



# Agenda Report

2725 Judge Fran Jamieson  
Way  
Viera, FL 32940

## Consent

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F.7.

1/26/2021

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### **Subject:**

Approval, Re: Housing and Human Services Department Policy for Foreclosure

### **Fiscal Impact:**

FY 20-21: There will be no impact to the General Fund. All future costs associated with foreclosure with be paid using the Brevard County Affordable Housing Trust Fund (Fund 0035, Cost Center 221010).

### **Dept/Office:**

Housing and Human Services

### **Requested Action:**

It is requested that the Board of County Commissioners review, approve, and authorize the Chair to sign the Housing and Human Services Department Policy for Foreclosure.

### **Summary Explanation and Background:**

Numerous programs administered by the Housing and Human Services Department (Department) are designed to provide a variety of affordable housing activities from first time home buyer to rehabilitation to the creation of new affordable housing. In each instance where local, state, and/or federal funds are expended the Department seeks to protect taxpayer investment utilizing mortgages, liens, and/or a Land Use Restriction Agreement (LURA). Occasionally an assisted Mortgagor, which can be an agency or individual, defaults upon the conditions of a security instrument. Up until this point the Department, in conjunction with the County Attorney's Office, has been able to cure these issues and resume compliance. However, it is only a matter of time before such an issue is unable to be cured. While these security instruments identify the County's right to declare all of the sums secured by them to be due and payable immediately and contemplate foreclosure, there is a lack of direction from the Board of County Commissioners on the process for pursuing a foreclosure action in court.

At no time will a foreclosure proceeding be initiated due to non-payment. The vast majority of Department security instruments are forgivable liens, which expire after a defined affordability period without any funds being repaid. The exception for forgivable liens is the Purchase Assistance Program (First Time Homebuyer) when assistance is given to households between 81% - 120% of area median income. These households agree to repay the mortgage over a 10-year period and if they default (don't pay) their liens are frozen at the time of default and the lien plus interest will remain on the property until they come into compliance or the property is sold and the lien is repaid.

The Department Foreclosure Policy is meant to address those properties who refuse to correct program violations during the period of affordability (for example, not renting to low income individuals/families, charging more rent than is allowed per HUD regulations, etc.) which could result in negative findings during an

audit/monitoring and might require repayment from the General Fund.

The attached policy: (1) provides guidance and clarity regarding the steps required to foreclose on any property (assisted with funds under the discretion of the Department) with a mortgage, lien, or LURA; (2) identifies the Department as being responsible for the administration and monitoring of the policy; (3) identifies the Brevard County Affordable Housing Trust Fund (Non-General Fund) as the funding source for fees and costs associated with foreclosure; (4) authorizes the Department Director to act as the County's Agent and to take all necessary steps to initiate foreclosure proceedings; and, (5) identifies how recaptured funds will be managed.

**Clerk to the Board Instructions:**

Please have the Chair sign, the Clerk Attest, and then return the executed Policy to the Housing and Human Services Department.



Kimberly Powell, Clerk to the Board, 400 South Street • P.O. Box 999, Titusville, Florida 32781-0999

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January 27, 2021

**M E M O R A N D U M**

**TO:** Frank Abbate, County Manager

**RE:** Item F.7., Approval of Housing and Human Services Department Policy for Foreclosure

The Board of County Commissioners, in regular session on January 26, 2021, approved and authorized the Chair to execute the Housing and Human Services Department Policy for Foreclosure. Enclosed is a fully-executed Policy.

Your continued cooperation is always appreciated.

Sincerely,

**BOARD OF COUNTY COMMISSIONERS**  
**RACHEL M. SADOFF, CLERK**

*for Donna Scott*  
Kimberly Powell, Clerk to the Board

Encl. (1)

**cc:** Housing and Human Services  
Finance  
Budget

**BREVARD COUNTY  
BOARD OF COUNTY COMMISSIONERS**

## INITIAL CONTRACT REVIEW AND APPROVAL FORM

### SECTION I - GENERAL INFORMATION

<b>1. Contractor:</b>	
<b>2. Fund/Account #:</b>	<b>3. Department Name:</b> Housing & Human Serv.
<b>4. Contract Description:</b> HHS-33 Foreclosure Policy	
<b>5. Contract Monitor:</b> Ian Golden	<b>7. Contract Type:</b>
<b>6. Dept/Office Director:</b> Ian Golden, HHS	Select from pulldown:

