

No. 96063-1

Court of Appeal No. 76510-8-I

King County Superior Court No. 15-2-12454-4 SEA

IN THE COURT OF APPEALS  
OF THE STATE OF WASHINGTON  
DIVISION I

WASHINGTON STATE HOUSING FINANCE COMMISSION, a public  
body corporate and politic of the State of Washington,

Respondent,

v.

NATIONAL HOMEBUYERS FUND, INC., f/k/a Homebuyers Fund,  
Incorporated, a California nonprofit corporation; GOLDEN STATE  
FINANCE AUTHORITY, f/k/a California Home Finance Authority, f/k/a  
California Rural Home Mortgage Finance Authority, a California joint  
powers authority; RURAL COUNTY REPRESENTATIVES OF  
CALIFORNIA, f/k/a Regional Council of Rural Counties, f/k/a Mountain  
Counties Water Resources Association, a California nonprofit corporation,

Appellants.

**APPELLANTS' OPENING BRIEF**

101 Mission Street, 18th Fl.  
San Francisco, CA 94105

**KERR & WAGSTAFFE LLP**  
James Wagstaffe, CA Bar No. 95535  
Michael von Loewenfeldt, CA Bar No. 178665  
Kevin B. Clune, CA Bar No. 248681

One Union Square  
600 University, 27th Fl.  
Seattle, WA 98101  
(206) 467-1816

**McNAUL EBEL NAWROT & HELGREN  
PLLC**  
Avi J. Lipman, WSBA No. 37661  
Theresa M. DeMonte, WSBA No. 43994

*Attorneys for Appellants National Homebuyers  
Fund, Inc., Golden State Finance Authority,  
and Rural County Representatives of California*

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## I. INTRODUCTION

National Homebuyers Fund Inc. (“Homebuyers Fund”) is a California nonprofit public benefit corporation that provides down payment assistance to approved homebuyers through gifts, with no obligation to repay the down payment. The gifts are financed by securitization of the resulting mortgages. Homebuyers Fund provides this assistance in connection with federally insured loans in states across the nation.

The Washington State Housing Finance Commission (“WSHFC”) is a state administrative agency that was created to increase the supply of affordable housing in Washington. WSHFC has its own program for down payment assistance, whereby it offers low-interest-rate loans to homebuyers. WSHFC’s assistance is a loan, not a gift, and *does* have to be repaid. Fearing competition from Homebuyers Fund, WSHFC filed this lawsuit, seeking declaratory relief that Homebuyers Fund’s operation in Washington was somehow illegal. The trial court granted that relief, ruling without explanation that “Defendants’ housing activities in the State of Washington are prohibited by law.” CP 1287.

The trial court’s erroneous grant of declaratory relief should be vacated, and WSHFC’s complaint dismissed, for three key reasons:

First, WSHFC lacks standing to challenge Homebuyers Fund's activities in Washington. WSHFC's only alleged injury is a competitive one, and Washington law is clear that competition does not provide "personal" standing to challenge a competitor's business conduct. Nor does WSHFC have "representative" standing as a governmental body. WSHFC is not a law enforcement agency; only the attorney general of each state has plenary standing to sue to enforce the law (and no attorney general has done so here). Thus, the trial court should have dismissed this action for lack of standing.

Second, even if standing existed, the trial court's declaratory judgment is erroneous because Homebuyers Fund's operations in Washington are lawful. As a nonprofit public benefit corporation, Homebuyers Fund is expressly authorized under California law to operate outside of that state. The trial court provided no explanation for its conclusion that Homebuyers Fund is operating unlawfully. But Homebuyers Fund's provision of down payment assistance in Washington is not prohibited by Washington or California law.

Third, although Homebuyers Fund is subject to personal jurisdiction in Washington, the other two Defendants are not. Neither Golden State Financing Authority ("GSFA") nor Rural County

Representatives of California (“RCRC”) has any contacts with Washington, and they are not the alter egos of Homebuyers Fund.

Accordingly, this Court should vacate the declaratory judgment entered below, and remand with directions (i) to dismiss the claims against Homebuyers Fund for lack of standing or, alternatively, to enter summary judgment in favor of Homebuyers Fund; and (ii) to dismiss GSFA and RCRC for lack of personal jurisdiction.

## **II. ASSIGNMENTS OF ERROR**

1. The trial court erred in concluding that WSHFC had standing to challenge Homebuyers Fund’s operations in Washington because (i) WSHFC has suffered no actual injury to a legally protected interest and (ii) WSHFC is not the governmental agency authorized to sue to enforce general compliance with the law.
2. The trial court erred in granting summary judgment in favor of WSHFC because Homebuyers Fund’s actions in Washington are not prohibited by Washington or California law.
3. The trial court erred in concluding that it had personal jurisdiction over Defendants GSFA and RCRC, where they had no minimum contacts with the State of Washington and are not the “alter egos” of Homebuyers Fund.

### III. STATEMENT OF THE CASE

#### A. The National Housing Act and HUD Loans

Under the National Housing Act, Congress has developed a program “to make homes accessible to low income families by providing mortgage insurance to permit mortgagees [i.e., lenders] to make more favorable loans than were obtainable on the market.” *Anderson v. U.S. Dep’t of Hous. & Urban Dev.*, 701 F.2d 112, 113–14 (10th Cir. 1983). That program works by inducing lenders “to make essentially risk-free mortgages by being guaranteed against loss in event of default.” *Id.* at 114.

The National Housing Act delegates to the Secretary of the U.S. Department of Housing and Urban Development (“HUD”) the power to oversee the program and insure mortgages “upon such terms as the Secretary may prescribe.”<sup>1</sup> 12 U.S.C. § 1709(a). Pursuant to that authority, HUD has issued detailed regulations and policy guidance regarding what types of loans it will insure. *See e.g.*, 24 C.F.R. § 202.1 *et seq.*; HUD Policy Handbook 4000.1 (issued Dec. 30, 2016).<sup>2</sup> Only mortgages that

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<sup>1</sup> The terms that the Secretary may prescribe are subject to a myriad of legal limitations and procedural requirements not at issue in this litigation.

<sup>2</sup> All citations to the “HUD Handbook” refer to the current FHA Single Family Housing Policy Handbook 4000.1, available at <http://portal.hud.gov/hudportal/documents/huddoc?id=40001HSGH.pdf>

“[h]ave been made to, and [are] held by, a mortgagee approved by the Secretary [of HUD]” qualify for such federal insurance. 12 U.S.C. § 1709(b).

To qualify for mortgage insurance under the program, the homebuyer must make a down payment of at least 3.5 percent of the appraised value of the property. 12 U.S.C. § 1709(b)(9). Frequently, however, low and moderate income homebuyers are unable to come up with this down payment themselves, and thus require assistance. *See, e.g.*, CP 840 (48:24–49:7). Both Homebuyers Fund and WSHFC provide such assistance.

**B. Homebuyers Fund Provides Down Payment Assistance as a Gift with No Repayment Owed**

Homebuyers Fund was created in 2002 for the purpose of providing down payment assistance to homebuyers both within and outside of California. CP 859. Its articles of incorporation state that it was created with the explicit purpose of “assisting in the provision of adequate, safe and sanitary residential housing and for any other public purposes related thereto.” *Id.* Consistent with this purpose, Homebuyers Fund provides down payment assistance to low and moderate income

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(last accessed June 5, 2017). A copy of the portions of the HUD Handbook cited in this brief is provided in the Appendix.

homebuyers in the form of non-repayable gifts, which are paired with first mortgages offered by various lending institutions.<sup>3</sup> CP 863–64 (p. 29:18–30:7); CP 865 (p. 77:13–25). As a nonprofit public benefit corporation, Homebuyers Fund is generally empowered by the State of California to “conduct its activities in any other state, territory, dependency, or foreign country.” CAL. CORP. CODE § 5140(c). It provides down payment assistance in many states around the country. *See* CP 549; 697 (p. 214:3–19); 713. It began offering its gift-based down payment assistance program in Washington in 2014. CP 671.

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<sup>3</sup> Homebuyers Fund’s gift-based program works as follows: Individual lenders participating in Homebuyers Fund’s program originate individual mortgages under the program, with interest rates that vary daily based on then-current market conditions. CP 992. Homebuyers Fund provides a non-repayable gift of up to five percent of the mortgage loan to assist the homebuyer with the down payment. *See, e.g.*, CP 1001. Homebuyers Fund does not require that these gifts are ever repaid. CP 669–70; 992. The individual loans are pooled into mortgage-backed securities and sold to Homebuyers Fund. CP 992. Homebuyers Fund then generates revenue to support the continued existence of its program by selling the mortgage-backed securities on the open market to investors. *Id.* It then uses the resulting revenue to cover the costs of administering the program and other obligations, and recycles the remaining revenue to cover future gifts to other homebuyers. *Id.* Approximately 75 percent of the revenue generated from the sale of the mortgage-backed securities is used to fund additional gifts to homebuyers. *Id.* During this process, Homebuyers Fund itself does not transact directly with homebuyers, as the homebuyers deal directly with the lenders themselves. CP 1128 (p. 245:3–10).

Although arguably related to the two other Defendants, GSFA and RCRC, Homebuyers Fund is a separate, independent legal entity, and has at all times observed all corporate formalities required of such a separate existence. Homebuyers Fund has its own articles of incorporation, bylaws, directors, and officers. CP 950. It has also received a private letter ruling from the IRS as a separate entity and issues its own audited financial statements on an annual basis. CP 995–99; 1047–66. Its board of directors holds regular meetings. *See, e.g.*, CP 859; 877 (pp. 130:12–131:13); 953. Homebuyers Fund contracts with RCRC to provide administrative services to Homebuyers Fund to run its down payment assistance program pursuant to valid administrative services contracts. CP 931.<sup>4</sup> And, while Homebuyers Fund transfers certain excess revenues from its programs to RCRC, the amount of any such excess revenue is ultimately up to the discretion of Homebuyers Fund. CP 868 (p. 140:14–17). Homebuyers Fund is fully capitalized, and the obligations of Homebuyers Fund are distinct from those of both GSFA and RCRC. *See, e.g.*, CP 950–62; 1047–66.

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<sup>4</sup> As part of those administrative services contracts, RCRC employees perform all of Homebuyers Fund’s work.

