THE CASE FOR A SOCIAL HOUSING DEVELOPMENT AUTHORITY

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The Urban Democracy Lab at NYU's Gallatin School promotes critical, creative, just, and sustainable forms of urbanism through engaged scholarship, collaborative undergraduate and graduate coursework, creative public programming, and active publication. Our Beyond the Pandemic Project explores urban policy contexts and alternatives that are both transformative and realistic.

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Executive summary

The goal of the Social Housing Development Authority (SHDA) is to create lasting solutions for the housing crisis by purchasing distressed real estate, particularly multi-family rentals, and financing its transfer to the social housing sector (such as cooperatives, non-profits, community land trusts, and public housing). In addition to preventing the further consolidation of the housing market by private equity and other speculative investors, this federal program would avoid the upcoming crisis of evictions as moratoria expire and give distressed landlords a graceful exit. Most fundamentally, however, this policy contributes to the stability and empowerment of those communities most historically affected by predatory policies like redlining and disinvestment by creating permanently affordable, community-controlled housing. By investing in a robust social sector that is, in principle, lasting and immune to speculation, this policy helps communities avoid displacement and the destructive pressures of gentrification. And by investing in maintenance, upgrading, and retrofitting before turning units over to communities, it contributes to the stock of quality, environmentally sound housing. This policy will benefit vulnerable tenants in urban and rural areas of the country.

Introduction

The CoVid-19 pandemic has worsened what was already untenable: millions of renters and homeowners are now facing housing insecurity, as making rent and mortgage payments has become difficult. Already before this crisis we, in the richest country on the planet, were living through an era of growing unaffordability, and now we are at the brink of a generation-defining housing emergency. The current patchwork of federal and local policies – such as eviction moratoria, mortgage forbearance, and one-time cash transfers – has only temporarily held back a tsunami of families losing their homes. Renters and homeowners are still responsible for paying back all of their missed payments – with money that they do not and probably will not have. The effects are likely to cascade, first to smaller landlords, then to owners of larger properties, pushing them into distress. As this distress continues, many landlords will likely cut costs on necessary maintenance activities, which both deteriorate the living conditions of the resident tenants as well as potentially create long-term damage to the property from neglect. Large volumes of undervalued property promise to become available in the near future, and private equity firms and opportunistic investors are waiting in the wings.

The aftermath of 2008 showed us that investors are ready to capitalize on economic crisis. When families lost their homes to foreclosure, small and large investors were ready to buy the property at a steep discount. Distressed property investors often flipped the property to resell for a quick profit, or turned it into a rental property with either rising rents and, often, neglected maintenance. As landlords, these actors often have higher eviction rates, rents, and resident complaints.[1] Economic crises like these benefit those actors with access to liquidity, and private equity investors are in the ready for “one of the greatest buying opportunities of the century,” with an estimated $328 billion in “dry powder” set aside for just such a moment.[2]

The public sector must aggressively enter the private housing market to prevent both mass displacement and the further consolidation of real estate holdings by private equity. Instead of short-term band-aid solutions our proposal seeks to build truly affordable and lasting solutions that stabilize and empower communities. We propose a federal institution that creates durable solutions for the housing crisis by purchasing distressed real estate and financing its transfer to the social housing sector (such as cooperatives, non-profits, community land trusts, and public housing). It would intervene to stop the mass transfer of property to the hands of speculators and stymie the wave of evictions we are likely to see.

This proposed agency, that we are calling the Social Housing Development Authority (SHDA), has the potential to expand opportunities for millions of families to have long-lasting housing security. It would begin to address this nation's long-standing deficit in affordable housing, would create stability in neighborhoods, and would provide a measure of redress in communities previously impacted by policies like redlining and disinvestment. It could address the estimated 350,000 housing units per year that must replenish lost housing stock.[3] It would increase the stock of housing outside the market, insulating it from speculative investments and downturns. Through its retrofitting efforts, the SHDA would also contribute to climate mitigation efforts.

