



MEMORANDUM

June 7, 2005

TO: Georgia Community Loan Fund, Inc.

FROM: Sutherland Asbill & Brennan LLP

RE: **State Affordable Housing Funds**

INTRODUCTION:

This memorandum contains information about various representative state legislation creating affordable housing funds and community land trusts. Some of these funds and trusts exist primarily for the purpose of providing loans, while others provide both loans and grants as well as technical assistance and other programs to assist persons with low and moderate income, including the elderly and persons with disabilities, to obtain affordable housing. Although each is created with unique administration and oversight mechanisms, many are administered by a state department or agency, and some states have created separate corporations with a governing board of directors to oversee the funds. Several state legislatures have also made provisions requiring that these programs allocate certain percentages of funding to provide assistance to rural areas in each state.

DISCUSSION:

A. Statutes Creating Affordable Housing Funds

Several states have created affordable housing funds that provide both grants and loans to create affordable housing. For instance, the Kentucky Legislature created both a Housing Development Fund and an Affordable Housing Trust Fund, which are administered by the Kentucky Housing Corporation. KY. REV. STAT.

ANN. §§ 198A.080, 198A.710 (2004). The Housing Development Fund provides a source of funding to make loans and grants in order to defray development costs of residential housing, provide mortgages either for purchase or rehabilitation of residential housing for low and moderate-income families, and make or participate in making construction loans that are not federally insured or otherwise available from private lenders. *Id.* § 198A.080(5). The Affordable Housing Trust Fund is authorized to make loans or grants for eligible activities, including the “[a]cquisition of housing units for the purpose of preservation or conversion as very low-income housing,” and “[n]ew construction or rehabilitation of very low income housing.” *Id.* § 198A.715(1)-(2). Housing units provided under the Affordable Housing Trust Fund must be deed-restricted, and if very low-income persons are displaced as a result of the development of housing pursuant to moneys received from the Fund, the development project must be designed to pay all reasonable relocation costs for those who have been displaced. *Id.* § 198A.715(4)-(5). Another facet of the Fund requires that 40% of the moneys in the Fund be used for rural areas of the state. *Id.* § 198A.720(6).

The Iowa Finance Authority administers Iowa’s Housing Improvement Fund Program (“Program”). IOWA CODE § 16.100 (2005). The Program provides financial assistance in the form of loans, guarantees, grants, and interest subsidies to low-income persons with disabilities, elderly persons, and families. *Id.* § 16.100(1)-(2). Other financial assistance provided by the Program includes a home maintenance and repair program, a rental rehabilitation program, and a home ownership incentive program, with 5% of the funds expended under the home ownership incentive program used specifically to finance manufactured homes in communities of less than ten thousand. *Id.* § 16.100(2)(a)-(c). Within the Iowa Finance Authority, there is a Housing Trust Fund (“Fund”), which receives assets from the Iowa Housing Corporation and appropriations from the Iowa General Assembly “to be used for the development and preservation of affordable housing for low-income people in the state.” *Id.* § 16.181(1)(a). Sixty percent of the moneys in the Fund are allocated for a local housing trust program, and 40% of the moneys in the Fund are allocated for a project-based housing program. *Id.* § 16.181(1)(b)-(c).

The Nebraska Legislature also created an Affordable Housing Trust Fund (“Fund”). This Fund is located within the State Department of Economic Development “to finance loans, grants, subsidies, credit enhancements, and other financial assistance for community affordable housing projects.” NEB. REV. STAT. § 58-705 (2004). The Fund includes moneys from appropriations from the

Legislature, grants, private contributions, and repayment of loans. *Id.* § 58-703. A housing advisory committee appointed by the Governor was also created to oversee the operation of the Fund and coordinate low-income housing efforts throughout the state. *Id.* § 58-704.

New Hampshire's Affordable Housing Fund ("Fund") is used "to facilitate the purchase and rehabilitation or construction of affordable housing primarily for low and moderate income persons and families . . . and for pre-construction technical assistance to entities which undertake such efforts." N.H. REV. STAT. ANN. § 204-C:57(I) (2004). The Fund is located within the New Hampshire Housing Finance Authority ("Authority") and contains funds from government appropriations and grants. *Id.* The Authority may enter into both grants and loans with applicants seeking affordable housing. *Id.* § 204-C:57(II). The Authority is required to make reasonable efforts to ensure that all geographic areas of the state seeking funding receive assistance and is prohibited from providing any financial assistance to projects where more than 50% of the units will not be affordable for people with low and moderate incomes. *Id.* § 204-C:57(III)-(IV).

New Hampshire has also established a Low and Moderate Income Housing Loan Program ("Program"). *Id.* § 204-C:64. This Program is also administered by the Authority and makes "low interest loans to low and moderate income persons for the purpose of assisting them to make down payments on single family homes and to pay closing costs and fees associated with the purchase of such homes." *Id.* Funds for the Program are provided as "the general court may specifically appropriate from time to time to the authority." *Id.* § 204-C:65. All persons who contract with the Authority for a loan from the Program must agree that if the "property is sold, or not longer owner occupied, the loan provided under this program shall be immediately due and payable." *Id.* § 204-C:66.

