

November 5, 2018

MEMO

Subject: Acceptance of alternative homeownership verification methods under the PR CDBG-DR Action Plan.

I. Background

The Puerto Rico Disaster Recovery Action Plan prepared by the Puerto Rico Department of Housing in order to administer the Community Development Block Grant Disaster Recovery funds includes a Title Clearance Program that has the goal of providing “clear title to homeowners throughout the hurricane impacted area, therefore resulting in long-term sustainability and security for residents.”¹ The program’s intent is to address the obstacles faced by the residents of the island in terms of access to the federal disaster assistance for which they were eligible. The program was added to the plan submitted to HUD on June 14th and was never opened to public comment.

As per federal regulations, the Federal Emergency Management Agency (FEMA) must verify ownership before providing individual assistance to an applicant. In order to verify ownership the applicant may present formal title or they may present evidence that shows that they are the one in charge of the property’s maintenance. However, FEMA demanded applicants to verify ownership via formal title in order to give them access to the individual assistance. In multiple cases -estimated between 40,000 to 70,000- eligible applicants were denied Individual Assistance due to the lack of such documentation.

FEMA’s demands went against federal regulations and against the island’s legal framework, which recognizes various methods through which an individual can verify or establish ownership over a property, aside from possessing a title deed. Through a long and arduous process, led by Ayuda Legal Puerto Rico and other non-profit organizations that promote access to justice, FEMA recognized our legal framework and started accepting a “signed self-declaration”², drafted by ALPR with the collaboration of FEMA. This declarative statement does not need to be notarized and allows applicants to verify homeownership with FEMA. This has paved the way for thousands of families that, more than a year after the hurricane, have yet to receive the assistance necessary to repair their homes.

¹ Puerto Rico Housing Department, Puerto Rico Disaster Recovery Action Plan - Draft For Public Comment (September 21, 2018) - Page-131

² Hurricane Survivors in Puerto Rico Can Self-Declare Home Ownership, Occupancy, Release No. 240 (2018) <https://www.fema.gov/news-release/2018/07/31/hurricane-survivors-puerto-rico-can-self-declare-home-ownership-occupancy>

The CDBG-DR Puerto Rico Action Plan, approved by HUD on July 29, 2018, not only includes the aforementioned Title Clearance Program but also integrates the concept of formal title as a requirement of the housing rehabilitation, reconstruction and relocation programs. The program was added to the plan submitted to HUD on June 14th and was never opened to public comment. The whole program should be considered a substantial amendment to the original draft action plan given citizens were not afforded a reasonable opportunity to examine its contents nor to provide feedback. The Amended Action Plan increased the amount for this program from 35 million dollars to 40 million dollars.

We request a clear policy on how the local Housing Department will verify homeownership through alternative methods in order to assess eligibility for these programs or any other that could be established in the future. Insisting on verifying homeownership through formal title documentation is extremely worrisome, even more when this is the standard being proposed to determine access to funds destined for the post-disaster recuperation. Henceforth this memo has two objectives:

1. Analyze if it is possible for the Department to adopt a clear public policy that allows the use of alternative methods -such as a declarative statement- to verify homeownership.
2. Analyze the possibility of reallocating the funds for the Title Clearance Program to other programs that tend to the community's most urgent needs.

II. Legal investigation

A. Proof of ownership under disaster related federal regulations:

Through the Community Development Block Grant Disaster Recovery Program (CDBG-DR) the U.S. Department of Housing and Urban Development (HUD) provides flexible grants to help cities, counties, and States recover from Presidentially declared disasters, especially in low-income areas, subject to availability of supplemental appropriations. Grantees must comply with regular CDBG regulations, except those that are waived by HUD, and they must comply with Title VI of the Civil Rights Act of 1964.

CDBG-DR funds offer Grantees a great amount of flexibility when it comes to determine how to invest the money granted and allows them to carry out a wide range of recovery activities. The Allocation Notices³ that pertain to the CDBG-DR funds assigned to Puerto Rico do not impose upon the Puerto Rico Housing Department any requirements when it comes to its ability to decide who is an eligible homeowner who can benefit from disaster related assistance.

Although the CDBG Act does not define homeownership, the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act, 1974), the law that structures federal

³ 83 F.R. 5844 and 83 F.R. 40314

natural disaster assistance for state and territories, defines an owner-occupied residence as a residence occupied by: (1) The legal owner; (2) A person who does not hold formal title to the residence and pays no rent, but is responsible for the payment of taxes or maintenance of the residence; or (3) A person who has lifetime occupancy rights with formal title vested in another."⁴

In fact, HUD offers grantees a “toolkit” that is meant to help them in their efforts of setting up their CDBG-DR programs. The toolkit contains sample program policies, procedures and other tools related to recovery programs and projects. According to HUD the toolkit “provides the information you need to set up and run an **effective, compliant CDBG-DR Program**”. Within the toolkit there are examples of methods that could be implemented by grantees in order to verify applicants’ homeownership. The example provided by HUD permits applicants to verify homeownership through alternative methods such as signed self-declarations similar to the one FEMA helped draft and has started to accept in Puerto Rico.

B. Proof of ownership in Puerto Rico

In Puerto Rico, property can be acquired through various means and methods. Meanwhile, it is not a requirement to register the acquired property in the Property Registry in order to be able to verify ownership. Our legal framework does not require people to have documentation or evidence that they are the owners of a property.

There is a plethora of ways for a person to own property. One of them is through heirship laws that grant property rights and responsibilities, automatically, to the members of decedent's estate. The Puerto Rico Civil Code recognizes the heirs’ responsibility of preserving and maintaining the estate’s assets.

