

Affordable Housing Flowchart: Start Here

Local Government Support for Privately Owned Affordable Housing

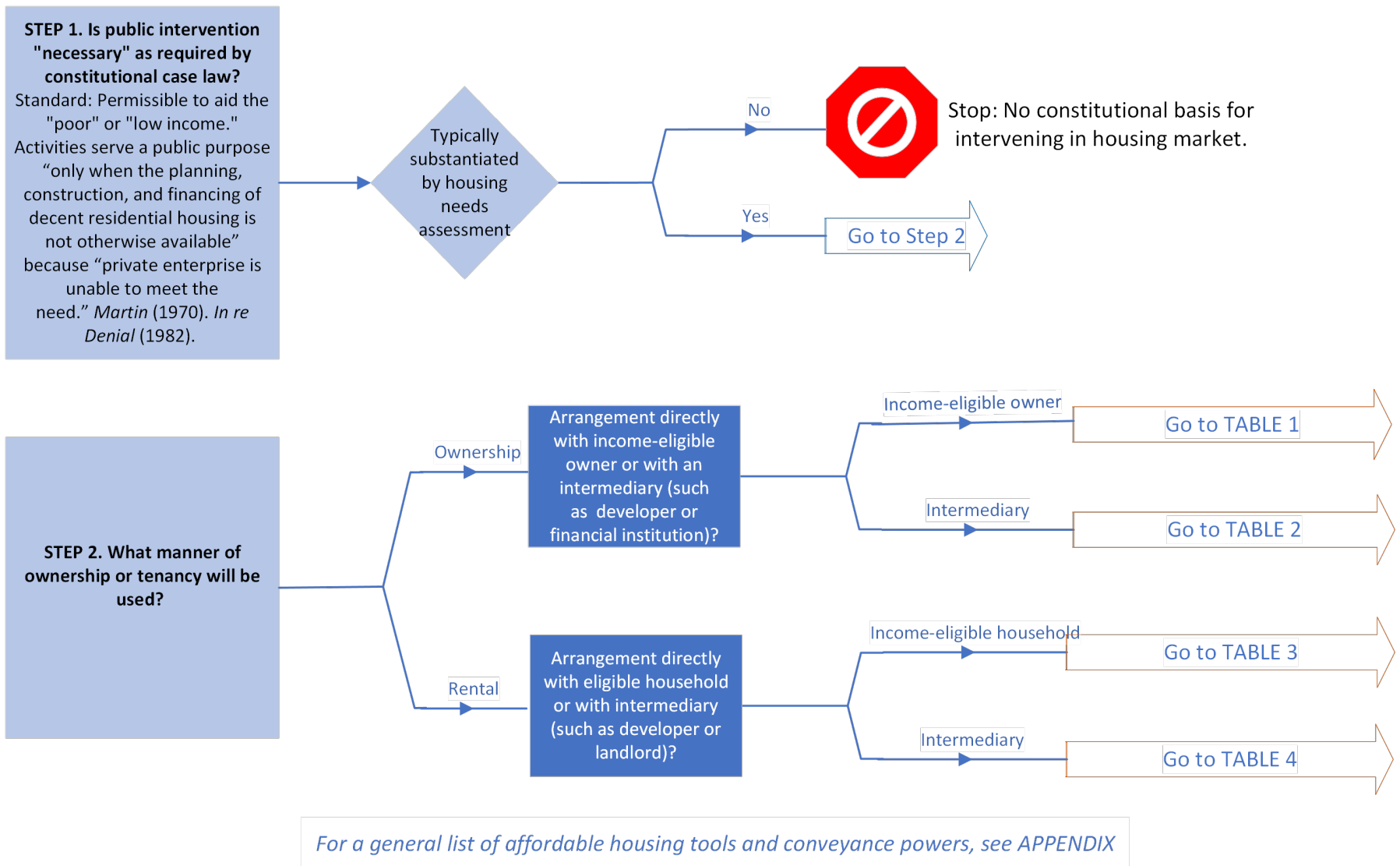


TABLE 1: Homeowner Programs – Direct to Income-Eligible Households

Financial Assistance Directly to Owner for Rehabilitation or Down Payment for Purchase