### SECTION II - REVIEW AND APPROVAL TO ADVERTISE

<u>COUNTY OFFICE</u>	<u>APPROVAL</u>		<u>SIGNATURE</u>	<u>DATE</u>
	<u>YES</u>	<u>NO</u>		
User Agency	<input type="checkbox"/>	<input type="checkbox"/>		
Risk Management	<input type="checkbox"/>	<input type="checkbox"/>		
County Attorney	<input type="checkbox"/>	<input type="checkbox"/>		

### SECTION III - REVIEW AND APPROVAL TO EXECUTE

<u>COUNTY OFFICE</u>	<u>APPROVAL</u>		<u>SIGNATURE</u>	<u>DATE</u>
	<u>YES</u>	<u>NO</u>		
User Agency	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Golden, Ian <small><div>Digitally signed by Golden, Ian Date: 2021.01.15 14:18:05 +0000</div></small>	
Risk Management	<input type="checkbox"/>	<input type="checkbox"/>		
County Attorney	<input checked="" type="checkbox"/>	<input type="checkbox"/>		1/15/2021

### SECTION IV - CONTRACTS MANAGEMENT DATABASE CHECKLIST

<b>CM DATABASE REQUIRED FIELDS</b>	<b>Complete ✓</b>
Department Information	<input type="checkbox"/>
Department	<input type="checkbox"/>
Program	<input type="checkbox"/>
Contact Name	<input type="checkbox"/>
Cost Center, Fund, and G/L Account	<input type="checkbox"/>
Vendor Information (SAP Vendor #)	<input type="checkbox"/>
Contract Status	<input type="checkbox"/>
Contract Title	<input type="checkbox"/>
Contract Type	<input type="checkbox"/>
Contract Amount	<input type="checkbox"/>
Storage Location (SAP)	<input type="checkbox"/>
Contract Approval Date	<input type="checkbox"/>
Contract Effective Date	<input type="checkbox"/>
Contract Expiration Date	<input type="checkbox"/>
Contract Absolute End Date (No Additional Renewals/Extensions)	<input type="checkbox"/>
Material Group	<input type="checkbox"/>
Contract Documents Uploaded in CM database (Initial Contract Form with County Attorney/ Risk Management Approval; Signed/Executed Contract)	<input type="checkbox"/>
"Right To Audit" Clause Included in Contract	<input type="checkbox"/>
Monitored items: Uploaded to database (Insurance, Bonds, etc.)	<input type="checkbox"/>



**BOARD OF COUNTY COMMISSIONERS**

**HOUSING AND HUMAN SERVICES DEPARTMENT POLICY**

**TITLE:** Foreclosure  
**NUMBER:** HHS-33  
**CANCELS:** New  
**APPROVED:**  
**ORIGINATOR:** Housing and Human Services Department  
**REVIEW:** As Needed

**I. OBJECTIVE:**

To establish a policy for addressing projects (for example: homeowner, agency, demolition) in default which cannot be brought into compliance. The Housing and Human Services Department (Department) provides a variety of services to encourage homeownership, increase opportunities for affordable housing, repair, rehabilitate, or reconstruct homes, and address slum and/or blight. This policy will provide guidance and clarity regarding the steps required to foreclose on any property (assisted with funds under the discretion of the Department) with a mortgage, lien, or Land Use Restriction Agreement (LURA).

**II. DEFINITIONS AND REFERENCES:**

- A. Florida Statutes, Title XL, Real and Personal Property, Chapter 702, Foreclosure of Mortgages and Statutory Liens.
- B. Florida Statute 45.0315, Right of Redemption.
- C. Florida Statute 83.5615, Protecting Tenants at Foreclosure Act.
- D. Housing and Human Services Department Policy HS-024, Section XV.A – Brevard County Affordable Housing Trust Fund.
- E. Brevard County Board of County Commissioners (BOCC).
- F. County Attorney's Office (CAO) – Brevard County Attorney's Office.
- G. Default - A default shall be the occurrence of any of the following events, and upon that occurrence the County may, at the County's option, declare all sums secured by the Mortgage, Lien, or LURA to be immediately due and payable:
  - 1. Nonperformance by the Mortgagor of any covenant, agreement, term or condition of the Mortgage Lien, or of the Note, or of any other agreement made by the Mortgagor with the Brevard County Board of County Commissioners and/or the Housing and Human Services Department in connection with such indebtedness, after the Mortgagor

has been given due notice, as described hereafter, by the Housing and Human Services Department of such nonperformance.