Our legal framework also establishes a person can acquire property by the mere passage of time, also known as prescription. As long as the person occupies a property in a public, peaceful and uninterrupted manner for a determined amount of time, and is recognized as the owner they may acquire property by prescription.

Recognizing our historic and social context is essential in order to manage and tend to the disaster at hand. The land tenure, economic and community development policies implemented throughout the years by Puerto Rico’s government and U.S. Congress have promulgated thousands of Puerto Rican families to lack formal title over their lands. This fact, combined with the aforementioned legal framework has caused properties to be transferred throughout the years without documents that can attest to that fact. Many of said transfers have occurred automatically through many family generations and clearing said titles will prove to be a long, costly and arduous process. We need to adopt coherent and sensible public policies that deal with the title issue in a just and definitive manner.

⁴ Emergency Management and Assistance, 44 C.F.R. § 206.111 (2018)

C. Other jurisdictions:

Throughout the U.S. various jurisdictions have adopted flexible standards when it comes to verifying homeownership to determine eligibility to CDBG-DR programs. The Homeowner Rehabilitation Program⁵ adopted by Connecticut after hurricane Sandy also included the possibility for homeowners to verify their ownership through alternative methods. The same can be said of West Virginia's ⁶ , North Carolina's ⁷ and Louisiana's Action Plans.

In 2009 the Texas legislature signed Act HB 2450 into law. This Act enables an applicant for federally provided financial assistance administered by the department to repair or rebuild a home damaged by a natural disaster may establish ownership of the home through nontraditional documentation of title, including a sworn declaration similar to the one we mentioned before.

The fact of the matter is that federal agencies, in their disaster recovery efforts, must respect state's legal frameworks. In fact, CDBG-DR funds are designed to adjust to the particularities of each state and disaster in order to speed up the recovery process as much as possible. Puerto Rico's Housing Department can implement a similar policy and allow homeowners to verify their ownership through alternative methods.

III. Legal analysis and recommendations:

A. We recommend the PR Department of Housing adopts a clear public policy accepting that there are alternatives methods through which applicants can verify ownership. The policy would go hand-in-hand with FEMA's recent adoption of the self-signed declaration as a viable method of verifying ownership in determining eligibility to assistance programs.

B. We recommend the PR Department of Housing to redistribute the money assigned for the Title Clearance Program to other programs. We believe this could be achieved through a substantial amendment to the Action Plan whereby the Title Clearance Program is eliminated and the money allocated towards it is redistributed between the other programs.

The Department of Housing does not need HUD's authorization in order to establish the aforementioned public policy. This notwithstanding, in order to promote the greatest amount of clarity, transparency and efficiency in allocating funds, the Department should explain that it will accept such verification method through all available outlets. This includes the CDBG-DR implementation policies.

⁵ State of Connecticut Department of Housing, Community Development Block Grant - Disaster Recovery Owner Occupied Rehabilitation and Rebuilding Program (2013)

⁶ West Virginia CDBG-DR Housing Programs Policies and Procedures (2018)

⁷ State of North Carolina CDBG-DR Housing Recovery Programs (2017)

CDBG-DR programs are characterized by the fact that they are supposed to be designed in such a way as to provide long-term relief in an expedient and efficient manner. This is fundamental in determining the success of the relief efforts. Case by case legal strategies, such as the Title Clearance Program, are unbearably slow, onerous and will not resolve the issue that we are facing at this moment.

There is no precedent for the magnitude of the damages caused by hurricane María in PR. The government of Puerto Rico submitted a 94.4 billion dollar plan to Congress in order to rebuild, repair and improve our infrastructure. The 20 billion dollars assigned by Congress, though significant, represent almost a quarter of what the government estimated was needed. Therefore, it is of the utmost importance to invest the CDBG-DR funds in the most efficient and strategic manner in order to maximize the potential for an everlasting recovery.

The most urgent priority that the people that were affected by the hurricanes have is to make their homes secure once again. HUD is promoting the use of alternatives methods to establish ownership and Puerto Rico's Housing Department should embrace that option since it would allow us to rehabilitate the island much faster and as urgently as is needed. This would be analogous to previous practices adopted by the Department that allowed the verification of ownership via alternative methods through its temporary reconstruction programa "Tu Hogar Renace". While it is true that the Reparation, Reconstruction or Relocation Program contemplates the possibility of allowing "alternative methods for documenting ownership, including an affidavit process"⁸ we maintain that the Department must adopt a clear and explicit public policy accepting such alternative methods. Also, a model of the self-signed declaration should be included with the program's application forms as an attachment. Ayuda Legal has prepared several materials that explain and educate the general public on the use of the aforementioned sworn statement. These materials have also served to educate FEMA officials on this matter. They have been published at www.ayudalegalhuracanmaria.org. Clarity in regards to these conditions will prevent the confusion that lead FEMA to deny thousands of eligible applicants the assistance needed to repair their houses.

There are urgent unmet needs related to housing, infrastructure and the development of planning models that integrate the community. Instead of investing 40 million dollars clearing titles the Department of Housing can accept alternative methods to verify homeownership and focus in adopting a public policy that would enable it to deal with this matter in a definitive, sensible and just manner.

Conclusion

We understand that the elimination of the Title Clearance Program, the creation of an alternative title verification policy and the redistribution of the proposed TCP funds the can be achieved through a substantial amendment to the Action Plan. Said amendment shall be opened to public comments as required by HUD's regulations. Implementing

⁸ *Supra* Puerto Rico Housing Department Action Plan Page-126

alternative methods to verify homeownership will end up streamlining the procedures of other programs included in the Action Plan. It would also open up the title issue to public debate where it can be discussed in a just and decisive manner.