

**HANGING ON TO AFFORDABLE HOUSING:  
AN ANALYSIS OF THE MECHANISMS, PROCESSES & PITFALLS OF  
OWNERSHIP-BASED AFFORDABILITY CONTROLS IN MASSACHUSETTS**

by

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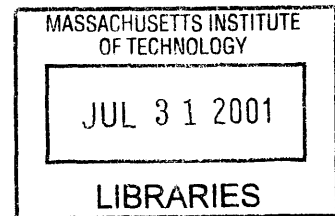
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**ABSTRACT**

While much attention has been paid to ways to help low and moderate income homebuyers buy their first homes, relatively little has been written about how those homes can be kept affordable for the next purchasers when the original owners move on. Although programs have become very successful at finding ways to make homeownership possible for households not served by the private market, the ultimate challenge is to devise workable strategies to maintain the affordability of those homes over time.

This analysis will provide an overview of both the policy choices being made and the mechanisms being employed to protect Massachusetts' stock of affordable ownership housing. Through an examination of the ways in which ownership-based affordability restrictions are currently being designed, implemented, monitored, and enforced, under different programs and in different communities, this report will demonstrate ways in which the current system may fail to protect units from being "lost to the market" and will recommend measures which could be taken to make the system more failsafe.

Only a few decades ago, housing activists did not think that it was possible to find a workable balance between restricting resale prices and maintaining affordability. Today thousands of families who are unable to become owners through the private market are accepting this trade-off when they decide to purchase restricted ownership units.

This analysis focuses exclusively on what has been occurring in Massachusetts. While the concepts outlined in this report should be applicable to other programs in other parts of the country, there are a number of features of the Massachusetts affordable housing experience which are uniquely local.





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## INTRODUCTION

While much attention has been paid to ways to help low and moderate income homebuyers buy their first homes, relatively little has been written about how those homes can be kept affordable for the next purchasers when the original owners move on. Although programs have become very successful at finding ways to make homeownership possible for households not served by the private market, the ultimate challenge is to devise workable strategies to maintain the affordability of those homes over time.

This analysis will provide an overview of both the policy choices being made and the mechanisms being employed to protect Massachusetts' stock of affordable ownership housing. Through an examination of the ways in which ownership-based affordability restrictions are currently being designed, implemented, monitored, and enforced, under different programs and in different communities, this report will demonstrate ways in which the current system may fail to protect units from being "lost to the market" and will recommend measures which could be taken to make the system more failsafe. The current strategy for protecting the long term affordability of ownership housing relies on a complex system of legal, programmatic, and procedural checks and balances. As will be seen, whenever any one of these safeguards fails, the continued affordability of ownership housing may be put at risk.

### Definition of Affordability Restrictions

"Affordability restrictions" and "affordability controls" may mean different things in different contexts. However, for the purposes of this analysis, the terms are meant to describe: (1) the legal means by which the initial purchase prices of homes are made affordable; and (2) the process by which those homes remain affordable over time. The restrictions serve two basic purposes: (1) they protect the investment of public resources; and (2) they preserve the intent of those resources by extending their impact for as long as possible. Although there are many components which must be included in affordability restrictions, the most important are resale controls. There are two primary conditions which should be included in all resale controls: (1) the future sales price of the homes must be restricted, and (2) the income limits of future owners must be controlled. Programs which neglect to include both types of controls in their restrictions are vulnerable to losing units to the market.

### The Affordability Restriction Trade-Off

Although thirty years ago, housing activists did not think that it was possible to find a workable balance between restricting resale prices and maintaining affordability, today many families who are unable to

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become owners through the private market are accepting this trade-off when they decide to purchase restricted ownership units.<sup>1</sup> For most families, one of the most valued benefits of owning a home is the potential for building equity. However, in order to preserve the affordability of subsidized homes for future owners, limitations must be placed on the degree to which appreciation can be recaptured at resale.

Both owners and policy makers have come to realize that, compared to the alternative, homeownership makes sound financial sense for families even if they are not able to realize the full value of their homes' appreciation. In Massachusetts, the cost of renting a family-sized apartment can easily exceed \$2,000 per month. Although subsidized rental units exist in most communities, waiting lists may run into the hundreds or even thousands. Although many moderate income homeowners will benefit from the mortgage interest deduction, one of the greatest financial benefits for all owners of affordable homes is simply the security of fixed-monthly payments which remain constant for at least 30 years. Giving the perils of rapidly escalating rents in Massachusetts today, this is a significant advantage over renting.

Financial considerations aside, homeownership provides value in other significant ways. It provides the social benefit of encouraging families to lay down roots and invest in their communities. It provides the psychological benefit of giving families a sense of stability and security. The mere ability to control one's environment and improve one's surroundings as one sees fit is, for many families, invaluable. Finally, homeownership has strong symbolic value for many families who feel that by owning a home they have obtained a piece of the quintessential American Dream. None of these benefits should be underestimated when evaluating affordability restrictions, one of the means by which homeownership opportunities are protected for generations of such families.

#### The Basis of this Analysis

Very little has been written on ownership-based affordability restrictions. As a result, the information needed to prepare this report has been obtained through a review of specific legal documents and program guidelines, as well as through interviews with a wide range of participants in the ownership development process including: housing activists, developers, bankers, brokers, lawyers, owners, and local and state officials. Furthermore, although the examination initially included statistical analyses of how well restrictions were working under different programs and in different communities, interviews later in the research process revealed that much of the data being used was inaccurate or incomplete and that such

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<sup>1</sup> Langley Keyes, MIT

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inferences could not reasonably be made.<sup>2</sup> This limitation on available data is indicative of the complicated and tenuous way in which the system currently functions where monitoring is performed on different levels by a variety of different players.

