

# Texas State Affordable Housing Corporation

## Affordable Communities of Texas Land Bank/Land Trust Policy and Guidelines

1. **Policy.** This policy (the “Policy”) has been adopted by the Texas State Affordable Housing Corporation (the “Corporation”) in order to organize and codify its administration of the Affordable Communities of Texas program (the “ACT”). The ACT supports the Corporation’s mission to promote equal access to safe, decent, and affordable housing with an emphasis on serving rural and underserved markets. The ACT’s purpose is to create partnerships between the Corporation and local housing providers to acquire or accept donations of foreclosed housing assets, government properties and other real estate for the benefit of, or to create affordable housing for, low-income households.
2. **Source of Funds.** The primary sources of funds available to the ACT are investments made by public and private entities to the Corporation. The Corporation may also commit its own funds to the ACT, accept private donations and grants, or apply for funding from government agencies. The availability of funds is dependant upon the Corporation’s ability to find new investments and generate income from the sale, lease or disposition of properties acquired.
3. **Eligible Activities.** The ACT initiative focuses primarily on the acquisition of vacant or foreclosed housing units, land and other properties that may be used to provide safe, decent and affordable housing. Properties may be developed to preserve, rehabilitate, or construct housing for homeownership, rental, cooperative or any other form of affordable housing that advances the Corporation’s mission. The ACT program may also be used to clear vacant or blighted structures, maintain vacant lots, and manage land-banked properties owned by the Corporation or Local Partners (hereinafter defined). The use of ACT funds may be limited by local, state, federal or other contractual agreements from the providers of such funding and pursuant to any funding agreements executed by the Corporation.
4. **Corporation’s Role.** In order to carry out the eligible activities of the ACT program, the Corporation shall enter into memoranda of understanding with its Local Partners (“Local Partner MOU”). Each Local Partner MOU will detail the responsibilities and roles of both the Corporation and Local Partner. The Corporation’s responsibilities may include any one or more of the following:
  - a. **TSAHC Land Bank.** In this capacity, the Corporation will acquire properties using ACT funds, hold properties in the Corporation’s name, and manage the redevelopment of properties with assistance from Local Partners. The Corporation may use ACT funds to cover the cost of option fees, title reports, due diligence activities, environmental reviews, purchase price and closing costs. Local Partners will be responsible for financing the redevelopment of acquired land bank properties, unless otherwise provided by the Corporation through an agreement separate from the Local Partner MOU. The Corporation and the applicable Local Partner shall determine the appropriate end use of the property (for-sale or rental) and a timeline for completing redevelopment and occupancy by a qualified low-income household. The Corporation shall determine the final sales price or rental rates of all homes, in its sole determination, ensuring that Local Partners are reimbursed for reasonable rehabilitation costs from sales proceeds. The Corporation may also utilize a shared equity agreement, in the form of a ground lease or other acceptable documentation, in order to recover its investment in a property and generate revenues for the program.
  - b. **TSAHC Land Trust.** In this capacity, the Corporation will acquire properties and hold them in perpetuity for the benefit of providing affordable housing. The Corporation will assist Local Partners with the planning and redevelopment of properties and may commit ACT funds to cover predevelopment activities.. After redevelopment the Corporation may split the real property estate from the improvements and sell the improvements to the Local Partner or qualified low-income households. The Corporation will continue to own the ground estate and grant access to the Local Partner or qualified low-income households through a ground lease agreement or other legal documentation

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- deemed appropriate in the sole determination of the Corporation. The Corporation may collect ground lease fees in order to cover its holding cost, monitoring and long-term expenses associated with a land trust property.
- c. **Buyer Agent.** In this capacity, the Corporation will serve as a conduit for the acquisition of properties on behalf of Local Partners, using funding provided by Local Partners. The Corporation will be reimbursed by Local Partners for any option fees, title agreements or due diligence activities required to purchase the property and paid for by the Corporation. The Corporation will immediately transfer ownership of the property to the Local Partner, be reimbursed for any expenses incurred during the acquisition process, and collect a transaction fee prior to transfer in an amount no less than \$250.00.
  - d. **Land Bank Administrator.** In this capacity, the Corporation will acquire properties using funding provided by Local Partners, hold properties in the Corporation's name, and manage the redevelopment of properties with assistance from Local Partners. The Corporation will be reimbursed by Local Partners for any option fees, title agreements or due diligence activities required to purchase the property and initially paid for by the Corporation. The Corporation will hold properties under its ownership until the Local Partner can complete redevelopment activities and place qualified low-income households into properties. The Corporation will collect an annual fee for overhead and administration, plus reimbursement for the actual cost of insurance premiums from the Local Partner. The Corporation shall transfer ownership of the property to the Local Partner within 60 days of written notice, and the Corporation will collect a reasonable transfer fee.
5. **Selection of Partners.** The Corporation intends to focus on developing partnerships with qualified nonprofit and local government entities as local partners (collectively the "Local Partners") that have clear relationships to the communities where properties are acquired. The Corporation will market the ACT program to Local Partners in targeted communities and/or may accept partnership applications from Local Partners. In either case, Local Partners must meet the following minimum qualifications:
- a. Nonprofit entities must be an active nonprofit 501(c)(3) or (c)(4) corporation as recognized by the U.S. Internal Revenue Service, and registered as a nonprofit corporation within the State of Texas;
  - b. Financial audits or statements of the Local Partner for a two year period must reflect the entity's ability to manage funds appropriately, as determined solely by the Corporation;
  - c. At least two years of experience in the planning, marketing, development or management of housing programs for moderate and low-income households; and
  - d. The ability to provide evidence of support from local government officials for their activities within the target community.
6. **Competitive or Select Application Procedures.** In the event the Corporation receives funding that requires the Corporation to utilize a competitive or other application process to disburse the funds, it shall publish to its website a request for proposals (an "RFP") and application materials. The Corporation will only accept applications when there are available sources of funds and will include all guidelines, procedures, thresholds and scoring criteria in the relevant RFP.
7. **Local Partner Approvals.** The Manager of Development Finance (the "Manager") is responsible for coordinating and overseeing the review of Local Partner applications. Local Partner applications that fulfill all of the threshold and selection criteria of this Policy and any applicable RFP will be recommended to the Corporation's Board of Directors (the "Board") for consideration and possible approval. The Board's approval may include the commitment of specific funding resources to the Local Partner to acquire properties and complete other activities (demolition, clearance, etc.) as detailed in the Manager's recommendation. If the Local Partner's application is approved by the Board, the Local Partner must enter

