

Effective Written Agreements

sponsored by
Florida Housing Finance Corporation's Catalyst Program
 Aida Andujar



Catalyst Training Schedule



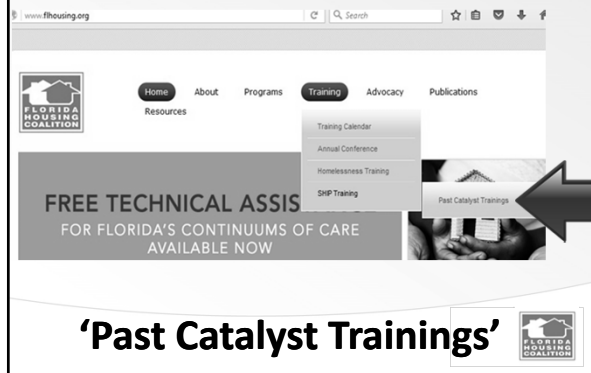
The Coalition is Florida's affordable housing training and technical assistance provider.

Florida Housing Coalition is commonly acknowledged as the foremost authority in Florida on affordable housing, community development and related issues, as a source for information, a provider of training and technical assistance, and an advocate at the state and national levels for people in need of affordable housing.

www.flhousing.org



Library of Catalyst Trainings



Newest in Library: LHAP Webinar

Below are the past Catalyst trainings – Webinars and Lunch & Learns – that you may have missed. Click the links below for the webinar recordings and presentations for any of the past trainings. For a list of future Florida Housing Coalition trainings, click here to view the Training Calendar.

- LHAP Strategy and Design Amendments – Webinar Recording – PowerPoint Oct 27, 2016
- Financial Management for Nonprofits – Webinar Recording – PowerPoint Oct 13, 2016
- Reducing Energy Cost for Affordable Housing – Recording – PowerPoint – Handout – September 7, 2016
- Preparing and Submitting the Annual Report – Recording – PowerPoint – July 19 and July 25, 2016
- Working with Nonprofits, Sponsors and Sub-Recipients – Recording – PowerPoint – June 22, 2016
- Best Practices for Providing SHIP Rental Assistance (Webinar) – Recording – PowerPoint – June 16, 2016
- How to Adopt an AHAC Report (Webinar) – Recording – PowerPoint – Handout – May 31, 2016
- Best Practices for Implementing a SHIP Rapid Rehousing Strategy (Webinar) – Recording – PowerPoint – Handout: Rental Subsidy Sample
- Preparing for Deadlines and Annual Reports (Webinar) – Recording – PowerPoint – May 19, 2016
- SHIP Administration (Webinar) – Recording – PowerPoint – April 14, 2016
- SHIP Loans Recapture Option and Portfolio Management (Webinar) – Recording – PowerPoint – April 12, 2016
- Program Income, Recapture Tracking and Use (Lunch & Learn) – Recording – PowerPoint – April 5, 2016
- Foreclosure File Management and Counseling (Lunch & Learn) – Recording – PowerPoint – March 29, 2016
- Income Compliance (Webinar) – Recording – PowerPoint – March 24, 2016
- Tax Credit Deals from a SHIP Perspective (Webinar) – Recording – PowerPoint – Handouts: Fee Deferral Form, Fee Waiver Form, Grant Form 2016
- Notice of Funding Availability and Waiting Lists (Lunch & Learn) – Recording – PowerPoint – March 8, 2016
- Investing in Rental Developments in Your Community (Lunch & Learn) – Recording – PowerPoint – Handout: Demystifying Financial Statements
- Managing the Internal Financial Process (Tracking) – Recording – PowerPoint – February 23, 2016
- Assisting Veterans with SHIP (Webinar) – Recording – PowerPoint – Handout 1- Operation Reveille, Handout 2- Palm Beach Veterans SHIP Sample LHAP, Handout 4- Verification of Veterans Benefits – February 16, 2016
- Moving Files for Compliance (Lunch & Learn) – Recording – PowerPoint – February 9, 2016
- Disaster Recovery Management (Lunch & Learn) – Recording – PowerPoint – January 26, 2016
- Lessons in Leveraging (Webinar) – Recording – PowerPoint – January 26, 2016
- Purchase Assistance (Lunch & Learn) – Recording – PowerPoint – January 14, 2016
- Common Administrative Pitfalls to Avoid (Lunch & Learn) – Recording – PowerPoint – January 12, 2016

What is a Contract?

