

## LEGAL AND OPERATIONAL ISSUES

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### Uniform Procurement Act - C. 30B Section 16

- Applies to the sale/purchase of an interest in real property – includes restrictions!
- If the transaction is fully funded by CPA money, the exemption in c. 44B follows the money. c. 30B does not apply;
- any other trust project is not exempt. Purchase: costs more than \$25,000?
  1. Advertise for proposals
  2. Proposals must be opened in public
  3. Exemption – file uniqueness determination in Central Register at least 30 days prior to closing

## Uniform Procurement Act

- **Disposition – sale, lease or mortgage:**
  1. Determine value by usual appraisal methods
  2. Establish re-use restrictions
  3. If value exceeds \$25,000, advertise in Central Register and local sites, open proposals in public, and disclose reasons if disposition is for less than fair market value
  4. There is no uniqueness determination for sale of property

## Uniform Procurement Act

- A mortgage is a “disposition” of real estate because mortgages in Massachusetts are deeds
- If the trust is purchasing property and financing the purchase – recommend following c. 30B by advertising purchase in Central Register and include financing

## Open Meeting Law

1. Posting requirements: meetings must be posted with the Town Clerk at least 48 hours prior to meeting date. 48 hours does not include Saturdays, Sundays and holidays.
2. Notice must include date, time and place and agenda. The agenda must include all topics that the chair reasonably believes will be discussed at the meeting.
3. Minutes: - need copies of everything – maps, photos, Power Point presentations.

## Ongoing Problems

- **Real Estate Taxes** – valuation of affordable units – abatements Review tax bills to make sure that the assessors have factored in the reduction in value due to the restriction – property should not be assessed at fair market value
- **Monitoring and enforcement of affordable housing restrictions** – who's in charge? Does the affordable housing restriction run to the benefit of the city or town or to the Trust? Is the Trust an authorized agent of the municipality?

## Funding Sources

- Community Preservation Act funds (161 cities and towns now have CPA) and more in November!
- Inclusionary Zoning Payments in lieu – to receive these funds, the Trust must be mentioned in the Zoning By-Law – otherwise payments go to the general fund and must be appropriated to the Trust by Town Meeting
- Sales of tax title parcels – must have Town Meeting vote in place that establishes this program
- Donations and gifts

## Grant Agreements - Types

- Grant Agreements between Trust and Community Preservation Committee and/or Selectmen
- Grant Agreements between Trust and Developer

## Grant Agreement with CPC

- Check website of Community Preservation Coalition – [communitypreservation.org](http://communitypreservation.org) for its sample – **CAUTION – Don't use the sample - talk to your attorney first!!**
- Basic purpose – reassuring your local CPC that you are using the funds for the activities authorized by Town Meeting/City Council vote and for CPA purposes
- Agreement may be signed by CPC or Selectmen or Mayor
- Describes the proposal you submitted to the CPC and the amount of money voted
- Establishes a time limit for performance with right to extend for good cause

## Grant Agreement with CPC

- Restricts use of funds for purposes authorized under the Community Preservation Act (G.L. c. 44B)
- May restrict the percentage of funds that can be used for administration and operation of the Trust
- Establish a process for funding and a contact person
- Requires delivery of a deed restriction approved by DHCD running to the benefit of either the Trust or the municipality
- Termination on disbursement of all funds and delivery of restriction or may be terminated by municipality if obligations are not met – undisbursed funds returned by Trust to CPC

## Grant Agreement with Developer

- Same concept – establish amount of grant, described purpose of grant, requirement for creation, maintenance, and support of affordable housing
- Be sure to include the requirements that are in any grant agreement with the CPC
- Require developer to include Trust as a party to the Affordable Housing Restriction imposed on the property
- Termination Date – very important – if the project is not built and sold to an affordable buyer, the money comes back!

## Affordable Housing Restrictions

- Required if you used CPA funds for acquisition of property
- CPCs usually want housing included on DHCD's Subsidized Housing Inventory (SHI) – must use DHCD's approved LIP Deed Rider
- If property is owned by the Trust and is being sold to an affordable buyer – process approved by DHCD and compliance with c. 30B
- Work with affordable buyer's lender to make sure that Deed Rider is acceptable and down payment assistance (if any) is approved

## Loan Agreements and Mortgages

- Trusts do have the authority to act as a lender and accept notes and mortgages (REMEMBER - Many trusts are prohibited from borrowing – check your vote/by-law)
- Loan Agreement is similar to grant agreement but provides for a mortgage that can be foreclosed if property no longer contains affordable housing.
- May be long term, no interest, forgiveness over time
- Agreement to subordinate loan to construction and permanent financing
- Secured by Mortgage recorded with Registry of Deeds

## Mortgage/Title Issues

- Declaration of Trust for AHT should be recorded at the Registry of Deeds
- Every transaction – record Trustees Certificate naming current Trustees and stating that the Trust has not been altered, amended or revoked, and that Trustees have been authorized to do any of the following; buy the property, make the loan, subordinate or discharge the mortgage, etc.
- Mortgage from Trust – comply with c. 30B

## Amending Trust

- Check the actual Declaration of Trust –
- Sample: This Declaration of Trust may be amended from time to time except as to those provisions specifically required under G.L. c. 44 Section 55C, by an instrument in writing signed by all of the Trustees and approved at a meeting called for that purpose, provided that in each case, a certificate of amendment has been recorded with the Registry of Deeds and the Land Registration Office
- If you don't have a Declaration of Trust, right to amend must be included in the by-law.

## Housing Partnerships and Trusts

- Housing Partnerships and Trusts are separate entities but roles frequently get combined and confused
- Merger – need to check Trust by-law to make sure that Trustees have authority to take on Partnership's duties
- Housing Partnership members must be appointed as Trustees through process outlined in by-law and Declaration of Trust
- Housing Partnership as subcommittee? Has no authority to make decisions on behalf of Trust
- DISCUSS