



# CRC MEMORANDUM



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## HOUSING TRUST FUNDS: BARRIERS AND OPPORTUNITIES

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Housing trusts are legal entities established to receive dedicated public funds to support affordable housing. They may receive public (and solicit private) funds for the production, preservation, or rehabilitation of rental or for-sale housing and for a number of related activities, and they are generally located in an existing local or state agency.

An analysis of state and local government revenues and of possible private sources of funding for housing trusts reveals a host of obstacles: constitutionally mandated rates and dedication of revenues; the need for enabling statutes; and the requirement for authorizing votes in affected locales. It also identifies potential opportunities: credits against existing taxes; use of existing authorities; and statutes that could be amended. Potential sources of revenue include development impact fees, density bonuses, fees and fines on blighted property, rental inspection fees, sale of surplus public property, support from MSHDA, a Metropolitan Council property tax or fee, donations, or arbitrage of funds on loan from socially conscious investors.

Revenues from existing state and local taxes reflect the depressed state of the Michigan economy, but the tax structure is the framework for identifying possible public funding options. The state imposes a personal income tax of 4.35 percent; the rate is scheduled to decline, beginning in 2011, to a rate of 3.9 percent in 2015. State statute specifies the disposition of revenues: 23.3 percent to the State School Aid Fund and the remainder to the state's general fund. A number of credits are allowed, including for contributions to Michigan colleges and universities and various non-

profit organizations. PA 133 of 2007 created a state income tax check off for individual taxpayers making a minimum donation of \$5 to the Michigan Housing and Community Development Fund. (In addition to the state income tax, 22 cities impose a municipal income tax.) Implementation of a regional or county income tax to support a housing trust would require statutory authority and a vote of the people in the affected area. Provision of an income tax credit for donations to a regional or county housing trust would require amending the existing act.

The Michigan Business Tax and surcharge is levied on business income and modified gross receipts. The enabling legislation provides for credits for a large number of activities that the state is trying to encourage. PA 36 of 2007 allows businesses to claim a tax credit equal to 50 percent of the total amount donated during the year to the Michigan Housing and Community Development Fund. Provision of a business tax credit for donations to a regional or county housing trust would require amending the existing act.

The state imposes nine other specific business taxes and specifies the disposition of those revenues. The

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only sub-state business privilege tax in Michigan is the authorization for Detroit to levy a local casino gaming tax.

The maximum rate of the sales tax and the distribution of revenues from the sales and use tax to specific state funds are established in the Michigan Constitution. In 1970, the state Attorney General ruled that local sales taxes are not allowed under the constitution. Excise taxes, which include “sin taxes” on alcoholic beverages and tobacco products, are paid on the sale of a specific product. Excise taxes also include taxes on hotel and motel accommodations and rental cars, and utility taxes. With enabling legislation and an affirmative vote of the people in the affected area, one or more excise taxes could be used to support a county or regional housing trust.

Property taxes are the traditional way of funding local governments in Michigan. Both the property tax rate and growth in the base are limited by the state constitution, but state constitutional limits on total millage do not apply to property taxes imposed by those districts or authorities established under enabling legislation that contains separate property tax limits. Use of a property tax to support a county or regional housing trust would require enabling legislation and a vote of the people. A number of revenues related to the property tax, such as fees and fines on delinquent taxes or revenues from related tax rolls, could be appropriated by local governments to a housing trust.

Real estate transfer taxes are im-

posed by both the State of Michigan and county governments. Real estate transfer taxes are a popular funding source for housing trusts in other states, and have been the basis for legislative bills that would establish and fund county housing trusts for the homeless in Michigan. Thus far, those legislative efforts have failed. Although the real estate market is currently depressed, it will presumably recover in the future, and real estate transfer taxes remain a potential source of funding for county or regional housing trust funds.

In Michigan, transportation related taxes are earmarked for transportation. This dedication is unlikely to be challenged successfully.

### **Income Metrics**

Housing trusts are one of a number of strategies that seek to meet the housing needs of families and individuals who meet a defined measure of need, which is usually defined in terms of income. Housing programs usually target individuals and families with income below a standard that is measured against the area median family income. Area median family income varies by family size and location: the 2009 median family income for the U. S. is \$64,000; for Michigan as a whole it is \$63,800 (\$67,300 in metro areas, \$52,700 in non-metro areas). Family median income is calculated by the federal government for all metropolitan areas and non-metropolitan counties. The 2009 amounts in Michigan vary from \$39,300 in Lake County to \$89,900 in Livingston County. While conditions vary across the different regions of the

state, the number of individuals and families requiring assistance has been increased by the loss of high wage, low skill jobs; the impact of the credit crisis and the recession; the foreclosure crisis; the growing senior population; and other factors.

The generally accepted definition of housing affordability is for a household to pay no more than 30 percent of its annual income on housing. Beginning July 1, 2008, Michigan employers with two or more employees who are at least 16 years of age are required to pay at least the Michigan minimum wage of \$7.40 per hour (the federal minimum wage is \$7.25 per hour). Although the Michigan minimum wage is higher than the federal minimum wage, and housing prices are lower in Michigan than in many other parts of the U.S., there are no metro or non-metro areas in Michigan where fair market rent for a one bedroom apartment is affordable to a household supported by one full-time worker earning the Michigan minimum wage. And, while the glut of foreclosed houses on the market has driven down the sale price of all housing, the tightening of credit has made homeownership unattainable for most low income families.