This white paper describes the institutional design of the SHDA. Part 1 describes the overarching mission and organizational structure of the SHDA. Part 2 elaborates on how the SHDA *acquires* distressed properties. Next, part 3 outlines what happens while the SHDA *holds* the assets, from servicing mortgages to maintaining and rehabbing distressed property. Part 4 lays out the asset *disposition* process, where preferred housing providers — non-profit housing organizations, tenant groups, community land trusts, housing cooperatives, public housing authorities, and other government agencies — gain first priority to purchase the SHDA's assets. Lastly, part 5 discusses two pieces of companion policy that would enhance the ability of the SHDA to carry out its mission: the repeal of the Faircloth Amendment and the establishment of a national Tenant Opportunity to Purchase (TOPA) policy for rental property sales. For simplicity, in the Appendix, we provide a flowchart of the SHDA's acquisition and disposition processes.

1. The SHDA: an overview

The Social Housing Development Authority (SHDA) would be a new government instrumentality with the authority, funding, capacity, and autonomy to acquire distressed real estate assets, hold and upgrade their conditions, and finance their transfer to the social housing sector. Its fundamental purpose would be to increase the supply of permanently affordable quality housing and stabilize communities by increasing the amount of social housing in this country.

The SHDA's mission would be:

> - Expand the supply of affordable housing across the country by financing the transfer of distressed real estate to the "social housing sector," such as tenant cooperatives, non-profits, community land trusts, public housing authorities, and other eligible entities.

- Ensure decent living conditions for residents and combat neighborhood blight by undertaking maintenance of neglected housing.
- Reverse decades of neglect, predatory practices, and discriminatory policies by focusing efforts on historically marginalized communities.
- Invest in green infrastructure and climate mitigation by assuring that transferred properties are retrofitted.
- Stabilize the housing market by reaching properties ahead of predatory investors, providing a viable exit for imperiled landlords, and reducing the overall amount of speculative investment in the housing market.
- When they are not covered by existing programs, and when important to neighborhood stability and the broader goals of the SHDA, such as to protect the stability of marginalized communities of color, to relieve homeowners by restructuring their mortgages to avert foreclosure or forced transfer.
- Manage itself and its assets so as to ensure the SHDA's longevity and financial solvency.

The SHDA would thus 1) acquire distressed real estate, 2) rehabilitate and retrofit properties where necessary, 3) transfer the properties to the social housing sector or tenants where possible, and 4) provide financing to eligible entities to acquire the properties.

To accomplish these goals, the SHDA would act as an aggressive asset manager to pursue distressed real estate. Currently, the arena of distressed real estate is occupied mostly by private interests, who opportunistically buy up property at discount and then flip it for a substantial profit – and often at a significant social cost. In contrast, the SHDA would use its powers and resources to reach these assets ahead of speculative investors. It would be empowered to use all the tools at its disposal to act like any private distressed asset investor to seek out and capitalize on opportunities.

The SHDA would be a government instrumentality, similar to past entities like the Home Owners Loan Corporation (HOLC)[4] or the Resolution Trust Corporation (RTC)[5] that helped steer the country out of economic crises.[6] As a government entity, the SHDA would be mission-driven rather than profit-driven. It would, however, like HOLC or RTC, recoup many of its costs in the finance and transfer of properties to the social sector.

Indeed, the ability to recoup its costs and generate revenue is a key pillar of its long-term viability and capacity to fulfill its mission of expanding affordable housing. Too many programs are subject to the whims of Congressional appropriations and eventually wither away due to chronic underfunding – the affordable housing sector is filled with such examples. To ensure the success of the SHDA, it will need to be able to manage its finances and activities in such a way that it can generate the resources necessary to meaningfully expand social housing in the US.

Rather than an agency under the administration of the executive branch, the corporation model will help insulate the SHDA to a degree from the vagaries of political influences and allow it to act nimbly. It would be run by a governing board that would set policy and investment priorities and overall organizational strategy, as well as ensure that the corporation remains accountable to its mission. The board would have representation from affordable housing and housing rights networks as well as from government agencies related to housing.

Given the diversity of housing needs across the country, the SHDA would work closely with local partners, agencies, and communities. The SHDA would establish a system of regional offices that could respond to local needs and conditions. The SHDA would staff its local and federal offices with people experienced in distressed asset acquisition, housing finance, property management, affordable housing, and community development, among others. It is important that the board itself both remain accountable to housing rights organizations and in communication with on-the-ground staff in charge of implementation who will be aware of local realities. These on-the-ground realities will be important for the SHDA to be able to define long-term affordability for its operations in a more meaningful and robust way than the current federal guidelines. The SHDA would set such guidelines in consultation with local stakeholders. A guideline for truly affordable housing would take housing burden and neighborhood characteristics into account.