### C. WSHFC Loans Down Payments to Homebuyers

WSHFC is an administrative agency created by the Washington Legislature in 1983 to be a participant in HUD's federal mortgage assistance program. RCW 43.180.010. As its enabling legislation makes clear, the Legislature created WSHFC to *increase* the supply of housing finance in Washington—not to regulate or limit assistance provided in Washington by other marketplace participants. *See generally* RCW 43.180.010. At the time WSHFC was created, there was “a serious shortage of safe, sanitary and energy efficient housing available at prices within the financial means of [Washington's] citizens.” RCW 43.180.010. Although the Legislature created WSHFC to be “a” participant in federal home financing programs to aid to low and moderate income households, it by no means made WSHFC the exclusive participant in Washington. *See generally* RCW 43.180.010. Indeed, as WSHFC admitted below, there are many other types of persons and entities that provide such assistance, such as individuals, unions, nonprofits, and local governmental entities. *See* CP 835–36; *see also* HUD Handbook 4000.1 § II(A)(4)(d)(iii)(F)(2)(a).

Sometime during the 1990s, WSHFC realized that “the largest obstacle to homeownership for low and moderate income homebuyers was no longer affording monthly payments but rather making the down payment.” CP 840 (pp. 48:24–49:9). It thus began offering down payment

assistance to low and moderate income homebuyers. *Id.* But even WSHFC recognized that it did *not* have a “monopoly” with respect to offering down payment assistance in Washington. CP 843 (p. 66:4–7). Indeed, as it concedes, at least 25 different organizations have provided down payment assistance in Washington. *See* CP 835–36.

Though created by the Legislature, WSHFC is a separate entity from the State itself, with specifically delimited powers. For example, although WSHFC issues bonds, the State of Washington has no liability for those bonds. *Washington State Hous. Fin. Comm’n v. O’Brien*, 100 Wn.2d 491, 498, 671 P.2d 247 (1983). Indeed, it was precisely because of this separateness from the State that the Washington Supreme Court held that WSHFC’s activities do not constitute the unlawful use of State resources to subsidize private commercial ventures. *Id.* at 495.

Unlike Homebuyers Fund, WSHFC does not *give* down payment money to homebuyers. CP 404–05. Instead, WSHFC *loans* the money. Thus, the buyer takes on two loans: the mortgage from a lender and the down payment loan from WSHFC. *Id.*

In the proceedings below, although not pertinent to the legal issues presented, WSHFC attempted to paint Homebuyers Fund as a predatory lender. In fact, Homebuyers Fund’s gift-based program represents a better deal for many—indeed most—homebuyers in Washington than the loan-

based programs offered by WSHFC. WSHFC's own securities broker has admitted as much. CP 856. Homebuyers Fund's interest rates are provided at market rates, meaning they can be above, equal to, *or below* the rates offered by WSHFC. *See, e.g.*, CP 1010–17; 1034. But because Homebuyers Fund's assistance does not need to be repaid (whereas WSHFC's does), Homebuyers Fund's programs are often better for individual borrowers than the down payment assistance programs offered by WSHFC. *See, e.g.*, CP 824–25 (p. 133:6–22, pp. 135:21–136:17); 856. In any event, having options in this marketplace gives low and moderate income homebuyers the opportunity to select which of the many available programs best meets their needs. *See, e.g.*, CP 377 (p. 50:15–25); 719.

#### **D. RCRC and GSFA**

Defendant RCRC is a California nonprofit mutual benefit corporation founded in 1972 by several rural counties in California. It operates as an advocacy association for those counties (for example in the California Legislature), and also provides various administrative support services to those counties. CP 929; 964. It is undisputed that RCRC does no business in Washington State. *See* CP 4–5.

Defendant GSFA is a joint powers authority formed under California law in 1993 by several California counties to provide housing finance assistance to homebuyers within the State of California. CP 880;

882. GSFA's membership includes many (but not all) of the member counties of RCRC, as well as several additional counties and cities that joined GSFA as associate members specifically to participate in its mission of providing housing finance. CP 880–81; 946. GSFA provides its housing finance assistance exclusively to homebuyers in California. CP 481. It is undisputed that GSFA does no business in Washington State. *See* CP 4–5; 481.

**E. The Proceedings in the Trial Court**

In 2014, WSHFC learned that Homebuyers Fund was providing a potentially competing product in Washington State. CP 1030. Fearing losing its market share, WSHFC filed this lawsuit in King County Superior Court, asserting two causes of action. Its first claim was a request for “declaratory judgment” that Homebuyers Fund’s “ongoing activities in Washington are unauthorized and may not continue.” CP 10–11. The Complaint did not ask the court to construe any particular statute, but instead generically asserted that Homebuyers Fund’s operations exceeded the authority delegated to it under California law. CP 9–11. WSHFC also asserted a second cause of action for “injunctive relief,” “prohibiting [Homebuyers Fund] from any further provision of homeownership financing services in Washington.” CP 11.

Homebuyers Fund moved to dismiss the Complaint under CR 12, which the trial court summarily denied in an order that did not provide any reasoning. CP 100. The parties subsequently filed cross-motions for summary judgment. The trial court denied both motions—again, in an order without explaining its analysis—and set the matter for trial to resolve unspecified disputed issues of fact. CP 1254–55.

WSHFC then moved for reconsideration of the trial court’s denial of its motion for summary judgment, without citing any new facts or new law to justify reconsideration. CP 1256. The trial court granted WSHFC’s motion for reconsideration and issued declaratory judgment in favor of WSHFC, still without providing an explanation for its decision. CP 1287.

#### **IV. ARGUMENT**

The trial court erred in granting summary judgment for WSHFC and denying summary judgment on Defendants’ cross-motion for summary judgment for three independent reasons. First, WSHFC lacked standing to challenge Homebuyers Fund’s operations in Washington. Second, even if it were proper to reach the merits, neither California nor Washington law prohibits Homebuyers Fund from providing its down payment assistance program in Washington. Third, the Court lacked personal jurisdiction over GSFA and RCRC, which do not conduct

business in Washington and have no other jurisdictionally relevant contacts.

**A. Standard of Review**

Standing is a legal question that is reviewed de novo. *City of Snoqualmie v. King Cty. Exec. Dow Constantine*, 187 Wn.2d 289, 296, 386 P.3d 279 (2016). A grant of summary judgment is likewise reviewed de novo, as are all questions of statutory construction. *Wagg v. Estate of Dunham*, 146 Wn.2d 63, 67, 42 P.3d 968 (2002). Similarly, “a trial court’s assertion of personal jurisdiction is a question of law that [the Court] review[s] de novo, where, as here, the jurisdictionally relevant facts are undisputed.” *Failla v. FixtureOne Corp.*, 181 Wn.2d 642, 649, 336 P.3d 1112 (2014).

**B. WSHFC Lacks Standing to Challenge Homebuyers Fund’s Operations in Washington**

**1. Only Parties Whose Rights and Interests Are at Stake May Bring Cases**

The doctrine of standing reflects the bedrock principle that “[c]ases should be brought and defended by the parties whose rights and interests are at stake. . . . This principle is reflected in the court rules and in common law limitations on who can bring suit.” *Riverview Cmty. Grp. v. Spencer & Livingston*, 181 Wn.2d 888, 893, 337 P.3d 1076 (2014) (citations omitted). “To have standing, a claimant must establish that

injury has occurred to a legally protected right. . . . A party has standing to raise an issue if that party ‘has a distinct and personal interest in the outcome of the case.’” *Pac. Marine Ins. Co. v. Dep’t of Revenue*, 181 Wn. App. 730, 740, 329 P.3d 101 (2014) (citations omitted). In other words, “[t]he doctrine of standing generally prohibits a party from asserting another person’s legal right.” *Timberlane Homeowners Ass’n, Inc. v. Brame*, 79 Wn. App. 303, 307, 901 P.2d 1074 (1995).

The mere fact that an allegedly unlawful action has occurred does not suffice to confer standing. *Bankhead v. Tacoma*, 23 Wn. App. 631, 635, 597 P.2d 920 (1979) (“The presence of some violation of law is not sufficient if the party challenging an action lacks standing to challenge the violation.”); *see also State of Utah v. Babbitt*, 137 F.3d 1193, 1205 (10th Cir. 1998) (“[T]he mere allegation that Defendants are acting without authority or in violation of the law is insufficient to establish standing.”). The standing requirement fully applies to claims for declaratory judgment. *To-Ro Trade Shows v. Collins*, 144 Wn.2d 403, 411, 415, 27 P.3d 1149 (2001).

## **2. WSHFC Has No Rights or Legally Protected Interests at Stake in this Litigation**

WSHFC has no legally protected rights that have been injured by Homebuyers Fund’s activities in Washington. WSHFC purports to have an

interest in this case because Homebuyers Fund is competing with it.

Absent a right to be free from competition, however, competition cannot constitute injury to a protected interest and competitors generally have no standing to sue.

Where there is no monopoly or other right to be free from competition, a plaintiff cannot bring suit to challenge the way its competitor does business. *See Tenn. Elec. Power Co. v. Tenn. Valley Auth.*, 306 U.S. 118, 140, 59 S. Ct. 366, 83 L. Ed. 543 (1939) (utilities that lacked a right to be free from competition did not have standing to sue the Tennessee Valley Authority to allege that it was exercising power unlawfully); *Hardin v. Kentucky Utilities Co.*, 390 U.S. 1, 5–6, 88 S. Ct. 651, 19 L. Ed. 2d 787 (1968) (“This Court has . . . repeatedly held that the economic injury which results from lawful competition cannot, in and of itself, confer standing on the injured business to question the legality of any aspect of its competitor’s operations.”); *Tallahatchie Valley Elec. Power Ass’n v. Mississippi Propane Gas Ass’n, Inc.*, 812 So. 2d 912, 925 (Miss. 2002) (even where a court determined that a company had, in fact, exceeded its corporate authority under statute and its corporate charter, the company’s competitor could not obtain an injunction enjoining its

continued operation because competitive injury is not a cognizable one allowing it to bring suit).<sup>5</sup>

Here, no law gives WSHFC protection from competition, much less a monopoly on down payment assistance in Washington. The Legislature created WSHFC “to act as *a* financial conduit which . . . can . . . *participate* in federal, state, and local housing programs and thereby make *additional* funds available at affordable rates to help provide housing throughout the state.” RCW 43.180.010 (emphasis added). Nothing about the statute suggests that Washington intended to create a monopoly or otherwise protect WSHFC from competition with other entities providing down payment assistance. *See O’Brien*, 100 Wn.2d at 493 (discussing how WSHFC was created specifically in response to a “stagnant” housing market, where “construction was at record lows, and current housing supply was critically below the population’s needs, for both home buyers and renters”).

