

**FLORIDA HOUSING FINANCE CORPORATION**  
**Board Meeting**  
**September 16, 2016**  
**Action Items**



# ASSET MANAGEMENT

## *Action*

### I. ASSET MANAGEMENT

#### A. Florida Housing Finance Corporation Insurance Guide

##### 1. Background

- a) Fannie Mae's Multifamily Selling and Servicing Guide (FNMA Guide) includes insurance guidelines for its national portfolio, and it is often used as a reference by other industry participants, including affordable housing providers. Recent revisions to the FNMA Guide have expanded delegated responsibilities to the lender, requiring the latter to make more in-house decisions regarding the adequacy and appropriateness of certain types and facets of insurance.
- b) Historically, the Corporation established insurance guidelines by way of specific requirements within the loan documents for a transaction. In 2002, FHFC rule Chapter 67-48 (SAIL) was amended to reference the FNMA Guide's insurance guidelines, while 67-21 (MMRB/LIHTC/HOME) referenced the FNMA Guide, but only a section pertaining to audited financial statements, not insurance.
- c) The FNMA Guide has evolved over time such that specific requirements in force 10 years ago may not be required today, and vice versa. Likewise, provisions in the loan documents have varied over time as well. For example, older loan documents may require a maximum deductible of \$5,000 per occurrence, whereas \$25,000 may be the industry standard today; mold coverage may be required in older transactions, but is typically required in environmental indemnity agreements today.
- d) Blanket policies, referring to a single "blanket" policy covering multiple properties, have been around for some time. After the 2004/2005 hurricane season, they became more common in Florida, particularly among owner/borrowers with large portfolios. However, blanket policies are often not permissible in older loan documents.
- e) The FNMA Guide does not provide nuanced State-level guidance. For example, Florida-related insurance requirements, such as sinkhole coverage and worker's compensation requirements are not addressed. Based on the nature of the FNMA portfolio, it does not address construction period insurance requirements, nor does it provide guidance for evaluating adequacy of blanket policies for property insurance. This has resulted in confusion and, in the absence of guidance, contributed to a significantly large number of non-compliance issues reported by FHFC's servicers.
- f) Historically, only non-compliance issues of a monetary nature have carried penalties or repercussions for owner/borrowers. Comparatively, insurance non-compliance, being a non-monetary infraction, it has not carried similar penalties or repercussions, thus there has been and remains little incentive for owners/borrowers to correct their non-compliant insurance issues. This has resulted in an extensive list of non-compliance issues on FHFC's insurance report requiring significant monitoring resources by the Servicers and FHFC staff.

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- g) Historically, monitoring and enforcement of insurance requirements has been carried out by FHFC or its Servicers regardless of whether FHFC was at any financial risk. For example, 9% LIHTC or MMRB with 4% LIHTC do not represent a monetary risk (loss of capital) to FHFC, yet we continue to monitor and enforce insurance requirements.

### 2. Present Situation

- a) With the shift to the Request for Application (RFA) process for the award of funding, FHFC rules were amended to remove reference to the FNMA Guide and the requirement for insurance was placed within each RFA. For example, RFA 2016-104 includes the following:

*“The Corporation shall require adequate insurance to be maintained on the Development as determined by the first mortgage lender, the Corporation, or the Corporation’s servicer, which shall meet the standards established in Part IIIA, Section 322 of Fannie Mae’s Multifamily Selling and Servicing Guide, effective February 3, 2014 (and as amended from time to time)...”*
- b) The proposed FHFC Insurance Guide (Insurance Guide) provides a single reference for insurance requirements, specific guidance for assessing the adequacy of coverage as well as measures to effectively deal with non-compliance.
- c) The FHFC Insurance Guide incorporates the FNMA Guide and is supplemented with FHFC specific guidance to address the lack thereof in the FNMA Guide (see above. Background, paragraph “e”).
- d) The FHFC Insurance Guide recognizes that the party at greatest financial risk must take on the responsibility for determining the criteria for, and maintenance of, adequate insurance. It provides guidance as applicable depending on the type of funding awarded, such as, priority lien position.
- e) Based on the applicability criteria, transactions awarded FHFC resources by FHFC from Request For Applications (RFA’s) issued during or after September 2016 will be governed by the FHFC Insurance Guide, which may be amended from time to time. RFA or competitive solicitation documents, including transaction documents, will contain insurance language consistent with the governing criteria.
- f) For developments awarded funding through the RFA process containing insurance language that does not reference the FNMA Guide and/or the Insurance Guide, the RFA language will singularly govern the insurance requirements.
- g) Noncompliance with the insurance criteria will result in the development being in default. Consequences for noncompliance with the FHFC Insurance Guide requirements for the transaction are articulated in the Guide (attached as [Exhibit A](#)).

