SURPLUS LANDS
for Affordable Housing

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INTRODUCTION

In 2006, at the height of the housing boom, the Florida Legislature passed requirements for counties and municipalities to identify lands they owned that were suitable for affordable housing. The requirements are found in two statutes: §125.379 for counties, and §166.0451 for municipalities. The Florida Nonprofit Housing Advocacy Network (FNHAN), composed of nonprofit housing providers in FHC's membership, has been researching the extent to which communities have used the statutes to promote affordable housing development. This article describes the results of an informal survey of local governments conducted in late summer 2013, and discusses challenges and opportunities for disposing of surplus lands for affordable housing.

OVERVIEW OF THE STATUTES

The two statutes have identical requirements for counties and municipalities. Beginning in 2007, each of these local governments was required to prepare an "inventory list" of properties to which it holds fee simple title, and which are "appropriate for use" as affordable housing. After reviewing and possibly revising the list, the governing body adopts it in a resolution. The lists must be updated every three years. The statutes do not actually require that local governments dispose of the identified properties for affordable housing, but three disposition methods are explicitly authorized:

1. A property "may be offered for sale [without use restrictions] and the proceeds used to purchase land for the development of affordable housing or to increase the local government fund earmarked for affordable housing,"
2."…Sold [to a developer, low-income homeowner, etc.] with a restriction that requires the development of the property as permanent affordable housing,"
3."… Donated to a nonprofit housing organization for the construction of permanent affordable housing."

HOW DO LOCAL GOVERNMENTS ACQUIRE SURPLUS LANDS?

If a local government has no current or future use for a property it owns—such as for a right-of-way, a park, or a public building—it has a strong incentive to dispose of the property as quickly as possible. The property pro-

vides no tax revenue or direct public benefit, and the local government must pay for its maintenance and upkeep. Some surplus properties are acquired when the local government forecloses on code enforcement liens. In other cases, the city or county may have purchased a property long ago for some future use, but may no longer have a use for the property. Properties acquired by these means may not have clear title—that is, they may have liens that must be paid before the local government can transfer title to new owner.

One particularly important process by which cities and counties acquire land is known as "escheatment". The term sometimes refers to the conveyance of land ownership to a local government after the owner's death, if no inheritor or next of kin can be found. However, it also applies to tax-delinquent properties that revert to a local government. As Figure 1 shows, escheatment of tax-delinquent properties takes five years in Florida. Escheatment essentially clears the title to a property; F.S. §197.502(8) states that "all tax certificates, accrued taxes, and liens of any nature against the property shall be deemed canceled." If an escheated property is located within the boundaries of a municipality, the county must either use it for purposes specified in F.S. §197.592(3), or convey it to the municipality. County-held liens of record on the property are eliminated by conveyance to a municipality.

SURVEY DESIGN AND QUANTITATIVE RESULTS

We sent e-mail surveys to 41 local governments (20 counties and 21 cities). These jurisdictions included the state's five largest cities and counties, twenty-one communities known or suspected to have numerous vacant lots in subdivisions platted in the 1960s and '70s, and ten communities that were otherwise considered relevant. The 29 respondents had a wide range of population sizes, and their quantitative responses are shown in Table 1.

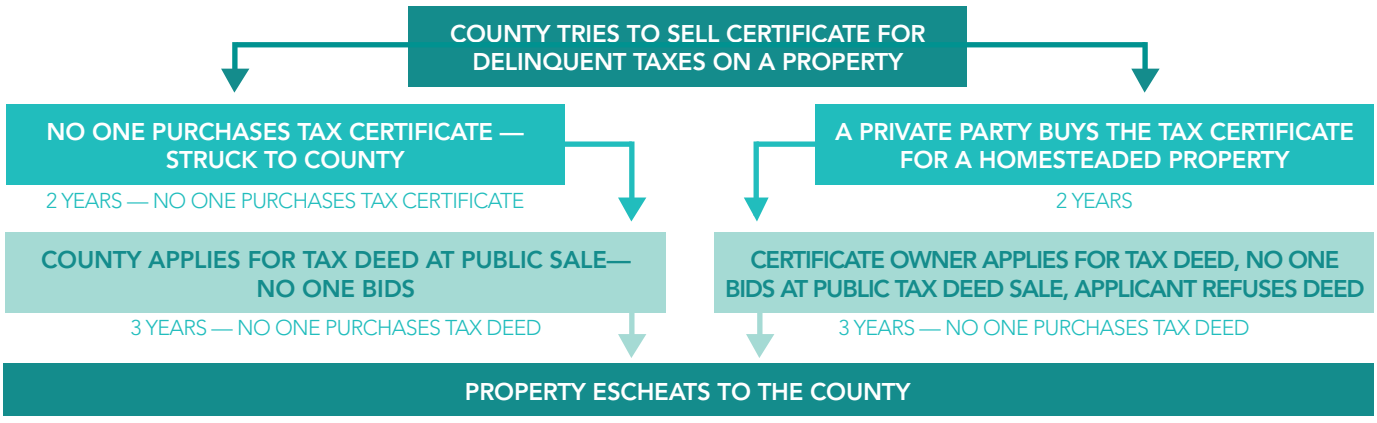
Despite FNHAN's concern that many communities would be unaware of the "surplus lands" statutes, 80% of respondents have in fact developed lists of surplus properties that are suitable for affordable housing. Four of the five jurisdictions without lists were aware of the statutes, but are too small to have the need or capacity to dispose of surplus lands for affordable housing. Two of these four communities use other practices to promote affordable housing development on surplus lands, such as development code incentives, and the other two communities are built out. In communities that did have lists, the number of properties varied widely, from none to over 100.