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<sup>5</sup> See also *Lea Cty. Elec. Co-op., Inc. v. City of Plains*, 373 S.W.2d 90, 93 (Tex. Civ. App. 1963) (nonprofit electric cooperative from a foreign state allegedly conducting unauthorized business within the state could not obtain an injunction to shut the company down because the domestic corporation did not have an “exclusive franchise” to provide electricity with its territory, and thus no right to be free from competition).

Indeed, WSHFC concedes it has no monopoly over providing down payment assistance. CP 843 (“Q. Does the Commission have a monopoly with respect to offering down payment assistance in Washington? A. No.”). WSHFC is aware of at least 25 different organizations that have provided down payment assistance in this State, including many other governmental entities. *See* CP 835–36.

WSHFC will no doubt argue that this competitor-standing rule only prevents “*lawful*” competitors from suing one another, and that it has standing as a competitor because Homebuyers Fund’s operations in Washington are “unlawful” insofar as they allegedly exceed Homebuyers Fund’s “lawfully” granted corporate powers. CP 1104–05. That argument distorts the concept of “lawful” competition.

Homebuyers Fund is acting within its corporate powers. *See* discussion *infra* pages 25–36. But even if it were not, exceeding one’s corporate powers is not an “unlawful” act for purposes of standing doctrine. In order to constitute the type of unlawful act that a competitor can sue to enjoin, the act must be *per se* unlawful (such as selling illegal narcotics). *See* 7A FLETCHER CYCLOPEDIA OF THE LAW OF CORPS. § 3400. Ultra vires acts, by contrast, are merely those acts which are “beyond the powers conferred upon the corporation by its charter,” regardless of whether they are “in any sense immoral or injurious to others.” *Id.*; *see*

also *Ladd Estate Co. v. Wheatley*, 246 Or. 627, 629, 426 P.2d 878 (1967) (contrasting an ultra vires act with an illegal act “in contravention of a statute specifically prohibiting it”); *Donovan v. Kansas City*, 352 Mo. 430, 441, 175 S.W.2d 874 (Miss. 1943) (“[M]unicipal contracts entered into in a manner and form not prescribed by statute or charter are spoken of as ultra vires. Ultra vires and illegality are not synonymous.”). WSHFC’s contention that Homebuyers Fund lacks authority to operate in Washington at most alleges an ultra vires act, and thus confers no competitor standing.

WSHFC has, at best, asserted that it has lost business due to Homebuyers Fund’s competition in the market for down payment assistance in Washington. Because WSHFC has no right to be free from such competition, it suffers no legally protected injury when Washington residents utilize Homebuyers Fund’s services. WSHFC thus lacks standing to bring this suit.

**3. WSHFC Cannot Assert Governmental Standing Here Because It Is Not a Governmental Entity with Authority to Enforce any Relevant Law as Applied to Others**

Nor can WSHFC claim that it is bringing this action as a “law enforcement” matter where it somehow represents the citizens of

Washington. WSHFC has been granted no such enforcement powers by the Legislature.

Under certain limited situations, a governmental entity can assert claims on behalf of its citizens, and generally enforce the state's laws, even if the governmental entity itself is not injured in such a way as to confer standing on it directly. *Grant Cty. Fire Prot. Dist. No. 5 v. City of Moses Lake*, 150 Wn.2d 791, 803, 83 P.3d 419 (2004); *City of Seattle v. State*, 103 Wn.2d 663, 669, 694 P.2d 641 (1985). However, the governmental entity must have been authorized to do so. *Grant Cty. Fire Prot. Dist. No. 5*, 150 Wn.2d at 804 (holding that fire districts, which are "limited-purpose" public entities created to ensure "effective fire protection [and] other emergency services" have no representative standing on behalf of their citizens to challenge the method under which the citizens annex property). Here, WSHFC has not been granted such power.

It is the Attorney General who has plenary power to sue to enforce laws. *See State v. Nat'l Mercantile Co.*, 87 Wash. 108, 109, 151 P. 244 (1915); *see also* RCW 23.95.555. WSHFC has not been given this power. It is simply a participant in the market for down payment assistance.

A government agency does not automatically have standing to challenge any conduct that might have some impact on the agency's performance of its duties. As the U.S. Supreme Court has explained:

Agencies do not automatically have standing to sue for actions that frustrate the purposes of their statutes. The Interior Department, being charged with the duty to 'protect persons and property within areas of the National Park System,' 16 U.S.C. § 1a-6(a), does not thereby have authority to intervene in suits for assault brought by campers; or (more precisely) to bring a suit for assault when the camper declines to do so. What the [agency] must establish here is such a clear and distinctive responsibility . . . as to overcome the universal assumption that 'person adversely affected or aggrieved' leaves private interests (even those favored by public policy) to be litigated by private parties.

*Dir., Office of Workers' Comp. Programs, Dep't of Labor v. Newport News Shipbuilding & Dry Dock Co.*, 514 U.S. 122, 132, 115 S. Ct. 1278, 131 L. Ed. 2d 160 (1995); *Washington State Human Rights Comm'n ex rel. Spangenberg v. Cheney Sch. Dist. No. 30*, 97 Wn.2d 118, 126, 641 P.2d 163 (1982) (ability of a state-created Commission to identify potentially discriminatory practices did not carry with it the implied power to provide for remedial compensation to those injured by such practices); *State v. Pierce*, 11 Wn. App. 577, 580, 523 P.2d 1201 (1974) (ability of the State Highway Commission to reduce the speed limit under some conditions did not imply the ability of the Commission to reduce the speed limit under other circumstances). Thus, the fact that WSHFC is

empowered to provide down payment assistance does not mean it has the power to sue other entities in that market to ensure they are operating lawfully.

WSHFC argued below that, as a matter of good public policy, it should be empowered to address the types of problems that arose in the 2008 subprime mortgage crisis, when a pre-2008 expansion of mortgage credit to riskier borrowers ultimately caused harm to the wider economy. *See* CP 1084; *see also* CP 338. But courts may not invent a private right of action simply because it is a good idea, “no matter how desirable that might be as a policy matter, or how compatible with the statute.” *Alexander v. Sandoval*, 532 U.S. 275, 286, 121 S. Ct. 1511, 149 L. Ed. 2d 517 (2001). And absolutely nothing about WSHFC’s enabling legislation suggests that it was empowered to police the mortgage assistance market in Washington.<sup>6</sup> *See* RCW 43.180.010. Thus, WSHFC lacks governmental standing, and is not a proper plaintiff to bring this lawsuit.

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<sup>6</sup> WSHFC has also not identified any provision of California law which specifically gives it standing to sue market participants to enforce California legal requirements. As in Washington, the general power to bring law enforcement actions in California rests with the Attorney General. *See* CAL. CORP. CODE §§ 208(a), 1801.

**C. WSHFC's Claims Fail on the Merits**

Even if WSHFC had standing to obtain a declaration under Washington or California law concerning Homebuyers Fund's operations in Washington,<sup>7</sup> its claims would still fail on the merits. The trial court declared that "Defendants' housing activities in the State of Washington [including the provision of down payment assistance] are prohibited by law." CP 1287. The court did not state what law applied, or *why* it found Homebuyers Fund's conduct to violate that law. CP 1287. In fact, there is no law that prohibits Homebuyers Fund from providing down payment assistance in Washington.

**1. Washington Law Does Not Bar Homebuyers Fund from Offering Down Payment Assistance in Washington**

Nothing in Washington law bars Homebuyers Fund from providing down payment assistance to Washington residents. Corporations incorporated in other states are generally entitled to conduct business in Washington just like domestic corporations. *State ex rel. University Lumber & Shingle Co. v. Nichols*, 48 Wash. 605, 608, 94 P. 196 (1908).

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<sup>7</sup> WSHFC sought summary judgment on its declaratory relief claim solely under Washington and California law. Specifically, WSHFC argued: "[Homebuyers Fund] lacks domicile authority to operate outside of California and also lacks any state or local governmental authority in Washington to offer governmental homeownership financing services in conjunction with federally insured mortgage loans." CP 1257.

There is no statute or other law in Washington that specifically prohibits Homebuyers Fund from providing down payment assistance to Washington residents.

The only sources of Washington law that WSHFC cited below do not support the trial court's conclusion that Homebuyers Fund's conduct was "prohibited by law." WSHFC first pointed to its own enabling legislation, RCW 43.180.010 *et seq.*, as providing it with exclusive authority to provide such assistance, but, as discussed above, that enabling legislation does *not* bestow a monopoly on WSHFC. *See generally* discussion *supra* pp. 16–17.

Second, WSHFC pointed to common law authority for the proposition that, where a governmental entity is exercising exclusively governmental functions, other governments cannot invade upon its exclusive territory. CP 347. But providing down payment assistance is *not* an exclusively governmental function. All of the cases that WSHFC relied upon involve a power that the government had the *exclusive* right to exercise within its own jurisdiction. Thus, for example, *Skagit Cty. Pub. Hosp. Dist. No. 304 v. Skagit Cty. Pub. Hosp. Dist. No. 1*, 177 Wn.2d 718, 724, 305 P.3d 1079 (2013) dealt with the *exclusive* power to run a rural public hospital district in the boundaries of another rural public hospital district. The Court pointed to specific statutory pronouncements that "it is

not cost-effective, practical, or desirable to provide quality health and hospital care services in rural areas on a competitive basis because of limited patient volume and geographic isolation,” and read this as an “express[]” statement of legislative “intent to displace competition in the provision of rural health care and connect[] the finances of rural and nonrural [Public Hospital Districts] with revenue from health care services.” *Id.* at 727–28. Similarly in, *Alderwood Water Dist. v. Pope & Talbot, Inc.*, 62 Wn.2d 319, 322, 382 P.2d 639 (1963), an entity was provided a geographic monopoly over water supply in order to ensure the viability of the water utility. Here, in contrast, WSHFC was *not* given any governmental monopoly over the provision of down payment assistance in any particular territory.<sup>8</sup>

Third, WSHFC argued below that providing down payment assistance in the form of gifts rather than loans somehow violates

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<sup>8</sup> As a demonstration of the problematic results of accepting WSHFC’s position, WSHFC’s *own* “master servicer” (a separate company that manages the securitization of mortgages for WSHFC) would also not be able to operate in Washington State under WSHFC’s interpretation of relevant law because it is a department of the Alabama State Housing Finance Authority (Alabama’s equivalent to WSHFC) with no express authority under Alabama or Washington law to operate extraterritorially. CP 848 (p. 179:12–17).

