

Gayle White

From: Gary J. Cohen [GCohen@shutts.com]
Sent: Thursday, January 17, 2008 4:00 PM
To: Debbie Blinderman; Gayle White; Steve Auger
Cc: Wellington Meffert
Subject: SAIL allocation/Miami-Dade County

I understand that an issue has arisen as to the construction of certain Florida Statutes as they pertain as to the limitation/cap on SAIL funds allocable to Miami-Dade County. Specifically, that Florida Statute Section 420.5087(1) somehow overrides or modifies Florida Statutes Sections 201.15 and 201.0205 so as to further decrease/limit the amount of SAIL funds available to Miami-Dade County. I disagree with this position.

In years past (including last year), there has been no confusion. Under Florida Statutes Section 201.15(9) and (10) and 201.0205, it has been the position of FHFC that operation of these statutes results in an overall cap on the amount of funds allocable to Miami-Dade County equal to roughly 22.33% of the total. I'll spare you a recitation of the methodology necessary to reach this percentage, other than to say it's approximately equal to the ratio of the amount available under the "second dime" (201.15(10)) to the amount available under the sum of the second dime and the "first dime" (201.15(9)), since under 201.0205 Dade is only eligible to participate in doc stamp revenues available to FHFC under the "second dime".

Note that 201.0205 was enacted in 1992, at the same time as the 10 cent tax increase in doc stamps was enacted. The purpose of 201.0205 was clear; any county that had previously enacted a local surtax ordinance (such as Dade County) as permitted by 201.031 (enacted in 1983; Dade quickly enacted its local surtax ordinance in 1983 under the guidance of attorney Martin Fine of Holland & Knight) was given a choice in 1992; either eliminate your local surtax ordinance and charge the extra \$.10 increase and fully participate in all FHFC funding programs, or keep your surtax ordinance, do not collect the extra \$.10 and only participate under 201.15(10) and not under 201.15(9). Note that 201.0205 was "cleaned up" in 2007 to correct the references to the correct subsections of 201.15.

When 201.0205 was enacted in 1992, Florida Statute Section 420.5087(1) was already in place (since 1988), and the operative section thereof (mandating that SAIL funds be distributed pursuant to a rental housing market study) has not been changed since 1988. My understanding is that the most recent rental housing market study has resulted in an allocation of 56% of SAIL funds to Large County, 34% to Medium County and 10% to Small County. I understand that the position of certain persons now is that Dade County is only eligible to receive 22.33% of the SAIL funds allocable to the Large County Set-Aside (56% of the total SAIL funds), rather than 22.33% of all SAIL funds.

This position is illogical and not supported by general concepts of statutory construction. When the limit on the amount of SAIL funds available to Dade County (201.0205) was enacted in 1992, it would have been a simple matter for the drafters to take 420.5087(1) into account, as 420.5087(1) was already in existence for four years at that time. The drafters could've specifically limited the amount available to Dade by incorporating 420.5087(1) into 201.15 and 201.0205, but they did not do so. Their intent was clear; by not revoking its local surtax ordinance, the language of 201.0205 makes it clear that Dade was deciding to limit its participation to a percentage of the total amount of FHFC funds available under the State Housing Trust Fund under 201.15(9) and (10). 201.0205 limits Dade's ability to "participate in programs funded pursuant to 201.15(9) and (10)" (201.0205); the reference to programs funded by 201.15(9) and (10) (SAIL is funded under both such subsections) is a reference to the total amount of funds available under such programs, and is not a reference to the amounts available under such programs as further suballocated (by program rule) to various geographic set-asides (as is being urged by some). 201.0205 was clearly intended to limit Dade's participation in the "entire pot" of money, not Dade's suballocated share of the total amount under 420.5087(1).

FHFC's own interpretation is clear. See page 100 of the most recent draft Instructions (also in the 2007 Cycle Instructions) whereby FHFC limits the amount of SAIL funds in the Large County Set-Aside so that no one county in the large county set-aside (i.e., Dade) can receive more than 50% of the funds available in the Large County Set-Aside. If FHFC thought that Dade was limited to 22.33% of the 56% of SAIL funds available to Large County Set-Aside, there would have been no need to enact this Instruction for the 2007 Cycle, since the 50% limits (for SAIL and housing credit allocations) were specifically directly at the large number of deals being awarded to Dade County.

The interpretation being urged by some also flies in the face of the most recent rental study. The study acknowledges the large need in Dade County, yet adopting the position urged by some would result in only 12.5% of the total SAIL funds being available

for Dade (22.33% times the 56% allocated to Large County Set-Aside); assuming a \$50 million SAIL amount (as reflected in the recent NOFA) and combined with the rule that Dade SAIL jobs can't be partially funded, this results in one Dade SAIL job (assuming a \$4 million SAIL loan request). Given that Dade homeless jobs frequently prevail and come first in the funding hierarchy and receive SAIL funds, this effectively locks out Dade from any SAIL funds; clearly this cannot be the intended result.

Please do not hesitate to contact me regarding this matter if you like.

"SHUTTS-LAW.COM" made the following annotations.

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