<u>Type of Assistance</u>	<u>Low-Income Household “not more than” 60% Area Median Income</u>	<u>Moderate-income Household Reasonably up to 80% AMI</u>	<u>Household income above 80% AMI</u>
Unsubsidized loan (e.g., interest rate at or above primary loan rate)	For rehabilitation: G.S. 160D-1311(a)(1). For down payment: G.S. 157-3(12) and 157-9 pursuant to G.S. 160D-1311(b).	For rehabilitation: G.S. 160D-1311(a)(1). For down payment: G.S. 157-3(12) and 157-9 pursuant to G.S. 160D-1311(b).	No supporting constitutional case law. No statutory authority.
Subsidized loan (e.g., low interest rate)	For both rehab and down payment: G.S. 157-3(12) and 157-9 pursuant to G.S. 160D-1311(b).	Statutes same as low income. Case law: Low-interest loans approved “with same purpose in mind” (add-on to low-income program) “to make available decent, safe and sanitary housing” to another group “who cannot otherwise obtain such housing.” <i>In re Denial</i> (1982).	
Direct govt procurement of construction services for rehabilitation; Make grant to homeowner for downpayment	For both rehab and down payment: G.S. 157-3(12) and 157-9 pursuant to G.S. 160D-1311(b).	Statutory authority same as low income. Note: As noted above, case law pertains to low-interest loans, not grants, but arguably permissible to include moderate income persons in low-income focused program with “same purpose in mind.” <i>In re Denial</i> (1982).	
Control period for affordability (e.g., 15 years): None required by state law. Follow any requirements of funding source (e.g., HOME or CDBG).			
No county referendum required for (1) rehabilitation in counties meeting population threshold (G.S. 153A-149(15a) and 160D-1311(a)(1)) or (2) authorized programs funded by source other than state or local tax revenue (160D-1311(d)).			

Conveyance of Housing Unit Directly to Owner

<u>Type of Conveyance</u>	<u>Low-Income Household “not more than” 60% Area Median Income</u>	<u>Moderate-income Household Reasonably up to 80% AMI</u>	<u>Household income above 80% AMI</u>
Unsubsidized conveyance	G.S. 160D-1316(1) and (4)	G.S. 160D-1316(1) and (4)	No supporting constitutional case law. No statutory authority.
Subsidized conveyance (e.g., sold at price below fair market value)	G.S. 157-3(12) and 157-9 pursuant to G.S. 160D-1311(b).	Statutory authority same as low income. Note: As noted above, case law pertains to low-interest loans, not subsidized conveyance, but arguably permissible to include moderate income persons as explained above. <i>In re Denial</i> (1982).	
Must price be “affordable” to buyer (e.g., payments no more than 30% of income)? No requirement in state law. Follow requirements of funding source.			
Control period for affordability (e.g., 15 years): None required by state law. Follow any requirements of funding source (e.g., HOME or CDBG).			
No county referendum required for unsubsidized conveyance (G.S. 153A-149(15b), 160D-1316) or subsidy by source other than state or local tax revenue.			

