

PALM BEACH COUNTY BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: February 7, 2012 [] Consent [X] Regular [] Ordinance [] Public Hearing

Department: Department of Economic Sustainability

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve: Policies for Alternative Strategies to Foreclosure to address the approval of short sales and the receipt of deeds in lieu of foreclosure in connection with housing programs administered by the Department of Economic Sustainability (DES).

Summary: These Policies for Alternative Strategies to Foreclosure (Policies) establish standards for the approval of short sales and for the receipt of deeds in lieu of foreclosure as alternative strategies to foreclosing on County financed homeowners who become delinquent on their mortgage payments. DES administers various housing programs under which homeowners receive financial assistance in exchange for which they grant the County repayable first and/or second mortgages as security for such funding. These Programs include, but are not limited to, the Universal Housing Trust Program (UHT), the Neighborhood Stabilization Programs 1, 2, and 3 (NSP1, NSP2, and NSP3), the State Housing Initiatives Partnership Program (SHIP) and the HOME Investment Partnership Program (HOME). Homeowners who become delinquent on their County financed mortgages, or on privately financed mortgages senior to those financed by the County, may in some instances be able to avert foreclosure by short selling their homes or by conveying title to the County by means of a deed in lieu of foreclosure. Under these Policies short sales may be approved when the County holds a second mortgage, provided that the first mortgage holder is in agreement with the short sale, the homeowner does not sell the home to a relative, the homeowner does not receive any funds from the proceeds, the County approves the closing statement for the transaction, and the County receives the lesser of \$3,000 or eight percent (8%) of the remaining balance owed on the second mortgage. Deeds in lieu of foreclosure may be accepted under these Policies when the County holds a first mortgage, provided that the homeowner pays off all obligations associated with the home (such as taxes and homeowners' association fees) and delivers a deed to the County without any objectionable cloud on the title as determined by the County Attorney's Office. These Policies require homeowners to pay a non-refundable \$750 fee to recover the County's administrative costs associated with the acceptance of deeds in lieu of foreclosure. These Policies also incorporate reporting requirements to the Board of County Commissioners (Board) and the Palm Beach County Clerk and Comptroller's Office for both short sale and deed in lieu of foreclosure transactions. On January 12, 2010, the Board approved Short Sale Policy Guidelines. These Policies supersede the aforesaid Short Sale Policy Guidelines. No additional local funds are required to implement the proposed policies. (MHA) Countywide (TKF)

Background and Policy Issues: (Continued on Page 3)

Attachments:

- 1. Policies for Alternative Strategies to Foreclosure

Recommended By: [Signature] Department Director 1/13/2012 Date

Approved By: [Signature] Assistant County Administrator 1-23-12 Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2012	2013	2014	2015	2016
Capital Expenditures					
Operating Costs					
External Revenues					
Program Income					
In-Kind Match (County)					
NET FISCAL IMPACT					

# ADDITIONAL FTE POSITIONS (Cumulative)					
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Is Item Included In Current Budget? Yes No


Budget Account No.:

Fund _____ Dept _____ Unit _____ Object _____ Program Code/Period _____.

B. Recommended Sources of Funds/Summary of Fiscal Impact:

No fiscal impact.

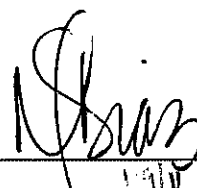
C. Departmental Fiscal Review:




 Shairette Major, Fiscal Manager I

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Development and Control Comments:



 OFMB
 1/10/12
 JB



 Contract Development and Control
 1-13-12 B. Wheller

B. Legal Sufficiency:



 Senior Assistant County Attorney

C. Other Department Review:

Department Director

Background and Policy Issues: (Continued from Page 1)

With the implementation of new housing programs that provide first and second mortgage assistance and the growth of the County's mortgage portfolio, DES has become aware of the need for these Policies in anticipation that some assisted homeowners may, over the life of their mortgages, become financially distressed thereby leading to default on their County and/or privately financed mortgages which in turn could result in foreclosure.

While DES presently has a Mortgage Foreclosure Prevention Program that could provide assistance to some affected homeowners to enable them to keep their mortgage payments current, the scope of assistance afforded by this Program is both temporary and limited. Furthermore, while DES also has First Mortgage Modification Policies in place under which homeowners could restructure their mortgage debt in order to enable them to remain in their homes and avoid foreclosure, those who do not meet the requirements for debt restructuring despite the County's best efforts, may have no other option than to become subject to foreclosure proceedings.

