

CITY OF NEWTON
LAW DEPARTMENT
INTEROFFICE MEMORANDUM

To: Jennifer Goldson, Community Preservation Planner

From: Eileen McGettigan, Assistant City Solicitor

Re: Perpetual Affordable Housing Restrictions

Date: April 3, 2003

There are two ways in which affordable housing restrictions placed on affordable housing units purchased or assisted by Community Preservation Act funding may be made perpetual. The first way is the "statutory restriction" pursuant to G.L. c. 184, §§31-32. Under these statutes, five types of restrictions (conservation, agricultural preservation, watershed preservation, preservation and affordable housing) are granted perpetual status without the necessity of re-recording if the appropriate state approval is obtained. For an affordable housing restriction, the approval of the secretary of the Department of Housing and Community Development ("DHCD") must be obtained to confer perpetual status.

Another way to achieve perpetuity in the event that DHCD approval is not obtained is to rely on the exception afforded restrictions held by "any governmental body" in G.L. c. 184, §26. In this section, restrictions held by any governmental body, which would include a city, are exempted from the statutory prohibition on restrictions longer than 30 years and from re-recording requirements. The practical result of this exemption operates to confer perpetual status on governmentally-held restrictions which may not have obtained the requisite approvals as set forth in G.L. c. 184, §§31-32.

From: "Josephine McNeil" <jam_cando@msn.com>
To: jgoldson@ci.newton.ma.us, sgartrell@ci.newton.ma.us
BCC to: Subject: Fwd: Perpetuity Restriction
Date sent: Thu, 03 Apr 2003 20:51:01 +0000

I made a mistake on the addresses. Thanks, Josephine

Josephine McNeil
Executive Director
Citizens for Affordable Housing in Newton Development Organization
617-964-3527

>From: "Josephine McNeil" <jam_cando@msn.com>
>To: jgoldson@newton.ci.ma.us
>CC: ted@shulaw.com, sgartrell@newton.ci.ma.us, pherr@msn.com
>Subject: Perpetuity Restriction
>Date: Thu, 03 Apr 2003 20:27:31 +0000
>
>
>Jennifer
>CAN-DO accepts the deed restriction into perpetuity based upon Eileen's
>McGettigan's opinion that it is legally possible to place such a deed
>restriction on the units and the only issue is the best way in which to
>achieve that. Secondly, I have had a conversation with officials at
>Auburndale Co-Operative Bank and they are willing to provide end loan
>financing with a deed restriction into perpetuity, assuming the borrower
>satisfies their underwriting criteria in all other respects.
>
>Thanks for you help with this matter. Should you have any additional
>questions please feel free to contact me.
>
>Sincerely,
>
>Josephine McNeil
>
>
>Josephine McNeil
>Executive Director
>Citizens for Affordable Housing in Newton Development Organization
>617-964-3527
>
>
>

The new MSN 8: smart spam protection and 2 months FREE*
<http://join.msn.com/?page=features/junkmail>