2. How it works: Acquiring assets

The SHDA's work begins with acquiring distressed real estate assets. The main assets would either be direct real estate property or mortgage notes. For the multi-family rental sector, the SHDA would intervene in the financing structure or directly acquire properties. While the SHDA's primary focus would be residential property, the Board would have the discretion to allow the acquisition of non-residential real estate. This could either be part of a strategy to diversify the financial resources of the organization, or to convert commercial, retail, or hotel property into residential housing or to allow for mixed-used community controlled properties to help defray residential property costs.

While the primary mission is to serve communities and renters, this acquisition strategy provides an opportunity for relief for both landlords and lenders. Banks often want to sell non-performing loans so they can avoid a costly and lengthy foreclosure process. The purchasers of these loans often buy them at a discounted price and either renegotiate with the borrower, avoid foreclosure with a pre-foreclosure sale or a deed-in-lieu of foreclosure, or foreclose on the property. Similarly, landlords in distress may be looking for a graceful exit, rather than delaying the inevitable with a protracted legal and financial struggle that also harms and angers their tenants.

The SHDA would have a diverse acquisition strategy. Since its primary goal is expanding affordable social housing, it would likely prioritize housing that is at risk of predatory activity, such what policy makers sometimes denominate “naturally occurring affordable housing” in gentrifying areas, among others.[7] Yet, it could also selectively pursue other kinds of real estate that helps it meet its broader goals. These might be undervalued properties that could be resold to expand the SHDA’s resources for affordable housing work. Or it could be property that could be converted to affordable housing. It is conceivable that in the next months and years a lot of commercial real estate become available that could through creative adaptation and zoning changes provide viable sources of affordable housing. The expertise of the organizational staff and governing board would help set policy to balance the multiple goals of the SHDA.

The Case of Single Family Homes

> While the principal goal of the SHDA is to increase permanently affordable social housing, and we imagine the bulk of initial acquisitions to be of multi-family rental properties, single-family homes can be an important element of neighborhood stability and affordable housing. The SHDA would retain the ability to purchase these distressed mortgage notes. It may do so with the purpose of restructuring loans to keep people in their homes. It could work with both loans that are backed by existing federal support and those that are not, and would devise processes to work with both. There are, for example, approximately 12 million mortgages that are held in private bank portfolios and nearly 3 million held in private label securities, and

currently hard to reach with any of the federal interventions during the pandemic.[8] It may also do so if these homes are in priority areas to the SHDA, such previously red-lined areas, or in the case of homeowners in marginalized communities. In case restructuring is unsuccessful or undesired, the SHDA may transfer these to the social housing sector. One intriguing possibility that exists today is the model of "scatter-site cooperatives," when several individual homes actually comprise a housing cooperative, sometimes with the land held in a trust.[9]

The Distressed Assets Platform and Legal Powers

The SHDA would proactively seek out distressed property to add to its portfolio. It would create a Distressed Assets Platform to allow lenders, property owners, and others to market their distressed real estate assets to the SHDA. The eligible assets could be either the property itself or mortgage notes — individually or in pools. The SHDA, after due diligence, would have the discretion to purchase those assets and negotiate terms favorable to the financial health of the SHDA.

But in order for the SHDA to effectively acquire assets beyond the voluntary listing of properties in its platform, it would need legal powers to reach such properties before private investors. One legal instrument would be an expanded, national version of TOPA (the Tenants Option to Purchase Act), based on the Washington DC legislation. We discuss this in more detail below, but TOPA establishes a mandatory waiting period after any residential rental property is put on sale, giving the right of first refusal to the tenants. Another important legal instrument is the use of Eminent Domain, for use in the cases where the acquisition process is being blocked for some reason and is creating undue harm for the community.

