Challenges of Automatic Termination Requirements

October 8, 2014

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Workshop Agenda

- Introductions
- Defining the Issue
- HUD Requirements and Automatic Termination Provisions
- USDA Requirements
- Rural/Mountain Community Perspective
- Urban Perspective
- Fannie Mae Approach
- Proposed Solutions – Alternatives

Defining the Issue

- Affordable Housing Programs for Home Ownership
- Maintaining Long Term Affordability
- Non-profit and Government Sponsored Programs that subsidize the purchase price to affordable levels
- Buyers agree to restrictions
  - Resale price
  - Eligible low-moderate income buyer

HUD Requirements and Automatic Termination Provisions

- Legal Restrictions on Conveyance (HUD 24 CFR 203.41 and ML 94-2)
- HUD Policy against restraints on alienability (transfer) without restrictions of mortgaged property
- Homeownership includes ability to freely dispose of home and retain unfettered ownership
- Exception for affordable housing programs:
- Part of eligible government or nonprofit program AND
- Restrictions Automatically Terminate if title is transferred by foreclosure or deed-in-lieu

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Problems Identified with Current FHA Policy

- Resale formula – FHA requires 50% of increase in value to homeowner
- Prohibitions on local program requirements
- ML 94-2 limits eligibility to 115% AMI instead of 120% AMI
- No community-wide program certification for FHA approvals – development based
- Affordability restrictions may not survive foreclosure

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USDA Requirements

Rural/Mountain Property Perspective

Urban Perspective

Fannie Mae Requirements

- Fannie Mae Selling Guide B5-5.3
  - Will purchase loans with Automatic Termination Requirements and those without Automatic Termination Requirements
  - Loans without Automatic Termination
    - Appraisal approach reflects resale restrictions
    - Lender Reps & Warrants no impairment of ability to cure default, foreclose, or otherwise protect Fannie's interest in mortgage
    - Right of first refusal or option to purchase allowed within 90 days of notice of default or foreclosure
    - Third party notification allowable
    - Servicer ability to track loans, Special Feature Codes

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HUD Pilot Program

- HUD
- Timing is To Be Determined
- New person responsible for pilot
  - Request for data re properties being financed with resale restrictions
  - Request for ideas for potential solution
  - What can be done beyond the pilot
  - Questionnaire

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Potential Solutions

- Fannie Mae Approach
- HUD Pilot Program or Revisions to ML 94-2
- USDA
- All Ideas Welcome!

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Resources

- http://cltnetwork.org/topics/deed-restricted-or-inclusionary-housing-programs/
- http://www.huduser.org/portal/periodicals/cityscpe/vol15num2/ch21.pdf
- https://www.fanniemae.com/content/guide/selling/b/index.html
- http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_16755.txt

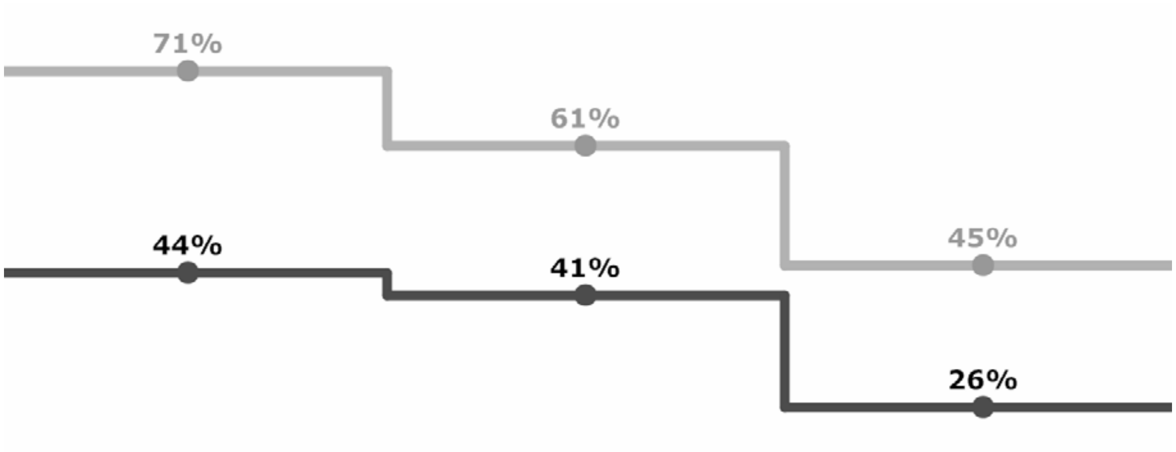
Denver

Homeownership

2005	2011	August 2013

Sale price $300,000

Sale price $200,000



2010	2011

Renters earning $75,000

Homeownership rate (50%) could change with increase in higher income renters.