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into a Local Partner MOU with the Corporation, as defined above, which will detail the roles and responsibilities of the Corporation and Local Partner.

8. **Project Approvals.** The selection of individual properties acquired by the ACT program will be completed by the Manager and then approved by the Corporation's President or Executive Vice President. If selected properties are approved by the President or Executive Vice President, the Manager shall be authorized to execute purchase agreements on any specific property and pursue other due diligence requirements of this Policy and the ACT program's funding sources.
9. **Qualified Projects.** All housing units acquired by the Corporation must meet the following criteria in order to be considered a qualified project ("Qualified Project") for the purposes of this policy.
  - a. A Qualified Project must advance the mission of the Corporation;
  - b. A Qualified Project must be financially feasible and provide sufficient return on the Corporation's investment to sustain the ACT program;
  - c. A Qualified Project must be located in an area that provides access to good educational, employment, transportation and other community services; and
  - d. A Qualified Project must have a plan to ensure the property will be redeveloped for the benefit of low-income Texans.

In order to be considered for the TSAHC Land Trust a Qualified Project must also demonstrate a special circumstance or condition that justifies its inclusion in the Land Trust program. Such special circumstances may include the development of homes for persons with disabilities or other special needs, homes for extremely low-income households, and homes in areas considered to be high opportunity areas (such as areas experiencing gentrification or high income areas) that will affirmatively further fair housing choice.

### 10. **Affordability Threshold.**

- a. The Corporation's statutory and charitable mission requires that all properties held by the Corporation be used for the benefit of qualified low, very-low and extremely low-income households. To ensure adherence to these requirements, all properties held by the Corporation will be held to the following minimum qualifications:
  - i. All units acquired and developed for homeownership shall be affordable to low, very low and extremely low-income households at eighty percent (80%) or below of the area median income (the "AMI") for the location of the property, or eighty percent (80%) or below of the statewide median income, whichever is greater;
  - ii. All units acquired and developed for rental shall be affordable for low, very low and extremely low-income households at or below 80% of the AMI for the location of the property;
  - iii. All multifamily properties (4 or more units) acquired and developed for rental shall be held to the following additional income and rent restrictions:
    - A. At least 20% of the total units in the development for persons or families earning 50% or less of the AMI, based on the size of the unit and number of persons occupying the unit; or
    - B. At least 40% of the total units in the development for persons or families earning 60% or less of the AMI, based on the size of the unit and number of persons occupying the unit.
  - iv. The Corporation may impose additional affordability requirements in accordance with funding limitations or on a case by case basis; and