Washington law (without citing any statute actually saying so).<sup>9</sup>

Washington law does not require that homebuyers *receive* loan-based assistance rather than assistance in the form of a gift. While WSHFC itself exclusively provides loans (rather than gifts), the primary reason it appears to do so is in order to get around a constitutional prohibition on gifting public funds *of the State of Washington*. See *O'Brien*, 100 Wn.2d at 498. That constitutional provision is intended to prevent harm to the taxpayers at large in the State, who might otherwise have to incur public expense for private gain. *Id.* It is not intended to protect homebuyers from receiving gifts. See *id.* And the concern for protecting Washington taxpayers simply does not apply here, where the gifts from Homebuyers Fund are not funded by Washington taxes.

## **2. California Law Allows Homebuyers Fund to Operate in Washington**

Homebuyers Fund's activity is also permitted by California law. Homebuyers Fund has express authority under the California Corporations Code and Homebuyers Fund's governing documents to operate outside of California. Moreover, binding precedent from the California Supreme

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<sup>9</sup> The statute WSHFC cites, RCW 43.180.050(1)(d), merely "*empower[s]*" WSHFC to "[m]ake loans for down payment assistance to home buyers in conjunction with other commission programs" (emphasis added). It does not state that borrowers must *receive* down payment assistance exclusively in the form of a loan rather than a gift. See *id.*

Court squarely holds that, as a duly incorporated nonprofit public benefit corporation that has complied with all requisite corporate formalities, Homebuyers Fund has the ability to exercise the full extent of its corporate powers notwithstanding any limitations on the exercise of power that may apply to governmental entities with which it is affiliated.

**a. Homebuyers Fund Has Express Authority to Operate Outside of California**

Homebuyers Fund has express authority under California law to operate outside of its home state. Nonprofit public benefit corporations like Homebuyers Fund “shall have all of the powers of a natural person.” CAL. CORP. CODE § 5140. Among other things, that power includes “without limitation,” the power to “[q]ualify to conduct its activities *in any other state, territory, dependency, or foreign country.*” CAL. CORP. CODE § 5140(c) (emphasis added).

Homebuyers Fund’s Articles of Incorporation (as amended) and Bylaws likewise permit Homebuyers Fund to act outside of California. *See* CP 859 (articles of incorporation); 950–62 (bylaws). Its bylaws state that “[t]he corporation shall have and exercise *all powers* and rights conferred upon nonprofit corporations by the California Nonprofit Public Benefit Corporation Law . . . which are approved by its governing board as necessary and appropriate for accomplishing its purposes.” CP 950–51

(emphasis added). Those general powers include the specific power to “qualify the corporation to do business in any other state, territory, dependency or country and conduct activities *within or outside California*.” CP 951 (emphasis added).

**b. Under California Law, Homebuyers Fund Is Not Categorically Bound by Restrictions Placed on Governmental Entities with Which It Is Affiliated, Regardless of Such Entities’ Alleged “Control” over Homebuyers Fund**

Despite this clear statutory authorization to operate outside of California, WSHFC argues that Homebuyers Fund may not act outside of California because it is affiliated with California public entities. WSHFC argues that Homebuyers Fund cannot have greater powers than the entities that created it. This argument fundamentally misunderstands the nature of a nonprofit public benefit corporation.

As a duly incorporated nonprofit public benefit corporation under the laws of California, Homebuyers Fund has a separate corporate existence. *Laird v. Capital Cities/ABC, Inc.*, 68 Cal. App. 4th 727, 737, 80 Cal. Rptr. 2d 454 (1998) (holding that “[c]orporate entities are presumed to have separate existences”), *disagreed with on other grounds by Reid v. Google, Inc.*, 50 Cal. 4th 512, 524, 235 P.3d 988 (2010). Homebuyers Fund has complied with all potentially relevant corporate formalities. It

has its own articles of incorporation and bylaws. CP 950. Its board of directors holds regular meetings. *See, e.g.*, CP 859; 877 (pp. 130:12–131:13); 953. It is also capitalized, and has its own distinct obligations from GSFA and RCRC. *See, e.g.*, CP 950–62; 1047–66. The IRS has issued a private letter ruling to Homebuyers Fund as a separate entity, CP 995–99, and Homebuyers Fund issues its own, audited financial statements on an annual basis, CP 1047–66.

As a separate legal entity, Homebuyers Fund is limited (if at all) by the restrictions on *its* conduct, not by the restrictions that might apply to its governmental affiliates. Thus in *Rider v. City of San Diego*, 18 Cal. 4th 1035, 1044, 959 P.2d 347, 77 Cal. Rptr. 2d 189 (1998), the California Supreme Court held that a joint powers agency created by the City of San Diego was not required to comply with certain voter approval requirements that the City itself would have had to comply with, despite allegations from the plaintiff that the joint powers agency was “a mere financing ‘shell’ that acts at the City’s behest, doing for the City what the City may not do in its own name.” *Id.* at 1041. The Court looked directly to the textual language of the constitutional provision that purportedly imposed the voter restriction, and noted that, although it listed “cities” as beholden to the limitation, it did not separately list “joint powers agencies” as subject to the same rule. *Id.* at 1043.

In reaching this conclusion, the California Supreme Court rejected a “controlled” test as a means of disregarding the separate status of the two entities. “[W]e have never held that control by itself establishes the identity of two separate governmental entities.” *Rider*, 18 Cal. 4th at 1044.

The *Rider* Court also held that the City’s purported intent to circumvent restrictions on governmental power through use of the corporate form did not matter:

We are not naive about the character of this transaction. If the City had issued bonds to pay for the Convention Center expansion, the two-thirds vote requirement would have applied. Here, the City and the Port District have created a financing mechanism that matches as closely as possible (in practical effect, if not in form) a City-financed project, but avoids the two-thirds vote requirement. Nevertheless, the law permits what the City and the Port District have done.

*Rider*, 18 Cal. 4th at 1055.

Similarly, in *City of Cerritos v. Cerritos Taxpayers Association*, the California Court of Appeal held that a nonprofit public benefit corporation created under California law did not have to comply with the same restrictions under the California Constitution for low rent housing projects as the city that created it, even though it was alleged to be a “shell corporation” . . . created by the City to circumvent” those constitutional restrictions. *City of Cerritos v. Cerritos Taxpayers Assn.*, 183 Cal. App. 4th 1417, 1438, 108 Cal. Rptr. 3d 386 (2010). The court

noted that it was “not at liberty to ignore the corporation’s status; it has a ‘genuine separate existence’ from the City and Agency, so ‘it does not matter whether or not the City ‘essentially controls’ [the nonprofit public benefit corporation].” *Id.* at 1442. Numerous other decisions of the California Court of Appeal have reached similar results. *City of Bakersfield v. W. Park Home Owners Ass’n & Friends*, 4 Cal. App. 5th 1199, 1211, 209 Cal. Rptr. 3d 346 (2016) (public benefit corporation not held to the same debt restrictions as the City that created it); *San Diegans for Open Gov’t v. City of San Diego*, 242 Cal. App. 4th 416, 438, 195 Cal. Rptr. 3d 133 (2015) (joint powers authority not restricted by debt restrictions applicable to the City that created it); *see also See Yoffie v. Marin Hosp. Dist.*, 193 Cal. App. 3d 743, 755, 238 Cal. Rptr. 502 (1987) (holding that, even though a governmental agency is subject to California’s open public meeting law, a nonprofit corporation formed by that governmental agency is not).

Thus, Homebuyers Fund is not subject to the restrictions on the exercise of municipal power that may apply to either RCRC (a nonprofit), GSFA (a joint powers authority), or the counties that created those two entities. Like the numerous entities discussed above, Homebuyers Fund is a separate legal entity, duly organized under state law, which must be presumed to have a valid and separate existence. *See City of Bakersfield*, 4

Cal. App. 5th at 1211; *City of Cerritos*, 183 Cal. App. 4th at 1439.

Homebuyers Fund has express statutory authority to operate outside of California. CAL. CORP. CODE § 5140(c).

**c. Nothing in *Cabrillo* or the Deputy Attorney General Letter Interpreting It Holds Otherwise**

WSHFC erroneously asserts that, notwithstanding the clear grant of authority under § 5140(c) and the case law cited above, Homebuyers Fund may not engage in any conduct that its affiliated governmental entities could not perform. For this proposition, WSHFC cites *Cabrillo Cmty. College Dist. v. Cal. Junior College Assn.*, 44 Cal. App. 3d 367, 372, 118 Cal. Rptr. 708 (1975), an inapposite intermediate appellate court case decided *prior to* the enactment of the relevant statutes authorizing Homebuyers Fund's activity, and an equally inapplicable letter penned by a Deputy California Attorney General, Julie Bilaver. See June 18, 2012 Letter from Deputy Attorney General Julia A. Bilaver to Victor James ("Bilaver Letter").

*Cabrillo* is not on point. It merely stands for the proposition that community colleges delegated with power from the state to "regulate the athletic programs of their colleges" cannot delegate that regulatory power to "an *agent* of the community college" to promulgate rules which are expressly prohibited by state law. *Cabrillo*, 44 Cal. App. 3d at 372

(emphasis added). This case, in contrast, involves no delegation of sovereign regulatory power to Homebuyers Fund, much less regulatory power to an “agent” of the government. Indeed, there is no *delegation* of power at issue here whatsoever. Homebuyers Fund independently derives all of its power to act extraterritorially from California’s public benefit corporations law—not from any power derived from GSFA or RCRC. *See* CAL. CORP. CODE § 5140. In any event, *Cabrillo* predates the enactment of § 5140 by three years, demonstrating that the *Cabrillo* court could not have been contemplating limiting the independent powers the California Legislature bestowed on nonprofits via that statute when its decision came down. *See Cabrillo*, 44 Cal. App. 3d 367; CAL. CORP. CODE § 5140.

