

FLORIDA HOUSING FINANCE CORPORATION
Board Meeting
September 21, 2007
Action Items



ELDERLY HOUSING COMMUNITY LOAN PROGRAM (EHCL)

Action

I. ELDERLY HOUSING COMMUNITY LOAN PROGRAM (EHCL)

A. Request for Authority to Begin Rulemaking

1. Background/Present Situation

- a) In order to address changes to Rule Chapter 67-32, Florida Administrative Code, which governs the Elderly Housing Community Loan (EHCL) Program, it is necessary to begin the rulemaking process.
- b) A public meeting will be held in October 2007 to solicit comments concerning Rule Chapters 67-32, F.A.C.
- c) Staff will advertise the rulemaking process as required.

2. Recommendation

Approve staff's request to begin the rule development process by scheduling a rule development workshop.

HOMEOWNERSHIP LOAN PROGRAM

Action

II. HOMEOWNERSHIP LOAN PROGRAM

A. Approval of Amendments to Rule Chapter 67-57, Florida Administrative Code (F.A.C.) for the Homeownership Pool (HOP) Program

1. Background

- a) Staff commenced the rule development process in February 2007.
- b) On March 16, 2007, a public meeting was held in Miami to discuss possible changes to the HOP program.
- c) On April 27, 2007, a Rule Development Workshop was held immediately following the Board meeting at City Hall in Tallahassee.

2. Present Situation

- a) A copy of the proposed amendments to Rule Chapter 67-57, F.A.C., was provided to the Joint Administrative Procedures Committee (JAPC) for review. A copy of the rule incorporating these changes is attached as [Exhibit A](#).
- b) On March 23, 2006, JAPC advised that they had completed their review and found no substantive changes necessary.
- c) A rule hearing was held on August 6, 2007 in Tallahassee.

3. Recommendation

Approve the proposed amendments to Rule Chapter 67-57 and authorize staff to file for adoption.

LEGAL

Action

III. LEGAL

A. In Re: Subsidiary Entity

1. Background

- a) In 2002, the Legislature amended Section 420.507, creating a new subsection (4), authorizing Florida Housing “To establish subsidiary business entities for the purpose of taking title to and managing and disposing of property acquired by the corporation.” (Subsection (4) was amended in 2006 to allow other forms of business entity, and to grant the subsidiary entities rulemaking authority.)
- b) Section 420.507(4) reads as follows:

(4) To establish subsidiary business entities for the purpose of taking title to and managing and disposing of property acquired by the corporation. Such subsidiary business entities shall be public business entities wholly owned by the corporation; shall be entitled to own, mortgage, and sell property on the same basis as the corporation; and shall be deemed business entities primarily acting as an agent of the state, within the meaning of s. 768.28, on the same basis as the corporation. Any subsidiary business entity created by the corporation shall be subject to chapters 119, 120, and 286 to the same extent as the corporation. The subsidiary business entities shall have authority to make rules necessary to conduct business and to carry out the purposes of this subsection.

2. Present Situation

The economic conditions and sharply increased operating expenses recently encountered by affordable housing developments have placed some developments in difficult straits. In order to be prepared for any eventuality, it is advisable to plan for the eventuality that Florida Housing may have to take title to some property, by establishing a corporation not for profit, to take and hold title, to manage, and to dispose of such property.

3. Recommendation

That the Board authorize staff to proceed with establishment of a subsidiary corporation, and delegate authority to the Chair to review and approve articles of incorporation before documents establishing the subsidiary are filed.

