

TOOLS TO IMPOSE AFFORDABILITY RESTRICTIONS

HOMEOWNERSHIP PROGRAMS

Examples of Compliance Tools:

- **Loans** (in the form of a security instrument recorded against the property).
 - Long-term “silent” mortgages which incorporate occupancy restrictions. Repayment would be triggered if conveyed to another party during affordability period. Could also include penalties.
 - Forgivable Loans - over the affordability period, pro-rated portion of loan amount is forgiven each year. To discourage violation of affordability period, conveyances during such period could be treated as a default of the terms of the loan, triggering repayment of entire principal, accrued interest and penalties.
 - Loan instruments could incorporate additional provisions described below: (i.e. shared appreciation or maximum sale price, right of first refusal, resale limited to other eligible low income household).
- **Deed Restriction or Restrictive Covenant** recorded against the property through deed granting title or later filing:
 - Deed restriction or restrictive covenant tied to property title opposed to being tied to a mortgage interest, limiting use of property as primary residence of titleholder for affordability period. Should include language that it attaches to any future deed. The restriction can incorporate additional provisions described below (i.e. shared appreciation or maximum sale price, right of first refusal, resale limited to other eligible low income household).
 - Enforcement language could include the following remedies in the event of default (if allowed under Florida law): repayment of loan in full immediately upon default; relief requiring restoration of the property to the condition, affordability or occupancy which existed prior to violation of restrictive covenant (or any terms therein); money damages; right to void any contract for sale, sale, conveyance or any other transfer in violation of restrictive covenant by action in equity.
 - Some risk posed by subordination and foreclosure issues. But see *MassHousing Model Deed Rider* resulting from Fannie Mae’s revised seller and servicer guidelines (May 2006) allowing deed restrictions on single-family homes to survive foreclosure.

- **Additional Provisions** (can be incorporated into security instruments or deed restriction or restrictive covenants recorded against the property).

- Shared Appreciation Agreements

- Incorporating shared appreciation formula into security agreement allows the affordable housing program to capture a portion of the equity in the event that the property is sold within the affordability period or the borrower defaults. Allowances for capital improvements can be included.
- To discourage sales during affordability period, the entire principal can become due upon sale, along with a portion of the equity. Note: This policy was recently adopted by Miami-Dade County in connection with its 2007 Cycle for HOME, Surtax and SHIP funds.
- Shared appreciation approach, allowing market-driven appreciation, should be distinguished from a re-sale pricing approach in which the affordable housing program establishes and imposes a maximum sale price.

- Limiting Re-sale

Property can only be sold to other eligible low-income households. See Davis, Shared Equity Homeownership – The Changing Landscape of Resale-Restricted, Owner-Occupied Housing, National Housing Institute, 2006 (study explores benefits and limitations of shared equity approaches versus restricting ownership to the overall effort of community revitalization and affordable housing preservation).

- Right of first refusal (RFR) to affordable housing program.

- Utilizing resale restrictions or RFR go further to ensure affordable housing stock preservation in that the property itself remains in play for low income households after the affordability period.
- Requiring notice and opportunity to purchase assists in avoiding loss of community-invested property through foreclosure.
- These mechanisms should be tied to a forgivable loan and shared equity provisions so that the purchase price at fair market value would be reduced by the remaining balance owed (if any) and share of equity to make the re-purchase reasonable. See Lewis, Affordable Real Estate Transactions, Probate & Property, May/June 2006.

- **Community Land Trusts:**

Model in which title remains in the control of a non-profit or government entity and homebuyers hold a long-term leasehold, which typically can be transferred to another eligible household or to family members (assuming income-eligible).

AFFORDABLE RENTAL PROGRAMS

Typical affordability period: Thirty Years

Examples of Compliance Tools:

- **Rent Regulatory Agreements**, typically incorporated into security instruments relating to subsidy loans, incorporate income restrictions on occupants of assisted units, rents that may be charged, affordability period, re-payment terms and penalties in event of failure to comply. The agreement can be incorporated into recorded security instruments by reference. Such terms also can be incorporated into deed restrictions recorded against the property's title.
- **See following chart ("Affordable Housing Programs – Use Restrictions, Compliance Periods and Mechanisms")** covering all of the major funding sources typically accessed for affordable housing projects in Miami-Dade as well as income target restrictions, minimum compliance periods and mechanisms used by each funding source to enforce compliance/recapture resources in the event of failure to comply.

Affordable Housing Programs – Use Restrictions, Compliance Periods and Mechanisms

	<i>SAIL (State of Florida)</i>	<i>Tax Credit (State of Florida/Federal Tax Incentive Program)</i>	<i>Affordable Housing Program (AHP – Federal Home Loan Bank of Atlanta)</i>
Income Targets (% of Median Income)			
50%	Satisfies requirements if 20% of units occupied by incomes of 50% AMI or less.	Satisfies requirements if 20% of units occupied by incomes of 50% AMI or less.	—
60%	Satisfies requirements if 40% of units occupied by incomes of 60% AMI or less.	Satisfies requirements if 40% of units occupied by incomes of 60% AMI or less.	—
80%	—	—	Funding is limited to very low, low and moderate income household. Generally, projects targeting 100% of units towards 60% MI or less receive maximum points.
120%	—	—	—
140%	—	—	—
Minimum Compliance Period	<i>30 years</i>	<i>30 years</i> An initial 15- year period with a mandatory 15 year extension (a total Extended Use Period of 30 years). Some projects may agree to a longer extended use period (up to 50 years) in order to qualify for preference in	Rental Project: 15 year retention period. Owner-Occupied: 5 year retention period.

