



**Review of the Recording of Mortgages, Promissory  
Notes & Declaration of Restrictive Covenants Related  
to Selected State and Federal Grants**

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**Office of the County Auditor**

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## Executive Summary

This report summarizes our review of public records to determine that mortgages, promissory notes, and declaration of restrictive covenants (DRC) were recorded for disbursements of federal and state grant funds in compliance with program guidelines. The scope of our review included fiscal years 2004 through 2006 and for the following programs:

- The Community Development Block Grant (CDBG),
- Homeless Initiative Program (HIP),
- Home Investment Partnerships Program (HOME), and
- State Housing Initiatives Partnership (SHIP) Programs.

These programs were administered by the Human Services Department. Effective June 2006, the SHIP, CDBG and HOME grant programs were transferred to the Urban Planning and Redevelopment Department.

Based on our testing of 592 mortgage transactions it appears that mortgages, promissory notes and DRCs were recorded in the public records as required by grant guidelines. However, our review disclosed:

- 1) Six instances where the DRCs were improperly recorded as part of the mortgage document,
- 2) Delays in recording seventeen mortgages and promissory notes and,
- 3) Five checks outstanding for extended periods pending closing.

Proper and timely processing of mortgage transactions is important to protecting the County's interest and ensuring the restrictive use covenants are effective for their entire term.

Recommendations addressing these issues are included following each finding below.

## Objective and Scope

The objective of our review was to determine whether mortgages, promissory notes and DRCs relating to CDBG, HIP, HOME and SHIP grants for fiscal years 2004 through 2006 were recorded in the Public Records.

## Methodology

We tested 592 (60%) mortgages for fiscal years 2004 through 2006 by tracing the mortgages and restrictions to recording in the Public Records. We reviewed:

- 100% of mortgages recorded by outside closing agents and a sample of mortgages recorded by County personnel for fiscal years 2004 and 2005.
- A sample of all mortgages recorded by County staff and outside closing agents for fiscal year 2006.

We also reconciled SHIP expenditures in the financial accounting system to reports filed with the State for Grant year June 30, 2006 and interviewed staff in the Human Services and Urban Planning and Redevelopment Departments.

## Background

Broward County receives CDBG, HIP, HOME, and SHIP funds from federal and state governments to fund various programs including low-income housing. The County's Human Services Department awards HIP funds to applicants for multifamily rental acquisition and rehabilitation. Housing and Community Development Division in Urban Planning and Redevelopment Department, awards SHIP, HOME, and CDBG grants for single-family purchase assistance, home repair, foreclosure prevention, water-sewer rehabilitation, new construction assistance and multi-family rental acquisition and rehabilitation. Awards under these programs are secured by mortgages against the real property.

Mortgages, promissory notes and DRCs for single and multifamily repair grants are recorded by County staff while purchase assistance mortgages are recorded by outside closing agents. Mortgage terms are as follows:

- Single family housing purchase or rehabilitation mortgages and promissory notes are for five or ten years and require no payback to the County unless sold prior to term expiration.
- Multifamily rental housing purchase or rehabilitation mortgages and promissory notes are for 10 to 30 years. Rental of the real property is restricted to affordable housing use by the DRC for 10 to 30 years. Some multi-family grants require a monthly payment to the County, while others require no pay back. Properties sold prior to expiration of the mortgage term require pro-rated repayment to the County.

## Findings and Recommendations

All mortgages, promissory notes and DRCs were recorded in public records as required by grant guidelines. We observed delays in recording and finalizing mortgage (closing) documents and recording procedures that could result in inadvertent termination of restrictive use requirements.

### **Finding 1: Six Declaration of Restrictive Covenants (DRC) were recorded as part of the mortgages**

We noted that six HOME and HIP DRCs valued at **\$1,588,421** were recorded with mortgage documents. Rental of multifamily housing purchased or rehabilitated with HOME, HIP, or SHIP funds require that a mortgage, promissory note, and DRC be recorded in public records. The DRC restricts rental of the property for affordable housing. If the DRC is included in the mortgage and the mortgage is satisfied (paid off) prior to the DRC expiration term, the affordable housing use restriction will be included in the satisfied mortgage potentially resulting in inadvertent termination of restrictive use covenant.

### **Recommendations:**

To ensure that DRCs are maintained through their agreed upon term, we recommend that the Board of County Commissioners direct the County Administrator and County Attorney to implement procedures to:

- Record the six DRCs identified in our review as separate documents in the public record.

- Require that future DRCs be recorded as separate documents.

**Finding 2: Seventeen mortgages and promissory notes were recorded 36 to 162 days after closing or after payment to the home repair contractors.**

To protect the County's interest, good business practice requires that promissory notes and mortgages are recorded immediately. Delays in recording mortgage documents make it difficult for the County to ensure agreed upon lien position. When mortgages are not recorded the public is not notified of the County's claim against the property. The following delays were noted:

- Ten SHIP and HOME purchase assistance mortgages totaling \$170,000 were recorded by non-County staff between 36 and 85 days after closing, and
- Seven home repair mortgages valued at \$116,042 were recorded by County personnel between 56 and 162 days after contractor payments were issued. These mortgages were recorded late because the Division experienced delays in obtaining the homeowner's signature on modified mortgage documents after repairs were completed.

**Recommendations:**

We recommend that the Board of County Commissioners direct the County Administrator to implement procedures requiring;

- County staff to record all mortgages, including purchase assistance, within 30 days of closing.
- Home repair clients sign modified mortgages documents prior to completion of repairs.

**Finding 3: Five checks paid to outside closing agents were outstanding 68 to 230 days without a closing taking place**

Four checks totaling \$90,000 for two HOME and SHIP new construction purchase assistance grants were paid to real estate closing agents and outstanding 68 to 230 days as of October 2, 2006 due to lack certificate of occupancy (CO) issuance. One CO was not issued and one CO was just issued on October 2, 2006. Good business practice dictates that checks for new construction purchase assistance grants are disbursed after the CO is issued.

A closing agent returned the County's check for \$10,000 representing the SHIP purchase assistance grant on September 25, 2006, 110 days after disbursement. The client became ineligible for the first mortgage and therefore the SHIP assistance was cancelled. We were unable to determine the date of ineligibility that resulted in cancellation.

**Recommendation:**

To ensure that checks are returned to the County when there are closing delays, we recommend that the Board of County Commissioners direct the County Administrator to implement procedures to follow-up with outside closing agents weekly and require that checks are returned to the County for delays of 30 days or longer.