Effective Written Agreements

sponsored by Florida Housing Finance Corporation’s Catalyst Program
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Our Thanks to the Florida Housing Catalyst Program

Sponsored by the Florida Housing Finance Corporation
Catalyst Training Schedule

Fine Tune Your SHIP Program
REGISTER NOW FOR

CATALYST TRAINING

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

Hotline: 1-800-677-4548
www.flhousing.org
Workshop Registration

DECEMBER 2018

WORKSHOP- Affordable Housing Funding Sources
December 11 - 9:00 am - 5:00 pm
Wells Fargo Historic Springfield Community Learning Center, 1601 N. Main Street, 2nd Floor
Jacksonville, FL 32206

REGISTER This workshop is an introduction to federal and state affordable housing funding sources, including the State Housing Initiative Housing Partnership (SHIP), State Apartment Incentive Loan (SAIL), Community Development Block Grant (CDBG), HOME Investment Partnership Program (HOME), Housing Opportunities for Persons with AIDS (HOPWA), Emergency Solutions Grant (ESG), HUD Continuum of Care (CoC), and Low-Income Housing Tax Credit (LIHTC). Presenters will provide an overview of the source of the federal and state funds, how the funds are awarded, allocated and...

Find out more »
Catalyst Trainings

TRAINING CALENDAR – If you would like to search by keyword, please use the SEARCH tool below. The Search tool also allows you to search for past Catalyst Trainings.

Click Links below to DOWNLOAD the training schedules:
- Catalyst Training Schedule 2018-2019

For questions, please contact the Florida Housing Coalition at 850-895-5200.

Upcoming Events

EVENTS FROM SEARCH
Date Keyword

FIND EVENTS

« Previous Events Next Events »

‘Past Catalyst Trainings’
What is a Contract?

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

- **Mutual Assent**: Each party must have a shared understanding regarding what the subject matter of the contract is.
- **Offer and Acceptance**: One party must make an offer and the other party renders their acceptance.
- **Consideration**: This where both parties mutually exchange something of value in order to make the agreement binding.
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

- Clearly identify the parties (who)
- Specify the activity to be carried out (what)
- Location (where)
- Timing (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

Specify 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
- Applicant
- Contractors
- Sponsors
- Subrecipients
Local Government

Funding Agency

• Responsible for oversight and administration

• Disbursement process outlined in agreement - Reimbursement based on documentation submitted and inspections if required

• Enforcement Agency

• Closeout and Monitoring
Applicants

• Have a vested interest in the property
• Normally identified on the title/deed to the property
• Even if the individual with the vested interested does not reside in the home, they should execute the lien documents
• Consult with your attorney
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.
Poll Question

Is a developer a
A) sponsor
B) contractor
C) subrecipient
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.
SHIP Rule

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

**2018 Income Limits and Rent Limits**

**Florida Housing Finance Corporation**

**SHIP Program**

<table>
<thead>
<tr>
<th>County (Metro)</th>
<th>Percentage Category</th>
<th>Income Limit by Number of Persons in Household</th>
<th>Rent Limit by Number of Bedrooms in Unit</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td>Alachua County</td>
<td>30%</td>
<td>15,000</td>
<td>17,150</td>
</tr>
<tr>
<td>(Gainesville MSA)</td>
<td>50%</td>
<td>25,000</td>
<td>28,550</td>
</tr>
<tr>
<td></td>
<td>80%</td>
<td>39,950</td>
<td>45,650</td>
</tr>
<tr>
<td>Median: 71,300</td>
<td></td>
<td>60,000</td>
<td>68,520</td>
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<tr>
<td></td>
<td>120%</td>
<td>70,000</td>
<td>79,940</td>
</tr>
<tr>
<td></td>
<td>140%</td>
<td>13,100</td>
<td>16,460</td>
</tr>
<tr>
<td>Baker County</td>
<td>30%</td>
<td>21,800</td>
<td>24,900</td>
</tr>
<tr>
<td>(Baker County HMFA; Jacksonville MSA)</td>
<td>50%</td>
<td>34,850</td>
<td>39,800</td>
</tr>
<tr>
<td></td>
<td>80%</td>
<td>52,320</td>
<td>59,760</td>
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<tr>
<td>Median: 62,200</td>
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<td>61,040</td>
<td>65,720</td>
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<tr>
<td>Bay County</td>
<td>30%</td>
<td>13,300</td>
<td>16,460</td>
</tr>
<tr>
<td>(Panama City-Lynn Haven- Panama City Beach MSA)</td>
<td>50%</td>
<td>22,150</td>
<td>25,300</td>
</tr>
<tr>
<td></td>
<td>80%</td>
<td>35,400</td>
<td>40,450</td>
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</table>
# Maximum Sales Price