### **Federal Housing Programs**

The U.S. Department of Housing and Urban Development (HUD), established in 1965, administers federal programs that direct payments to low income families, communities, or developers of affordable housing. Major federal programs include housing choice vouchers, public housing projects,

Section 8 project based rental assistance, Section 515 rural rental program and Section 521 rural rental assistance program, Section 202 and Section 811 supportive housing programs, HOME investment partnerships program, McKinney-Vento homeless assistance program, and low income housing tax credits. Since 2000, most low income housing production has been funded by local communities using Community Development Block Grant and housing (HOME) block grants. The American Recovery and Reinvestment Act of 2009 includes \$13.6 billion for projects and programs administered by HUD.

## Michigan Housing Programs

State efforts to increase the supply of affordable housing have been linked to the internal improvements clause in the state constitution. The 1963 Michigan Constitution allows public internal improvements that are specifically allowed in statute, and a state Supreme Court advisory opinion issued in 1966 validated the constitutionality of the law that created the Michigan State Housing Development Authority (MSHDA), the state's housing finance authority. MSHDA is funded by state appropriations, sale of tax exempt bonds, federal grant programs, and other sources.

In Michigan, interest in creating a state housing trust was renewed after 2003, and the decision was made to broaden the appeal of a housing trust by including community development focused on downtowns and adjacent neighborhoods. PA 480 of 2004 charges

MSHDA with creating the Michigan Housing and Community Development Trust Fund for the purpose of developing and coordinating public and private resources to meet the housing needs of low income households and to revitalize downtowns. A fiscal year 2008 state general fund appropriation of \$2.162 million supported Michigan Housing and Community Development Trust Fund awards to 18 nonprofit organizations.

Although fiscal pressures on the state make it highly unlikely that state general fund resources will be made available to the state housing trust in the foreseeable future, there are other affordable housing and supportive housing organizations that operate on a statewide basis. Furthermore, there are other approaches to increasing the supply of affordable housing that have been tested by communities in Michigan.

## Other Structures

Community land trusts are private nonprofit corporations created to acquire and hold land for the benefit of the community and provide secure, affordable access to land and housing for community residents. They may acquire land and arrange for the development of housing on that land, or may acquire land and housing together, but the key concept is that they treat the land and building differently: the land is held by the trust, while the housing may be owned by those who live there. There are four land trusts in Michigan (in Grand Rapids, Ann Arbor, Traverse City, and Boyne City).

Land banks are public authorities

created to hold and redevelop tax foreclosed property. Because county land banks may acquire, rehabilitate, and dispose of housing units at less than market rate, there is potential for mutually supportive cooperation between land banks and housing trusts. The state, the City of Detroit, and 24 counties have established land banks.

Two Michigan cities have initiated housing trusts. The City of Ann Arbor Housing Trust Fund was created in 1999 and is administered by the city's Community Development Department. It is primarily funded by fees from developers who take advantage of density bonuses offered by the city that allow additional density if a certain amount of affordable units are included or if the developer makes a contribution to the housing trust. This Housing Trust Fund also receives some funding from the Washtenaw County Housing Contingency Fund, and the city's general fund.

The City of Kalamazoo in 2003 committed \$250,000 to establish a housing trust fund and invited participation from other units of government. Kalamazoo County matched the city's donation in 2006, committing \$500,000 over two years. The \$500,000 from the city and county was matched by MSHDA. The Local Housing Assistance Fund is administered by the Kalamazoo County Public Housing Commission.

## County or Regional Housing Trusts

Michigan is a state that contains very diverse regions, and the needs

for low income housing vary across those regions. Interests that previously advocated for a state housing trust are now interested in sub-state structures that respond to those varying needs. Advocates of housing trusts emphasize the need for a dedicated source of public funding for housing trust programs, which provide a predictable, on-going revenue stream that allows for multi-year planning and commitments. Many public officials, however, oppose dedicating revenues to any single purpose. Dedicated revenues are not available for the general appropriation process that allocates resources to a range of public

needs. Eliminating a potential source of general revenues through dedication to a particular purpose reduces the ability of elected officials to meet emerging or higher priority needs. Further, the current fiscal stresses on Michigan state and local governments make it highly unlikely that any of those governments would be willing to forego an existing or potential revenue.

Because the ability of the state government to fund the Michigan Housing and Community Development Trust is limited, and the need for affordable housing exceeds the ability of MSHDA to

provide funding, the state should consider empowering county and regional authorities to use local resources and expertise to create and support housing trusts. These sub-state housing trusts could address regional needs, help to build a special sense of place, and foster competitive, diverse, unique communities where people want to work, live, and invest. Facilitating county or regional housing trusts could allow counties and regions to complement and supplement state efforts in ways that are innovative and entrepreneurial, and that reflect the special assets and challenges of those areas.