The number of properties disposed for affordable housing also varied. Although the highest disposition rate was 50 properties since 2007, overall disposition was low (median = 9%). The most popular disposition method was donating land to a nonprofit (Figure 2). Several qualitative responses suggested that this is the simplest of the three specified methods. In contrast, marketing a property to a willing buyer and hosting a competitive bid process requires considerable staff time and resources.

COMPLIANCE AND DISPOSITION CHALLENGES

Some respondents reported that the process of identifying surplus properties and screening them for suitability

FIG. 1. ESCHEATMENT OF TAX-DELINQUENT PROPERTIES.



(**NOTE:** If a private party buys the tax certificate, the property is much more likely to escheat if it is homesteaded than if it is not. If no one bids on a homesteaded property at a tax deed sale, the tax deed applicant must pay an extra sum to take possession of the property.)

was not straightforward. Challenges included making time in busy staff schedules and coordinating among multiple departments (e.g. Housing, Planning, Real Estate etc.). Some respondents found that developing and refining a dataset from which to identify properties is time-consuming. For instance, the real estate department of one community is still working with the property appraiser to copy a backlog of property records into the real estate department's computer system. Additionally, the statutes do not specify suitability criteria, and several respondents found it difficult to create their own criteria. However, most of these respondents said that the screening process became easier once the criteria were established. The title research process for properties with liens poses another administrative challenge.

Several factors accounted for the low disposition rates. The most commonly mentioned challenge was that properties are in undesirable areas. As one respondent said, "There's a reason the private sector hasn't taken an interest in them." Other respondents reported that elected officials remove desirable properties from the list if they can be sold to raise general fund proceeds, or may want to sweep the proceeds from surplus lands that are sold under these statutes. Further challenges include tightened mortgage lending standards for would-be buyers of affordable homes, and reductions in SHIP and CDBG funding. Finally, two municipalities reported legal restrictions on their disposition activities. One city's charter requires that when land is offered for sale on the private market, it must be sold to the party that makes the best offer, making it difficult to sell redeveloped lots with affordability restrictions to low-income homebuyers. Another city reported that its county imposes affordability restrictions on escheated properties that it conveys to municipalities, ruling out the option of selling properties for other uses and earmarking the proceeds for affordable housing.

CONCLUSION AND NEXT STEPS

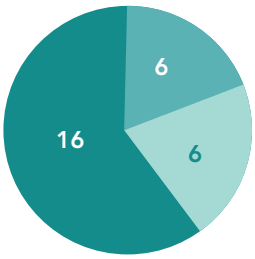
Communities that can reasonably implement the surplus lands statutes are doing so in good faith, even though there is no real enforcement mechanism. A majority of respondents also agreed that the statutes are a supportive tool in their overall efforts to develop affordable housing, although their role is very modest. Because of the challenges that local government agencies face in identifying and disposing of surplus properties, it would not be appropriate to make the statutes substantially more prescriptive. Smaller changes might be worth considering—for example, requiring that local governments publicize the criteria by which they evaluate surplus lands. This could enable affordable housing advocates to block efforts by governing bodies to remove suitable surplus properties from the lists. Changes to other statutes could also improve the surplus land disposition process. For example, the 5-year escheatment process could be expedited to allow counties and cities to return the lands to productive use as soon as possible.

Even without legislative changes, the statutes may become more useful as the housing market improves, and private demand increases for some surplus properties. If nonprofit housing providers and other advocates are aware of the statutes, they can work with elected and administrative officials in their communities to obtain surplus lands that would otherwise be sold on the open market, or to advocate for a share of the revenue from land sales. In communities that are dedicated to providing affordable options, the surplus land statutes may be a powerful tool in a vibrant housing market. HNN

TABLE 1. IDENTIFICATION AND DISPOSITION OF SURPLUS LANDS FOR AFFORDABLE HOUSING BY STUDY RESPONDENTS.

RESPONDENTS WITH INVENTORY LISTS	24 of 29
PROPERTIES IDENTIFIED	Median: 47.5 Range: 0-102
PROPERTIES DISPOSED	Median: 2 Range: 0-50
PERCENT DISPOSED	Median: 9% Range: 0-74%
DISPOSITION RATE (PROPERTIES/Y)	Mean: 1.4

FIG. 2. NUMBER OF RESPONDENTS USING DISPOSITION METHODS EXPLICITLY AUTHORIZED BY STATUTES.



(Note: Some respondents used more than one disposition method.)