

**CONSIDERATIONS FOR LOCAL GOVERNMENTS PROPOSING PROPERTY ACQUISITION UNDER GEORGIA’S NEIGHBORHOOD STABILIZATION PROGRAM**

This document provides information to assist communities that propose to demolish, acquire, hold, rehab or sell property as part of their NSP strategies. The process of acquiring real estate and managing it as rental property or putting it back in the hands of private individuals can be legally complicated for local governments. This is why most NSP strategies will involve collaboration and often contractual relationships between local governments and private and non-profit legal entities or various types of authorities. The following table provides information on most of the legal entities that may partner with local governments to implement NSP strategies. It is not an all inclusive list. There may be other types of organizations or entities that would be allowable partners or subcontractors for NSP initiatives.

<b>Entity</b>	<b>Enabling Statutes</b>	<b>General Powers and Purposes</b>	<b>Notes:</b>
<b>General Purpose Local Governments</b>	Enabled by the Georgia Constitution	Georgia is a home rule state, so theoretically local governments have all governmental powers not prohibited or limited by Federal and State laws. Several important limitations in local government’s powers do exist that can complicate redevelopment and real estate transactions. These include requirements that any property put up for sales by local governments must be advertised in a prescribed way, should go to the highest bidder. Similarly, construction projects over a certain price threshold should be competitively awarded to the lowest responsive bidder regardless of reputation. In addition, city elected officials may not execute contracts that bind their successor officials hands making long term contracts with private developers problematic. Also, since the legislature recently amended its powers of eminent domain statutes local governments may not use their previous power to condemn land to be used for “economic development purposes”. Borrowing powers of local governments are also limited by their “General Bonded Indebtedness Ceiling” based a percentage of there tax	<p>Because of the problems mentioned in the previous column , and to create a stronger legal firewall between community development projects and the city coffers, most communities will contract with, or delegate redevelopment powers to, various kinds of authorities capable of implementing community development projects.</p> <p>This may often involve the authority holding title to property once in public ownership or purchasing property with grant or loan funds.</p> <p>There are some cases, (usually when all the city is investing in infrastructure or public/government buildings or when a community wants to tightly control a development project), where the local government will choose access the expanded</p>

		base revenues. Finally, local governments must enforce their own land development and building codes with great consistency to avoid having them be overturned by the courts.	development powers authorized by the Urban Redevelopment Act (described below) in order to enable more effective real estate transactions and subcontract for other redevelopment services.
<b>Urban Redevelopment Agencies created or authorized under the Urban Redevelopment Act</b>	O.C.G.A. 36-61-1	<p>The <b>Urban Redevelopment Act</b> is one of the most powerful and flexible statutory redevelopment tools in Georgia and may be useful in implementing NSP strategies. Local governments may activate and use some expanded development power directly by making a finding of blight under the Act. Alternately, communities can delegate some or all of the development powers established in the Act to <b>Urban Redevelopment Agencies, Housing Authorities, or DDAs</b>, may all be designated by local governments to exercise the expanded development powers enabled under this act.</p> <p>Local governments, or their designees) with an adopted URA plan, can waive or condition any of their current development regulations that are likely to impede the community's NSP revitalization strategies.</p> <p>The Act has reasonable planning requirements and encourages maximum use of the private sector to accomplish redevelopment goals</p>	Allows development entity to float revenue bonds, establish plans for new streets and public amenities, sell property below market value to attract development partners, pick best-qualified contractors rather than going with lowest bids, negotiate binding long term contracts with development partners. URA districts can be established in any area determined to be "blighted" by local government, URA plans may be adopted by simple local government resolution and do not require voter approval or referendums. URA plans are relatively inexpensive and easy to amend.
<b>Local/Regional Housing Authorities</b>	O.C.G.A. 8-3-1	Local housing authorities may deal strictly with public housing project management or may be more involved in other kinds of housing initiatives.	Housing authorities' experience levels with real estate acquisition, and revitalization projects may vary.
<b>Downtown Development Authorities</b>	O.C.G.A. 36-42-1	The general purpose of these authorities is to do downtown revitalization, however they can do housing within their formal boundaries may also be	Limited to owning or managing properties within their districts, which must focus on traditional central