Virginia created the Virginia Housing Partnership Revolving Fund ("Fund") with moneys appropriated by the General Assembly as well as income from loans, investments, and donations. VA. CODE ANN. § 36-142 (2005). The purpose of the Fund is to "provide additional affordable housing opportunities for low and moderate income Virginians, by preserving existing housing units, by producing new housing units and by assisting persons with special needs to obtain adequate housing." *Id.* The Fund is administered and managed by the Virginia Housing Development Authority ("HDA"). *Id.* Moneys in the Fund may be used both to make loans or to provide grants for the "acquisition, construction, improvement, ownership or occupancy of housing developments and residential housing for

persons and families of low or moderate income.” *Id.* §§ 36-146, 36-147. The General Assembly also created a provision allowing the HDA to form a corporation under the control and supervision of the HDA in order to administer and manage the Fund. *Id.* § 36-149.

The West Virginia Affordable Housing Trust Fund (“Fund”) was “established as a governmental instrumentality of the state and public body corporate.” W. VA. CODE § 31-18D-4 (2004). The Fund is administered and managed by a board of directors and makes both loans and grants for various activities, such as new construction, rehabilitation, repair of acquisition of housing for low or moderate income persons, loan guarantees, and down payments, closing costs, and foreclosure prevention. *Id.* §§ 31-18D-5, 31-18D-7. Specific provisions require that the board ensure there is an equitable distribution of funds throughout different geographic areas of the state, including urban and rural areas, and the board also provides funds for technical assistance and monitors services and projects, among other duties. *Id.* § 31-18D-6.

Illinois’ Affordable Housing Trust Program (“Program”) was created by the Illinois Legislature “for the purpose of developing and coordinating public and private resources targeted to meet the affordable housing needs of low-income and very low-income households in the State of Illinois.” 310 ILL. COMP. STAT. 65/4 (2005). The Program is funded by the Illinois Affordable Housing Trust Fund (“Trust Fund”), which is a separate fund within the State Treasury. *Id.* at 65/4-5. The Trust Fund “may be used to make grants, mortgages, or other loans to acquire, construct, rehabilitate, develop, operate, insure, and retain affordable single-family and multi-family housing . . . for low-income and very low-income households.” *Id.* at 65/8. Loans made from the Trust Fund “may be at no interest or at below market interest rates, with or without security, and may include loans for predevelopment financing.” *Id.* at 65/10(c). Other facets of the Program include providing housing development credits, a senior congregate housing demonstration project for low and very low-income seniors who are at least 65 years of age, and rural housing projects, which issue notes and bonds to finance rural community housing projects for low and very low-income households. *Id.* 65/12-13, 15.

Indiana’s Affordable Housing Fund (“Fund”) consists of appropriations from the Indiana General Assembly, as well as gifts, grants, and investment income earned from the fund’s assets. IND. CODE §§ 5-20-5-7, -11 (2005). The Indiana Housing Financing Authority administers the Fund and provides grants, loans, and loan guarantees to assist lower income families to purchase, construct,

rehabilitate, develop, and operate affordable housing, as well as rent and rent supplements. *Id.* §§ 5-20-5-8, -10. Moneys from this Fund are specifically earmarked to be distributed equally among rural and urban lower income families. *Id.* § 5-20-5-9.

Other states legislatures have created funds primarily to provide loans to entities seeking to purchase or develop affordable housing. For instance, the Florida Legislature has specifically stated in its housing strategy policy that there is a preference that state funds be used for loans rather than grants. FLA. STAT. ANN. § 420.0003(3)(e)(4) (2005). The Florida Legislature created a public corporation called the Florida Housing Finance Corporation (“Corporation”), which resides in the Department of Community Affairs, although the Corporation “is a separate budget entity and is not subject to control, supervision, or direction by the Department of Community Affairs.” *Id.* § 420.504(1)&(3) The Corporation is governed by a board of directors and is “organized to provide and promote the public welfare by administering the governmental function of financing or refinancing housing and related facilities in Florida.” *Id.* § 420.504(1). The Corporation administers the Florida Affordable Housing Guarantee Program (“Program”), which was created to stimulate “private sector lending activities to increase the supply and lower the cost of financing or refinancing eligible housing” by “[c]reating security mechanisms to allow lenders to sell affordable housing loans in the secondary market.” *Id.* § 420.5092(1)(a)-(b). Within the Program is an Affordable Housing Guarantee Fund, which was created and established with proceeds of revenue bonds. *Id.* § 420.5092(2)(e). The Corporation also operates the Florida Affordable Housing Catalyst Program, which “provide[s] specialized technical support to local governments and community-based organizations to implement . . . affordable housing programs.” *Id.* § 420.531.

