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LONG TERM RECOVERY FROM CATASTROPHIC DISASTERS

In addition to emergent and short term assistance to families displaced or injured by the disaster, there is also a long term impact on the community. It is often those neighborhoods in the community most depended upon by low income households that are most severely damaged. Affordable housing, particularly older market rate housing and older mobile homes, are frequently decimated by hurricanes and floods. However, in rebuilding efforts, while there is significant attention to the immediate needs of the low income families displaced by the storm, there is often much less attention focused on preserving or restoring their housing and communities. As a result a significant amount of post disaster advocacy for resources must be devoted to insuring that housing and community development efforts focused on very low and extremely low income households receive at least the same amount of attention as those focused on higher income households and their communities.

However, unlike the immediate needs of the displaced tenants and homeowners - food, clothing, shelter, and health care - needs which FEMA and other emergency agencies are specifically designed to address - long term needs are as varied as the disasters themselves. Likewise, as opposed to the programmatic rules governing FEMA assistance, disaster Food Stamps, disaster Unemployment Compensation and the like, many of the issues arising during the long term disaster response are simply disaster-specific applications of much broader legal and policy issues. Each of these

issues could deserve a manual on its own and it is impossible to fully treat them within the scope of this manual.

What follows is an attempt to alert the reader to the existence of these issues, provide some overview as to identification and response and, finally, to point the direction in addressing a solution.

I **AFFORDABLE HOUSING RECOVERY**

Without question the most serious and fruitful long term housing advocacy strategy for low income households is insuring that as much as possible of the existing low income housing is repaired and returned to the market as housing, affordable to low income households. This includes not only subsidized housing but also low income market rate housing.

There are a number of reasons, including but certainly not limited to disaster related damage, that may result in the long term loss of that housing. Owners of properties with significantly appreciated underlying land values may attempt to manipulate the disaster related damage in an effort to convince the regulatory agency to remove any low income housing restrictions. Local governmental agencies may attempt to use the disaster related damage as a type of urban renewal, trying to discourage the return of unwanted affordable housing. And finally, many owners of older affordable market rate housing may simply be uninsured or under-insured and thus unable to fully repair the damage.

While every disaster is unique in its range, severity and types of damage, there

are certain common themes that emerge during the recovery effort. These suggestions attempt to provide some guidance as to various tasks and advocacy efforts that can be undertaken in response to any serious disaster. Specifically, it is initially vitally important to identify all of the affordable housing resources affected by the disasters and, to the extent possible, shepherd them back to occupancy. This involves ongoing contact and communication with owners, regulators and tenants. It is also important to undertake advocacy to access and target new resources so that they might be made available to extremely low income households. Finally it is important to work with local governments to insure that new resources can work for the most needy of households and to prevent “redevelopment” efforts designed to prevent the return of our clients to the “new” city.

1. Identification of Low Income Housing Resources

The first step in any effort to insure that losses of affordable housing is minimized is identifying the affordable housing resources that existed prior to the disaster. While it is possible to do this after the disaster hits, it is far more efficient to conduct a census of subsidized affordable housing long before any disaster strikes and to periodically update the census. When a disaster hits, the tenants are scattered. To the extent there is a realistic list of preexisting subsidized units, those scattered tenants can be organized based on their prestorm addresses and can become a powerful force for requiring the restoration and repair of those buildings.

a. Subsidized Housing

(i) **Federal** - Identifying subsidized housing is particularly difficult because there are so many different sources of subsidy and there are few centralized databases listing subsidized.

While the properties can be roughly categorized by the type of subsidy, units are often subsidized by more than one type of assistance. It is beyond the scope of this manual to describe all of the possible sources of subsidies. An excellent reference for federal subsidy programs is HUD Housing Programs: Tenants' Rights (3d ed.), pp. 1/22 et seq., available from the National Housing Law Project.

(ii) **State** - Florida also has state subsidy programs, funded through the Sadowski Act Housing Trust Fund, Fla. Stat., 420.0001, et seq. and administered by the Florida Housing Finance Corporation. The Corporation administers the principal state financed rental program, SAIL (see Fla. Stat. 420.5087) , in a consolidated funding cycle with federal Low Income Housing Tax Credits and HOME funds. An explanation of the Florida state programs is available at the Corporation's website, <http://www.floridahousing.org> and the rules governing their administration are available in the Fla. Adm. Code, 67-48.