WSHFC’s reliance on the Bilaver Letter is equally misplaced. That letter, written by a California deputy attorney general and never adopted by any court, is not binding legal authority. *See Branson v. Port of Seattle*, 115 Wn. App. 695, 699, 63 P.3d 830 (2004) (“Attorney general opinions are not binding on this court, and we are not persuaded by the opinion here.”). In addition, that letter, which construes *Cabrillo* as applied to a local housing agency, addresses the delegation of powers which are the *exclusive* power of governmental entities within their defined territories, such as “the power of eminent domain” and the power to finance, build, and operate a “housing project” for low income residents. *See Bilaver*

Letter at 3–4. Here, by contrast, WSHFC does not have a governmental monopoly over the provision of down payment assistance or other right to be free from competition within any territorial jurisdiction, and thus the reasoning of the letter does not apply. Finally, to the extent the letter suggests that corporate entities formed by public entities cannot do things, such as “issue bonds,” that its public creators cannot do, *see id.* at 4, its reasoning is expressly contrary to binding California Supreme Court precedent. *See Rider*, 18 Cal. 4th at 1043.

**d. Just Because HUD Recognizes Homebuyers Fund as a “Governmental” Entity Does Not Mean Homebuyers Fund Is Acting in a “Governmental Capacity” Under California Municipal Law When It Offers Down Payment Assistance**

WSHFC may also contend that Homebuyers Fund has to be operating in a “governmental” capacity under California municipal law, because the federal government treats Homebuyers Fund as a “governmental” entity for purposes of HUD’s internal loan underwriting guidelines. But that argument conflates *being* a governmental entity with *acting* in a governmental capacity. The two are not the same, and the distinction matters because a governmental entity does not necessarily act at all times in a governmental capacity.

“[A]n entity can be an ‘agency’ or ‘instrumentality’ of government for one purpose but not another.” *Guardian Indus. Corp. v. Comm’r*, 143 T.C. 1, 14 (2014) (discussing the Red Cross); *Sunburst Bank v. Exec. Life Ins. Co.*, 24 Cal. App. 4th 1156, 1162–63, 29 Cal. Rptr. 2d 734 (1994) (FDIC acts in a governmental capacity when it acts as a regulator but not when it assumes bank assets in receivership); *City of Malibu v. Santa Monica Mountains Conservancy*, 98 Cal. App. 4th 1379, 1384, 119 Cal. Rptr. 2d 777 (2002) (“Labeling an entity as a ‘state agency’ in one context does not compel treatment of that entity as a ‘state agency’ in all contexts.”) (citation omitted).

The fact that HUD might designate Homebuyers Fund as a “governmental” source of funds in no way implies that Homebuyers Fund is acting in a governmental capacity wherever it provides its gift-based assistance.<sup>10</sup> It simply means that Homebuyers Fund is among the acceptable sources of gift down payment assistance. That has nothing to do with whether, when Homebuyers Fund provides those funds, Homebuyers Fund is performing a governmental act under California law.

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<sup>10</sup> In addition, WSHFC ignores the fact that, HUD recognizes IRS section 115 entities as “governmental” entities solely for purposes of offering loan-based down payment assistance (known as “secondary financing”)—not for purposes of offering gift-based down payment assistance. See HUD Mortgagee Letter 2012–24.

Indeed, governments frequently conduct business transactions where they exercise a proprietary function, not a governmental one (for example, when the University of Washington sells athletic apparel).<sup>11</sup> “A government’s acts become proprietary when they are those normally done by private persons, and the determination is a question of law for the court.” *E.g., Sherman v. City of Pasadena*, 367 F. Supp. 1115, 1117-18 (C.D. Cal. 1973); *see also Sunburst Bank*, 24 Cal. App. 4th at 1162. Many factors favor the conclusion that Homebuyers Fund’s down payment gift assistance is proprietary here. For example, Homebuyers Fund’s down payment assistance program is operated with private, and not

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<sup>11</sup> California political jurisdictions *are* allowed to operate outside of California where, as would be the case here, they are engaging in commercial operations in a proprietary capacity and not governance. *See S.D. Myers, Inc. v. City & Cty. of San Francisco*, 253 F.3d 461, 473 (9th Cir. 2001); *Air Cal, Inc. v. City & Cty. of San Francisco*, 865 F.2d 1112, 1117 (9th Cir. 1989) (citing Osborne M. Reynolds, Jr., LOCAL GOVERNMENT LAW, § 3 at 12 (1982)); *see also Guidi v. State*, 41 Cal. 2d 623, 627, 262 P.2d 3 (1953) (“[T]he state and, necessarily, its subdivisions, may act in a proprietary capacity.”); Cal. Gov’t Code §§ 23000, 23004(d) (generally providing counties with “corporate powers” that include the right to “manage, sell, lease, or otherwise dispose of its property as the interests of its inhabitants require”). Washington law is also in accord. *Burns v. City of Seattle*, 161 Wn.2d 129, 155, 164 P.3d 475 (2007) (“When acting in a proprietary capacity, a municipal corporation acts as the proprietor of a business enterprise for the private advantage of the city and may exercise its business powers in much the same way as a private individual or corporation.”) (internal quotation marks and citation omitted); *see also* 62 C.J.S. MUN. CORPS. § 147 (“When a municipality operates in its proprietary capacity, it is governed by the same laws and may exercise the same rights as a private corporation engaged in a similar undertaking.”).

governmental, funds. *See* CP 992. As WSHFC itself admits, private individuals and nonprofits regularly provide down payment assistance to those who lack sufficient resources to pay themselves. *See* CP 835–36. Thus, nothing about the fact that Homebuyers Fund qualifies as a governmental *entity* under HUD guidelines means it is necessarily acting in a governmental *capacity* when it provides down payment assistance in Washington.

In summary, this Court should not reach the merits of WSHFC’s claims against Homebuyers Fund because, as discussed above, WSHFC lacks standing to bring them. But in any event Homebuyers Fund’s operation in Washington is entirely lawful on the merits. No provision of Washington or California law supports the trial court’s judgment below.

**D. The Trial Court Erred in Concluding It Had Personal Jurisdiction over GSFA and RCRC**

The trial court also erred in concluding it had personal jurisdiction over RCRC and GSFA.<sup>12</sup> Three defendants were sued here, each with its own legal identity and interests.

For a foreign corporation to be subject to personal jurisdiction in Washington State, “(1) the nonresident defendant or foreign corporation

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<sup>12</sup> This question of personal jurisdiction was raised both in Defendants’ motion to dismiss, CP 40–41, and in their motion for summary judgment, CP 784.

must purposefully do some act or consummate some transaction in the forum state; (2) the cause of action must arise from, or be connected with, such act or transaction; and (3) the assumption of jurisdiction by the forum state must not offend traditional notions of fair play and substantial justice, consideration being given to the quality, nature, and extent of the activity in the forum state, the relative convenience of the parties, the benefits and protection of the laws of the forum state afforded the respective parties, and the basic equities of the situation.” *FutureSelect Portfolio Mgmt., Inc. v. Tremont Grp. Holdings, Inc.*, 180 Wn.2d 954, 963–64, 331 P.3d 29 (2014) (quoting *Shute v. Carnival Cruise Lines*, 113 Wn.2d 763, 767, 783 P.2d 78 (1989)). “[E]ach defendant’s contacts with the forum State must be assessed individually.” *Failla v. FixtureOne Corp.*, 181 Wn.2d 642, 651, 336 P.3d 1112 (2014) (citation omitted).

Here, neither RCRC nor GSFA conducts any business in Washington. CP 4–5; 481. They simply have no relevant contact with this State. As such, there is no basis for asserting personal jurisdiction over them. *See FutureSelect Portfolio Mgmt., Inc.*, 180 Wn.2d at 963-64.

WSHFC asserted below that the trial court had jurisdiction over RCRC and GSFA because Homebuyers Fund was allegedly the “alter ego” of these separate corporate entities, such that its independent

existence should be disregarded. CP 75–76. The facts before the Court, however, show the opposite as a matter of law.

Whether an entity has abused its corporate form to evade limitations on its power is necessarily determined by the laws of the state of incorporation that are supposedly being abused. *Stromberg Metal Works, Inc. v. Press Mech., Inc.*, 77 F.3d 928, 933 (7th Cir. 1996) (“Efforts to ‘pierce the corporate veil’ are governed by the law of the state of incorporation.”); *Taurus IP, LLC v. DaimlerChrysler Corp.*, 726 F.3d 1306, 1336 (Fed. Cir. 2013) (same, citing RESTATEMENT (SECOND) CONFLICT OF LAWS § 309 (1971)); *Davis & Cox v. Summa Corp.*, 751 F.2d 1507, 1527 (9th Cir. 1985) (“Claims involving ‘internal affairs’ of corporations, such as the breach of fiduciary duties, are subject to the laws of the state of incorporation.”). Here, Homebuyers Fund is incorporated in California (as are GSFA and RCRC), meaning that this Court would look to California law to see whether or not its separate corporate entity status should be disregarded for purportedly exceeding the powers granted to Homebuyers Fund under California law.<sup>13</sup>

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<sup>13</sup> In any event, Washington law appears to be in accord with California law on this issue in all material respects. *See generally Meisel v. M & N Modern Hydraulic Press Co.*, 97 Wn.2d 403, 410–11, 645 P.2d 689 (1982).

Under relevant California law, Homebuyers Fund has a separate corporate existence from RCRC and GSFA. As discussed above, Homebuyers Fund is a duly incorporated corporation that California presumes to have a separate existence and that has at all times respected the necessary corporate formalities. *See* discussion *supra* p. 27.