Funding

The SHDA would be initially capitalized by Congress at startup. It would fund its work by issuing bonds that would be backed by the US Treasury. The proceeds would be used to fund its acquisition activities. In addition to bonds, the SHDA would generate sources of revenue and cash flow that should finance its operation, including rental payments and mortgage payments and sale of properties, to permit it to meet debt servicing obligations. Occasional additional appropriations by Congress would be helpful, especially in the start-up phase. These are similar mechanisms to how HOLC and RTC were funded, and HOLC even returned a small positive return to taxpayers.[10]

3. How it works: Managing, upgrading, and retrofitting assets

Once the SHDA has acquired an asset, it may hold and manage it for a period of time, with the purpose of preventing displacement and bringing properties up to standards of habitability and environmental soundness before disposing of them. In the case of homeownership properties, the SHDA's mission would be to act in the best interest of the *homeowners* themselves. In the case of rental properties, the mission would be to act in the best interest of the *tenants*.[11]

When the SHDA comes to own a mortgage note for a distressed property, it can restructure delinquent mortgages in favorable terms to keep individual homeowners in their homes. For continually distressed borrowers, the SHDA could pursue a managed exit, either through deed-in-lieu of foreclosure, short sales, or pre-foreclosure sales, and then acquire the property. It will take all steps necessary to ensure the former homeowner can remain in their home if possible.

For rental properties, the SHDA would service the loan and collect rent payments. There is a real risk of maintenance going unaddressed, as well as long term vacancy in neighborhoods during periods of property distress. Deferred building maintenance is likely to be a crucial issue with distressed housing. As bills become more difficult to pay, landlords may have put off necessary maintenance tasks. These maintenance needs may grow on top of an existing backlog, leading to inhospitable and potentially unsafe and unhealthy living conditions for tenants.

The SHDA would be tasked with ensuring that housing is brought up to habitability and environmental standards. The SHDA would identify habitability violations at the time of acquisition, with the goal of avoiding any prolonged period of delayed maintenance and disruption for residents. To do this, the SHDA would undertake the maintenance itself, likely through assigning or subcontracting administrators to handle the property management, much like New York City's 7A program and other receivership processes. In cases of less serious violations and environmental retrofitting, the SHDA could sell or transfer the housing to an eligible entity with an agreement that they would undertake the maintenance themselves. Environmental retrofitting will meet the highest possible level of energy efficiency, balancing costs and overall environmental goals. The maintenance function of the SHDA would be a significant stimulus into the local economy through maintenance and construction jobs.

4. How it works: Transferring assets to the social housing sector

To dispose of the properties, the SHDA would prioritize selling to a set of preferred housing providers that focus on the creation and preservation of affordable housing. Such entities include non-profit housing organizations, public housing agencies, other state or local governmental agencies, or tenant/resident cooperatives or trusts.

To do this, the SHDA would establish a "first look" system for eligible entities to view and bid on the properties. The properties would be listed on the first look system for a period of time determined by the Governing Board, after which the properties could be placed on the open market.

For properties that have not yet been sufficiently rehabbed and retrofitted, eligible entities can purchase the properties if they enter into an agreement with the SHDA to undertake the rehab themselves.

For tenants interested in purchasing their building, the SHDA shall follow procedures established under the Tenant Opportunity to Purchase Act (described below). Organized tenants would be able to make a formal statement of interest to purchase the property, and would be eligible to apply for financing as described below.

Financing

> For eligible entities in need of financing, the SHDA can directly lend money on favorable terms to assist in the purchase.[13] These loans could be inclusive of funds to carry out rehab and retrofit activities.
>
> The financing operations of the SHDA would serve multiple benefits. It would help expedite transfer of the properties to the eligible entities so that they could take over management of the residences. While these loans would be on favorable terms, they would also serve as a source of revenue recuperation for the SHDA.

What are eligible entities?

> We do not prescribe a particular model of non-profit or cooperatives, as long as they provide for community control, permanent affordability, and limits on speculation. Experience shows that various ownership models, from Limited Equity Cooperatives, to Community Land Trusts, or Resident Owned

> Communities, among others, can work differently based on context and there is not a “one size fits all” model. At the same time, certain safeguards need to be in place from their inception to ensure affordability in perpetuity, like limiting the equity vested in individual shares or capping future resale values.
>
> We are aware that simply offering funding for tenants to collectively purchase properties will not be sufficient for cooperatives to appear on their own. The conditions to form such entities is uneven around the United States, and experience around the world shows that significant resources will have to go to education, preparation, and organizing.

5. What it needs: Supporting legislation

Two additional policies would help support the mission of the SHDA. The first is the repeal of the Faircloth Amendment. This policy has severely constrained affordable housing opportunities by requiring that any new public housing construction must come with a corresponding removal of the same number of units from the existing public housing stock. Since the SHDA could be transferring and rehabbing properties that would eventually become public housing, this would be a necessary precondition to make the SHDA effective.