2. Failure of the Mortgagor to perform any covenant, agreement, term or condition in any instrument creating a lien upon the mortgaged property or any agreement entered into by the Mortgagor with the Housing and Human Services Department, or any part thereof, which shall have priority over the lien of the Mortgage.

3. The Housing and Human Services Department's discovery of the Mortgagor's failure in any application of the Mortgagor to the Housing and Human Services Department to disclose any fact deemed by the Housing and Human Services Department to be material, or the making therein, or in any of the agreements entered into by the Mortgagor with the Housing and Human Services Department (including, but not limited to, the Note, a LURA, and Mortgage) of any misrepresentation by, on behalf of, or for the benefit of the Mortgagor.

- H. Department – Brevard County Housing and Human Services Department.
- I. Mortgagor – A person, household, or agency incorporated in the State of Florida who has entered into a mortgage, lien, or Land Use Restriction Agreement (LURA) with the Brevard County Board of County Commissioners or any of its departments. This term includes any reference to applicants or borrowers.
- J. Land Use Restriction Agreement (LURA).
- K. Risk Management (RM) – Brevard County Risk Management.

### **III. DIRECTIVES**

#### **A. Program Administration**

- 1. The Brevard County Housing and Human Services Department shall be responsible for the administration and monitoring of the Foreclosure Policy.
- 2. The Housing and Human Services Department will utilize funds from the Brevard County Affordable Housing Trust Fund for all costs associated with foreclosure actions.
- 3. The Brevard County Board of County Commissioners designates the Brevard County Housing and Human Services Department Director to act as the County's agent in foreclosure proceedings and authorizes the Brevard County Housing and Human Services Department Director to take all necessary steps as approved by the CAO to initiate foreclosure proceedings without any further direction or approval of the BOCC.

#### **B. Applicability** - This policy shall apply to:

- 1. Any Property assisted through Department administrated funds with a Mortgage, Lien, and/or LURA.
- 2. Any property which continues to be in default after all reasonable efforts to resume compliance (Section III.C) have been exhausted.

**C. Compliance**

1. The Department will comply with all default processes as identified in the mortgage, lien, and/or LURA, which can include, but is not limited to, notice of default and attempts to cure the default.
  - a. The Department will consult with the CAO regarding the process and/or supplementary recommendations, which can include but is not limited to additional efforts to cure the default.
2. The Department will document all reasonable efforts to bring the defaulted property back into compliance.
3. The Department will document the date of each step taken, copy of any documentation, and notes regarding the outcome of the effort will be included within the project file.

**D. Foreclosure**

1. Upon the exhaustion of all reasonable efforts under Section III.C, the Department and/or the CAO will provide final notice to the Mortgagor indicating a final effort to resolve the default prior to pursuing an action in a court of competent jurisdiction to foreclose the lien or obtain any other relief available to the County.
2. Failure by the Mortgagor to comply with this final notice will result in the CAO taking all necessary steps to begin a foreclosure action or any other cause action available to the County in accordance with the laws of the State of Florida.

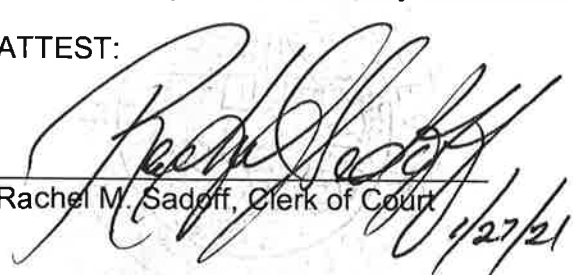
**F. Recaptured Funds**

1. Funds, including interest, penalties and attorney's fees, may be recaptured by the County pursuant to a foreclosure action, other proceeding or by court order.
2. Any recaptured funds will be distributed in the following priority order:
  - a. All Program funds shall be reimbursed to the appropriate Program which originally funded the project.
  - b. Any excess funds over and above any Program funds shall be distributed to the Brevard County Affordable Housing Trust Fund.

**IV. RESERVATION OF AUTHORITY**

The authority to issue or revise this policy is reserved to the Chair, Brevard County Board of County Commissioners.

ATTEST:

  
Rachel M. Sadoff, Clerk of Court

BOARD OF COUNTY COMMISSIONERS  
OF BREVARD COUNTY, FLORIDA

By:   
Rita Pritchett, Chair

Approved by the Board on 01/26/2021.