
- Healthy Housing Foundation
- LeadingAge Florida
- The Arc of Florida
- United Way of Florida

FAITH BASED ORGANIZATIONS

- Florida Conference of Catholic Bishops
- Florida Impact
- Habitat for Humanity of Florida
- Volunteers of America

CATALYST PROGRAM

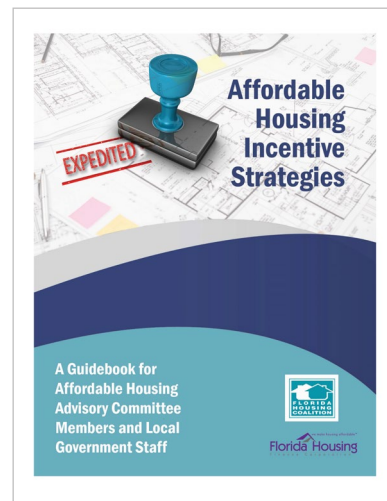
The Florida Housing Coalition is Florida’s statewide nonprofit provider of training and technical assistance on all things affordable housing, from ending homelessness to first-time homeownership. We have a staff of twenty housing professionals available to help local governments and nonprofits one on one through telephone technical assistance, on-site visits, webinars, workshops, and producing guidebooks, like this one.

All of this assistance is intended to help local governments and their private sector partners to meet their communities’ housing needs by using best practices and leveraging government funding with private sector investment to the greatest extent feasible.

The housing continuum of need spans from people experiencing homelessness to moderate-income families who have been priced out of homeownership. Visit www.flhousing.org/publications to find a virtual bookshelf that contains free resources, such as how to develop Permanent Supportive Housing, Affordable Housing Incentive strategies, Disaster Management for Housing, and an Accessory Dwelling Unit Guide.



https://flhousing1.org/Permanent_Supportive_Housing_Guidebook



<https://flhousing1.org/ahacguide22>



<https://flhousing1.org/disastermanagement>



https://flhousing1.org/ADU_Guidebook

AFFORDABLE HOUSING CATALYST PROGRAM

Florida Statute 420.531

(1) The corporation shall operate the Affordable Housing Catalyst Program for the purpose of securing the expertise necessary to provide specialized technical support to local governments and community-based organizations to implement the HOME Investment Partnership Program, State Apartment Incentive Loan Program, State Housing Initiatives Partnership Program, and other affordable housing programs. To the maximum extent feasible, the entity to provide the necessary expertise must be recognized by the Internal Revenue Service as a nonprofit tax-exempt organization. It must have as its primary mission the provision of affordable housing training and technical assistance, an ability to provide training and technical assistance statewide, and a proven track record of successfully providing training and technical assistance under the Affordable Housing Catalyst Program. The technical support shall, at a minimum, include training relating to the following key elements of the partnership programs:

- (a) Formation of local and regional housing partnerships as a means of bringing together resources to provide affordable housing.
- (b) Implementation of regulatory reforms to reduce the risk and cost of developing affordable housing.
- (c) Implementation of affordable housing programs included in local government comprehensive plans.
- (d) Compliance with requirements of federally funded housing programs.

(2) In consultation with the corporation, the entity providing statewide training and technical assistance shall convene and administer biannual regional workshops for the locally elected officials serving on affordable housing advisory committees as provided in s. 420.9076. The regional workshops may be conducted through teleconferencing or other technological means and must include processes and programming that facilitate peer-to-peer identification and sharing of best affordable housing practices among the locally elected officials. Annually, calendar year reports summarizing the deliberations, actions, and recommendations of each region, as well as the attendance records of locally elected officials, must be compiled by the entity providing statewide training and technical assistance for the Affordable Housing Catalyst Program and must be submitted to the President of the Senate, the Speaker of the House of Representatives, and the corporation by March 31 of the following year.

History.—s. 19, ch. 2004-243; s. 16, ch. 2020-27.

GLOSSARY OF TERMS AND ACRONYMS

Affordable Housing: The rule of thumb used by the federal government is that housing should cost no more than 30 percent of a household's gross income. Housing costs include rent or mortgage payments, property taxes (for homeowners), renter's or homeowner's insurance, and utility costs. Many, though not all, federal, state, and local funding programs require affordable housing providers to use this standard when setting rents or purchase prices for their units. Depending on the program, the rent or purchase price of a unit may be set at 30 percent of a specific income level (e.g. 50 percent of Area Median Income), or at 30 percent of the applicant household's income.

One example of a program that does not have a specific definition of affordability is the Community Development Block Grant (CDBG). In practice, many CDBG grantees use the 30-percent standard.

Affordability Period: The period during which a subsidized owner-occupied or rental unit must be kept affordable to households at designated income levels. Affordability periods vary widely among subsidy programs, generally ranging from 15 to 50 years. This period is sometimes also referred to as a "compliance period."

Area Median Income (AMI): The median household or family income in a designated geographic area, usually a metropolitan area or a county, adjusted for household size. Every year, the U.S. Department of Housing and Urban Development (HUD) calculates "Median Family Incomes" for designated geographic areas around the country, using data from the U.S. Census Bureau and the Consumer Price Index. State and local housing

programs generally use HUD's Median Family Income calculations for their own definitions of Area Median Income.

Note that in any given year, HUD's Median Family Incomes are different than median family incomes and median household incomes calculated by the Census Bureau, due to differences in calculation methods.

Deferred-Payment Loan: A loan to a home buyer or affordable housing developer that does not have to be repaid until a later date, when or if certain conditions are met. For example, if a home buyer receives a deferred-payment loan for down payment assistance or mortgage principal reduction, he or she may have to pay back all or part of the loan if he or she sells the home during the affordability period (see Recapture). Depending on the program, deferred-payment loans may be forgivable under certain circumstances.