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- h) If a determination is made that the FHFC Insurance Guide can be applied retroactively, the majority of content on the FHFC Insurance Non-Compliance report would be eliminated. This would simplify the current reporting process as well as enhance the report's value as an asset/risk management monitoring tool.

### 3. **Recommendation**

- a) Staff recommends the Board adopt the Florida Housing Finance Corporation Insurance Guide for transactions awarded resources by FHFC under the rules effective during or after September, 2016, and, upon satisfactory consultation and review with counsel, staff and consultants, retroactively apply it to FHFC's existing portfolio.

## LEGAL

### Action

## II. LEGAL

### A. In Re: Cypress Trace Associates, Ltd., et al. - FHFC Case No. 2016-038VW

<b>Development Names: (“Developments”):</b>	<b>Cypress Trace 1998-529C Cross Keys Phase II 1998-513C Bridgewater Place 1999-509C Villa Esperanza 1999-511C Captiva Club 2002-529C San Marco 2001-532C Bernwood Trace 1999-520C Crossings at University 1999-517C</b>
<b>Developer/Principal: (“Developer”):</b>	<b>Cornerstone Group Jorge Lopez</b>
<b>Number of Units: Variable</b>	<b>Location: Various</b>
<b>Type: Variable</b>	<b>Set Asides: Variable</b>
<b>Demographics: Variable</b>	<b>Variable 4% HC awards</b>

#### 1. Background

- a) Each of the 8 Developments listed above were allocated 4%, Non-Competitive tax credits in the years indicated by their Application numbers. On August 30, 2016, Florida Housing received a “Petition for Waiver of Rule 67-21.027(1) and Rule 67-21.031(2) to Permit Petitioners to Submit Qualified Contract Packages or, in the Alternative, to Modify Unit Affordability Set-Asides upon the Expiration of the Extended Use Period” (the “Petition”) on behalf of the eight Applicant entities of the above listed Developments. A copy of the Petition is attached as [Exhibit A](#).

#### 2. Present Situation

- a) Rule 67-21.031(2), Fla. Admin. Code, provides in pertinent part:
  - (1) [E]ach Housing Credit Development shall comply with any additional Housing Credit Set-Aside chosen by the Applicant in the Application.
- b) Rule 67-21.031(2), Fla. Admin. Code, further provides, in pertinent part:
  - (1) After the fourteenth year of the Compliance Period, unless otherwise obligated under the Extended Use Agreement, or a Land Use Restriction Agreement under another Corporation program, and provided the right to request a qualified contract for the Development was not waived in exchange for or connection with the award of Housing Credits, the owner of a Development may submit a qualified contract request to the Corporation.