(iii) **Local** - Several counties and many cities also have locally administered affordable housing programs which result in subsidized units with recorded regulatory agreements.

Even after you have listed all of the possible subsidy programs, obtaining the exact addresses of all subsidized units is a difficult and tedious task, best performed before a disaster when timely responses to public records requests are possible. However, there are several sources which when combined can provide a relatively complete listing of subsidized units.

(A) The Shimberg Center at the University of Florida has an excellent website

with information on housing programs in the State of Florida. The website includes an “assisted housing inventory” and “public housing inventory” which attempts to list all subsidized projects within the State of Florida, sorted by County and listed by address. The website is available at www.flhousingdata.shimberg.ufl.edu/

(B) A list of all units assisted with Low Income Housing Tax Credits can be found at <http://lihtc.huduser.org> .

(C) U.S. HUD maintains a database of Project Based Section 8 and HUD assisted multifamily properties at <http://www.hud.gov/offices/hsg/mfh/exp/mfhdiscl.cfm>

b. Market Rate Affordable Housing

In addition to subsidized housing most communities have significant amounts of *affordable market rate housing*, i.e., housing which rents, without subsidy, for a rate that is affordable to low income households. This group includes older mobile home parks, as well as older, unsubsidized but affordable rentals. In addition, it includes owner occupied homes, often occupied by elderly couples who have paid off any existing mortgage. While this housing is far more difficult to identify and quantify and is often overlooked in disaster recovery, it is often a far more significant resource (in terms of numbers of units) than subsidized units and far more at risk in a disaster.

2. Interim Policy Advocacy on Behalf of Displaced Tenants

a. Coordination and Communication Among Affordable Housing Providers

It is vital that there be communication between advocates, owners and regulatory bodies on an ongoing basis during the recovery period. While the regulatory agencies will often be in

touch with their developers, advocates are frequently excluded unless they proactively join the conversations. It is essential that certain policies be determined at the outset to guide the recovery efforts. The following are examples of the type of cooperative policies that might be considered by such a group.

(i) **Rent Rolls** - It is vital that current rent rolls be obtained on every damaged project as soon as possible. Tenants will be scattered by the disaster and the rent rolls are often the most accurate picture of who occupied the units at the time of the disaster. The regulatory agencies, such as the Florida Housing Finance Corporation or U.S. HUD, can be useful in obtaining this information from the owners. Advocates and tenants can similarly apply pressure on local Housing Authorities to preserve the rent rolls. Housing Authority rent rolls are public records and can be requested by advocates to insure that the information is preserved.

(ii) **Right of Return** - It is important that the developers, regulators, landlords and advocates agree on a common overall “right of return” policy. The basic policy should be that the tenants who relocated due to the storm did so temporarily and have an absolute right to return when all necessary repairs are completed. After Hurricane Andrew, U.S. HUD issued a directive to its owners, requiring them to recognize the “right of return” of its tenants.

This “right of return” policy accomplishes several goals. First, it allows for an initial communication with the tenants as to their rights (during the early period following the storm when they are still visiting the storm damaged site.) Second, it ties the tenants to the projects during the interim recovery period. Third, it prevents landlords from “rescreening” tenants at the time of return. Essentially, tenants should be permitted to return just as they were

on the day before the storm. If something occurred in the interim period that might be cause for eviction - they should be permitted to return and then be subjected to an eviction proceeding.

(iii) *Tenant Communication* - It is also important that owners maintain communication with their tenants and, to the greatest extent possible, secure forwarding addresses. If the former tenants cannot be located at the time the building is repaired any rights they might have to return will be forfeited once the building has been filled. By obtaining an early “right of return” commitment, it is possible to provide tenants with an initial friendly communication from the landlord - which will keep lines of communication open. In addition, having an accurate rent roll list allows for cross checking names with FEMA and other assisting agencies to insure that families, who may be in temporary shelters, are informed when their former apartments are ready to be reoccupied.

