

## **Chapter 122E.**

### **North Carolina Housing Trust and Oil Overcharge Act.**

#### **§ 122E-1. Short title.**

This Chapter shall be known and may be cited as the "North Carolina Housing Trust and Oil Overcharge Act." (1987, c. 841, s. 1.)

#### **§ 122E-2. Definitions.**

As used in this Chapter:

- (1) The term "substandard unit" means a housing unit which, by reason of dilapidation, deterioration, age or obsolescence, inadequate provision for ventilation, light, air, sanitation, or open spaces, high density of population and overcrowding, unsanitary or unsafe conditions, or the existence of conditions which endanger life or property by fire and other causes, or any combination of such factors, is conducive to ill health, transmission of disease, or has an adverse effect upon the public health, safety, morals or welfare of its inhabitants.
- (2) The term "Partnership" means the North Carolina Housing Partnership.
- (3) The term "Agency" means the North Carolina Housing Finance agency.
- (4) The term "Fund" means the North Carolina Housing Trust Fund.
- (5) The term "Treasurer" means the North Carolina State Treasurer.
- (6) The term "affordable housing unit" means a unit for which an occupant is paying no more than thirty percent (30%) of gross monthly household income for rent and utilities.
- (7) The term "Stripper Well Litigation Funds" means funds received by North Carolina, and all interest and other income generated by such funds, pursuant to the Settlement Agreement that was approved by Order of the Court, dated July 7, 1986, in In re: The Department of Energy Stripper Well Exemption Litigation M.D.L. No. 378 (D. Kan.).
- (8) The term "Diamond Shamrock Litigation Funds" means funds received by North Carolina, and all interest and other income generated by such funds, pursuant to the Order of the Court, dated June 6, 1986, in Diamond Shamrock Refining and Marketing Co. v. Standard Oil Co., Civil Action No. C2-84-1432 (S.D. Ohio). (1987, c. 841, s. 1.)

#### **§ 122E-3. North Carolina Housing Trust Fund.**

(a) There is established a North Carolina Housing Trust Fund, separate and distinct from the General Fund.

(b) The Fund shall consist of monies received under this act and any other sources of revenue, public or private, dedicated for inclusion in the Fund.

(c) The State Treasurer shall serve as trustee for the Fund. The Treasurer shall invest the North Carolina Housing Trust Fund revenues he receives as provided in G.S. 147-69.2(b). The Treasurer shall provide the Agency with quarterly and annual reports of Fund revenues and interest earnings. (1987, c. 841, s. 1.)

#### **§ 122E-3.1. Community Living Housing Fund.**

(a) Definitions. – The following definitions apply in this section:

(1) Catchment area. – As defined in G.S. 122C-3.

(2) Targeted units. – Units within Low Income Housing Tax Credit developments that are specifically designed to facilitate the inclusion of individuals with disabilities.

(b) Creation and Source of Funds. – The Community Living Housing Fund is established within the Housing Finance Agency to pay for the transition of individuals diagnosed with severe mental illness or severe and persistent mental illness as defined in G.S. 122C-20.5 from institutional settings to integrated, community-based supported housing and to increase the percentage of targeted housing units available to individuals with disabilities for use in the North Carolina Supportive Housing Program under Article 1B of Chapter 122C of the General Statutes. Beginning with fiscal year 2013-2014, any unexpended, unencumbered balance of the amount appropriated to the Transitions to Community Living Fund established pursuant to Section 10.23A(d) of S.L. 2012-142 at the end of each fiscal year shall not revert but shall be transferred and made available to the Community Living Housing Fund.

(c) Use of Funds. – The North Carolina Housing Finance Agency, in consultation with the Department of Health and Human Services, shall be responsible for administering the Community Living Housing Fund. The monies in the Fund shall be available for expenditure only upon an act of appropriation by the General Assembly and only for the following purposes:

(1) To provide permanent community-based housing in integrated settings appropriate for individuals with severe mental illness and severe and persistent mental illness.