Affordability of Detached and Attached Homes, 2000 and 2013

	Single Family Detached Home		Single Family Attached Home	
	2000	2012-2013	2000	2012-2013
Median Price	$185,000	$290,000	$140,500	$228,200
Income need to afford the median price	$39,745	$62,303	$34,497	$56,029
Percent of renters who could afford to buy	34%	26%	40%	30%

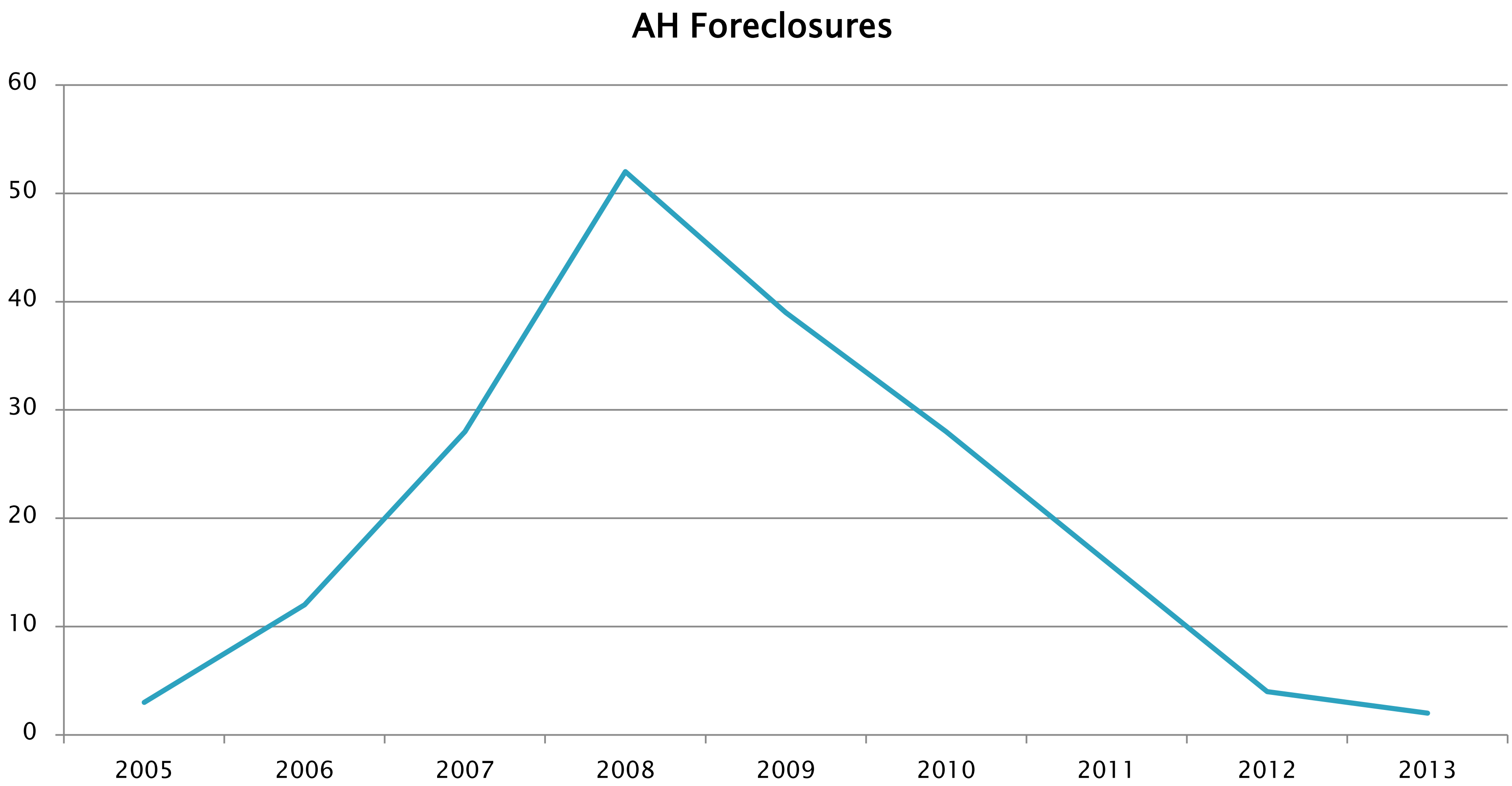
Median Price of Homes to Buy, 2000 and 2013

County	No. of Units Listed or Sold		Median Home Price, All Units		Change in Median
	2000	2012-2013	2000	2012-2013	2000-2013
Denver County	13,784	24,676	$170,000	$269,000	**$99,000**
Adams County	7,172	14,109	$163,500	$195,000	$31,500
Arapahoe County	12,857	21,224	$170,000	$225,000	$55,000
Boulder County	6,229	11,090	$237,000	$345,000	**$108,000**
Jefferson County	11,881	20,137	$195,000	$253,000	$58,000