WSHFC argued below that the separate corporate form of Homebuyers Fund should be disregarded because Homebuyers Fund is controlled by public-affiliated entities (GSFA and RCRC). As discussed above, these “control” arguments provide no basis for disregarding Homebuyers Fund’s corporate form in the context of governmentally affiliated corporations. *Rider*, 18 Cal. 4th at 1044 (“Because the Financing Authority has a genuine separate existence from the City ... it does not matter whether or not the City ‘essentially controls’ the Financing Authority”) (citation omitted); *Vanoni v. Cty. of Sonoma*, 40 Cal. App. 3d 743, 748–750, 115 Cal. Rptr. 485 (1974); *City of Cerritos*, 183 Cal. App. 4th at 1442 (“We are not at liberty to ignore the [nonprofit public benefit] corporation’s status; it has a ‘genuine separate existence’ from the City and Agency, so ‘it does not matter whether or not the City ‘essentially controls’ Cuesta Villas.”).

Similarly, the fact that money may flow between Homebuyers Fund and RCRC or GSFA (pursuant to valid service agreements) is

insufficient to warrant disregarding Homebuyers Fund's separate corporate form. *Rider*, 18 Cal. 4th at 1040 (holding that a joint powers agency was not bound by restrictions imposed on the city that created it even though, "in effect, the City agreed to provide funds to meet all the Financing Authority's obligations as they arose").

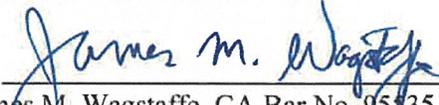
There was simply no legal basis for the trial court to treat RCRC or GSFA as an alter ego of Homebuyers Fund. *See City of Bakersfield*, 4 Cal. App. 5th at 1211 ("[T]he California Secretary of State certified the articles of incorporation. This is conclusive evidence that the Corporation was formed and prima facie evidence of its corporate existence."); *City of Cerritos*, 183 Cal. App. 4th at 1439 (refusing to disregard "a duly incorporated domestic corporation of the State of California, organized under the Nonprofit Public Benefit Corporation Law for charitable purposes, and specifically for the primary purposes of developing, owning, maintaining and operating an affordable senior citizen housing development"). Personal jurisdiction over RCRC and GSFA must be based on each of *those entities'* contacts with Washington. *See Failla*, 181 Wn.2d at 651. They have none. RCRC and GSFA should therefore have been dismissed for lack of jurisdiction.

## V. CONCLUSION

For the reasons set forth above, the trial court's declaratory judgment should be vacated, the Complaint should be dismissed, and judgment should be entered for Defendants, because (i) WSHFC had no standing to bring these claims, (ii) Homebuyers Fund's provision of down payment assistance in Washington complies with Washington and California law, and (iii) RCRC and GSFA are not subject to personal jurisdiction in Washington. Accordingly, the trial court's decision should be vacated, and the case should be remanded for entry of judgment in favor of Defendants.

Respectfully submitted this 5th day of June, 2017.

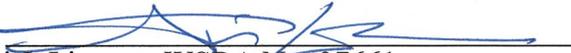
**KERR & WAGSTAFFE LLP**

By: 

James M. Wagstaffe, CA Bar No. 95435  
Michael von Loewenfeldt, CA Bar No. 178665  
Kevin B. Clune, CA Bar No. 248681  
101 Mission Street, Floor 18  
San Francisco, CA 94105  
Phone: (415) 371-8500  
wagstaffe@kerrwagstaffe.com  
mvl@kerrwagstaffe.com  
clune@kerrwagstaffe.com

*Attorneys for Appellants National Homebuyers  
Fund, Inc., Golden State Finance Authority, and  
Rural County Representatives of California  
(admitted pro hac vice)*

**McNAUL EBEL NAWROT & HELGREN  
PLLC**

By: 

Avi J. Lipman, WSBA No. 37661  
Theresa M. DeMonte, WSBA No. 43994  
600 University Street, Suite 2700  
Seattle, Washington 98101  
Phone: (206) 467-1816  
alipman@mcnaul.com  
tdemonte@mcnaul.com

*Attorneys for Appellants National Homebuyers  
Fund, Inc., Golden State Finance Authority, and  
Rural County Representatives of California*

Court of Appeal No. 76510-8-I

King County Superior Court No. 15-2-12454-4 SEA

IN THE COURT OF APPEALS  
OF THE STATE OF WASHINGTON  
DIVISION I

---

WASHINGTON STATE HOUSING FINANCE COMMISSION, a public  
body corporate and politic of the State of Washington,

Respondent,

v.

NATIONAL HOMEBUYERS FUND, INC., f/k/a Homebuyers Fund,  
Incorporated, a California nonprofit corporation; GOLDEN STATE  
FINANCE AUTHORITY, f/k/a California Home Finance Authority, f/k/a  
California Rural Home Mortgage Finance Authority, a California joint  
powers authority; RURAL COUNTY REPRESENTATIVES OF  
CALIFORNIA, f/k/a Regional Council of Rural Counties, f/k/a Mountain  
Counties Water Resources Association, a California nonprofit corporation,

Appellants.

---

APPENDIX TO APPELLANTS' OPENING BRIEF

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101 Mission Street, 18th Fl.  
San Francisco, CA 94105

**KERR & WAGSTAFFE LLP**  
James Wagstaffe, CA Bar No. 95535  
Michael von Loewenfeldt, CA Bar No. 178665  
Kevin B. Clune, CA Bar No. 248681

One Union Square  
600 University, 27th Fl.  
Seattle, WA 98101  
(206) 467-1816

**McNAUL EBEL NAWROT & HELGREN  
PLLC**  
Avi J. Lipman, WSBA No. 37661  
Theresa M. DeMonte, WSBA No. 43994

*Attorneys for Appellants National Homebuyers  
Fund, Inc., Golden State Finance Authority,  
and Rural County Representatives of California*

**INDEX TO APPENDIX**

<b><u>Appendix Pages</u></b>	<b><u>Title</u></b>
App. 1	CAL. GOV'T CODE § 23004(d)
App. 2	CAL. GOV'T CODE § 23000
App. 3-5	HUD Mortgagee Letter 2012-24
App. 6-7	HUD Policy Handbook 4000.1 (issued Dec. 30, 2016)
App. 8-11	June 18, 2012 Letter from Deputy Attorney General Julia A. Bilaver to Victor James
App. 12- 14	CAL. CORP. CODE § 5140
App. 15	RCW 43.180.010

West's Annotated California Codes  
Government Code (Refs & Annos)  
Title 3. Government of Counties (Refs & Annos)  
Division 1. Counties Generally (Refs & Annos)  
Chapter 1. General (Refs & Annos)

West's Ann.Cal.Gov.Code § 23004

§ 23004. Powers, enumeration

Currentness

A county may:

- (a) Sue and be sued.
- (b) Purchase, receive by gift or bequest, and hold land within its limits, or elsewhere when permitted by law.
- (c) Make contracts and purchase and hold personal property necessary to the exercise of its powers.
- (d) Manage, sell, lease, or otherwise dispose of its property as the interests of its inhabitants require.
- (e) Levy and collect taxes authorized by law.

**Credits**

(Added by Stats.1947, c. 424, p. 1039, § 1. Amended by Stats.1947, c. 829, p. 1969, § 2.)

Notes of Decisions (40)

West's Ann. Cal. Gov. Code § 23004, CA GOVT § 23004

Current with urgency legislation through Ch. 9 of 2017 Reg.Sess

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End of Document

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West's Annotated California Codes  
Government Code (Refs & Annos)  
Title 3. Government of Counties (Refs & Annos)  
Division 1. Counties Generally (Refs & Annos)  
Chapter 1. General (Refs & Annos)

West's Ann.Cal.Gov.Code § 23000

§ 23000. Definition of county

Currentness

A county is the largest political division of the State having corporate powers.

**Credits**

(Added by Stats.1947, c. 424, p. 1039, § 1.)

Notes of Decisions (24)

West's Ann. Cal. Gov. Code § 23000, CA GOVT § 23000

Current with urgency legislation through Ch. 9 of 2017 Reg.Sess



# U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

WASHINGTON, DC 20410-8000

ASSISTANT SECRETARY FOR HOUSING-  
FEDERAL HOUSING COMMISSIONER

**Date:** November 21, 2012  
**To:** All FHA-Approved Mortgagees

## Mortgagee Letter 2012-24

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**Subject** Secondary Financing Eligibility Requirements for Internal Revenue Code (IRC) Section 115 Entities

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**Purpose** The purpose of this Mortgagee Letter (ML) is to clarify that HUD deems Section 115 entities to be “instrumentalities of government” for the purpose of providing secondary financing under single family FHA programs. Entities providing proof of Section 115 status, as described below, need not meet the instrumentality of government test otherwise required by ML 1994-02, and need not be included on HUD’s Nonprofit Organization Roster, as originally provided in ML 2009-38, which was later superseded by ML 2011-38.

This ML supersedes guidance on Section 115 entities stated in ML 2011-38, except for the waiver of the voluntary board requirements as described in the ML, which waiver remains in place.

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**Effective Date** All provisions of this ML are effective immediately.

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*Continued on next page*

## Mortgagee Letter 2012-24, Continued

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**Instrumentality of Government Status for Section 115 Entities** Given the requirements imposed on entities to qualify under Section 115 of the Internal Revenue Code, HUD has determined that Section 115 entities should be treated as instrumentalities of government for purposes of FHA's secondary financing program. Furthermore, HUD also considers entities with the dual distinction of 501(c)(3) **and** Section 115 status to be instrumentalities of government. As such, Section 115 entities must follow all FHA guidance in HUD handbooks, regulations, Mortgagee Letters, and Housing Notices, to which instrumentalities of government are subject regarding the operations of secondary financing programs.

---

**Section 115 Entities – Secondary Financing Programs** As instrumentalities of government, Section 115 entities are not required to have HUD approval or placement on HUD's Nonprofit Organization Roster to operate a secondary financing program. Section 115 entities implementing secondary financing programs are held to the same program eligibility standards applicable to all other government agencies and instrumentalities of government operating secondary financing programs as described in 24 CFR §203.32(b).

However, Section 115 entities are not considered instrumentalities of government for participation in other FHA programs. Therefore, they must meet eligibility and participation requirements for those FHA programs. If participation in other FHA programs requires approval and placement on HUD's Nonprofit Organization Roster, Section 115 entities must remain on HUD's Nonprofit Organization Roster. In such cases, Section 115 entities will still be considered to be instrumentalities of government for purposes of secondary financing, even though they are also on HUD's Nonprofit Organization Roster.

