


CITY OF NEWTON
LAW DEPARTMENT
INTEROFFICE MEMORANDUM

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DATE: June 17, 2009
TO: Board of Aldermen's Committee on Community Preservation
FROM: Robert J. Waddick, Assistant City Solicitor 
RE: 192 Lexington Street

It is my understanding that a question has been raised with respect to the rights of one John B. Avila relative to the sale of the real property at 192 Lexington Street, Newton (the "property").

The records of the Assessors of the City of Newton list the owner of the property as Rosalie Avila. According to Attorney Peter Caruso who represents the Estate of Rosalie Avila, Mrs. Avila died on July 12, 2007. Attorney Caruso is in the process of probating the estate.

Attorney Caruso provided the Law Department with copies of Mrs. Avila's Last Will and Testament (the "Will") and a revocable trust entitled, Rosalie Avila, a/k/a Castellana Avila 2000 Revocable Trust (the "Trust").¹ Under the provisions of the Will, the property became subject to the provisions of the Trust upon Mrs. Avila's death.

The Trust provides that Mrs. Avila's assets, which include the property, are divided into two shares as follows:

- 50% to Emily M. Avila; and,
- 50% to a named trustee to be held, in trust, for John B. Avila.

Thus, the property is owned by Emily M. Avila and a named trustee for John B. Avila. Under the terms of the Trust, John B. Avila has the right to income from the 50% share held in trust for him by the named trustee. However, it does not appear that John B. Avila has any ownership right to the property, nor does he have any decision making authority with regard thereto.

Attorney Caruso represents that the named trustee for John B. Avila is agreeable to the sale of the property.

I hope that the foregoing is responsive to the questions raised about John B. Avila's rights relative to the sale of the real property at 192 Lexington Street.

¹ Attorney Caruso requested that we not make public these documents in order to protect the privacy of those named in them. Consequently, copies of these documents have not been provided as attachments.