<p><i>Mechanism(s) to Control Compliance Period</i></p>	<p>Recorded regulatory/land use agreement. FHFC can accelerate loan or foreclose.</p>	<p>the award of credits.</p> <p>Recorded regulatory/land use agreement.</p> <ul style="list-style-type: none"> • FHFC can accelerate loan or foreclose. • FHFC must report non-compliance to the IRS. • The IRS can demand recapture of tax credits claimed by investors and impose fines and penalties. • Investors can seek compensation from general partners involved in project for loss of credits and for IRS fines and penalties. 	<p>Retention mechanism provisions must be contained in the mortgage note and security instrument; enforceable under local law; appropriately recorded and run in favor of the lending member of the FHLBA.</p> <p><u>Rental Projects:</u> In case of sale or refinancing during retention period, (a) with respect to a direct subsidy, an amount equal to the full amount of the direct subsidy must be repaid to the FHLBA; and (b) with respect to a subsidized advance, the full amount of the interest-rate subsidy received by the project owner (based upon a pro rata portion of the interest-rate subsidy imputed to the subsidized advance during the period the project owner owned the property prior to the sale or refinancing, must be repaid.</p> <p><u>Owner-Occupied Projects:</u></p> <p>In case of sale during five-year retention period, (a) with respect to a direct subsidy, an amount equal to a pro rata share of the direct subsidy, reduced for every year the seller owned the unit; and (b) with respect to a subsidized advance the proceeds of which were used to finance construction or rehabilitation of (and not permanent financing for) the units, an amount equal to the pro rata portion of the interest-rate subsidy imputed to the subsidized advance that financed the construction or rehabilitation loan for the unit, reduced for every year the seller owned the unit, must be repaid to FHLBA from any net gain realized upon the sale of the unit after deduction for the sales expenses, unless the purchaser is a low- or moderate-income household.</p> <p>In case of refinance during five-year retention period, (a) with respect to a direct subsidy, an amount equal to a pro rata share of the direct subsidy, reduced for every year the occupying household has owned the unit; and (b) with respect to a subsidized advance the proceeds of which were used to finance permanent financing for the unit, the full amount of the interest-rate subsidy received by the owner, based upon a pro rata portion of the interest-rate subsidy imputed to the subsidized advance during the period the owner owned the property prior to refinancing; and (c) with respect to a subsidized advance the proceeds of which financed the construction or rehabilitation of the unit, an amount equal to the pro rata portion of the interest-rate subsidy imputed to the subsidized advance that financed</p>
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<i>(Mechanism(s) to Control Compliance Period – Continued)</i>			the construction or rehabilitation loan for the unit, reduced for every year the owner owned the unit, must be repaid from any net gain realized upon the refinancing.
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	<i>HOME (Rental Housing)</i>	<i>HOME (Homeowner-ship)</i>	<i>CDBG</i>	<i>Surtax</i>
<i>Income Targets (% of Median Income)</i>				
<i>50%</i>	Projects with five or more units: 20% of HOME-assisted units.	—	—	—
<i>60%</i>	No less than 90% of HOME-assisted units.	—	—	—
<i>80%</i>	Remaining 10% of HOME-assisted units	Assisted units must target 80% or less of median income.	Assisted units must target 80% or less of median income (low and moderate income households).	75%
<i>120%</i>	—	—	—	—
<i>140%</i>	—	—	—	25%
<i>Minimum Compliance Period</i>	<p><u>Federal Regulations:</u> Rehabilitation or Acquisition of Existing Housing per unit amount of HOME funds: <\$15,000 5 yrs. \$15,000 - \$40,000 10 yrs. >\$40,000 15 yrs.</p> <p>New Construction or Acquisition of Newly Constructed Housing 20 yrs.</p> <p><u>State and Local:</u> Miami-Dade County permanent loans are for a period of no more than 30 years. Florida Housing Finance Corporation imposes 30 years.³</p>	<p><u>Federal Regulations:</u> <\$15,000 5 yrs. \$15,000 - \$40,000 10 yrs. >\$40,000 15 yrs.</p> <p><u>Local:</u> Miami-Dade has adopted an affordability period equal to the term of the thirty-year mortgage or until the loan is repaid in full.</p>	No regulatory mandate. Local grantees may set affordability period.	
<i>Mechanism(s) to Control Compliance Period</i>	<p>HUD Must be imposed by deed restrictions. Covenants running with the land, or other mechanism approved by HUD.</p> <p><u>MD-OCED</u> Requires a Rent Regulatory Agreement, which is incorporated by reference into</p>	<p>HUD allows option of recapture or resale. Options must be identified prior to assistance. Adopting a resale option requires that resale be made to a low income household.</p> <p>Miami-Dade has selected the fund recapture option: If unit is sold within affordability period,</p>		Mortgage

<p><i>(Mechanism(s) to Control Compliance Period – Continued)</i></p>	<p>recorded mortgage documents. Failure to meet affordability requirements for the specific compliance term requires repayment of <u>ALL</u> HOME funds through fund recapture or sale of assisted units.</p>	<p>homeowner must repay the principal amount of the Loan, together with share of the property's appreciation in value. Share is determined by applying (i) the % which represents the ratio of the original principal amount of the Loan to the original unsubsidized sales price (i.e. the gross purchase price) in connection with the purchase of the Property to (ii) the amount, if any, by which the sales price upon transfer of the property exceeds the original sale price.</p>		
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