The second policy would be a national requirement to provide tenants with a first opportunity to purchase their building when it goes up for sale. This would be modeled after Washington DC’s Tenant Opportunity to Purchase Act, which gives tenants a period to state their intention to purchase the building as well as the “right of first refusal” to give a counter offer the landlord has accepted an offer by a third party. This policy would bypass the need for some activities of the SHDA. The SHDA could also provide financing to tenants as eligible entities, even if the property did not pass through its hands.

6. Conclusions and possibilities

As the pandemic exacerbates an already untenable housing crisis, decisive action is needed. Left to its own devices, the unregulated market will create profits for speculators at the expense of families and communities. The SHDA brings the power of the Federal Government to tackle the housing crisis and support healthy and safe communities.

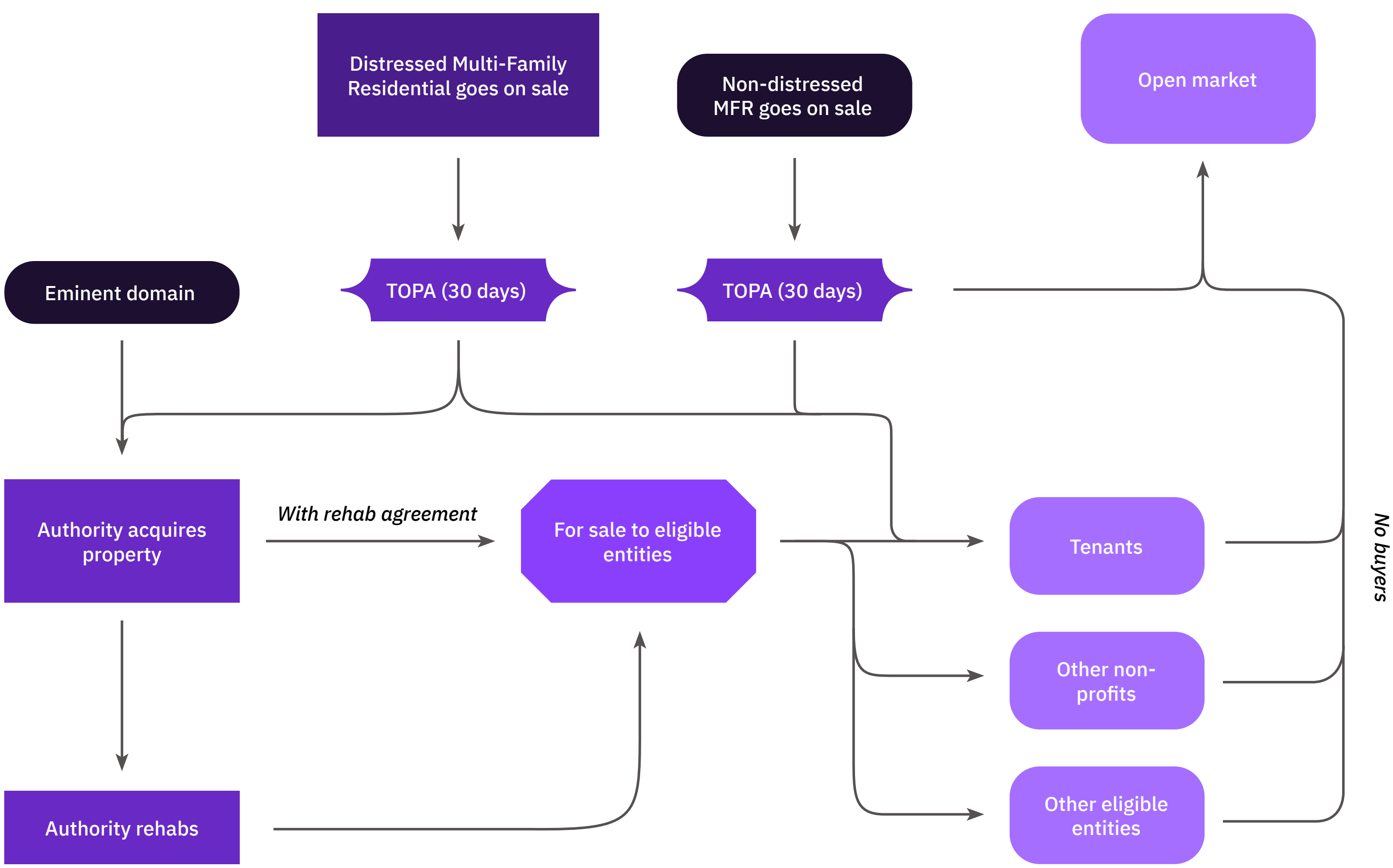
A tenacious staff and board, combined with broad popular support for its mission, could make the SHDA a truly groundbreaking institution. While its principal focus is on distressed real estate, an innovative and dynamic organization would have the freedom under its mission to pursue other efforts. It could turn the new glut of unused office space in many cities into new housing. It could pick up the backlog of public housing maintenance. It could undertake its own construction projects to further expand the supply of housing, especially when it acquires land. It could choose to transfer assets directly to public housing if it saw fit. While choosing not to overload the authority with too many statutory obligations, we do believe that with the political will and enough funding, the SHDA could take on a major role in guaranteeing that everyone has a right to housing.