TABLE 2: Homeowner Programs – Support through Intermediary Organizations

Type of Activity	Which households are served by intermediary’s activities with local government support?		
	All units in project reserved for low income households (60% AMI or less) and moderate income households (80% AMI or less). Low and moderate income (LMI) only. No one earning over 80% AMI can be served by project.	Residents above 80% AMI served by project. <i>At least 20%</i> of units set aside for “exclusive use” of low income persons (60% AMI or less).	Residents above 80% AMI served. <i>Less than 20%</i> of units set aside for “exclusive use” of low income persons (60% AMI or less).
Unsubsidized conveyance (e.g., property sold at price above or equal to fair market value) from govt to intermediary for later rehab or construction and sale to income-eligible buyers	Lease (G.S. 160A-278) or sale (G.S. 160D-1316(3)). Income restrictions placed on property will likely cause fair market value to be lower than value prior to restrictions being placed. This is not subsidy to the intermediary—this is simply new fair market value of restricted property.	Lease (G.S. 160A-278) or sale (G.S. 157-3(12) and 157-9 pursuant to G.S. 160D-1311(b)). Income restrictions placed on property will likely cause fair market value to be lower than value prior to restrictions being placed. This is not subsidy to the intermediary. Even with no subsidy, G.S. 157-3(12) requires 20% set aside for low-income persons whenever those earning above 80% AMI are also served.	No supporting constitutional case law. No statutory authority. Possible alternatives: Utilize zoning and provision of public-owned infrastructure using tools such as conditional zoning and development agreement or reimbursement agreement. Convey restricted land for other purposes, such as G.S. Ch. 160A, Art. 22 (competitive bidding and buyer adheres to redevelopment plan).
Subsidized conveyance (e.g., sold at price below fair market value) from govt to intermediary for later construction and sale to income-eligible buyers.	G.S. 157-3(12) and 157-9 pursuant to G.S. 160D-1311(b). Intermediary not permitted to retain subsidy—must show that all subsidy flows to income-eligible persons. Note: case law pertains to low-interest loans, not subsidized conveyance, but arguably permissible to include moderate income persons in low-income focused program with “same purpose in mind.” <i>In re Denial</i> (1982).	G.S. 157-3(12) and 157-9 pursuant to G.S. 160D-1311(b). G.S. 157-3(12) requires 20% set aside for low-income persons whenever those earning above 80% AMI are also served. Intermediary not permitted to retain subsidy—must show that all subsidy flows to income-eligible buyers.	
Contract with intermediary to construct or rehabilitate intermediary-owned units for later sale to income-eligible households.	G.S. 157-3(12) and 157-9 pursuant to G.S. 160D-1311(b). No subsidy to intermediary permitted—must show that all contract payments flow to income-eligible persons. Note: case law pertains to low-interest loans, not contract with intermediary, but arguably permissible to include moderate income persons in low-income focused program with “same purpose in mind.” <i>In re Denial</i> (1982).	G.S. 157-3(12) and 157-9 pursuant to G.S. 160D-1311(b). G.S. 157-3(12) requires 20% set aside for low-income persons whenever those earning above 80% AMI are also served. Intermediary not permitted to retain subsidy— must show that all contract payments flow to income-eligible buyers.	
Must price be “affordable” to buyer (e.g., payments no more than 30% of income)? No requirement in state law. Follow requirements of funding source.			
Control period for affordability (e.g., 15 years): None required by state law. Follow any requirements of funding source (e.g., HOME or CDBG).			
No county referendum required for (1) rehabilitation in counties meeting population threshold (G.S. 153A-149(15a) and 160D-1311(a)(1)); (2) unsubsidized conveyance (G.S. 153A-149(15b), 160D-1316); (3) lease under G.S. 160A-278; (4) statutorily authorized programs funded by source other than state or local tax revenue (G.S. 160D-1311(d)); (5) conveyance to nonprofit pursuant to G.S. 160A-279 to accomplish purpose under G.S. 160D-1316 (all units for LMI).			

TABLE 3: Renter Programs – Providing Support Directly to Renters

<u>Type of Assistance</u>	<u>Low-Income Household “not more than” 60% Area Median Income</u>	<u>Moderate-income Household Reasonably up to 80% AMI</u>	<u>Household income above 80% AMI</u>
Direct rental of gov-owned or operated housing to income-eligible household at fair market rent .	G.S. 160D-1316(1). No authority to subsidize the rent, nor any requirement for rent level to be affordable to the renter. The key is that property is reserved for low income persons so they don’t have to compete with higher-income renters. Govt may enter contract with third party to manage rental property.	G.S. 160D-1316(1). No authority to subsidize the rent, nor any requirement for rent level to be affordable to the renter. Govt may enter contract with third party to manage gov-owned rental property. Case law pertains to low-interest loans, not property rental, but arguably permissible to include moderate income persons in low-income focused program with “same purpose in mind.” <i>In re Denial</i> (1982).	No supporting constitutional case law. No statutory authority.
Direct rental of gov-owned or operated housing to income-eligible household at subsidized rent level (e.g., public housing model).	G.S. 157-3(12) and 157-9 pursuant to G.S. 160D-1311(b). G.S. 157-9.4 requires 20% set aside for “exclusive use” of low-income persons. Rent level must be “within the financial reach” of low income renter and targeting requirements apply. G.S. 157-29.	Questionable. Only available authority is G.S. 157-3(12) and 157-9 pursuant to G.S. 160D-1311(b). Case law might permit moderate income persons to be served in a low income housing project “with same purpose in mind,” but G.S. 157-9.4 set-aside requirement plus G.S. 157-29 targeting requirements for “extremely low income families” and setting “lowest possible rates” create practical, if not legal, barriers to moderate income persons.	
Rent subsidies , such as rental security deposit or voucher program, paid to income-eligible household directly or to landlords on behalf of income-eligible tenants.	G.S. 157-3(12) and 157-9 pursuant to G.S. 160D-1311(b). Rent subsidies authorized only for “persons of low income.” G.S. 157-3(12)(c).	No statutory authority.	
Control period for affordability (e.g., 15 years): None required by state law. Follow any requirements of funding source (e.g., HOME or CDBG).			
No county referendum required for (1) rental at fair market rate pursuant to G.S. 153A-149(15b) and 160D-1316 or (2) statutorily authorized programs funded by source other than state or local tax revenue (G.S. 160D-1311(d)).			