---

**Documentation Requirements for Section 115 Status** When operating a secondary financing program, organizations claiming Section 115 status must present proof of that status as requested by the lender:

- 1) a letter from the organization's auditor; or
- 2) a written statement from the organization's General Counsel, as an official of the organization; or
- 3) a Letter Ruling issued by the Internal Revenue Service; or
- 4) an equivalent document evidencing Section 115 status.

---

*Continued on next page*

## Mortgagee Letter 2012-24, Continued

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**Documentation  
Requirements  
for Section 115  
Status**  
(continued)

The document used as evidence of Section 115 status must state that the organization's income is excluded from federal taxation through Section 115 of the Internal Revenue Code. Documentation evidencing Section 115 status must be placed on the right side of the case binder directly after "Request for Late Endorsement" in the attached, FHA Case Binder – Documentation Order.

---

**Paperwork  
Reduction Act**

The information collection requirements contained in this document have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) and assigned OMB control number 2502-0540. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number.

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**Questions**

If you have any questions regarding this Mortgagee Letter, please call the FHA Resource Center at 1-800-CALLFHA (1-800-225-5342). Persons with hearing or speech impairments may reach this number via TTY by calling the Federal Information Relay Service at 1-800-877-8339.

---

**Signature**

Carol J. Galante  
Acting Assistant Secretary for Housing-  
Federal Housing Commissioner

---

Attachment



**U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**  
WASHINGTON, DC 20410-8000

ASSISTANT SECRETARY FOR HOUSING-  
FEDERAL HOUSING COMMISSIONER

---

**Special Attention of:**

All FHA Approved Mortgagees  
All Direct Endorsement Underwriters  
All FHA Roster Appraisers  
All FHA Roster Inspectors  
All FHA Approved 203(k) Consultants  
All HUD Approved Housing Counselors  
All HUD Approved Nonprofit Organizations  
All Governmental Entity Participants  
All Real Estate Brokers  
All Closing Agents

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**Transmittal:** Handbook 4000.1

**Issued:** December 30, 2016

**Effective Date:** Multiple; See Below

**1. This Transmits:**

The incorporation of previously published updates to Handbook 4000.1, FHA Single Family Housing Policy Handbook.

**2. Explanation of Materials Transmitted:**

This revision to the FHA Single Family Housing Policy Handbook, or Handbook 4000.1 (Handbook), is being published to update existing sections.

## II. ORIGINATION THROUGH POST-CLOSING/ENDORSEMENT

### A. Title II Insured Housing Programs Forward Mortgages

#### 4. Underwriting the Borrower Using the TOTAL Mortgage Scorecard (TOTAL)

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##### (2) Standard

The Mortgagee may consider Private Savings Club funds that are distributed to and received by the Borrower as an acceptable source of funds.

The Mortgagee must verify and document the establishment and duration of the club, and the Borrower's receipt of funds from the club. The Mortgagee must also determine that the received funds were reasonably accumulated, and not borrowed.

##### (3) Required Documentation

The Mortgagee must obtain the club's account ledgers and receipts, and a verification from the club treasurer that the club is still active.

#### (F) Gifts (Personal and Equity) (TOTAL)

##### (1) Definition

Gifts refer to the contributions of cash or equity with no expectation of repayment.

##### (2) Standards for Gifts

###### (a) Acceptable Sources of Gifts Funds

Gifts may be provided by:

- the Borrower's Family Member;
- the Borrower's employer or labor union;
- a close friend with a clearly defined and documented interest in the Borrower;
- a charitable organization;
- a governmental agency or public Entity that has a program providing homeownership assistance to:
  - low or moderate income families; or
  - first-time homebuyers.

Any gift of the Borrower's MRI must also comply with the additional requirements set forth in [Source Requirements for the Borrower's MRI](#).

###### (b) Donor's Source of Funds

Cash on Hand is not an acceptable source of donor gift funds.

KAMALA D. HARRIS  
Attorney General

State of California  
DEPARTMENT OF JUSTICE



1300 I STREET, SUITE 125  
P.O. BOX 944255  
SACRAMENTO, CA 94244-2550

Public: (916) 445-9555  
Telephone: (916) 322-6124  
Facsimile: (916) 324-8835  
E-Mail: Julia.Bilaver@doj.ca.gov

June 18, 2012

Victor J. James  
Acting General Counsel  
California Housing Finance Authority  
500 Capitol Mall, Suite 1400  
Sacramento, California 95814

RE: Request for Advice on the Jurisdictional Authority of a Local Housing Authority and an Out-of-State Housing Authority Under State Law

Dear Mr. James:

This letter responds to your request for legal advice on the jurisdictional authority of local and out-of-state housing authorities to operate statewide in California. Your questions relate to a Notice of Funding Availability issued by the United States Department of Housing and Urban Development ("HUD") for its Performance-Based Contract Administrator Program. In connection with this federal program, you have asked for advice on the following state law issues:

#### Discussion

I. Does a local housing authority have legal authority to operate throughout the entire state?

Although there is no case or statute precisely on point, our review of the relevant authorities leads us to conclude that a local housing authority likely lacks the necessary legal authority to operate statewide.

Public housing is generally administered through local housing authorities pursuant to the Housing Authorities Law. (Health & Saf. Code, § 34200 et seq.)<sup>1</sup> The Housing Authorities Law creates in each county and city a local housing authority to provide safe and sanitary dwellings to persons of low income. (§§ 34201, 34240, 34242, 34312, 34315, 34322.) California has more than 80 local housing authorities operating in various areas throughout the state. The rights,

<sup>1</sup> All statutory references are to the Health and Safety Code unless otherwise provided.

JA6598

duties, powers and privileges of a housing authority are vested in its board of commissioners, who are appointed by local county or city officials. (§§ 34275, 34290.)

We have previously advised that the operation of a housing authority is local in nature, being essentially limited to a defined geographic area. (64 Ops.Cal.Atty.Gen. 677 (1981).) Under the Housing Authorities Law, the area of operation of a housing authority is a defined term. The area of operation of a city housing authority is the city and the area within five miles of its territorial boundaries, except it does not include any area which lies within the territorial boundaries of another city. (§ 34208.) For a county housing authority, the area of operation is the unincorporated areas of the county, and any incorporated areas of the county upon consent of the incorporated area. (§ 34209.) The area of operation of an area housing authority is the combined possible areas of operation of the participating cities and counties. (§ 34247.) We believe these definitional provisions indicate that the Legislature intended to limit the jurisdictional powers of a local housing authority to the geographic area in which it operates.<sup>2</sup>

This conclusion is supported by case law. In *Torres v. Board of Commissioners of the Housing Authority of Tulare County* (1979) 89 Cal.App.3d 545 (*Torres*), the court determined that local housing authorities are not "state agencies" even though they administer matters of state concern because they are local in scope and character, restricted geographically in their area of operation, and do not have statewide power or jurisdiction. (*Torres, supra*, 89 Cal.App.3d at 550.)

2. Does a corporation or other instrumentality formed by a local housing authority have legal authority to exercise the statutory powers of a local housing authority throughout the entire state?

A local housing authority which lacks legal authority to operate statewide may not delegate authority it does not have to operate statewide to a corporation or other instrumentality.

As described above, we view the powers of a local housing authority as being limited to the geographic area in which it operates. The issue then is whether a corporation or other instrumentality formed by one or more local housing authorities may exercise power outside of the geographic area in which the creating authorities operate. In *Cabrillo Community College Dist. v. California Junior College Assoc.* (1975) 44 Cal.App.3d 367 (*Cabrillo College*), the court considered a similar issue. In that case, several community colleges created an association to regulate athletic competition among its member colleges. The association imposed a local residency requirement on student athletes. The new requirement, however, was at odds with state law, which does not require students to be residents of a community college district to gain admission. The court held that when the member colleges created the association, they delegated

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<sup>2</sup> See *Housing Authority of City of Los Angeles v. City of Los Angeles* (1953) 40 Cal.2d 682, 687 (city housing authority did not exceed jurisdiction by developing a housing project on a site outside the city where city agreed to annex the site).

some of their power to the association and they could only delegate as much power as they themselves derive by statute. (*Cabrillo College, supra*, 44 Cal.App.3d at 372.) Thus, the association could not exercise greater power than its member colleges.

Applying *Cabrillo College*, a local housing authority cannot delegate more power than it has. If the legal authority of one or more local housing authorities is limited to a certain geographic area, then the legal authority of a corporation or instrumentality formed by the authorities is similarly limited.

3. Does a local housing authority have legal authority to accept a federal grant for a housing project that is outside its territorial jurisdiction?

A local housing authority which lacks legal authority to operate statewide may not accept a federal grant for a housing project that lies outside its defined area of operation.

A valid administrative action must be within the scope of authority conferred by statute. (*US Ecology, Inc. v. State of California* (2001) 92 Cal.App.4th 113, 131-132.) As a creature of statute, a local housing authority may not exceed the powers given to it by the Legislature. Section 34311, subdivision (d) authorizes local housing authorities to make and execute contracts necessary or convenient to the exercise of its powers. In addition, section 34315.3 authorizes local housing authorities to accept financial or other assistance from any public or private source for activities permitted by state law. More specifically, section 34327, subdivision (a) authorizes a local housing authority to borrow money or accept grants or other financial assistance from the federal government for any housing project that is "within its area of operation." As described above, we view the powers of a local housing authority as being limited to the geographic area in which it operates. Thus, we believe the grants of power in the three statutes above are also limited and only apply to housing projects and programs within a local housing authority's geographic area of operation.

4. Does an out-of-state housing authority have legal authority to exercise the powers of a housing authority in California?

An out of state housing authority lacks legal authority to exercise the powers of a housing authority in California.

As a sovereign state, California has a right to exercise its police power and the power of eminent domain to protect the safety, health, and welfare of its citizens. When enacting the Housing Authorities Law, the Legislature expressly declared that the shortage of safe and sanitary dwelling accommodations for persons of low income cause an increase in and spread of disease and crime and constitutes a menace to the health, safety, morals, and welfare of California residents. (§ 34201.) The Legislature has delegated some of its sovereign power to local housing authorities through the Housing Authorities Law to address these threats to public health and safety. A local housing authority may, among other things, acquire property, enter

into contracts, exercise the power of eminent domain, and issue bonds to finance its functions. (§ 34310 et seq.)