(iv) *Ongoing Adaptive Policy Determination and Development* - Housing program policy is not made with disasters in mind. Each disaster is *sui generis*, creating its own unique need for ad hoc policy determinations. While establishing a “right of return” policy answers a number of policy questions, the disintegration of families during the stress of relocation will present a myriad of issues. For example, how do developers accommodate families who have separated in the interim and now need two smaller units? Ongoing communication between the regulatory agencies, the owners and tenant advocates creates a forum for discussing these ad hoc policies and attempting to create some regularity of decision making.

3. Insuring the Restoration of All Affordable Housing

a. Establish Complete Restoration as the Goal

Complete restoration of all affordable housing, including all public housing, must be the norm - the standard - for all advocacy efforts. All of the previously described advocacy efforts - obtaining rent rolls, fostering communication, establishing a right of return - are designed to both operate with and to independently encourage the complete restoration of all affordable units.

If there is an ongoing communication effort, then it will be easier to distinguish and focus on those few projects for which complete restoration is most problematic. There are several possible reasons for a failure to repair and each has to be focused on separately.

(i) *Insufficient Funds* - Most regulated projects should be fully insured as a condition of their governmental assistance. Therefore, it should be rare that a governmentally subsidized privately owned project fails to have sufficient insurance to fully repair. Any argument that a project is under-insured should be very closely examined. Public Housing projects, on the other hand, may have such a great deal of deferred maintenance that restoration overwhelms the resources of the local housing authority. Therefore, it may be important to insure that any state or federal affordable housing disaster assistance program include funds specifically designed to address the needs of under-insured projects.

(ii) *Economic Disincentives to Repair* - For certain private subsidized developers, the disaster could provide an excuse for exiting the affordable housing restrictions on their units. Project Based Section 8 developments, for example, who are committed to long term contracts with U.S. HUD at fixed rents, it may be far more lucrative to rebuild the units as market rate rentals or condominiums. For such developers, there are strong incentives to exaggerate their damages and the futility of repair in the hope that U.S. HUD will simply release them from

any restrictions. Depending on the circumstances, any such efforts by owners, with or without HUD complicity should be challenged. I am not aware of any disaster specific legal challenges. Thus advocates must use the same challenges that would be available without a disaster - adapted to the disaster context. An excellent description of the legal tools available for fighting attempts by owners or HUD to relieve themselves of low income housing restrictions is contained in HUD Housing Programs: Tenants' Rights (3d ed.), *supra.*, at Section 15.3, *et seq.* (for HUD subsidized projects) and at Section 15.4, *et seq.* (for Project Based Section 8 Projects).

For certain Public Housing Authorities, a similar disincentive to repair exists as they may wish to use the disaster as an excuse to demolish and "voucher out" a damaged (and unwanted) public housing project. As with other federally assisted housing the same challenges would be available as are available without a disaster. An excellent description of the legal tools available for fighting attempts by Public Housing Authorities to demolish existing public housing is contained in HUD Housing Programs: Tenants' Rights (3d ed.), *supra.*, at Section 15.2, *et seq.*

II PARTICIPATION IN POST DISASTER RESOURCE ADVOCACY

After a serious disaster, every community will organize to focus advocacy for sufficient resources to respond and recover. This organizational effort may be organized privately or by the government. The Hurricane Andrew post disaster resource advocacy effort, called "We Will Rebuild", was organized in Miami-Dade County by private and public community leaders. The post 2004 Hurricane season state wide rebuilding effort was spearheaded by Governor Bush's Hurricane Housing Working Group, working out of the Governor's Office.

In either case it is vital that advocates for the needs of extremely low income households be part of these housing advocacy efforts. Extremely low income families, less than 30% AMI, consistently have some of the most severe housing needs as a result of the hurricanes in Florida. These families frequently reside in structures less able to withstand the storm, have few, if any, personal or family resources to assist with recovery, and are often at the mercy of others, landlords or mobile home park owners, regarding restoring or replacing their damaged homes.