		assigned development powers under the Urban Redevelopment Act.	business districts. These districts may often include older neighborhoods as well as vacant tracts suitable for mixed use, multifamily infill, live/work units or loft development above stores.
<b>Affordable Housing Land Trusts</b>		While not widely used in Georgia, these entities are legal and offer innovative ways to maintain permanently affordable housing units. Land Trusts may hold titles to property or may simply be charged with defending any covenants or conservation easements placed on property. Some land trusts contain both rental and owner occupied homes.	May be a good vehicle for doing lease purchase and down payment assistance-oriented programs.
<b>Authorities Individually Created by the General Assembly</b>	As described in individual Charters	Some of the older housing and development entities in Georgia predated more recent enabling statutes designed to standardize authority powers. These are unique entities and their charters detail their specific powers and limitations.	Some of these entities have broader powers than standard authorities created more recently.
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<b>Non-Profit Organizations 501(c)3, 501(c)4</b>	Individual Charter provisions and IRS Laws	Non profits are usually organized around very specific mission statements included in their incorporation charters. Their tax exempt status is dependent on acting within their stated purposes.  501(c)3 generally are for charitable purposes and may not lobby.  501(c)4s are created primarily to further the common good and general welfare of the people of the community. They are the vehicle often used for CVBs	Contracts for housing services with non-profits with proven track records may work well.  Many non profits are under-funded and therefore may not have large professional staffs or may need some portion of housing funds to go toward management and admin.

		and Chambers of Commerce. This category of non profit may be able to access some of a community's Hotel/Motel revenues.	
<b>Community Housing Development Authorities (CHDOs)</b>	Special housing non-profits approved by DCA	The Georgia Department of Community Affairs (DCA) has set aside a portion of its HOME allocation to provide operating assistance to Community Housing Development Organizations (CHDOs). The CHDO designation will allow your nonprofit organization to compete under the CHDO set aside for DCA HOME funds. Programs available to CHDOs include the CHDO Predevelopment Loan Program, Permanent Supportive Housing Program, HOME Rental Housing Loan Program, Georgia Dream Single Family Development Program, and CHDO Operating Assistance	Most areas of Georgia are already served by CHDOs who are experience buying property and developing affordable housing. They may be good partners for governments seeking to fast track projects.
<b>Land Bank Authorities</b>	O.C.G.A. 48-4-61	Land Bank Authorities allow local governments to gain control of tax delinquent properties, extinguish back taxes and mortgages and put the property back into productive use.	Presumably many foreclosed properties would in fact also be tax delinquent. However if a community does not currently have a Land Bank Authority in place, it may take too long to start one to meet NSP deadlines.
<b>For-profit Corporations, Limited Liability Corporations and Sole Proprietor Businesses</b>		For-profit businesses may be very experienced with real estate deal structuring and buying and selling practices and know how to take advantage of Low Income Housing Tax Credits Historic Preservation Tax Credits and other finance leveraging tools. It is important to vet any private businesses before contracting with them or incorporating them into a NSP strategy. It is common form local government driven development entities to share project risks with private partners by donating site development labor, providing gap financing or buyer	Due to limitations on the way local governments face in dealing directly with real estate, and lack of previous experience in related activities, a city or county may choose to establish housing partnerships with private sector businesses or may have authorities contract with private entities on their behalf.

		downpayment assistance or even helping to provide long term income stream to secure financing using long term leaseback arrangements.	
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Other tips and best practices for dealing with real estate purchase redevelopment, management and resale:

- **Make sure that your community’s entire process for property acquisition, rental and/or resale is reviewed by qualified attorneys.** Do not automatically assume that all “generalist” city and county attorneys are adequately versed in all areas of the law that will apply to your initiative. For example it is uncommon for lawyers to be equally well versed in federal housing guidelines, ADA requirements, complex real estate contracts, bonds, state redevelopment statutes such as Tax Allocation Districts, brownfields and other environmental laws. Thus depending on your partners and individual strategy, consultation with specialist attorneys such as bond attorneys, real estate, planning and zoning specialists, or non-profit attorneys may be prudent.
- **Keep in mind that the entities you choose to partner with will be both limited and empowered in how they conduct business not only by the provisions of the state’s NSP program, but by the specific state redevelopment laws they operate under and especially by their own enabling legislation, charters, bylaws, etc.**
- **Be aware that redevelopment statutes may have slightly different procedures and advertising requirements for buying and selling real estate.** As an example, the required process for selling property under the Urban Redevelopment Act (O.C.G.A. 36-61-1) is slightly different than under the State’s Tax Allocation District Law (O.C.G.A. 36-44-1). Thus the same development authority might have to use different procedures to buy and sell property depending on which statute it is are using.
- **Many state statues are interpreted and administered through “rules” typically promulgated by state agencies. Read the fine print of the rules, not just the statutory language.** Pay close attention to these rules in addition to the language of the law. Make sure that your partners understand any state agency approval, you and your partners have the administrative capacity to comply with any ongoing reporting requirements and that you follow and carefully document all due process, public notice and citizen participation requirements.
- **Take municipal and county ordinances into account.** Provisions in local regulations, especially as related to land development, building codes, historic preservation and tax incentive ordinances may modify or further condition the general provisions will affect what can be done on specific parcels of real estate. In some cases, local ordinances may create roadblocks or require tweaking to accomplish some important NSP goals. These local regulations should thus be reviewed and considered in designing a workable neighborhood stabilization strategy. The Urban Redevelopment Act may be a quick way to fine tune local codes and ordinances to enhance neighborhood stabilization efforts.
- **Selling property procured with NSP funds should be done in an equitable and transparent manner.** Most state redevelopment statutes allow entities granted city and county redevelopment powers to sell property, not to the highest bidder as would

typically be required in a land sale by a local government, but under any terms that are in the public interest and consistent with the entity's statutory purposes. Government owned lands may be deeded to such entities for development or resale. The rules and conditions for sales should be clearly spelled out in intergovernmental contracts or memorandums of agreement between local governments and their partners.

In some cases, communities may wish to sell multiple parcels of property in a particular neighborhood to a single master developer. Some reasons this might be appropriate would be: 1) fast tracking redevelopment and resale of property 2) ensuring the quality of construction, 3) finding developers who can offer special mortgage financing options to low-mod buyers, and 3) reducing administrative oversight costs. It is perfectly acceptable to institute a developer prequalification process to vet such private sector or non-profit master developers or real estate investors. This often involves developing a Request for Qualifications (RFQ) and maintaining a list of qualified private-sector partners. Local governments or their development partners should advertise the sale of property or letting of development contracts as well as prequalification requirements. Communities should also provide easy to understand written program guidelines, encourage media coverage of their NSP efforts and, obviously, avoid conflicts of interest or land transactions based on personal relationship with local investors.