In law, a **contract** (or informally known as an agreement in some jurisdictions) is an agreement having a **lawful** object entered into **voluntarily** by two or more parties, each of whom intends to create one or more **legal** obligations between them.



MOU

- A **Memorandum of Understanding (MOU)** is a formal agreement between two or more parties. Organizations can use MOUs to establish official partnerships. MOUs are not legally binding but they carry a degree of seriousness and mutual respect.



The Importance of Written Agreements

- A written agreement serves as a legally binding contract between the local government and any other party
- Serves as a management, accountability and enforcement tool for the local government
- Should be executed whenever funds or services are exchanged



Effective written agreements

- Specify the activity to be carried out (who, what, where, when)
- What the funding source is
- How they are carried out
- Roles, responsibilities and options of all parties involved
- What changes are allowed and process to incorporate those changes



Effective written agreements

- Provide a budget
- Use of funds
- Activity and tasks to be performed
- Payment procedures and schedule
- Terms of enforcement
- Compliance, reporting and monitoring requirements



Parties to the Agreements

Local government and

- Applicant
- Contractors
- Sponsors
- Subrecipients
- Developers



Contractors

- Persons /firms entering into a written agreement/contract to perform a specific task.
 - Appraisal firm
 - Lead based paint testing firm
 - Title insurance company
 - Construction work

They generally have no ownership or other ongoing interest in the project/job once their task is completed.



Sponsor

Means a person or a private or public for-profit or not-for-profit entity that applies for an award under the local housing assistance plan for the purpose of providing eligible housing for eligible persons to partially assist in the acquisition, construction, rehabilitation, or financing of eligible housing or to provide the cost of tenant or ownership qualifications.

420.9075 Local housing assistance plans; partnerships.--



Sub Recipient

Any local government receiving SHIP funds which administers any portion of the SHIP program through a Sub Recipient shall bear responsibility for actions of the sub recipient and shall monitor all sub recipients to insure compliance is maintained on all SHIP funded activities. Any **contract or agreement** between the local government and sub recipient shall detail the **policies and procedures that shall be adhered to in the management of the SHIP activities.**

67-37.019 Compliance Monitoring for Housing Developed With SHIP Local Housing Distribution Funds.



Sub Recipient

Any **contract** or document establishing the relationship between a SHIP eligible local government and a non-state organization which is a Sub Recipient receiving SHIP funds shall contain the standard audit language on Form DFS-A2-CL (Effective 7/05) of the **Florida Single Audit Act** in the document.

<https://apps.fldfs.com/fsaa/statutes.aspx>

67-37.019 Compliance Monitoring for Housing Developed With SHIP Local Housing Distribution Funds.



Read Technical Bulletin



<http://www.floridahousing.org/FH-ImageWebDocs/Housing%20Partners/Local%20Governments/SHIP%20Technical%20Bulletins/015-2016-01%20Sub-Recipients.pdf>



Annual Report



Indirect Recipients

Such as

- Subcontractors
- Sponsors
- Developers

Should also execute contracts



Different Agreement

- Depending on the
 - Funding source
 - Parties to the agreement
 - Roles and Responsibilities



Who Prepares the Written Agreement

- SHIP Staff
- City/County Attorney
- Paid Consultant

Remember: If are not an attorney, you should always have an attorney review your documents for legal sufficiency and form.



Poll Question

Who prepares your written agreement?

- Staff
- Consultant
- Attorney



When should the Agreement be Executed

- When the applicant has been deemed eligible
- When the project is ready to start and all funding sources are in place
- All required pre-contract program steps have been completed
- Before an funds are disbursed to the third party



Poll Question

Who in the local government is authorized to execute the written agreement?