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- c) Petitioners originally committed in their Applications and subsequent Extended Use Agreements to set-aside units for 30 years, which under the above Rules, prevents Petitioners from requesting a Qualified Contract at this time. These commitments mandate an affordability period beyond that which would have been necessary to submit a legally sufficient, non-competitive Application for 4% tax credits, ranging from 31 to 50 years.
- d) Petitioners now seek a waiver of these Rules, as they existed for each of the 8 Developments at the time of Application, to allow them to begin the Qualified Contract process via submission of Qualified Contract Packages (QCPs) to Florida Housing, or in the alternative, to curtail the Extended Use Period for each Development to 30 years, which is more typical for non-competitive tax credit allocations.
- e) Petitioners have also proposed to retain the affordable status of all 8 Developments whether the individual Developments enter into the QCP process (and are not then sold) or whether they do not enter the process, but are held for the duration of the 30 year amended Extended Use Period. Specifically, for 6 of the Developments, Petitioners propose to retain 10% of the units not disposed of in the QCP process for tenants earning at or below 40% Area Median Income (AMI), and 90% of said units for tenants earning at or below 80% of AMI. The remaining two Developments, Bernwood Trace and San Marco, include Extremely Low Income (ELI) set-aside units. For these Developments Petitioners propose the following set-asides:
  - (1) Bernwood Trace:
    - (a) 65 ELI units retained until ELI restrictions expire, 80% AMI thereafter;
    - (b) 34 units (10%) at 40% AMI; and,
    - (c) 241 units (80%) at 80% AMI.
  - (2) San Marco:
    - (a) 28 ELI units retained until ELI restrictions expire, 80% AMI thereafter;
    - (b) 26 market-rate units, which will remain so;
    - (c) 26 units at 40% AMI; and,
    - (d) 180 unites at 80% AMI.
- f) On August 31, 2016, Notice of the Petition was published in the Florida Administrative Register in Volume 42, Number 170. To date, Florida Housing has received no comments concerning the Petition.
- g) Section 120.542(2), Florida Statutes provides in pertinent part:

Variances 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.

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- h) While these Developments were funded under various processes between 14 and 18 years ago, Florida Housing's current bond funding Application process is non-competitive. Given the above and age of these Developments, granting the requested waiver would not have any impact on other participants in funding programs administered by Florida Housing, nor would it have a detrimental impact on Florida Housing, its operations or its statutory mission. Conversely, not granting the waiver would violate the fundamental principles of fairness, and subject Petitioners to unnecessary and substantial financial hardship resulting in deferred or delayed maintenance, renovations and repairs. Petitioner has also demonstrated that the purpose of the underlying statute, which is to "encourage development of low-income housing in the state" (§420.5099, Fla. Stat.), would still be achieved if the waiver is granted.

### 3. **Recommendation**

- a) Staff recommends the Board **GRANT** Petitioners' request for waivers of Rules 67-21.027(1) and Rule 67-21.031(2), Fla. Admin. Code, to permit them to begin the Qualified Contract process via submission of Qualified Contract Packages (QCPs) to Florida Housing, or in the alternative, to curtail the Extended Use Period for each Development to 30 years. This waiver would be conditioned upon Petitioners accepting a set-aside of 15% of the units of each Development for ELI tenants per the Area Median Incomes set forth in RFA 2016-109, and upon Petitioners entering into Amended Extended Use Agreements, or other amended documents as necessary, with Florida Housing to continue to maintain the Developments as affordable as described above for the extent of the amended, 30-year Extended Use Periods.

## PROFESSIONAL SERVICES SELECTION (PSS)

### *Action*

### III. PROFESSIONAL SERVICES SELECTION (PSS)

#### A. Competitive Solicitation for Housing Counseling Agencies (a/k/a Advisor Agencies) for the Hardest Hit Fund Program

##### 1. Background

- a) At the July 2010 meeting, Florida Housing's Board of Directors authorized staff to enter into contracts with firms to serve as Advisor Agencies for the Hardest Hit Fund (HHF) Program.
- b) On April 20, 2016, the United States Treasury extended the deadline for use of HHF funds from December 31, 2017 through December 31, 2020.

##### 2. Present Situation

- a) Florida Housing currently has 114 active contracts for the provision of services under this program:
  - 56 contracts for the Unemployment Mortgage Assistance Program / Mortgage Loan Reinstatement Program (UMAP/MLRP);
  - 64 for the Principal Reduction Program (PR);
  - 2 for the Modification Enabling Program (MEP); and
  - 2 for the Elderly Assistance Mortgage Program (ELMORE).
- b) The active UMAP/MLRP contracts have completed their initial terms, have exhausted all of the available renewal options, and are set to expire on June 30, 2017. The other programs have expiration dates throughout 2018.

##### 3. Recommendation

- a) Authorize staff to begin the competitive solicitation process and establish a review committee to make recommendations to the Board for multiple firms to continue to serve as Advisor Agencies for the HHF Program.