Appendix: The distressed asset management process

Below describes the process for acquisition, holding, and transfer by the SHDA. We describe it for two kinds of cases: multifamily rental properties and for distressed notes, which may include single-family ownership properties.

Case 1: Multifamily Properties

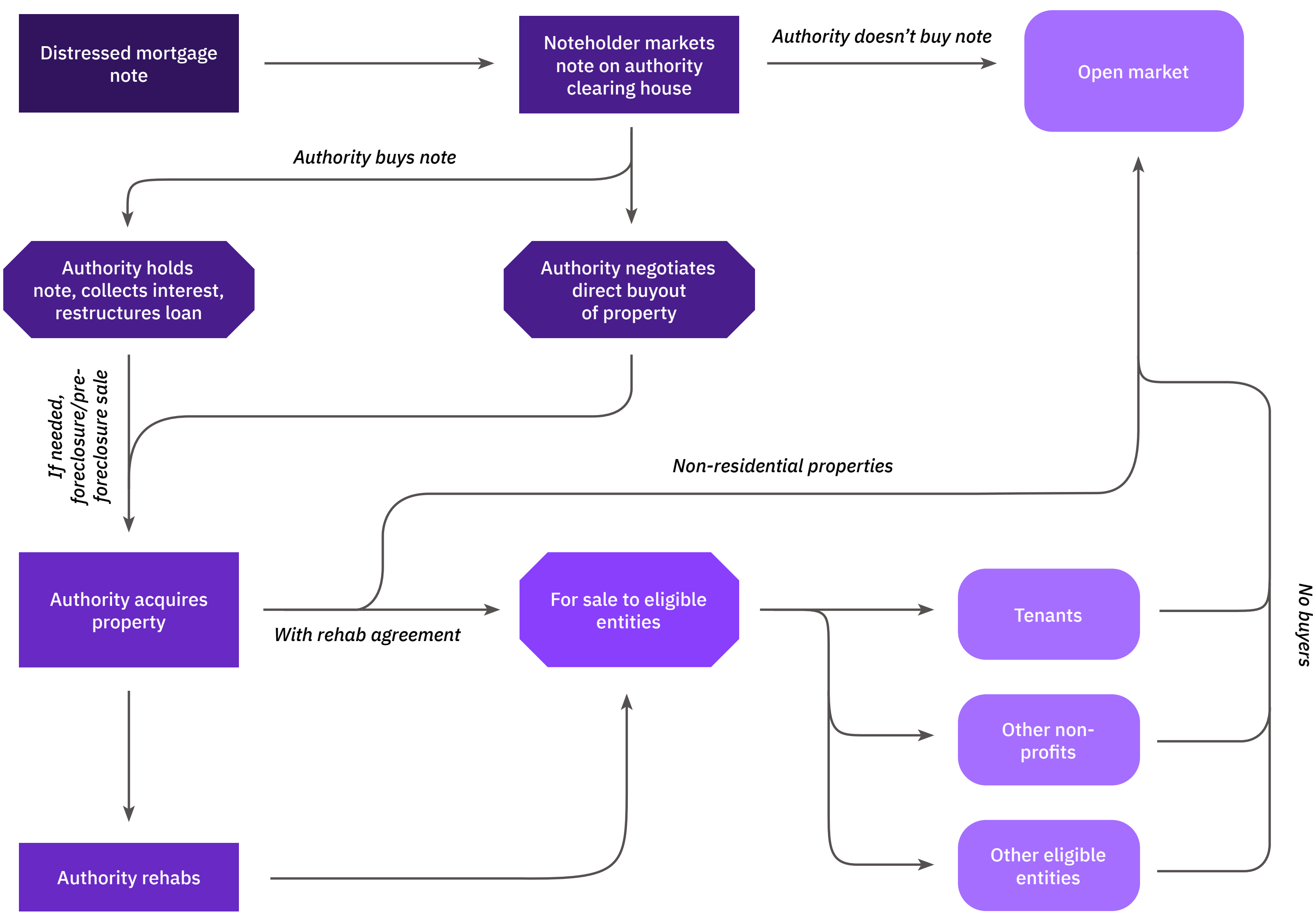
> For rental properties, the first step is the TOPA process, which gives tenants the first chance to purchase the property. In the case of distressed properties, if the tenants decline to purchase directly, the SHDA may acquire the property. Depending on the condition of the property, it then either undertakes rehab activities itself, or sells it to one of the eligible entities with an agreement that they will do the rehab. The property is then marketed to a set of eligible entities from the social housing sector. If none of them move to acquire the property after a designated time frame, the property then is sold on the open market.