<table>
<thead>
<tr>
<th>County</th>
<th>90% Average Area Purchase Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>BAKER</td>
<td>303,882</td>
</tr>
<tr>
<td>BROWARD</td>
<td>317,647</td>
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<tr>
<td>CLAY</td>
<td>303,882</td>
</tr>
<tr>
<td>COLLIER</td>
<td>415,058</td>
</tr>
<tr>
<td>DUVAL</td>
<td>303,882</td>
</tr>
<tr>
<td>LAKE</td>
<td>255,176</td>
</tr>
<tr>
<td>MANATEE</td>
<td>264,706</td>
</tr>
<tr>
<td>MARTIN</td>
<td>291,176</td>
</tr>
<tr>
<td>MIAMI-DADE</td>
<td>317,647</td>
</tr>
<tr>
<td>MONROE</td>
<td>487,058</td>
</tr>
<tr>
<td>NASSAU</td>
<td>303,882</td>
</tr>
</tbody>
</table>
Maximum Value
(Definitions 420.9071 (27) )

Sales price" or "value" means

• In the case of acquisition of an existing or newly constructed unit, the amount on the executed sales contract.

• If building a unit on land they own sales price is determined by state certified appraiser based on the after construction value performed by a state-certified appraiser. The appraisal must include the value of the land must be dated within 12 months of the date construction is to commence.

• In the case of rehabilitation or emergency repair of an existing unit that does not create additional living space, the value is determined by a state-certified appraiser and dated within 12 months of the date construction is to commence or the assessed value of the real property as determined by the county property appraiser.

• In the case of rehabilitation of an existing unit that includes the addition of new living space, sales price or value is determined by an state-certified appraiser and dated within 12 months of the date construction is to commence or the assessed value of the real property as determined by the county property appraiser, plus the cost of the improvements in either case.
SHIP Monitoring Rules

• Tenant income of projects that receive more than $10,000 must be monitored annually

• May rely on monitoring report of another entity even if periodic

  “....to the extent another governmental entity or corporation program provides periodic monitoring and determination, a municipality, county, or local housing financing authority may rely on such monitoring and determination of tenant eligibility.”

• Does not require utility allowances
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.

Upcoming Webinar

Working with Nonprofits, Sponsors and Subrecipients

- Description

- Several SHIP communities outsource implementation of one or more of their strategies. Learn what types of groups may serve as sponsors and sub recipients and hear firsthand from the staff of groups that provide SHIP services. The presenters will highlight key examples of how SHIP work is effectively outsourced, addressing details of LHAP selection criteria and suggested language for a Request for Proposals. The webinar will address service delivery fees and other details in a sub recipient agreement. Key topics include the elements of monitoring and effective communication.

- Thu, Nov 29, 2018 2:00 PM - 3:30 PM EST
Any local government participating in SHIP that uses a Sub-Recipient to administer all or part of the SHIP program should be aware of the following facts:

1. The SHIP rule defines a Sub-Recipient (see below) broadly as any person or non-state entity. This would include any non-profit, consultant or other entity actively performing any administrative function of the program including application intake, income verification, contract oversight, counseling, etc. The term Sub-Recipient should not be confused with the statutorily defined Eligible sponsor (see below) which refers to an entity that receives a funding award. There may be situations where it is difficult to determine when an entity is “awarded” funds, but in practice carry out the administration function for those funds. In these cases, the entity should be considered as a Sub-Recipient.

2. Regardless of the use of Sub-Recipients, the local government is responsible (67-37.019 (10)) for monitoring the SHIP funds being expended through the Sub-Recipient. The responsibility for compliance with the requirements cannot be
Indirect Recipients

Such as subcontractors of the
- Sponsors
- Developers
- Contractors
- Non-profit
- For-profit

Should also execute contracts
Different Agreements

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?
A) Staff
B) Attorney
C) Consultant
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 any funds are disbursed to the third party
Poll Question

Who in the local government is authorized to execute the written agreement?
A) SHIP Administrator
B) Mayor/City or County Manager
C) Clerk
D) 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
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”
Section J: Discrimination

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

Section L. Purpose of the program:

• “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

• 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
Owner Occupied Rehabilitation Construction Contracts

• When does the project start and end
• Who gets the permits & pays for them
• Who pays for utilities needed during construction
• Tool/material storage
• 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 contractor
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
Contract signing

How long should the contract signing take?
A) 15 minutes
B) 30 minutes
C) 1 hour or more
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 2017-27)

- Eligible properties
- Counseling
- Property standards
- Insurance requirements
- Default
Rental Program Details in Written Agreements

• Award amount per unit/per project
• Activity
• Project description
• address
• Required # of SHIP units set aside/total units
• Unit Sizes (1 bed, 2 bed, etc.)
• Timeline for expenditure/completion
• Security documents- LURA- Land Use Restriction Agreement + Mortgage/Note if loan
Rental Program Details in Written Agreements

- Fixed/floating
- Marketing
- Beneficiaries
- Income targeting (ELI, VLI, LI, MI)
- Special needs
- Tenant rent and utility allowance
- Lease provisions if any
MORE Rental Program Details

• Affordability Period (minimum 15 years, 50 years best practice)
• 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
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.
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 has ended and a release is filed.

• Records should be retained for 5 year after the affordability period ends.

• 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 in addition to 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?
Thank you for joining us

• Please e-mail your questions to:
  • Andujar@flhousing.org