TABLE 4: Renter Programs – Support through Intermediary Organizations

Type of Activity	Which households are served by intermediary’s activities with local government support?		
	All units in project reserved for low income households (60% AMI or less) and moderate income households (80% AMI or less). Low and moderate income (LMI) only. No one earning over 80% AMI can be served by project.	Residents above 80% AMI served by project. At least 20% of units set aside for “exclusive use” of low income persons (60% AMI or less).	Residents above 80% AMI served. Less than 20% of units set aside for “exclusive use” of low income persons (60% AMI or less).
Unsubsidized conveyance (e.g., property sold at price above or equal to fair market value) from govt to intermediary for rental to income-eligible renters.	Lease (G.S. 160A-278) or sale (G.S. 160D-1316(3)). Income restrictions placed on property will likely cause fair market value (FMV) to be lower than value prior to restrictions being placed. This is not subsidy to the intermediary—this is simply new fair market value of restricted property.	Lease (G.S. 160A-278) or sale (G.S. 157-3(12) and 157-9 pursuant to G.S. 160D-1311(b)). Income restrictions placed on property will likely cause FMV to be lower than value prior to restrictions being placed. This is not subsidy. Even with no subsidy, G.S. 160A-278 and 157-3(12) require 20% set aside for low-income persons whenever those earning above 80% AMI are also served.	No supporting constitutional case law. No statutory authority. Possible alternatives: Utilize zoning and provision of public-owned infrastructure using tools such as conditional zoning and development agreement or reimbursement agreement. Convey restricted land for other purposes, such as G.S. Ch. 160A, Art. 22 (competitive bidding and buyer adheres to redevelopment plan).
Subsidized conveyance (e.g., sold at price below fair market value) from govt to intermediary for rental to income-eligible renters. <i>See appendix for conditions on non-monetary consideration.</i>	G.S. 157-3(12)(e) and 157-9 pursuant to G.S. 160D-1311(b). G.S. 157-9.4 requires 20% set aside for low-income persons for “at least 15 years.” Conveyance to nonprofit avoids G.S. Chapter 157 by conveying by G.S. 160A-279 to accomplish 160D-1316(1). In any case, intermediary not permitted to retain subsidy—must show that all subsidy flows to income-eligible persons. Note: case law arguably permits including moderate income persons in low-income focused program with “same purpose in mind.” <i>In re Denial.</i>	G.S. 157-3(12)(e) and 157-9 pursuant to G.S. 160D-1311(b). G.S. 157-9.4 requires 20% set aside for low-income persons for “at least 15 years.” Intermediary not permitted to retain subsidy—must show that all subsidy flows to low-income persons and is not diverted for other purposes.	
Contract with intermediary to develop intermediary-owned units for rental to income-eligible renters.	G.S. 157-3(12)(e) and 157-9 pursuant to G.S. 160D-1311(b). G.S. 157-9.4 requires 20% set aside for low-income persons for “at least 15 years.” Intermediary not permitted to retain subsidy—must show that all contract payments flow to income-eligible persons. Note: case law arguably permits including moderate income persons as explained above.	G.S. 157-3(12)(e) and 157-9 pursuant to G.S. 160D-1311(b). G.S. 157-9.4 requires 20% set aside for low-income persons for “at least 15 years.” Intermediary not permitted to retain subsidy—must show that all contract payments flow to low-income persons and is not diverted for other purposes.	
G.S. Chapter 157 requires rent to be “within financial reach” of low income renters. G.S. 157-29. Outside funding sources may impose specific affordability requirements.			
Control period: Any “multi-family rental housing project” that receives “financial assistance” (loan, grant, subsidized conveyance) from govt must reserve 20% of units for “exclusive use” of low income persons for “at least 15 years.” G.S. 157-9.4. Also follow any other longer control period requirements imposed by outside funding sources.			
No county referendum required for (1) unsubsidized conveyance (G.S. 153A-149(15b), 160D-1316); (2) lease under G.S. 160A-278; (3) statutorily authorized programs funded by other than state or local tax revenue (G.S. 160D-1311(d)); (4) conveyance to nonprofit under G.S. 160A-279 to accomplish G.S. 160D-1316 (all units reserved for LMI)			