Current City Covenant Units

PROGRAM	Units Produced	Foreclosures	Foreclosure Rate	Remaining AH Units
IHO	**82**	**2**	**2.44%**	**80**
LARGE SCALE	**1073**	**183**	**17.05%**	**890**
Green Valley Ranch	*652*	*166*	*25.46%*	*486*
Lowry Redevelopment	*186*	*1*	*0.54%*	*185*
Stapleton	*235*	*16*	*6.81%*	*219*
TOTAL:	**1155**	**185**	**16.02%**	**970**

Current City Covenant Units



Restrictions of HOME funding

HOMEfires - Vol. 5 No. 2, June, 2003
Q: Does the termination of the *affordability restrictions* on a HOME-assisted project due to foreclosure or transfer in lieu of foreclosure relieve the Participating Jurisdiction (PJ) of the requirement to repay the HOME investment in projects in which the *affordability requirements* are not met for the full affordability period?
A: No. Notwithstanding the termination of *affordability restrictions* on a HOME project conveyed to a lender due to foreclosure or transfer in lieu of foreclosure, the PJ must repay the HOME account because the project has not met the *affordability requirements* for the full affordability period. Consequently, if a HOME-assisted rental project or homebuyer project with a resale agreement no longer meets applicable affordability requirements, the PJ must repay the HOME investment.

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Restrictions of HOME funding

This HOMEfires is out of date and is being updated by HUD

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MEMORANDUM

TO: Rick Garcia (rick.m.garcia@hud.gov)

FROM: David J. Myler, The Myler Law Firm, P.C.

DATE: June 6, 2013

SUBJECT: Subordination of Deed Restrictions

Rick:

Thank you for taking the time yesterday to discuss the subordination issue. To recap, HUD and USDA are routinely requiring that Affordable Housing Deed Restrictions (the "Deed Restrictions") utilized by the mountain resort communities to restrict price increases and establish buyer qualifications be subordinated to new financing insured or guaranteed by FHA or USDA. The Deed Restrictions in question are the back-bone of the affordable housing programs in those communities; the mechanism which assures long-term affordability for working residents. Placing the Deed Restrictions at risk in the event of foreclosure is, in my opinion, unwarranted and unnecessary given the minimal risk associated with re-selling affordable units, even during the recession.[1] Furthermore, the subordination forces local governments to utilize their financial resources to cure defaults and purchase units in foreclosure in order to protect the Deed Restrictions. Given the very low risk of loss to lenders, I do not believe that the local governments and housing authorities should be forced to bear that burden and, in effect, backstop FHA and USDA.

The following information illustrates the demand for financing in Pitkin and Garfield Counties alone:

PITKIN COUNTY
SALES ACTIVITY

YEAR	# OF UNITS	TOTAL SALES
2013	36	10,051,707
2012	57	11,174,779
2011	60	12,152,059
2010	74	16,954,495
2009	72	14,920,968
2008	39	8,206,171
		74,460,179 TOTAL

[1] It is interesting to note that Alpine Bank routinely makes non-FHA/USDA guaranteed portfolio loans secured by mortgages on Deed Restricted Units without requiring subordination.

GARFIELD COUNTY
SALES ACTIVITY

YEAR	# OF UNITS	TOTAL SALES
2013	3	973,400
2012	8	1,828,200
2011	6	1,431,826
2010	21	5,279,515
2009	11	2,506,675
		12,019,615 TOTAL

Please keep in mind that there are 1,514 Owner-Occupied Deed Restricted Units in Pitkin County. The most that were involved in a foreclosure in any one year since 2007 is seven (7) of those Units. I am also advised that there has never been a foreclosure in Pitkin County where the 1st Mortgagee was not paid in full. All units "rescued" by APCHA or the City of Aspen were re-sold, subject to the price-caps and buyer qualifications in the Deed Restriction, for more than the foreclosure sale price. Although I have not had the opportunity to research the foreclosure scenarios in other areas, I would be surprised to find significant differences. Even during the recession, the demand for Deed Restricted Units exceeds the supply thereby assuring re-sales at prices which are capable of retiring the debt on those units.

As a Director of CHFA, and as a long-time affordable housing advocate, particularly in the mountain resort communities[2], I am requesting that your office consider and facilitate such policy refinements as may be required in order to eliminate the subordination requirement. I look forward to working with you on this important matter and will make myself available to assist you in any manner that you deem appropriate.

[2] Chairman of Aspen/Pitkin County Housing Authority; Advisor to the City of Aspen, the Town of Snowmass Village, the City of Glenwood Springs, and the Garfield County Housing Authority on housing matters.