- SHIP Administrator
- Mayor
- County or City Manager
- More than 1 of the above



SHIP Rules

- 10% admin/5% PI
- 30% very low
- 60% very low and low
- 65% homeownership
- 75% construction
- 20% cap on manufactured housing
- 20% special needs
- Rental 15 year affordability if more than 10,000



LHAP Text for Written Agreements

Section B. Purpose of the program:

- “To meet the housing needs of the very low, low and moderate...”

Section F. Leverage

- “by combining local resources and cost saving measures into a local housing partnership”

Section I. Waiting List and Priorities

- “A waiting list will be established when there are eligible applicants for strategies that no longer have funding”



LHAP Text for Written Agreements

Section J: Discrimination

- “In accordance with ss.760.20-760.37, it is unlawful to discriminate on the basis of...”

Section L. Purchase Price:

- “The sales price or value... may not exceed 90% of the average area purchase price...”

Section M. Income Limits, Rent Limits & Affordability

Section O. Monitoring and First Right of Refusal:

- “In the case of rental housing, the staff... that has administrative authority... shall annually monitor...”



Program requirements

- Advertising requirements
- Administration caps
- Maximum per unit award
- Mortgage payment should be affordable
- Loan terms
- Number of affordable units
- Lease requirements
- Over income tenants



Program Requirements

- Utility allowance
- Maintenance of units
- Marketing requirements
- Energy improvements
- Program income
- Reporting requirements
- Record keeping
- audits



General Provisions

- Funding sources
- Use of funds
- Amount of funds
- Roles and responsibilities
- Performance Standards
- Program requirements
- Project requirements
- Insurance



MORE General Provisions

- Affordability
- Duration of agreement
- timeline
- Disbursement of funds/payment
- Record retention and reports
- Reversion of assets
- Default
- monitoring
- Close out requirements



Rehab Construction Contracts – Basic Elements

- When does the project start and end
- Who gets the permits & pays for them
- Expectations of homeowner
 - Property access
 - Owner on-site during construction
 - Owner-requested changes and additions to work specifications
- Who pays for utilities needed during construction
- Tool/material storage



Rehab Construction Contracts – Basic Elements

- Site clean-up
- Sanctions for non-performance of contractor
- Who may issue a stop-work order
- Conditions for termination of contract
- How disputes will be handled
- Warranty information



Rehab - Owner's Responsibilities

- Provide access to home during normal work hours
- Provide water and electricity to contractors
- Keep pets and children contained
- Store and protect valuables
- Let contractors do their job
- Communicates problems as soon as they occur
- Evaluates contractors



Contractor's Responsibilities

- On job during normal work hours
- Clean up each day after they are done
- Avoid damage to owners personal property
- Advise the owner in a timely fashion if they are going to be late or not show up
- Advise the City/County as soon as possible of disputes
- Supply storage, sanitation unit, and dumpster
- Warranty and Guarantee



Homebuyer Program Details in Written Agreements

Eligibility

- Income Categories served
- Local Policy: Define First Time Homebuyer

Affordability restrictions

- Income targeting
- Eligibility determination

Maximum award

Homebuyer contribution requirements

Rehab or No Rehab?



MORE Homebuyer Program Details

Maximum purchase price/value

- Reference FHFC website for most updated limits (currently IRS Rev. Proclamation 2016-25)

Eligible properties

Counseling

Property standards

Insurance requirements



Rental Program Details in Written Agreements

- Activity
- Project description
- address
- Total SHIP units/total units
- Unit Sizes
- Maximum award per unit/or per project
- timeline



Rental Program Details in Written Agreements

- Fixed/floating
- Marketing
- Beneficiaries/special needs
- Income targeting
- Tenant rent and utility allowance
- Lease provisions if any



MORE Rental Program Details

- Affordability Period (minimum 15 years)
- Annual verification of eligibility
- Over income
- Details of Annual Monitoring
 - Required annually if more than \$10,000 project and no one else is doing it
- Property standards
- Use of Program income



Local government provides

- Rent limits
- Income guidelines
- Maximum value limits
- Maximum subsidy limits
- Tenant/homebuyer selection
- Marketing requirements

Can be exhibits to the agreement and updates if applicable, are provided regularly.