- **Understand and utilize mechanisms for attaching conditions that run with the land.** There are several instances in which local government and their partners may want to attach conditions to the sale of property, record those conditions and attach them to the actual property so that they are binding on future buyers. Attaching conditions to individual properties that may affect value or allowable uses can be done in a number of ways including 1) restrictive covenants, 2) conservation easements, 3) filing deed restrictions or development agreements with land records at the courthouse, or 4) requiring legally binding agreements or development contracts with development partners or land purchasers. These may specify remedies or penalties when the terms of development agreements are violated. Deed restrictions may be one tool for keeping properties “affordable” over time. In the case of selling large development parcels or a block of infill lots, especially if price concessions are negotiated in return for project open space, amenities or a percentage of affordable units, NSP programs may wish to file an entire development plan specifying allowable uses, design controls, architectural or site development requirements. Deed restrictions can prevent speculation and ensure that even if a developer sells the land to a third party or cannot complete his obligations, the next owner will pay the appropriate price for the land based on the agreed upon build out scenario and the community will not lose benefits that may have factored into a below market rate sales price. Good legal council is important in structuring these provisions.
- **If your NSP strategy involves are embarking on a large scale clearance of deteriorated properties, make the appropriate local infill development standards and building codes in place.** Replacing deteriorated older homes with poorly constructed or unattractive new ones will not necessarily turn a neighborhood around. Consider demolishing vacant properties with minimal architectural character first. As the neighborhood improves many neglected historic homes should begin to attract private sector investors, so consider inventorying and saving the best of those structures. Also look at state programs designed to help homeowners with rehabilitation cost and help keep elderly residents in their own homes.

- **Higher density mixed-used projects and live-work units are currently very attractive to homebuyers, especially in urban situations.** These sorts of projects can be done with NSP funds for either fee simple units or multifamily rental units but will require careful investment and ownership structuring since commercial portions of such properties may not generally be eligible for funding under NSP.
- **Be sure to document compliance with required 15% discounted price of property purchased.** Accurate record should be kept of property appraisals on each property purchased and the amount paid. Because markets are currently so volatile it is even more important that comparables should be on recent sales. Appraisers should also give a very detailed report on required repairs. If funded, your State NSP Grant Agreement will likely carry Special Conditions related to this NSP Appraisal requirement.
- **Consider incorporating in your NSP strategies various state and federal incentives that can affect bottom line housing prices or lower development costs for private partners.** State and local ad valorem tax abatements may contribute to housing affordability. Consider using State Enterprise Zones to provide a ten year ad valorem property abatement on properties where residential rehabilitation projects or infill housing increases land values five times the initial appraised value of the underlying land.

The State's Housing Tax Credit Program allocates federal and state tax credits to owners of qualified rental properties who reserve all or a portion of their units for occupancy for low income tenants. DCA's process for allocating funds through the OAH is outlined in Georgia's Qualified Allocation Plan. This document describes (1) the federal and state resources available for financing rental housing through the plan, (2) the legislative requirements for distributing these resources, (3) the State's preference for the location and type of such housing, (4) the process used for evaluating applications and awarding these resources, and (5) program compliance requirements and procedures.

Tax credits can dramatically affect the profitability of developer proformas. Tax credits can be sold if a developer does not own enough taxes to take full advantage of them. Housing tax credits can be taken in addition to Historic Rehabilitation Tax credits in many older neighborhoods. Information on these programs is available on DCA's website.

- **Think creatively about strategies for making more buyers eligible to buy NSP real estate.** Think creatively and consider whether real estate proceeds might be used to create long term local Revolving Loan Programs focused on workforce housing. NSP Loan Guarantees or similar risk reduction tools may also be useful encouraging local banks to make more loans in target areas, especially to low-mod or credit-challenged individuals.
- **Take ADA compliance into considerations in rehabilitation projects.** 5% of projects under NSP must be handicap accessible but there are funds available targeting special needs residents.

#### **Other Potentially Relevant Statutes:**

Georgia Building Codes O.C.G.A. 8-3-14

State Historic Preservation Act O.C.G.A. 44-10-1

Georgia Development Impact Fee Act O.C.G.A. 36-71-1

Enterprise Zone Employment Act O.C.G.A. 36-88.1

**Useful Web links and Publications:**

<http://www.dca.state.ga.us/communities/CDBG/programs/nsp.asp>

<http://www.hud.gov/offices/cpd/communitydevelopment/programs/neighborhoodspg/>