In instances where the institution of foreclosure proceedings becomes inevitable, DES has recognized that alternatives to foreclosure may, in some instances, be appropriate for both the homeowner and the County. The alternatives of a short sale or a deed in lieu of foreclosure as established in these Policies may have less of a negative impact on the homeowner's credit score than may occur from foreclosure, have a lesser financial impact (legal/court costs) on both parties than from foreclosure, take less time, and result in the conveyance of the home to another County income qualified homeowner rather than its sale on the open market.

**BOARD OF COUNTY COMMISSIONERS
PALM BEACH COUNTY
FLORIDA**



DEPARTMENT OF ECONOMIC SUSTAINABILITY

POLICIES FOR ALTERNATIVE STRATEGIES TO FORECLOSURE

**POLICIES EFFECTIVE AS OF
FEBRUARY 7, 2012**

1. INTRODUCTION AND PURPOSE

The Department administers various housing programs under which homeowners received financial assistance. In exchange for the receipt of such assistance, homeowners approved for funding under certain of these housing programs granted Palm Beach County (County) first and/or second mortgages as security for such funding. Under some of the aforesaid programs where the County received second mortgages, private lenders provided first mortgage financing. The Department has recognized that some of these assisted homeowners may, over the life of their mortgages, become financially distressed thereby leading to delinquency and/or default on their County and/or privately financed mortgages which in turn could result in foreclosure. While the Department presently has a Mortgage Foreclosure Prevention Program that could provide assistance to some affected homeowners to enable them to keep their mortgage payments current, the scope of assistance afforded by this program is both temporary and limited. Furthermore, while the Department also has First Mortgage Modification Policies in place under which homeowners could restructure their mortgage debt in order to enable them to remain in their homes and avoid foreclosure, those who do not meet the requirements for debt restructuring despite the County's best efforts, may have no other option than to become subject to foreclosure proceedings.

In instances where the institution of foreclosure proceedings becomes inevitable, the Department has also recognized that alternatives to foreclosure may, in some instances, be appropriate for both the homeowner and the County. The alternatives of a short sale or a deed in lieu of foreclosure as established in these Policies for Alternative Strategies to Foreclosure (Policies) may have less of a negative impact on the homeowner's creditworthiness than may occur from foreclosure, may have a lesser financial impact (legal/court costs) on both parties than from foreclosure, may take less time, and may result in the conveyance of the home to another County income qualified homeowner rather than its sale on the open market. As such, these Policies establish standards for the approval of short sales and for the receipt of deeds in lieu of foreclosure as alternative strategies to foreclosing on County financed homeowners who default on their mortgages.

2. COVERED PROGRAMS

Below is the list of housing programs implemented by the Department at the time of adoption of these Policies where financial assistance is provided in exchange for which the County receives first and/or second mortgages:

- Universal Housing Trust Program (UHT);
- Neighborhood Stabilization Programs 1, 2, and 3 (NSP1, NSP2 and NSP3);
- State Housing Initiatives Program (SHIP);
- HOME Investment Partnership Program (HOME);
- Residential Rehabilitation Program (RRP); and
- Any other housing program presently implemented by the Department and approved by the Board of County Commissioners (BCC) under which the County receives first and/or second mortgages.

All of the above listed programs are covered by these Policies. In addition, these Policies shall also cover any future housing programs approved by the BCC under which the County will receive first and/or second mortgages.

3. THE SHORT SALE PROCESS

This section of the Policies pertains to County financed homeowners who have granted the County second mortgages. Homeowners who become delinquent and/or default on their County financed second mortgages, or on their privately financed first mortgages, and who face the prospect of foreclosure or who have already had foreclosure proceedings begun against them may request the Department to approve a short sale of their homes.

Homeowners who request the Department to approve a short sale of their homes shall be required to provide the Department with documentation showing that the first mortgage holder has approved the proposed short sale.

The Department shall provide each such homeowner with the following requirements:

- The homeowner may not sell the home to a relative(s) and shall provide the Department documentation satisfactory to the Department showing their compliance with this requirement.
- The homeowners may not receive any funds, or other compensation, from the proceeds of the short sale transaction.
- The County shall receive from the proceeds of the short sale transaction, the lesser of, \$3,000 or eight percent (8%) of the remaining balance owed on the homeowner's second mortgage.
- The County must review and approve the closing statement for the short sale transaction.

In addition, the homeowner shall be informed that:

- The County shall waive its rights to file for a deficiency judgment against the homeowner upon the County's receipt of payment from the proceeds of the short sale transaction.
- The County shall provide the homeowner a satisfaction of the second mortgage, in the full amount of such mortgage, upon the County's receipt of payment from the proceeds of the short sale transaction.
- The homeowner may have a tax liability associated with the short sale transaction as determined by the Internal Revenue Service.