How much information

- Enough that roles and responsibilities are clear
- Specific program requirements
- Performance expectations
- Measureable benchmarks
- Default provisions

Only include the items that you will enforce



Consistency in Agreements

- Use templates
 - Standard format for variable information
 - Required provisions included
- Consistent language
 - Facilitates and expedites process
 - Minimizes staff errors
 - Makes monitoring easier

This works for terms and provisions that are the same for every project



Write In with your Experience

- If you have experienced a default, what was the importance of the written agreement during this process?
- How did it help or hurt your organization?
- Are there additional provisions that helped your organization enforce the agreement?



Poll Question

Do you have a template that you use for your written agreement?

- Yes
- No



Enforcement

- Mortgage, Note or Restrictive Covenants must be recorded covering the affordability period.
- Send letters and notify the third party of new income limits, rents, etc. that affect compliance.
- Ensure that household/organization provides annual report data required under the agreement.
- Regularly monitoring to ensure that the individual or organization is complying.
- Provide training to facilitate compliance.



Poll Question

Has your organization ever pursued a default?

- Yes
- No



Write In with your Experience

- If you have experienced a default, what was the importance of the written agreement during this process?
- How did it help or hurt your organization?
- Are there additional provisions that helped your organization enforce the agreement?



Amendments

- Process should be outlined in the agreement and should be followed
- Should be executed by all parties who executed original agreement
- State that other provisions remain in effect
- Have the attorney review the amendment for legal sufficiency and form



Expiration

- Agreement normally remain in effect during the affordability period.
- Most are recorded to ensure compliance during the affordability period.
- If funds are paid back then agreement is ended and a release is filed.
- Records should be retained for 5 year after the project is closed.
- Could be longer depending on local requirements



Review and Updates

- Read it in its entirety
- Have staff and legal review regularly to ensure it complies with any program changes
- Update when program or LHAP changes
- Have your attorney review updates and changes for legal sufficiency and form
- Review in detail with affected party before it is executed and answer questions



Encumbered

means that deposits made to the local affordable housing trust fund have been committed by **contract, or purchase order, letter of commitment or award** in a manner that **obligates** the county, eligible municipality, or interlocal entity to expend the amount upon delivery of goods, the rendering of services, or the conveyance of real property by a vendor, supplier, contractor, or owner.

67-37.002 Definitions.



Expended

- “Expended” or “Spent” means the affordable housing activity is complete and funds deposited to the local affordable housing trust fund have been transferred from the local housing assistance trust fund account to pay for the cost of the activity.



Reporting Requirements

420.9075 Local housing assistance plans; partnerships.

- The number of households served by income category, age, family size, and race, and data regarding any special needs populations such as farmworkers, homeless persons, persons with disabilities, and the elderly.
- Counties shall report this information separately for households served in the unincorporated area and each municipality within the county.
- The number of units and the average cost of producing units under each local housing assistance strategy.
- The average area purchase price of single-family units and the amount of rent charged for a rental unit based on unit size.
- By income category, the number of mortgages made, the average mortgage amount, and the rate of default.



Best Practices

- Use Separate Agreements for each funding source
- Keep separate files
- Reference in your agreements that when more than one funding source is used the strictest rule will apply
- Create policies and procedures that can apply to any of your funding sources to reduce compliance issues
- Allows for expenditures to be transferred across different funding sources



Management Tool

- Written agreements are a management and enforcement tool
- It is legally binding
- It minimizes the risk of the local government
- Allows for corrective action
- Identifies specific requirements
- Allows for monitoring and compliance



QUESTIONS?

**Please Complete Evaluation
when logging off**



Thank you for joining us

- Please e-mail your questions or ideas for future lunch and learns, webinars, clinics and workshops to:
- Andujar@flhousing.org
- Chaney@flhousing.org