LEGAL

Action

B. In Re: 2007 Universal Cycle Appeals

1. Background

- a) On or before April 10, 2007, Applicants submitted applications to Florida Housing for the award of SAIL, MMRB or HOME funds and/or an allocation of Housing Credits in the 2007 Universal Cycle program.
- b) On July 12, 2007, Florida Housing notified all applicants of its score, provided all applicants with a Notice of Rights pursuant to Sections 120.569 and 120.57, Florida Statutes, and an Election of Rights form.
- c) On or about August 3, 2007, petitioners filed 6 petitions challenging Florida Housing's scoring decisions. Requests for hearings are as follows:
 - (1) Three applicants filed petitions requesting informal hearings which were heard before a contract hearing officer: CEC Timber Trace, LLC; Spinal Cord Living-Assistance Development, Inc.; Shepherd's Court, LLC.
 - (2) One applicant requested an informal hearing; however, due to the existence of disputed issues of material fact, the file will be forwarded to the Division of Administrative Hearings: Pine Branch Limited Partnership.
 - (3) Two applicants filed a petition for informal hearing, which were withdrawn prior to hearing: We Help Community Development Corp; Owens Pointe II, LLLP.
 - (4) Informal hearings were held before Florida Housing contract Hearing Officers on August 22, 2007.

2. Present Situation

- a) The resulting Recommended Orders are attached as follows:
 - (1) [Exhibit A](#) – CEC Timber Trace, LLC.
 - (2) [Exhibit B](#) – Spinal Cord Living-Assistance Development, Inc.
 - (3) [Exhibit C](#) – Shepherd's Court, LLC.
 - (4) [Exhibit D](#) – We Help Community Development Corp.
- b) The following petition was withdrawn without a Recommended Order:
 - (1) [Exhibit E](#) – Owens Pointe II, LLLP.

3. Recommendation

Staff recommends that the Board accept all of the Recommended Orders and the two withdrawals and enter Final Orders in these matters.

LEGAL

Action

C. In Re: Spinal Cord Living-Assistance Development, Inc.

FHFC Case No. 2007027VW – Application No. 2007024H

Development Name: (“Development”):	SCLAD Plaza
Developer/Principal: (“Developer”):	Spinal Cord Living-Assistance Development, Inc.
Number of Units: 18	Location: Hialeah, FL
Type: Mid-rise	Set Asides: 4 low income HOME units 14 high income HOME units
Demographics: Family	HOME: \$1,100,000
MMRB: N/A	Housing Credits: N/A

1. Background

- a) During the 2007 Universal Cycle, Spinal Cord Living-Assistance Development, Inc. (“Petitioner”) applied for \$1,100,000.00 in HOME Investment Partnerships Rental Program (“HOME”) funding to finance the construction of an 18-unit, mid-rise development intended to serve the Family demographic, to be located in Miami-Dade County, Florida (the “Development”). Petitioner entered on the 2007 Universal Cycle application, first mortgage financing in the amount of \$521,009 to be provided by Bank of America. Florida Housing rejected this financing commitment as not meeting the criteria of the 2007 Application Instructions, resulting in a financing shortfall which caused Petitioner’s application to fail threshold. The Petitioner attempted to cure the financing shortfall. To cover the financing shortfall Petitioner deferred the Developers Fee in the amount of \$205,000 and requested an increase in its HOME funding application amount of \$316,000.
- b) On July 31, 2007, Florida Housing received a “Petition for Variance or Waiver of Rule 67-48.004(14)(n), Florida Administrative Code” (“Petition”), from Petitioner. A copy of the Petition is attached as [Exhibit F](#).
- c) On August 10, 2007, the Notice of Petition was published in the Florida Administrative Weekly in Volume 33, Number 32.
- d) To date, Florida Housing has received no comments concerning the Petition.
- e) Rule 67-48.004(14)(n), Florida Administrative Code (2007), states in pertinent part:

(14) Notwithstanding any provision of these Rules, there are certain items that must be included in the Application and cannot be revised, corrected or supplemented after the Application Deadline. Failure to submit these items in the Application at the time of the Application Deadline shall result in rejection of the Application without opportunity to submit additional information. Any attempt to change these items will not be accepted. Those items are as follows:

- (n) Funding Request (except for Taxable Bonds) amount;

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f) Petitioner requests a variance or waiver of Rule 67-48.004(14)(n). Specifically, Petitioner wishes Florida Housing to accept its waiver request and allow it to increase HOME funding by \$316,000 to \$1,416,000, thus causing the Application to pass threshold and become eligible for funding.

g) Section 120.542(2), Florida Statutes provides in pertinent part:

Variations and waivers shall be granted when the person subject to the rule demonstrates that the purpose of the underlying statute will be or has been achieved by other means by the person and when application of a rule would create a substantial hardship or would violate principles of fairness.