(2) To support an increase in the number of targeted units for individuals with disabilities located in housing projects funded by the Housing Finance Agency from ten percent (10%) to fifteen percent (15%). The additional targeted units funded shall be made available to the Department of Health and Human Services for use in the North Carolina Supportive Housing Program under Article 1B of Chapter 122C of the General Statutes. Priority for funding of the additional targeted units shall be given to units to be located in catchment areas identified by the Department of Health and Human Services, in consultation with the North Carolina Housing Finance Agency and LME/MCOs, as having the greatest need for targeted units.

(3) To recruit property owners who are willing to rent targeted units to individuals with disabilities. (2013-397, s. 8; 2015-241, s. 25A.1.)

**§ 122E-4. North Carolina Housing Partnership created; compensation; organization.**

(a) The North Carolina Housing Partnership is hereby created within the North Carolina Housing Finance Agency to establish policy, promulgate rules and regulations, and oversee the operation of the Fund. The Partnership shall be constituted to coordinate

private enterprise and investment with public efforts to address the serious shortage of decent, safe, and affordable housing for low and moderate income citizens of this State.

- (b) The Partnership shall consist of 13 members as follows:
- (1) The Executive Director of the North Carolina Housing Finance Agency shall serve ex officio;
  - (2) The Secretary of the Department of Commerce or his designee shall serve ex officio;
  - (3) The State Treasurer or his designee shall serve ex officio;
  - (4) In accordance with G.S. 120-121, five members shall be appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate, provided that one member shall be a representative of the homebuilding industry, one member shall be a low income housing advocate, and one member shall be a representative of the League of Municipalities;
  - (5) In accordance with G.S. 120-121, five members shall be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives, provided that one member shall be a representative of the real estate lending industry; one member shall be a representative of a non-profit housing development corporation; and one member shall be a resident of low income housing.

The members of the Partnership shall elect one of their members to serve as Chairman for a term of one year. Seven members of the Partnership shall constitute a quorum. All members shall have the right to vote on all issues before the Partnership.

(c) Members of the Partnership shall serve for three year terms. Initial terms shall begin on September 1, 1987. Appointed members shall serve until their successors are appointed and qualify.

(d) Vacancies in the offices of any appointed members shall be filled in accordance with G.S. 120-122 for the remainder of the unexpired term. No vacant office shall be included in the determination of a quorum. No vacancy in office shall impair the rights of the members to exercise all rights and conduct the official business of the Partnership.

(e) Members of the Partnership shall receive as compensation for each day spent on work for the Partnership such actual expenses as may be incurred for such travel and subsistence in the performance of official duties and such per diem as is allowed by law for other such State boards and commissions. Members shall not receive a salary for the performance of their duties as members.

- (f) The Partnership shall have the following powers and duties:
- (1) To promulgate rules and regulations governing all policy matters relating to the implementation of all programs for uses of the Fund and the Partnership's oversight of the Agency's administration of the Fund.
  - (2) To promote the development of a coordinated State low income housing plan.
  - (3) To obtain necessary information from other State agencies concerning housing; and

(4) To allocate monies contained in the Fund.

(g) The Partnership may appoint an Executive Director. The Executive Director shall be empowered to employ such additional professional and clerical assistance as the Partnership may deem necessary to administer the provisions of this Chapter. All employees of the Partnership, other than the Executive Director, shall be compensated in accordance with the salary schedules adopted pursuant to the North Carolina Human Resources Act. The Partnership and the Agency may enter into agreements for the use of Agency staff to assist the Partnership and the provision of administrative support for the Partnership by the Agency.

(h) The Partnership shall meet quarterly and can meet more regularly upon the call of the Chairman or upon written request of four members.

(i) Members of the Partnership may not receive any direct benefit from, or participate in, the programs of the Fund. Members of the Partnership may be employed by, or serve as a board member of, a nonprofit entity participating in a program of the Fund if the member discloses the employment or the membership in the minutes of the Partnership and does not vote on any matter pertaining to the entity's participation. This policy applies to:

- (1) Individual members of the Partnership;
- (2) Businesses, corporations, or partnerships owned in whole or in part by members of the Partnership; and
- (3) The immediate family members of the members of the Partnership. (1987, c. 841, s. 1; 1989, c. 727, ss. 218(84), 223(c); c. 751, ss. 7(12), 9(c), 16; c. 754, s. 53; 1991 (Reg. Sess., 1992), c. 959, s. 31; 1995, c. 490, s. 25; 2013-382, s. 9.1(c).)