Upon the Department Director's approval of a short sale transaction that meets the above requirements, the Department staff shall prepare a satisfaction of mortgage on a form approved by the County Attorney's Office and deliver an executed satisfaction of mortgage, in escrow, to the closing agent who is handling the short sale transaction pending receipt of amounts payable to the County.

4. THE DEED IN LIEU OF FORECLOSURE PROCESS

This section of the Policies pertains to County financed homeowners who have granted the County first mortgages. Homeowners who become delinquent on their County financed first mortgages and who face the prospect of foreclosure, or who have already had foreclosure proceedings begun against them, may request the Department to approve the County's acceptance of a deed in lieu of foreclosure of their homes.

Prior to acting on a homeowner's request for the acceptance of a deed in lieu of foreclosure, Department staff shall meet with homeowners desirous to do so at which time such homeowners shall be provided a request form to complete and shall be provided with information that provides details about the deed in lieu of foreclosure process and which, at minimum, contains the following:

- A statement informing homeowners that the County's acceptance of a deed in lieu of foreclosure is entirely at the County's discretion and that the County has no obligation to the homeowner to do so.
- A statement informing homeowners that if the County agrees to accept a request from a homeowner to proceed with the deed in lieu of foreclosure process, a non-refundable processing fee of \$750 will be due when the request form is submitted.
- A statement informing homeowners that upon the County's acceptance of a deed in lieu of foreclosure, homeowners must pay off all obligations associated with their homes such that they deliver marketable title to the County that is free of clouds on title that are objectionable to the County. (For example, this would require homeowners to pay off any taxes or homeowners' association fees owed and to remedy any cloud on title that is found to be objectionable to the County).
- A statement informing homeowners that their inability to deliver title acceptable to the County with the delivery of a deed in lieu of foreclosure will result in the cancellation of the transaction and the forfeiture of the non-refundable processing fee.
- A statement informing homeowners that they may have a tax liability associated with the deed in lieu of foreclosure process as determined by the Internal Revenue Service.

In determining whether to approve a request for the acceptance of a deed in lieu of foreclosure from homeowners, Department staff shall:

- Find out from homeowners about any outstanding and upcoming obligations associated with their homes (other than mortgage payments owed to the County) and their ability to pay them off.
- Find out from homeowners about any liens filed against their homes and the likelihood that such liens could be removed.
- Determine whether all persons who hold title are willing to proceed with, and execute documents associated with, the deed in lieu of foreclosure process.
- Evaluate the condition of the home.

Having completed the above, Department staff shall prepare a written synopsis of their findings related to the above, make a recommendation to the Department Director regarding the approval or disapproval of requests from homeowners, and provide the basis on which the recommendation is made.

If the Department Director approves the receipt of a request for the acceptance of a deed in lieu of foreclosure, Department staff shall then inform the homeowner to submit such request and pay the applicable fee, and if the Department Director disapproves the receipt of a request for the acceptance of a deed in lieu of foreclosure, Department staff shall then prepare a denial letter from the Department Director to the homeowner outlining the reasons for the denial.

Upon the receipt of a request for the acceptance of a deed in lieu of foreclosure and the applicable fee, Department staff shall obtain an Ownership and Encumbrance report for the homeowner's property and transmit such report to the County Attorney's Office for review. Concurrently, Department staff shall obtain from the Palm Beach County tax collector the amount of real estate taxes owed per diem for the current year and obtain the amount of any back taxes owed by the homeowner for prior years. In addition, Department staff shall determine whether the homeowner owes any homeowners' association fees.

The Department may then only accept and record a deed in lieu of foreclosure if the following conditions are met:

- The homeowner executes a deed in lieu of foreclosure in a form approved by the County Attorney's Office.
- The homeowner provides the Department a cashier's check payable to the County for such amount to pay off all obligations associated with the home as determined by the Department from information received from the tax collector, the homeowners' association, and the Ownership and Encumbrance report.
- The homeowner provides the Department any affidavits, releases, or other documentation as may be required by the County Attorney's Office to remove any objectionable cloud on title to be conveyed to the County.

Upon receipt of a deed in lieu of foreclosure, the Department shall seek BCC approval to convey the home to another County income qualified homeowner.

5. REPORTING REQUIREMENTS

Within ten (10) working days after the closing on each the Department approved short sale transaction, the Department shall inform the Revenue and Cash Management Department at the Palm Beach County Clerk and Comptroller's Office in writing of such transaction.

Within ten (10) working days after the receipt of each deed in lieu of foreclosure, the Department shall inform the Revenue and Cash Management Department at the Palm Beach County Clerk and Comptroller's Office in writing of such transaction.

The Department shall, annually submit to the BCC a Receive and File agenda that lists all the Department approved short sales and all deeds in lieu of foreclosure received by the County during the reporting period.