2. Recommendation

Staff recommends the Board deny the Petitioner's request for variance or waiver of Rule 67-004(14)(n), Florida Administrative Code (2007). Petitioner failed to demonstrate entitlement to a variance or a waiver of the rule pled in its Petition. Petitioner failed to demonstrate how the application of the rules to it would create a substantial hardship. Petitioner had an opportunity to receive a firm commitment from Bank of America and did not do so. Petitioner failed to demonstrate how the application of the rules will affect it in a manner significantly different from the way the rules affect other similarly situated developers who are subject to the rule. Granting this waiver for the Petitioner would be unfair to all other HOME applicants who correctly applied for funding and followed the rules. Funding the Petitioner would unfairly deprive another applicant of funding.

MINUTES

Action

I. MINUTES

- A. Consider Approval of the [July 27, 2007, Board of Directors' Meeting Minutes](#).

PREDEVELOPMENT LOAN PROGRAM (PLP)

Action

IV. PREDEVELOPMENT LOAN PROGRAM (PLP)

A. Request Approval of PLP Loan Extension for UDC-AHRP Miami-Dade (PLP 03-048)

DEVELOPMENT NAME (“Development”):	UDC-AHRP Miami-Dade
APPLICANT/DEVELOPER (“Developer”):	United Development Communities (UDC), Inc., a not-for-profit corporation
CO-DEVELOPER:	n/a
NUMBER OF SET-ASIDE UNITS:	7
LOCATION (“County”):	Miami-Dade
TYPE:	Homeownership
SET ASIDE:	100% @ 80% AMI
PLP LOAN AMOUNT:	\$500,000
ADDITIONAL COMMENTS: The original loan stipulated up to 8 units. The final total units is 7.	

1. Background

On September 16, 2004, the Developer closed on a PLP Loan in the amount of \$500,000. To date, the Developer has drawn \$500,000 for eligible predevelopment expenses and has repaid \$311,790 from proceeds of the sale of 5 homes in the development. There is a remaining principal balance of \$188,210.

2. Present Situation

- a) On February 13, 2007, and June 8, 2007, Florida Housing’s Special Assets Department sent the Developer letters informing of the approaching maturity of its PLP Loan and requesting a written response containing the Developer’s anticipated method of repayment.
- b) On August 6, 2007, staff received correspondence from the Developer requesting to extend the term of the PLP Loan ([Exhibit A](#)). The loan is scheduled to mature on September 16, 2007.
- c) The Developer has successfully purchased and rehabilitated 7 homeownership units since loan closing, of which 5 have been sold.
- d) The Developer believing that all the houses would have been sold prior to the loan maturity date did not submit an extension request prior to this time. The Developer had the two remaining houses under contract but was unsuccessful in selling them due to a failure of buyers to obtain necessary credit and financing.
- e) As provided in Exhibit A, the Developer indicated that as a result of the current housing downturn, stricter mortgage underwriting standards, rising insurance costs, and higher interest rates it has been difficult to find qualified buyers for the two remaining properties. However, there is a contract pending on one of the properties subject to income qualification of the potential buyer. On August 28, 2007, the Developer submitted a request for the pay-off amount for this property to Florida Housing.

PREDEVELOPMENT LOAN PROGRAM (PLP)

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- f) The TAP recommended the approval for up to one year and believes granting the extension will result in finding qualified buyers ([Exhibit B](#)).
- g) Staff has reviewed the request and believes that an extension request is reasonable and necessary in order to allow for the sale of said remaining units to low income households. However, staff recommends the extension be limited to six months.

3. **Recommendation**

Approve the Developer's request for an extension for six months for the PLP Loan extending the maturity date from September 16, 2007, to March 16, 2008.