Case 2: Distressed notes (including Single Family units)

In some cases, the SHDA would be purchasing mortgage and other notes, especially for single family homeowners. In the case of homeowners, the primary goal would be to restructure the terms of the loan to keep people in their homes. In the event that the borrower is not able to get on stable footing, the SHDA would strive to find the best exit options for the borrower, including pre-foreclosure sales and money to relocate. In such a case where the SHDA came into ownership of the property itself, it would go through similar disposition pathways as with rentals.

The SHDA may choose to involve itself in other more complex financing, such as multifamily rentals with multiple investors. It would be able to use such an ownership position to act in the best interest of tenants. If such an ownership position gave it the legal right to take control of the property, it would have the ability to do so, and move it through the rest of its acquisition and disposition processes.



Notes

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[2] Putzier, Konrad, and Peter Grant. 2020. "Real-Estate Investors Eye Potential Bonanza in Distressed Sales." *Wall Street Journal*, April 7. https://www.wsj.com/articles/real-estate-investors-eye-potential-bonanza-in-distressed-sales-11586260801 Gittelsohn, John, and Jack Sidders. 2020. "Loaded with Cash, Property Buyers Wait for Sellers to Crack." Bloomberg, May 19. https://www.bloomberg.com/news/articles/2020-05-19/loaded-with-cash-real-estate-buyers-wait-for-sellers-to-crack

[3] Freddie Mac. 2018. "The Major Challenge of Inadequate U.S. Housing Supply." *Economic & Housing Research Insight.* December. http://www.freddiemac.com/fmac-resources/research/pdf/201811-Insight-06.pdf

[4] HOLC is perhaps most well known for the creation of redlining maps, which became the quintessential example of structural racism in the US. We invoke it here for its institutional design and not for these practices– in contrast to HOLC, the SHDA would seek to undo long-standing structural racism.

[5] RTF is an institutional precedent also, but its work involved partnerships with REITs. The mission of the SHDA is to increase social housing.

[6] Cassell, Mark K., and Susan M. Hoffmann. 2009. "Managing a $700 Billion Bailout: Lessons from the Home Owners' Loan Corporation and the Resolution Trust Corporation." Washington DC: IBM Center for the Business of Government.

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[10] Cassell, Mark K., and Susan M. Hoffmann. 2009.

[11] In the case of small, landlord-occupied rental properties, it would, of course, also weigh the interest of the property owner.

[12] Retrofitting affordable housing is seen by many analysts as an important pillar of the Green New Deal.

[13] The Federal Reserve has been lending to banks at near-zero interest rates as part of the COVID-19 recovery effort, a practice it honed during the last fiscal crisis. Cheng, Jeffrey, Dave Skidmore, and David Wessel. 2020 "What's the Fed doing in response to the COVID-19 crisis? What more could it do?" The Brookings Institute, July 17. https://www.brookings.edu/research/fed-response-to-covid19/