#### **§ 122E-5. Administration.**

(a) The North Carolina Housing Finance Agency shall administer the Fund in accordance with the policies, rules and regulations promulgated by the Partnership.

(b) The Agency's responsibilities shall include:

- (1) The Management of the overall program for the use of the fund;
- (2) Development of program design in accordance with policies established by the Partnership;
- (3) Development and management of a selection system in accordance with policies established by the Partnership;
- (4) Provision of technical assistance to prospective applicants; and
- (5) Monitoring of projects to ensure compliance with applicable State and federal laws and regulations and relevant court decisions.
- (6) The Agency shall promulgate rules and regulations governing the administration of the Fund and its overall program for use of the Fund in accordance with the policies, rules and regulations promulgated by the Partnership.

(c) In administering the Fund, the Agency shall maintain a separate account for and shall keep separate records regarding the principal and expenditures made from the Stripper Well Litigation funds and the Diamond Shamrock Litigation funds in order to assure the proper

expenditure and reporting of these funds to the respective courts and to the United States Department of Energy.

(d) The Agency shall file all required reports with the appropriate courts in the Stripper Well Litigation and in the Diamond Shamrock Litigation, and otherwise shall fully comply with all relevant court orders. The Agency also shall file the report of planned expenditures which is required under Paragraph II. B. 3. f. iv of the Final Settlement Agreement in the Stripper Well Litigation prior to its first expenditure of Stripper Well Litigation Funds. (1987, c. 841, s. 1.)

**§ 122E-6. Uses of funds.**

Funds from the Fund shall be used to increase the supply of decent, affordable and energy-efficient housing for low, very low, and moderate income residents of the State as defined in G.S. 122E-2. Such funds shall be used to finance, in whole or in part, projects and activities eligible under this section. The Agency shall make available loans, grants, interest reduction payments, or other comparable forms of assistance to eligible applicants. Provided, however, that with regard to those funds of the Fund which are Stripper Well Litigation Funds or Diamond Shamrock Funds, grants shall be from both the principal and income generated by the principal of such Funds so that all such Funds will be expended within a reasonable period of time. Provided, further, that with regard to that portion of the Fund which is derived from the appropriation of State funds, the amount of grants to be made in any fiscal year shall be limited to the amount of income generated by the principal of that portion of the Fund.

(a) Beneficiaries.

- (1) The Partnership shall ensure that the Agency's program for uses of monies from the Fund directly benefit low, very low and moderate income persons and families as set forth in subsections (2), (3), and (4) below.
- (2) The Partnership shall ensure that at least thirty percent (30%) of the total funds from the Fund eligible for expenditure by the Agency in any fiscal year directly benefit persons and families whose incomes do not exceed thirty percent (30%) of the median family income for the local area, with adjustments for family size, according to the latest figures available from the U.S. Department of Housing and Urban Development.
- (3) The Partnership shall be authorized to allocate up to thirty percent (30%) of the total funds from the Fund for the benefit of persons and families whose incomes do not exceed fifty percent (50%) of the median family income for the local area, with adjustments for family size, according to the latest figures available from the U.S. Department of Housing and Urban Development; provided, however, these funds may also be directed for the benefit of the persons and families defined in subsection (2).
- (4) The Partnership shall ensure that no more than forty percent (40%) of the total funds from the fund eligible for expenditure by the Agency in any fiscal year directly benefit persons and families whose incomes do not exceed eighty percent (80%) of the median family income for the local area, with adjustments for family size, according to the latest figures available from the U.S. Department of Housing and Urban Development.

(b) Eligible Projects.

- (1) An eligible project consists of one or more residential buildings containing similarly constructed units, the site on which the building(s) is located and any

functionally related facilities. Multiple buildings may constitute a project only if bounded together as a result of proximate location, or common ownership and financing.

- (2) Projects which provide for the construction or rehabilitation of rental projects must contain contractual guarantees to ensure that at least twenty percent (20%) of the units are occupied by persons and families defined in G.S. 122E-6(a) (2) and (3) for a period of time following the award of grants or loan funds from the Fund, said period to be not less than 10 years, and shall be established by the rules and regulations promulgated by the Partnership and are affordable housing units as defined in G.S. 122E-2(9) [G.S. 122E-2(6)].