PROFESSIONAL SERVICES SELECTION (PSS)

Action

V. PROFESSIONAL SERVICES SELECTION (PSS)

A. Requests for Proposals (RFP) for Foreclosure Prevention Services

1. Present Situation

- a) Mortgage defaults and foreclosures continue to rise throughout the state. In July 2007, Florida had the second highest number of foreclosure filings in the nation, according to RealtyTrac. All of the major economic forecasts are predicting a dramatic increase in foreclosures over the next two years. Most experts in the field agree that the majority of the foreclosures are the result of aggressive sub-prime lending practices, using various forms of adjustable rate loan products. The greatest number of these mortgages will begin to reset starting in October of this year.
- b) Lenders repeatedly attempt to reach out to borrowers once a mortgage is delinquent, however most borrowers never respond to these efforts. Lenders use a variety of methods to contact to borrowers, including sending letters, emails and phone calls. Industry studies show that over 70% of borrowers that are delinquent in their mortgage payments never contact their lending institution. Many borrowers could have avoided foreclosure if they had been aware of their rights and other options available to them. There are several non-profits throughout the state that provide foreclosure intervention services for borrowers and have successful track records providing these services. However, there are not enough of these agencies to provide the services needed in the areas facing the greatest increase in foreclosures.
- c) As the only statewide housing agency in Florida, Florida Housing is in a unique position to work with lenders, borrowers, non-profits and local governments across the state to provide direction and assistance with the growing level of delinquent mortgages. Florida Housing is proposing a Foreclosure Prevention Strategy that includes training to local non-profit organizations on how to provide effective foreclosure counseling services, technical assistance support to the newly trained non-profit agencies, on-going financial support to the non-profits to support foreclosure counseling and a marketing campaign in counties with high foreclosure rates.
- d) Florida Housing is seeking to work with one or more organizations with extensive experience in foreclosure counseling and training. The selected organization must have capacity to provide the training within a short window of opportunity and have capacity to provide the technical assistance and contract management services.
- e) The selected agency must have an established curriculum on foreclosure counseling and professional staff capable of providing training. The curriculum will be required to include, among other issues, training on the following: reasons for default; ways to maximize income and reduce expenses for borrowers; calculating delinquencies; understanding the players in the mortgage marketplace; loss-mitigation options for FHA-insured and other loans; legal information about foreclosure laws and timelines; tips on effectively intervening with lenders and servicers; managing multiple mortgages or liens; and the pros and cons of refinancing. These trainings may be conducted on a regional basis such as: Pensacola, Jacksonville, Orlando, Sarasota, and Miami.

PROFESSIONAL SERVICES SELECTION (PSS)

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- f) The selected agency should also be capable of providing technical assistance to the trained non-profits to provide guidance and assistance to the non-profits so they are comfortable going forward in providing foreclosure counseling services.
- g) Florida Housing will provide a limited amount of financial support to the trained agencies on a fee for service basis. The selected agency must have the capacity to provide contract management services including reviewing and approving requests for reimbursement.

2. **Recommendation**

Authorize staff to begin the solicitation process for Foreclosure Prevention services and establish a review committee.

PROFESSIONAL SERVICES SELECTION

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B. State Housing Initiatives Partnership (SHIP) Program and Hurricane Housing Recovery Program (HHRP) Compliance Monitoring Services Request for Proposals (RFP) 2007-06

1. Background

At its June 22, 2007 meeting the Board authorized staff to begin the solicitation process for SHIP and HHR Program Compliance Monitoring Services and establish a review committee.