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- b. The Corporation requires that all properties acquired, but not held, by the Corporation in the role of Buyer Agent be made affordable to qualified low or moderate income households, not to exceed 120% of the AMI for the location of the property.
11. **Construction Threshold.** To ensure that working families have safe, decent, affordable housing, and to ensure long-term affordability and usability, all Qualified Projects held by the Corporation must meet the following standards:
- a. All Qualified Projects, at the time of acquisition or completion of construction or rehabilitation, shall meet all local building codes for the jurisdiction where they are located. If the development is located in an area where no building codes are in place or have been adopted, the development shall meet the most recent International Residential Code or International Building Code;
  - b. All Qualified Projects, at the time of acquisition or completion of construction or rehabilitation, shall be compliant with the Federal Fair Housing Act Accessibility Standards, Title II of the Americans with Disabilities Act of 1990, the Texas Minimum Construction Standards and §2306.514 (visitability guidelines) of the Texas Government Code. Borrowers must submit to the Corporation a certification from the project architect, engineer, or other third-party building inspector that the proposed Development will meet or exceed the above listed accessibility requirements;
  - c. All Qualified Projects, at the time of acquisition or completion of construction or rehabilitation, shall be compliant with the U.S. Department of Energy's Energy Star Program, as confirmed by a certified third-party Home Energy Rating System ("HERS") inspector or as certified to by the Development's architect or engineer; and
  - d. All Qualified Projects, at the time of acquisition or completion of construction or rehabilitation, shall have sidewalks, driveways and streets that are compliant with the Americans with Disabilities Act and Fair Housing Accessibility Standards.
12. **Location Threshold.** The Corporation shall consider a variety of factors to determine if a project is located in an area that promotes safe, healthy and decent housing for low-income households. The Corporation will consider a project's proximity to grocery stores, pharmacies, financial services and other commercial services. All Qualified Projects held by the Corporation must meet the following minimum location standards:
- a. Qualified Projects may not be located within the 100 year floodplain as identified by the Federal Emergency Management Agency (FEMA) Flood Insurance Rate Maps; and
  - b. Qualified Projects located within a County or City that is covered by the Texas Windstorm Insurance Association (TWIA) shall be required to secure windstorm insurance in accordance with the TWIA insurance policy requirements.
13. **Additional Thresholds.** All Qualified Projects held by the Corporation must meet the following additional threshold criteria:
- a. The Corporation requires a general review of environmental conditions at each Qualified Project location. The environmental review may include a review of city or county environmental records; an environmental notification process, as may be required by the Corporation's funding partners; or a Phase I Environmental Site Assessment and any necessary updates, based on the Corporation's sole determination of need;
  - b. The Corporation generally will not fund a project that may cause the displacement of a low-income household. Exceptions to this requirement may be considered on a case-by-case basis;
  - c. The Corporation shall use minimum underwriting standards in evaluating all projects. The Corporation shall review such items as debt coverage ratio, cost of project maintenance and the Local Partner's

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- financial strength. The minimum underwriting standards shall reflect the nature of the project, its location and the AMI for targeted low-income households. The Corporation's Manager shall be responsible for determining the feasibility of each project;
- d. The Corporation may require a third-party market analysis, or may conduct its own assessment of market conditions, to determine the feasibility of a proposal. Current information on demographics, population growth, employment trends, median home prices, zoning requirements, absorption rates, and any other indicators of the market capacity may be considered in the Corporation's review.
14. **Security Interest.** To insure the fulfillment of the Affordability Threshold, a variety of agreements may be filed in the deed records of Qualified Projects held by the Corporation. At a minimum the Corporation may consider the following security interests, or any combination thereof:
- a. **Deed Restriction or LURA:** The Corporation may file a deed restriction or Land Use Restriction Agreement (the "LURA") in the real property record that defines limitations on resale and occupancy of the Qualified Project. Deed restrictions may or may not be filed as non-foreclosable instruments.
  - b. **Shared Appreciation Agreement:** A shared appreciation agreement (the "Shared Appreciation Agreement") is filed either as a mortgage instrument, deed restriction, or other form of agreement acceptable to the Corporation, and allows for the Corporation to recapture grant funds or equity transfers (or the equivalent thereof) to a Qualified Project upon any future sale or transfer of ownership. Generally the Corporation shall seek to recapture 100% of such grant dollars and/or a percentage of such equity transfers. The total recapture amount will depend on the net proceeds available after repayment of superior liens.
  - c. **Ground Lease:** The Corporation may also hold properties in perpetuity and sell or lease their improvements to Local Partners to operate affordable rental housing, or sell improvements to qualified low-income households. In either case, the Qualified Project will be restricted for occupancy in accordance with the applicable Affordability Threshold through a ground lease agreement.
15. **Project Monitoring.** The Corporation requires that all Qualified Projects held by the Corporation undergo a regular review to determine that the project continues to meet the threshold criteria and goals of the ACT initiative. The Corporation may require, especially in the case of rental developments, that an asset management or asset oversight review be completed on an annual, semi-annual or other periodic basis, as determined by the Corporation. The Corporation may charge an annual fee in order to cover the cost of reviews.
16. **Disposition of Properties.** To accomplish the sale or transfer of Qualified Projects, the Corporation may rely on its Local Partners to market, broker, or otherwise sell or lease Qualified Projects. In the absence of a Local Partner, or as otherwise determined necessary, the President or Executive Vice President of the Corporation shall be authorized to contract disposition activities to a licensed real estate broker or other qualified third-party entity.
17. **Insurance.** The Corporation shall be authorized to carry general liability, property, casualty and other necessary insurance coverage on Qualified Projects held by the Corporation. The President, Executive Vice President, or Chief Financial Officer of the Corporation shall be authorized to contract for such insurance services.
18. **Fees.** The Corporation may charge fees, penalties or other monetary accruals in order to cover the cost of application review, professional fees, asset and compliance reviews, ground leases, maintenance or holding costs, and any other fee determined reasonable by the President or Executive Vice President of the Corporation.