The needs of these families are as diverse as they are. They include households that were homeless before the storm, as well as the many thousands of working poor, including contingent workers, migrant workers and the unemployed, as well as the elderly and the disabled. Many of these households are the workforce for our most important industries - tourism, agriculture, personal services. Therefore, providing diverse types of housing assistance for these families is a significant challenge in the post disaster recovery period.

It is important to remember, even after emergency shelter is provided, these households will have both “interim” and “long term” needs, and both of these needs must be addressed. Many of these households will be without adequate housing months after the storms and will not be able to wait the one or two years for the development of new subsidized housing opportunities. The families immediate needs must be addressed if they are to take advantage of the long term programs.

The following are some of the principal types of assistance that can be requested as part of any post disaster advocacy efforts¹:

¹ These suggestions for resource advocacy were taken from suggestions made to the Governor’s Hurricane Housing Working Group, established by Governor Bush after the hurricane

1. Increased Availability of Housing Vouchers and Rental Assistance

(i) *Federal Vouchers* - The federal Section 8 housing voucher program is currently the single largest resource for housing the extremely low income and very low income families in Florida. Every effort should be made to seek any additional federal vouchers that may be available. There is often a disincentive to request vouchers as the destruction of affordable rental housing can sometimes render them virtually useless in the short term. However, the private rental stock will almost certainly return more quickly than any new construction. Moreover, much of the new construction is often HOME financed or Low Income Housing Tax Credit financed, resulting in rents that are generally unaffordable to extremely low income households. Section 8 vouchers is the single housing resource which is guaranteed to provide affordable housing for extremely low income households.

(ii) *Interim State Voucher Program* - After the 2004 Hurricane season, Florida developed a short term supplemental housing voucher program that could provide a “bridge” to permit poor workers to remain in their communities as they await the development of longer term solutions.

(iii) *Relocation Expense Subsidy* - Needy families living in housing damaged by hurricanes often need relocation expenses such as security deposits, utility payment deposits, and first or last months rent which are not provided for by FEMA. Such a fund can also be used for temporary storage of household furnishings, moving costs, etc.

season of 2004.

(iv) *Increased Availability of Interim FEMA Trailer Assistance* - FEMA

trailers are one of the few sources of “interim housing” in areas where there are no units to rent with vouchers. Assuming that the newly constructed subsidized units will take 18 months to two years to come on line, the only interim resources for extremely low income households will be rent subsidy programs or FEMA Trailers. After Hurricane Andrew, the FEMA trailers were vital in providing a housing resource until the long term subsidized housing resources began to return. FEMA should be urged to make maximum use of trailers in situations where long term housing is not available.

2. *Prioritization of Funding*

(i) *Targeting Extremely Low Income Households Must Be the Top Priority* -

After every disaster, significant amounts of one time funds are identified. Housing advocates must advocate not only with respect to the amount of these funds but, more importantly, with respect to the prioritization of their expenditure. One of the highest priorities must be rental housing for the extremely low and very low income households. After a severe storm or series of storms, privately owned, unsubsidized affordable housing will often virtually cease to exist in the areas hit hardest by the hurricanes. That housing cannot be replaced at the same rents without significant subsidies.

(ii) *We must Advocate for Development of Imaginative Deep Subsidy Programs to Assist the Lowest Income Households* - One of the objections to programs targeted exclusively to the lowest income households is that they fail in the absence of an ongoing operating subsidy. While this notion should be confronted directly, the desperate and difficult situations after a serious disaster can sometimes be utilized to gain acceptance for programs and

policies that might otherwise be rejected as too highly targeted, or too novel. The following are a few programs that were suggested to the Governor's Hurricane Housing Working Group following the 2004 storms:

(iii) *Community Land Trust* - It was suggested that Florida should provide subsidies to impacted counties for the purpose of purchasing mobile home park properties to be used for housing extremely and very low income families for a term of no less than 50 years. Priority could be given for the purchase of properties that suffered damage in the hurricanes and are in danger of being converted to uses which do not serve the extremely and very low income. Local governments could transfer title to the properties to community land trusts (nonprofit organizations that could be set-up with the assistance of the local government). This program could greatly assist in stemming the widespread loss of mobile home park properties due to the combination of market forces and the hurricanes, with the displacement of thousands of extremely and very low income Floridians.