2. Present Situation

- a) An RFP process was initiated and RFP 2007-06 was issued on Friday, July 27, 2007. The deadline for receipt of proposals was 2:00 p.m., Friday, August 31, 2007.
- b) Six (6) proposals were received in response to the RFP. They are as follows:
 - (1) AmeriNational Community Services
 - (2) First Housing Development Corp. of Florida
 - (3) Florida Planning Group, Inc.
 - (4) ICF International
 - (5) Jett & Sitting, P.A.
 - (6) Seltzer Management Group, Inc.
- c) The Review Committee members, designated by the Executive Director, were Robert Dearduff (Chairman), Special Programs Administrator and Local Government Liaison; Darlene Raker, SHIP Program Manager, Matt Jugenheimer, Asset Management Manager, Sherri Baker, Housing Policy Senior Analyst, and Beverly Cliett, Guarantee Program Asset Manager.
- d) Each member of the Review Committee individually reviewed the proposals prior to convening for the Review Committee meetings. The Review Committee meetings were held on Monday, September 10th and Tuesday, September 11th. Results of the Review Committee's ranking are provided as [Exhibit A](#).

3. Recommendation

- a) The Review Committee recommends that the Board authorize staff to enter into contract negotiations with the top three ranked Offerors which are as follows in order of ranking:

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- (1) Seltzer Management Group, Inc.
 - (2) First Housing Development Corporation of Florida
 - (3) Florida Planning Group, Inc.
- b) The Review Committee further recommends that if contract negotiations fail with one of the top three ranked Offerors that the Board authorize staff to enter into contract negotiations with the fourth ranked Offeror which is AmeriNational Community Services.
- c) In addition, the Review Committee recommends that the Board require all four Offerors, prior to beginning contract negotiations, to provide a list of any and all work the Offeror has conducted with a local government in the State of Florida, not including the work that may have been assigned by Florida Housing, for the past four (4) fiscal years.

PROFESSIONAL SERVICES SELECTION (PSS)

Action

C. Request for Proposals (RFP) and Contract Renewal for Auditing Services

1. Background

- a) Pursuant to Chapter 420, Fla. Stat., Florida Housing is required to submit with its annual report an annual financial audit of its accounts and records performed in accordance with generally accepted auditing and governmental auditing standards by an independent certified public accountant.
- b) Florida Housing is also required, before June 1 of each year, to have performed a financial audit to determine whether at the end of each state fiscal year, there are adequate reserves and deposits in the Guarantee Fund's Debt Service Reserve account. Additionally, Florida Housing shall certify to the state's Chief Financial Officer the amount of any projected deficiency in the annual debt service reserve and the amount necessary to maintain such annual debt service reserve.
- c) Deloitte & Touche performed the financial audit services for the fiscal years ending June 30, 1994 to December 31, 1999.
- d) In 2000, Deloitte & Touche was awarded the audit contract for the years ending December 31, 2000, 2001 and 2002. Two one-year renewals were included in the contract, and these were executed for the years ending December 31, 2003 and 2004.
- e) At its January 14, 2005 meeting Florida Housing's Board of Directors authorized staff to issue an RFP for auditing services.
- f) At its August 25, 2005 meeting Florida Housing's Board of Directors authorized staff to accept Deloitte & Touche LLP to provide auditing services and directed staff to enter into contract negotiations for the auditing period ending December 31, 2005.
- g) Florida Housing entered into a one-year contract with Deloitte & Touche LLP effective March 26, 2006. The contract may be renewed twice. Each renewal is for an additional one-year period.
- h) At its September 8, 2006 meeting Florida Housing's Board of Directors authorized staff to renew the contract with Deloitte & Touch for the auditing period ending December 31, 2006.

2. Present Situation

- a) The term of the contract expired when the last report to Florida Housing for the auditing period ending December 31, 2006 was accepted by Florida Housing's Board of Directors. Florida Housing's Board of Directors accepted the report at its telephonic Board meeting which was held on June 22, 2007
- b) The quality of service performed by Deloitte & Touche for the auditing period ending December 31, 2006 was satisfactory. Staff supports a final one-year renewal of the contract.

PROFESSIONAL SERVICES SELECTION (PSS)

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3. **Recommendation**

- a) Staff recommends that Florida Housing renew its contract with Deloitte & Touche to provide auditing services for the auditing period ending December 31, 2007 pursuant to the existing contract, and recommends the Board direct staff to proceed to negotiate terms of the final one-year renewal of the contract.
- b) Staff further recommends that the Board direct staff to issue an RFP for auditing services going forward and authorize the Executive Director to establish a Review Committee to make a recommendation for an independent certified public accounting firm to the Board.