Extremely Low-Income (ELI) Household: A household with an income up to 30 percent of the Area Median Income (AMI).

Forgivable Loan: A loan to a home buyer or affordable housing developer for which repayment is not required if certain conditions are met. For example, in some home buyer subsidy programs, the home buyer is assisted with a loan that is forgiven if he or she lives in the home for a certain minimum amount of time.

Gap Financing: Gap financing generally refers to a grant or loan that covers the difference between the cost of developing and operating an affordable housing project and the funding sources that the developer has already obtained or is likely to obtain.

Guarantee: In the affordable housing field, a guarantee usually refers to a pledge from a funding agency to repay a mortgage or other loan if the borrower (an income-qualified home buyer or affordable housing developer) defaults. Loan guarantees encourage private lenders, such as banks, to make loans to individuals and organizations who would otherwise be considered too risky.

Joint Venture: A legal entity created by two or more organizations to undertake a specific project, sharing the benefits and risks according to a specified agreement. In affordable housing, a joint venture generally refers to a development project undertaken by two or more organizations working in partnership. The parties of a joint venture may be an inexperienced and experienced housing developer, a housing developer and a social service agency, or other configuration. A joint venture may consist of nonprofit organizations, for-profits, or both.

Loan-to-Value (LTV) Ratio: The ratio of a mortgage loan for a home buyer or rental housing developer to the total value of the property. Some funding programs have a maximum loan-to-value ratio used to determine the maximum amount of subsidy to award to an applicant.

Low-Income (LI) Household: The most commonly used definition of a low-income household is one whose annual income is no more than 80 percent of Area Median Income (AMI). The entries in this Guide use this definition of low-income unless otherwise stated. One program that uses a different definition is the Community Development Block Grant. Under CDBG regulations, a low-income household is one whose income is up to 50 percent of AMI.

Moderate-Income Household: Under Florida Statutes, a moderate-income household does not exceed 120 percent of the Area Median

Income (AMI). Under the CDBG and Neighborhood Stabilization Programs (NSP), a moderate-income household has an income greater than 50 percent of AMI but no more than 80 percent of AMI. Some programs, such as those administered by the United States Department of Agriculture's Rural Housing Service (USDA RHS), have their own definitions of moderate-income.

Recapture: "Recaptured funds" means funds that are recouped by a county or eligible municipality in accordance with the recapture provisions of its local housing assistance plan pursuant to s. 420.9075(5)(j) from eligible persons or eligible sponsors, which funds were not used for assistance to an eligible household for an eligible activity, when there is a default on the terms of a grant award or loan award. In regard to the SHIP program, see Section 420.9071 (27) for statutory definition.

The term "recapture" can also refer to a funding agency requiring a beneficiary (a public or private entity or an individual) to pay back funds, if the beneficiary used them for inappropriate activities, failed to spend them by an agreed-upon deadline, or otherwise failed to comply with the program.

Resale Requirement: If an affordable home sold to an income-qualified homebuyer has a resale requirement, the homeowner is legally required by a deed restriction or land covenant to sell the home to another income-qualified household at an affordable price (when/if the first homeowner chooses to sell.)

Very Low-Income (VLI) Household: A household with an income up to 50 percent of the Area Median Income (AMI).

ACRONYMS

AHP: Affordable Housing Program (Federal Home Loan Bank of Atlanta)	NOFA: Notice of Funding Availability
ALF: Assisted Living Facility	NSP: Neighborhood Stabilization Program
AMI: Area Median Income	PBRA: Project-Based Rental Assistance (acronym generally used for HOME and Section 8)
CCTC(P): Community Contribution Tax Credit (Program)	PBV: Project-Based Voucher
CDBG: Community Development Block Grant	PHA: Public Housing Authority
CHDO: Community Housing Development Organization	PJ: Participating Jurisdiction
DEO: Department of Economic Opportunity	PLP: Predevelopment Loan Program
FCLF: Florida Community Loan Fund	PRA: Project-Based Rental Assistance (acronym generally used for Section 202 and Section 811)
FHFC: Florida Housing Finance Corporation (or “Florida Housing”)	RA: Rental Assistance
FSS: Family Self-Sufficiency Program	RFA: Request for Applications
FTHB: First-Time Homebuyer Program	SAIL: State Apartment Incentive Loan Program
FY: Fiscal Year	SHIP: State Housing Initiatives Partnership Program
HCV: Housing Choice Voucher (also known as a “Section 8 Voucher”)	SPRAC: Senior Preservation Rental Assistance Contract
HFA: Housing Finance Agency	TA: Technical Assistance
HOME: HOME Investment Partnerships Program	TBRA: Tenant-Based Rental Assistance
HUD: U.S. Department of Housing and Urban Development	TBV: Tenant-Based Voucher
IDA: Individual Development Account	USDA: U.S. Department of Agriculture
LHAP: Local Housing Assistance Plan	WAP: Weatherization Assistance Program
LIHTC: Low-Income Housing Tax Credits (or “Housing Credits”)	
LTV: Loan-to-Value Ratio	
MMRB: Multifamily Mortgage Revenue Bond Program	



The Florida Housing Coalition Inc. is a statewide nonprofit organization, whose mission is to bring together housing advocates and resources so that everyone has a quality affordable home and suitable living environment. The Coalition is headquartered in Tallahassee and has offices throughout the state.

1311 N Paul Russell Road, Suite B-201, Tallahassee, FL 32301 | T: 850.878.4219 | FLhousing.org