

Local Government Tools for Private Affordable Housing

NC Constitution and Statutes	Tools for Renters (Low Income Only)	
<p>NC Constitution and case law supports housing assistance as aid for the “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 the “poor” 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 	<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"> • Housing counseling for homeowner • Statewide property tax exemptions • Loan with market-rate terms 	<ul style="list-style-type: none"> • Convey property for less than fair market value • Down payment assistance <ul style="list-style-type: none"> ○ Low-interest loan (up to moderate income level) ○ Down payment grant (low-inc) ○ Hybrid (shared equity loan) • 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 fair market value 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 	<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 fair market value. • 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>	

Local Government Statutory Powers – Affordable Multifamily Residential

All housing units reserved exclusively for low income (60% AMI or less) and moderate income (80% AMI or less)

	Multifamily Rental	Homeownership
No financial assistance or subsidy allowed	<ul style="list-style-type: none"> • G.S. 160D-1316(3): Private sale to provide LMI housing • G.S. 160A-278: Privately negotiated lease of land for housing for low and moderate income (LMI) persons 	<ul style="list-style-type: none"> • G.S. 160D-1316(4): Private sale to LMI person
Subsidy provided (e.g., financial assistance or conveyance below fair market value); subsidy must flow to eligible persons	<ul style="list-style-type: none"> • G.S. 160D-1311(b), G.S. 157-9, G.S. 157-3 Housing Project <ul style="list-style-type: none"> ○ Constitutional basis and focus is aid to “poor” ○ If “financial assistance to a multi-family rental housing project” then G.S. 157-9.4 requires at least 20% of the units in the project “shall be set aside for the exclusive use of persons of low income” (60% AMI or below) for “at least 15 years.” No affordability requirement but should be within “financial reach.” (G.S. 157-29) 	<ul style="list-style-type: none"> • G.S. 160D-1311(b), G.S. 157-9, G.S. 157-3 Housing Project <ul style="list-style-type: none"> ○ Subsidy only for LMI persons (80% AMI or less). ○ Case law approves <i>low-interest loans</i> up to 80% AMI ○ If “single undertaking or plan” provides housing to persons of other than low or moderate income, then 20% of units must be set aside for the exclusive use of persons of low income. No affordability requirement.

Not all housing units reserved for exclusive use of low income persons

	Multifamily Rental	Homeownership
No financial assistance or subsidy provided	<ul style="list-style-type: none"> • G.S. 160D-1311(b), G.S. 157-9, housing project defined at G.S. 157-3 <ul style="list-style-type: none"> ○ Even with no subsidy, if local government conveys property for a “housing project” (housing for LMI persons) and that housing project provides housing to persons of other than low or moderate income, then 20% of units must be set aside for the exclusive use of persons of low income. No affordability requirement. 	
Subsidy provided (e.g., financial assistance or conveyance below fair market value); subsidy must flow to eligible persons	<ul style="list-style-type: none"> • G.S. 160D-1311(b), G.S. 157-9, G.S. 157-3 Housing Project <ul style="list-style-type: none"> ○ Constitutional basis and focus is aid to “poor” ○ If “financial assistance to a multi-family rental housing project” then G.S. 157-9.4 requires at least 20% of the units in the project “shall be set aside for the exclusive use of persons of low income” (60% AMI or below) for “at least 15 years.” No affordability requirement but should be within “financial reach.” (G.S. 157-29) 	<ul style="list-style-type: none"> • G.S. 160D-1311(b), G.S. 157-9, G.S. 157-3 Housing Project <ul style="list-style-type: none"> ○ Subsidy only for LMI persons (80% AMI or less) ○ Case law approves <i>low-interest loans</i> up to 80% AMI ○ If “single undertaking or plan” provides housing to persons of other than low or moderate income, then 20% of units must be set aside for the exclusive use of persons of low income. No affordability requirement.
Other conveyance powers (No financial assistance or subsidy authorized)	<ul style="list-style-type: none"> • Acquisition and disposition for redevelopment (G.S. 160D-1312): Buyer must adhere to community development plan. • Urban redevelopment law (G.S. Chapter 160A, Art. 22): Use competitive bidding and impose redevelopment plan requirements on buyer. Plan could include income eligibility, affordability requirements, and delivery requirements. • Conveyance of property obtained through tax foreclosure (G.S. 153A-163): Private sale authorized to any person for not less than the amount of the unit’s bid for the property. 	