The Maryland General Assembly created the Maryland Housing Fund (“Fund”) also primarily as a loan fund as a result of finding that “the flow of private investment capital into adequate housing can be stimulated by a system insuring qualified lending institutions against losses resulting from nonpayment of money owed under the terms of a note, bond, or other evidence of indebtedness,” and that “adequate housing can and should be provided by private capital under our free enterprise system.” MD. CODE ANN., Housing & Comm. Dev. §§ 3-202(a)(1), (2), 3-203 (2005). The Fund consists of several sources of income, including state appropriations and proceeds of bonds issued for the Fund, which are used to insure loans, insure bonds or notes issued to finance projects eligible for insurance, and to provide other forms of credit enhancement. *Id.* § 3-203(e),(g).

The Mississippi Legislature created the Mississippi Home Corporation to “raise funds from private investors in order to make such private funds available to finance the acquisition, construction, rehabilitation and improvement of residential and rental housing for persons of low and moderate income.” MISS. CODE ANN. § 43-33-704(2) (2005). The Corporation is considered a “public body corporate and politic, separate and apart from the state, constituting a governmental instrumentality.” *Id.* § 43-33-702(d). Some of the powers of the Corporation include the power to make loans to mortgage lenders, to purchase loans from mortgage lenders and to make loans to purchase, improve, and rehabilitate existing residential housing for low and moderate income persons. *Id.* § 43-33-717(2)-(3). There is also a Mississippi Affordable Housing Development Fund in the State Treasury, which is used to support programs administered by the Corporation, and it consists of “any appropriations, donations, gifts, grants or loans.” *Id.* § 43-33-759.

The Vermont General Assembly created a “hybrid” affordable housing fund, called the Housing and Conservation Trust Fund (“Fund”). VT. STAT. ANN. tit. 10, § 312 (2004). The Fund has “dual goals of creating affordable housing for Vermonters, and conserving and protecting Vermont’s agricultural land, historic properties, important natural areas and recreational lands.” *Id.* § 302. The Fund’s sources of revenue come from 50% of the revenue from a property transfer, funds appropriated by the General Assembly, and donated funds and it is administered by the Vermont Housing and Conservation Board (“Board”). *Id.* §§ 311-312. The Board may distribute both grants and funds to eligible applicants, and there is a specific provision requiring the Board to “seek out and fund not-for-profit organizations and municipalities that can assist any region of the state which has high unemployment and low per capita income. *Id.* § 321(b).

One state has developed a program with the sole purpose of providing affordable housing rehabilitation assistance. The Delaware General Assembly created the Twenty-First Century Fund (“Fund”) as part of the Twenty-First Century Fund Investments Act of 1995. DEL. CODE ANN. tit. 29, § 6102A(b)(1) (2005). The Fund was initially created from the proceeds of a \$35,000,000 court settlement Delaware received, and the Act provides that the General Assembly may appropriate additional funds at any time. *Id.* Although the Fund was created for many purposes, such as farmland preservation and a parks endowment, there is a separate account for neighborhood revitalization to be used to “expand affordable housing opportunities for families and improve entire communities through the rehabilitation of existing homes.” *Id.* §6102A(f)(1). The Fund is administered

according to guidelines created by the Council on Housing and the State Housing Director, and the account is created in the Delaware Economic Development Office. *Id.*

B. Statutes Creating Community Land Trusts

Some states have created community land trusts (“CLT”), which usually work with nonprofit entities to minimize the cost of land to home owners by splitting the ownership interest between the land and the home. Under most CLTs, the CLT or the nonprofit organization retains ownership in the land and leases or sells the home to low-income families for affordable housing.

The Connecticut Legislature created a Housing Land Bank and Land Trust Fund (“Fund”) “to encourage the development of decent and affordable housing for low and moderate income families by providing grants-in-aid to nonprofit corporations.” CONN. GEN. STAT. § 8-214c (2005). The Fund receives moneys from the proceeds of bond sales authorized by the State Bond Commission. *Id.* § 8-214e. Under Connecticut’s program, the state may contract with a nonprofit corporation for state financial assistance, which can be in the form of a state grant-in-aid, a loan, or a deferred loan, to be used to acquire, hold and manage real property in order to provide affordable housing low and moderate income families. *Id.* § 8-214d(a). The nonprofit corporation then retains title to the real property, and retains the “first option to purchase any structures and improvements transferred at a below-market price agreed to at the time of such transfer.” *Id.* § 8-214d(b)(2)-(3). Alternatively, the nonprofit corporation may convey title to structures and improvements on the land to families of low and moderate income. *Id.* § 8-214d(b).

Maine has a similar CLT, the Maine Affordable Housing Land Trust Fund (“Fund”). ME. REV. STAT. ANN. tit. 30-A, § 5035 (2004). Sources of funding include appropriations from the state’s general fund, proceeds from the issuance of state bonds, investments, and land sales. *Id.* § 5035(2). Maine’s Office of Nonprofit Housing oversees the Fund, and works with nonprofit organizations to provide grants, loans, and other resources to preserve and purchase land for affordable housing. *Id.* §§ 5022, 5033-5034.