(c) Eligible Uses for State Appropriated Funds.

Eligible activities include, but are not limited to the following:

- (1) Rehabilitation, including weatherization, of sub-standard housing units;
- (2) Assistance for costs of necessary studies, surveys, plans and permits, engineering, legal and architectural and other technical services;
- (3) new construction, including costs of land acquisition and site preparation;
- (4) Assistance for the construction or rehabilitation of shelters for the homeless;
- (5) Assistance in the development of manufactured housing sites which constitute eligible projects as defined in subsection (b) of this section. The Agency may contract with outside organizations to provide such assistance; and
- (6) Such other programs which increase the supply of decent and affordable housing for low, very low, and moderate income persons which the Partnership shall deem appropriate to meet the purposes stated in this section.

(d) Eligible Uses for Stripper Well Litigation Funds and Diamond Shamrock Litigation Funds.

- (1) Eligible uses for the Stripper Well Litigation funds shall be those uses permitted under Paragraph II.B.3.f.ii. of the Settlement Agreement that was approved by Order of the Court, dated July 7, 1986, including, but not limited to, those residential energy-related uses which are identified in Exhibit J to said Settlement Agreement.
- (2) Eligible uses for the Diamond Shamrock Litigation funds shall be those uses permitted under Exhibit B to the Order of the Court, dated June 6, 1986, including but no [not] limited to those residential energy-related uses which are identified in Attachment C to Exhibit B to said Order. (1987, c. 841, s. 1.)

**§ 122E-7. Eligible applicants.**

Eligible applicants shall include units of State and local governments including municipal corporations, for profit and nonprofit housing developers. Provided, however, that the Partnership's rules and regulations shall ensure an equitable distribution of Fund funds based upon population and low and moderate income housing needs across the State. (1987, c. 841, s. 1.)

**§ 122E-8. Allocation of funds.**

(a) Monies within the Fund shall be allocated to eligible applicants under this Chapter by the Agency, in accordance with funding cycles established at least annually. The Partnership shall establish rules and regulations with full public input, including at least one public hearing for which adequate notice is provided in a timely manner. These rules and regulations shall establish general

policies governing the eligibility of applicants, application procedures, project eligibility requirements, and the criteria and standards for awarding grants and loans. Such rules and regulations shall be adopted within 270 days from the effective date of this Chapter.

(b) The Agency shall promulgate rules and regulations governing the review of applications for assistance and the awarding of grants or loans under this Chapter in accordance with the rules and regulations adopted pursuant to subsection (a) above. The rules and regulations shall provide that if an application is rejected, the Agency shall detail in writing the reasons for the rejection.

(c) The Agency shall give priority to applications providing for:

- (1) The improvement of existing housing stock which is affordable for low and very low income families;
- (2) The construction of housing units for very low income families; and
- (3) The leveraging of Fund monies by combination with other private or governmental loan grant or bond financing programs.

(d) The Agency shall also give priority to applications which include provisions such as:

- (1) Interest rates and loan terms more favorable than those conventionally offered;
- (2) Developer contributions to project costs;
- (3) Local government contributions to project costs, including infrastructure improvements, contributions of publicly owned land for housing development, and the provision of funds for such services as child care and job training;
- (4) Coordination with other housing and/or infrastructure investments in the community;
- (5) Provision of housing to the disabled, single parent households, or rurally isolated households; or
- (6) Provision of housing to persons whose current housing fails to meet basic standards of health and safety and who have little prospect of improving the condition of their housing except by residing in an eligible project receiving assistance under this Chapter. (1987, c. 841, s. 1; 1997-506, s. 44.)

#### **§ 122E-9. Displacement.**

In establishing criteria for G.S. 122E-8(a), the Agency shall give special attention to designing protections to provide that any lawful occupants who live in a project as defined in G.S. 122E-6(b) prior to rehabilitation or demolition shall not be displaced as a result of such activity, other than temporarily, in which case suitable relocation arrangements shall be provided. The Agency shall promulgate rules concerning acquisition of property and relocation. (1987, c. 841, s. 1.)