SPECIAL ASSETS

Action

VI. SPECIAL ASSETS

- A. Request Approval Of Workout Terms For SAIL Loan For St. John Apartments (92-049S), Which Matured 10/22/2000 And Is Now In Foreclosure With Florida Housing As Of 10/22/2005**

Development Name: St. John Apartments (“Development”)	Location: Miami-Dade
Developer/Principal: St. John Housing, LLC; St. John Community Development Corporation (“Developer”) a non-profit.	Set-Aside: 100% @ 60% AMI Terms: SAIL 50 years, 8/1/2042 HC 30 years,
Funding Sources: SAIL 92-049S HC 90L-075	Amounts: SAIL: \$753,318; 10/22/00 Housing Credits: \$239,761; 12/31/06 15yrs.
Number of Units: 35	
Demographics: Elderly and Family	1300 N.W. 2nd Avenue, Miami, FL 33136

1. Background

During the 1992 SAIL Cycle, Florida Housing awarded a \$753,318 loan to St. John Housing Ltd., a Florida Limited Partnership (Borrower) for the development of a 35-unit apartment complex in Miami-Dade County, Florida. The Development also received a 1990 allocation of low-income housing tax credits in the annual amount of \$239,761.

2. Present Situation

- a) The SAIL loan matured on 10/22/00. Florida Housing has been in negotiations with the borrower since that time to provide a payoff of the loan. To preserve our rights to enforce our lien and avoid the statute of limitations, we proceeded with a foreclosure action on 10/21/05. As of 9/30/07, the development will owe principal, interest and fees as follows:

Principal	\$ 753,318.00
Outstanding Interest 3%	135,359.41
Outstanding Interest 6% (net of forgiven amount)	<u>89,410.20</u>
Total Principal and regular interest:	\$ 978,087.61
Outstanding Interest 18% since maturity	<u>932,741.54</u>
Total due with default interest:	<u>\$1,910,829.15</u>
First Housing Servicing and Future Compliance Fees	<u>7,480.55</u>
Total with Servicing Fee	<u>\$1,918,309.70</u>

Total Principal and fees: \$760,798.55

- b) The borrower has provided a new workout proposal as follows:

- (1) St. John Housing will refinance St. John Apartments by obtaining financing from Miami-Dade County and use these funds to pay the outstanding principal of the SAIL loan.

SPECIAL ASSETS

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- (2) Florida Housing will forgive the accrued SAIL interest with two conditions:
 - (a) The Miami-Dade funds will be used to pay the outstanding SAIL principal and remaining funds would be used to rehabilitate the apartment units.
 - (b) St. John will agree to a two-year time out before requesting any funds administered by Florida Housing. This will include any affiliates of St. John and will include joint ventures.

3. **Recommendation**

- a) Recommend approval to accept payment of the full principal balance and forgive the accrued interest with the following conditions:
 - (1) The apartment units must be rehabilitated and available for rental following all conditions of the SAIL LURA. The term of the SAIL LURA will remain the same.
 - (2) The County funds will be placed into an account with Florida Housing's Servicer and the Servicer will distribute these funds to pay the SAIL principal and the expenses associated with the rehabilitation.
 - (3) St. John CDC and/or any of its affiliates will be precluded from receiving any funds administered by Florida Housing for a period of two (2) years from the time the principal balance is paid. This would include St. John as a partner in a joint venture.
 - (4) The loan servicing and compliance fees accrued and owing at the time of principal payment will be paid in full.

UNIVERSAL CYCLE

Action

VII. UNIVERSAL CYCLE

A. 2007 Universal Cycle Ranking

1. Background/Present Situation

Upon Board approval of the recommended orders, staff will present the final ranking of the Applications for the Board's consideration and approval. Staff will provide supplemental materials at the Board meeting.

2. Recommendation

Approve the ranking and direct staff to proceed with the issuing of invitations to credit underwriting and preliminary commitment letters to those Applicants that are in the funding range.