(iv) *Manufactured Home Loan Guarantee Fund* - It was suggested that Florida could establish a manufactured home loan guaranty program to be used as a credit enhancement for the financing of individual manufactured homes, to enable the buyer to obtain the same interest rate and closing fees on a manufactured home (built to post 1994 standards, with adequate tie downs) as a stick built home. The manufactured home would be required to be located on property owned by the buyer prior to or at closing. This program could also be supplemented with a down payment and closing cost assistance program. This program should to a substantial extent be targeted to rural areas and could result in ownership opportunities for extremely low income households.

(v) *Extremely Low Income Targeted Development Subsidy* - Florida should

provide a deep subsidy to developers using bonds with 4% tax credits to set-aside 15% of the units for extremely low income families and 10% of the units for very low income families for a term of no less than 50 years. This serves the purpose of using the much available bond money with 4% federal tax credits to create permanent housing for the extremely low income in a mixed income development. The Florida Housing Finance Corporation could administer these monies with the multifamily mortgage revenue bond program.

(vi) *Capacity Building among Community Based Developers* - Often a hurricane can result in a huge surge in reconstruction and construction of affordable housing in a damaged community. It is important that the influx of funds be accompanied with some funding to assist local community based nonprofit developers to have a fair chance to access those funds.

3. Advocates must Maintain Vigilance over Local ReBuilding and Planning Efforts to Insure that Former Low Income Residents are Included in the Post Disaster Community.

a. The Redevelopment Syndrome

Just as it is important to be part of the larger resource advocacy efforts, so to it is vitally important to participate in local government post disaster planning efforts. Frequently, particularly in smaller jurisdictions, local governments attempt to use the destruction caused by hurricanes as a type of “redevelopment” selectively rebuilding or refusing to rebuild housing based on the perceived attractiveness of its potential inhabitants. Any such effort when based on considerations of race, ethnicity or family size is subject to challenge as a violation of Title VIII of the Civil Rights Act of 1968, 42 U.S.C. §§ 3601, et seq.; the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution. For an excellent discussion of the law

challenging discriminatory zoning and land use decisions see, James A. Kushner, Fair Housing, Discrimination in Real Estate, Community Development and Revitalization, 2d Ed., Ch. 7, §§ 7.02 through 7.14.

b. Mobile Home Parks

Mobile home parks are frequently one of the least desirable land uses in the wake of a hurricane. Often local governments will take action to prevent them from being rebuilt or restored after the storm. Mobile home parks, however, provide one of the more affordable market rate housing options for extremely low income households. Therefore, advocacy efforts should be directed at the maintaining affordable mobile home parks whenever possible. If there is any evidence that the mobile home park is being closed due to the race, ethnicity or family size of the residents (or former residents) then the action of the local government may be subject to challenge as a violation of Title VIII of the Civil Rights Act of 1968, 42 U.S.C. §§ 3601, et seq.; the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution. For an excellent discussion of the law challenging discriminatory zoning and land use decisions see, James A. Kushner, Fair Housing, Discrimination in Real Estate, Community Development and Revitalization, 2d Ed., Ch. 7, §§ 7.02 through 7.14.

In addition, if the mobile home park is closed due to rezoning or other land use change during the period of post storm vacancy, then the advocate should review Fla. Stat., 723.083 which prohibits any local agency from approving any rezoning or taking “any other official action which would result in the removal or relocation of mobile home owners residing in a mobile home park without first determining that adequate mobile home parks or other suitable facilities exist for the relocation of the mobile home owners.”

c. Unmet Needs Consortium

A very positive and extremely useful local planning effort is the Unmet Needs Consortium. This is an informal assembly of social service, housing and other local emergency needs providers, each of whom have caseworkers working with storm victims. After obtaining waivers of confidentiality, they present particularly difficult or complex cases to the entire group who combine their resources in responding to each individual case worker's presentation. As a result, storm victims are given access to a large panoply of services and funds which they otherwise would be unable to obtain from a single agency.

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