Like California, other states have passed laws creating housing authorities. But a housing authority created under the sovereign power of another state does not have authority to exercise that power in California. (See *Hall v. University of Nevada* (1972) 8 Cal.3d 522, 524.) Under our federal system of government, individual states may adopt distinct policies to protect their own residents and every state enjoys the same power. (*Sullivan v. Oracle Corp.* (2011) 51 Cal.4th 1191, 1205.) It is true that each state must give full faith and credit to the "public acts, records, and judicial proceedings" of every other state." (U.S. Const., art. IV, § 1.) But a state does not have to substitute another state's statutes in place of its own laws on a subject matter it is competent to govern. (*Baker by Thomas v. General Motors Corp.* (1998) 522 U.S. 222, 232.)

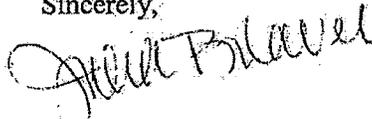
The Housing Authorities Law does not delegate powers to out-of-state housing authorities, and we are not aware of any other statutes that delegate the powers of a housing authority to out-of-state housing authorities. Thus, an out-of-state housing authority does not have legal authority to exercise the same powers as a housing authority in California.

5. Does a corporation formed by an out-of-state housing authority have legal authority to exercise the powers of a housing authority in California?

An out-of-state housing authority lacks legal authority to exercise the powers of a housing authority in California, and so would any corporations formed by it.

A corporation formed by an out-of-state housing authority can only exercise as much power as that out-of-state housing authority. (See *Cabrillo College, supra*, 44 Cal.App.3d at 372.) Because state law does not delegate any sovereign power to out-of-state housing authorities, a corporation formed by an out-of-state housing authority would also lack legal authority to exercise the powers of a local housing authority in California.

Sincerely,



JULIA A. BILAVER  
Deputy Attorney General

West's Annotated California Codes  
Corporations Code (Refs & Annos)  
Title 1. Corporations  
Division 2. Nonprofit Corporation Law (Refs & Annos)  
Part 2. Nonprofit Public Benefit Corporations (Refs & Annos)  
Chapter 1. Organization and Bylaws (Refs & Annos)  
Article 4. Powers (Refs & Annos)

West's Ann.Cal.Corp.Code § 5140

§ 5140. Powers

Effective: January 1, 2014

Currentness

Subject to any limitations contained in the articles or bylaws and to compliance with other provisions of this division and any other applicable laws, a corporation, in carrying out its activities, shall have all of the powers of a natural person, including, without limitation, the power to:

- (a) Adopt, use, and at will alter a corporate seal, but failure to affix a seal does not affect the validity of any instrument.
- (b) Adopt, amend, and repeal bylaws.
- (c) Qualify to conduct its activities in any other state, territory, dependency, or foreign country.
- (d) Issue, purchase, redeem, receive, take or otherwise acquire, own, sell, lend, exchange, transfer or otherwise dispose of, pledge, use, and otherwise deal in and with its own bonds, debentures, notes, and debt securities.
- (e) Issue memberships.
- (f) Pay pensions, and establish and carry out pension, deferred compensation, saving, thrift and other retirement, incentive and benefit plans, trusts, and provisions for any or all of its directors, officers, employees, and persons providing services to it or any of its subsidiary or related or associated corporations, and to indemnify and purchase and maintain insurance on behalf of any fiduciary of such plans, trusts, or provisions.
- (g) Levy dues, assessments, and admission fees.
- (h) Make donations for the public welfare or for community funds, hospital, charitable, educational, scientific, civic, religious, or similar purposes.

(i) Assume obligations, enter into contracts, including contracts of guarantee or suretyship, incur liabilities, borrow or lend money or otherwise use its credit, and secure any of its obligations, contracts or liabilities by mortgage, pledge or other encumbrance of all or any part of its property and income.

(j) Participate with others in any partnership, joint venture or other association, transaction or arrangement of any kind whether or not such participation involves sharing or delegation of control with or to others.

(k) Act as trustee under any trust incidental to the principal objects of the corporation, and receive, hold, administer, exchange, and expend funds and property subject to such trust.

(l) Carry on a business at a profit and apply any profit that results from the business activity to any activity in which it may lawfully engage.

(m) Pay the reasonable value of services rendered in this state to the corporation before January 1, 1975, and not previously paid, by any person who performed such services on a full-time basis under the direction of a religious organization in connection with the religious tenets of the organization. Such person shall have relied solely on the religious organization for his or her financial support for a minimum of five years. A payment shall not be made if such person or religious organization waives the payment or receipt of compensation for such services in writing. Payment may be made to such religious organization to reimburse it for maintenance of any person who rendered such services and to assist it in providing future support and maintenance; however, payment shall not be made from any funds or assets acquired with funds donated by or traceable to gifts made to the corporation by any person, organization, or governmental agency other than the members, immediate families of members, and affiliated religious organizations of the religious organization under whose direction the services were performed.

(n)(1) In anticipation of or during an emergency, take either or both of the following actions necessary to conduct the corporation's ordinary business operations and affairs, unless emergency bylaws provide otherwise pursuant to subdivision (g) of Section 5151:

(A) Modify lines of succession to accommodate the incapacity of any director, officer, employee, or agent resulting from the emergency.

(B) Relocate the principal office, designate alternative principal offices or regional offices, or authorize the officers to do so.

(2) During an emergency, take either or both of the following actions necessary to conduct the corporation's ordinary business operations and affairs, unless emergency bylaws provide otherwise pursuant to subdivision (g) of Section 5151:

(A) Give notice to a director or directors in any practicable manner under the circumstances, including, but not limited to, by publication and radio, when notice of a meeting of the board cannot be given to that director or directors in the manner prescribed by the bylaws or Section 5211.

(B) Deem that one or more officers of the corporation present at a board meeting is a director, in order of rank and within the same rank in order of seniority, as necessary to achieve a quorum for that meeting.

(3) In anticipation of or during an emergency, the board may not take any action that requires the vote of the members or is not in the corporation's ordinary course of business, unless the required vote of the members was obtained prior to the emergency.

(4) Any actions taken in good faith in anticipation of or during an emergency under this subdivision bind the corporation and may not be used to impose liability on a corporate director, officer, employee, or agent.

(5) For purposes of this subdivision, "emergency" means any of the following events or circumstances as a result of which, and only so long as, a quorum of the corporation's board of directors cannot be readily convened for action:

(A) A natural catastrophe, including, but not limited to, a hurricane, tornado, storm, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, or drought, or, regardless of cause, any fire, flood, or explosion.

(B) An attack on this state or nation by an enemy of the United States of America, or upon receipt by this state of a warning from the federal government indicating that an enemy attack is probable or imminent.

(C) An act of terrorism or other manmade disaster that results in extraordinary levels of casualties or damage or disruption severely affecting the infrastructure, environment, economy, government functions, or population, including, but not limited to, mass evacuations.

(D) A state of emergency proclaimed by a governor or by the President.

#### Credits

(Added by Stats.1978, c. 567, p. 1750, § 5, operative Jan. 1, 1980. Amended by Stats.1979, c. 724, p. 2234, § 14, operative Jan. 1, 1980; Stats.2013, c. 255 (A.B.491), § 3.)

#### Notes of Decisions (3)

West's Ann. Cal. Corp. Code § 5140, CA CORP § 5140

Current with urgency legislation through Ch. 9 of 2017 Reg.Sess

West's Revised Code of Washington Annotated  
Title 43. State Government--Executive (Refs & Annos)  
Chapter 43.180. Housing Finance Commission

West's RCWA 43.180.010

43.180.010. Declaration of public policies--Purpose

Currentness

It is declared to be the public policy of the state and a recognized governmental function to assist in making affordable and decent housing available throughout the state and by so doing to contribute to the general welfare. Decent housing for the people of our state is a most important public concern. Interest rates and construction costs have made it impossible for many Washington citizens to purchase their own homes. Older people, disabled persons, and low and moderate-income families often cannot afford to rent decent housing. There exists throughout the state a serious shortage of safe, sanitary and energy efficient housing available at prices within the financial means of our citizens. General economic development within the state is also impeded by a lack of affordable housing. The state's economy, which is dependent on the timber, wood products, and construction industries, has been damaged by inadequate investment in housing construction and rehabilitation. The result has been high unemployment and economic hardship affecting the prosperity of all the people of the state, particularly those in the wood products industry.

It is the purpose of this chapter to establish a state housing finance commission to act as a financial conduit which, without using public funds or lending the credit of the state or local government, can issue nonrecourse revenue bonds and participate in federal, state, and local housing programs and thereby make additional funds available at affordable rates to help provide housing throughout the state. It is also a primary purpose of this chapter to encourage the use of Washington state forest products in residential construction. This chapter is enacted to accomplish these and related purposes and shall be liberally construed to carry out its purposes and objectives.

**Credits**

[1983 c 161 § 1.]

Notes of Decisions (2)

West's RCWA 43.180.010, WA ST 43.180.010

The statutes and Constitution are current with immediately effective legislation through Chapter 129 of the 2017 Regular Session of the Washington legislature.

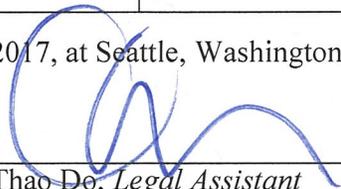
**DECLARATION OF SERVICE**

The undersigned declares under penalty of perjury, under the laws of the State of Washington, that the following is true and correct:

That on June 1, 2017, I caused to be served a true and correct copy of the foregoing document upon counsel of record, at the address stated below, via the method of service indicated:

Office of Clerk Court of Appeals – Division I 600 University Street Seattle, WA 98101	<input checked="" type="checkbox"/> Hand Delivery <input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Email
Paul J. Lawrence, WSBA No. 13557 Taki V. Flevaris, WSBA No. 42555 Pacifica Law Group LLP 1191 2nd Ave., Suite 2100 Seattle, WA 98101 Phone: 206-245-1700 Email: paul.lawrence@pacificallawgroup.com taki.flevaris@pacificallawgroup.com dawn.taylor@pacificallawgroup.com (asst.) <i>Attorneys for Respondent</i>	<input type="checkbox"/> Messenger <input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email per agreement

DATED this 5th day of June, 2017, at Seattle, Washington.

  
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Thao Do, *Legal Assistant*