APPENDIX: Local Government Tools for Private Affordable Housing

NC Constitution and Statutes	Tools for Renters	
<p>NC Constitution and case law supports housing assistance as aid for “poor.”</p> <p>Low-interest loans approved for moderate income with “same purpose in mind” (add-on to a low-income-focused program) “to make available decent, safe and sanitary housing” to another group “who cannot otherwise obtain such housing accommodations.” <i>In re Denial</i>.</p> <p><i>Necessity</i>: Activities serve a public purpose “only when the planning, construction, and financing of decent residential housing is not otherwise available” because “private enterprise is unable to meet the need.” <i>In re Denial (1982)</i>; <i>Martin (1970)</i>.</p> <p>No gifts or donations to nonprofit or for-profit developers. <i>Brumley v. Baxter (1945)</i>. Housing funds are for “low income” and cannot be diverted for other purposes. All subsidy must flow to the eligible households.</p> <p><i>Housing Project (160D-1311(b), G.S. 157-3)</i> Defined as “single plan or undertaking” to provide financial assistance and housing for “persons of low income [60% AMI or below] or moderate income [reasonably 80% AMI or below].” If housing for “persons of other than low or moderate income” also included, then must set aside 20% of the units “for the exclusive use of persons of low income.” No affordability requirement.</p>	No Subsidy	Subsidy (Constitutional/Statutory Reqmts)
	<ul style="list-style-type: none"> • Housing counseling for renters • Technical assistance to landlords • Code enforcement with repair lien 	<p><i>Only for low-income - G.S. 157-3(12)(c)</i></p> <ul style="list-style-type: none"> • Rental security deposit assistance • Rental subsidy (such as vouchers)
	Tools for Homeowners (Low Income and Moderate Income)	
	No Subsidy	Subsidy (Constitutional/Statutory Reqmts)
	<ul style="list-style-type: none"> • Convey property by sale or lease to homeowner for fair market value (FMV) with long-term affordability restrictions that reduce FMV • Housing counseling for homeowner • Statewide property tax exemptions • Loan with market-rate terms • Code enforcement with repair lien 	<ul style="list-style-type: none"> • Convey property to homeowner for less than fair market value (FMV) • Down payment assistance <ul style="list-style-type: none"> ○ Low-interest loan ○ Down payment grant ○ Hybrid (shared equity) • Emergency assistance <ul style="list-style-type: none"> ○ Home repair program ○ Mortgage assistance program • Mortgage lender program (loan loss reserve)
	Tools for Developers or Landlords of Affordable Housing	
	No Subsidy	Subsidy (Constitutional/Statutory Reqmts)
	<ul style="list-style-type: none"> • Conditional zoning overlay, development agreement • Statewide property tax exemptions • Predevelopment feasibility analysis • Convey property at FMV which may be lower due to affordability restrictions (or use competitive bidding in URA) • Reimbursement agreement or public-private partnership to construct public infrastructure • Loan with market-rate terms • Code enforcement with repair lien 	<p>Owner serves only as a conduit. All subsidy must flow to low and moderate income (LMI) households.</p> <ul style="list-style-type: none"> • Convey property for less than FMV. • Loan with subsidized terms • Cash or reimbursement for subsidy provided to LMI persons. <p><i>Rent for low-income persons should be within their “financial reach” (G.S. 157-29). Unless all units reserved for LMI, 20% of units must be “set aside” for “exclusive use” of low-income persons (G.S. 157-3). See next page.</i></p>

APPENDIX: Local Government Property Conveyance to Intermediary for Affordable Housing

Conveyance Type	N.C.G.S.	Cnty Ref.?*	Set aside required?	Non-monetary consideration? See <i>Brumley</i> **
Any buyer (nonprofit or for profit)				
Private sale at fair market value (FMV) with affordability restrictions	160D-1316	No	All units must be reserved for LMI persons. See G.S. 157-9.4 if separate financial assistance provided for multifamily.	Fair market value (FMV) required but accounts for: <ul style="list-style-type: none"> • affordability restrictions • Property reverts back to govt if end restrictions (unless sell to LMI household)
Private sale with non-monetary consideration (in form of promise to provide LMI housing on the property)	157-9	Only if state or local funds used	20% set aside for low income required only if: <ul style="list-style-type: none"> • one or more units serve “other than” LMI • or G.S. 157-9.4 financial assistance for multifamily 	Non-monetary consideration is promise to provide LMI housing. Property reverts back to govt if end restrictions (unless sell to LMI household).
Lease at FMV	160A-278	No	20% set aside required for low income if one or more units serve “other than” LMI household	Fair market lease rate required, but lease rate should account for affordability restrictions

* Referendum imposed on counties by G.S. 160D-1311(d). No referendum required for municipalities and housing authorities.

***Brumley v. Baxter*, 251 N.C. 691 (1945) (conveyance to charity unconstitutional unless conditioned on reversion back to county once no longer used by the recipient for charitable public purpose)