The focus of this report is limited to homeownership controls and will make few references to or comparisons with rental-based restrictions. Although they serve similar purposes, the mechanisms by which they are implemented differ entirely. The oversight of affordable rental projects is facilitated by monthly monitoring of rental payments, the ability to evict if restrictions are violated, and the frequency with which rental units typical overturn. Conversely, the oversight of affordable ownership housing is passive where action is triggered only when events occur. This “rip van winkle” aspect to the monitoring of ownership controls, where many years may pass before actions must be taken, represents a clear distinction from the ongoing, continual manner by which rental projects are monitored.

Furthermore, a great deal of attention has already been paid to the problems of protecting subsidized rental projects. When an affordable ownership unit becomes market rate, little notice is taken as no family has actually been displaced and the incident occurs one unit at a time. In contrast, expiring use rental projects cause widespread alarm due to the potentially rapid and drastic impact which the cessation of restrictions has on a large group of tenants simultaneously. However, in terms of resources, losing an affordable ownership unit may be even more wasteful than the loss of a rental unit. More importantly, that loss means that one less family will be able to find a home they can afford.

#### The Need for Affordability Restrictions in Massachusetts

This analysis focuses exclusively on what has been occurring in Massachusetts. While the concepts outlined in this report should be applicable to other programs in other parts of the country, there are a number of features of the Massachusetts affordable housing experience which are uniquely local. As will be seen, the existence of a state statute, Chapter 40B of the Massachusetts General Laws, has provided an unusual incentive for municipalities to both develop and maintain a stock of affordable housing. While the methods of designing and implementing affordability restrictions may be similarly employed in other

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<sup>2</sup> As will be seen, there are a range of actors involved with monitoring changes to the state’s affordable ownership inventory and each actor typically only records a portion of the activity. As a result, detailed information regarding the rates of resales, refinancing and foreclosure throughout the state’s 351 communities is either held on the local level or dispersed among databases held by at least three separate state agencies. In some cases, no formal tracking is occurring at all. Although efforts were made to at least obtain the state-held records, it was discovered that the databases, in many cases, had not be adequately updated and were thus unusable.

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states, the means of monitoring and enforcement, in the absence of such a statute, would likely result in an substantially different system than is currently in place in Massachusetts.

There is also a special need for strategies that will preserve the state's stock of affordable ownership housing. Although in recent years Massachusetts has witnessed an increase in the rate of homeownership which parallels what has been happening nationwide, by the end of the century, almost every other state was doing better than Massachusetts in terms of housing costs, development activity, and the rates of ownership. While between 1990 and 1997, the ownership rate increased from 58.6% to 62.3% across the state, the rate nationally had jumped from 64% to 65.7%.<sup>3</sup> The price of a median home in Massachusetts in 1999 was the second highest in the nation and more than twice as high as 18 other states.<sup>4</sup> Although Massachusetts provides more housing assistance per capita than any other state, costs are rising at twice the national rate.<sup>5</sup> A recent report issued by the Massachusetts Executive Office of Administration and Finance found that Massachusetts ranks 47<sup>th</sup> for the per capita number of new building permits issued annually.<sup>6</sup> And finally, a recent MassInc report estimates that Massachusetts ranks 43<sup>rd</sup> among all 50 states for its rate of ownership.<sup>7</sup> Restrictions aimed at preserving the accessibility of ownership units for future families have never been more needed than they are today. It is thus unsurprising that concerns regarding the efficacy of the affordability restrictions in place are being raised by municipalities, public agencies and housing activists throughout the state as once-affordable units are being lost to the market.

#### How Restricted Units Become Lost to the Market

A unit is considered "lost to the market" when ownership is transferred to a market-income purchaser before the expiration of the applicable affordability restriction period. This analysis will show that there is an interlocking system of safeguards which, when all pieces are in place, should drastically decrease the likelihood that units are lost. Units become vulnerable to being lost at events such as resale, refinancing, or foreclosure. The key to protecting the continued affordability of the units is to devise a system which will ensure that appropriate responses can and will be taken by the diffuse group of players involved in each event as soon as such events arise. This system entails the use of: (1) legal mechanisms to trigger responses when events occur, (2) program regulations to provide the technical framework within which units can be protected, and (3) procedural systems for actually implementing the process and for

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<sup>3</sup> "State of the States: Homeownership and the Cost of Housing," CommonWealth Magazine, Fall 1998

<sup>4</sup> *ibid*

<sup>5</sup> "Bringing Down the Barriers: Changing Housing Supply Dynamics in Massachusetts," EOAF, 2000

<sup>6</sup> *ibid*

<sup>7</sup> "State of the States: Homeownership and the Cost of Housing," CommonWealth Magazine, Fall 1998



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responding to issues which may not be addressed under existing program frameworks. When any one of these elements is deficient or overlooked entirely the system may fall apart and units may become vulnerable to being lost to the market.

Although the system has been able to protect the majority of affordable units, this analysis has found that there are four general circumstances in which the affordability of restricted ownership units in Massachusetts fails to be preserved:

1. Cold Real Estate Market: There are cases where, given certain market conditions, waiving of affordability restrictions is unavoidable. Although the resale prices of subsidized homes will vary, the original sales prices of newly restricted homes is set by the applicable program and will not change much over time. As a result, during slumps in the real estate market, it is possible to have a situation where the maximum allowable resale price of a home will actually equal, or exceed, the market resale value of the home. For new families buying the “subsidized” unit, there is no incentive to accept affordability restrictions as they are essentially purchasing the home at its market value.
2. Hot Real Estate Market: As noted above, resale controls limit the maximum prices at which owners may resell their homes and limit the pool of eligible purchasers of those homes to households earning low and moderate incomes. When the market is booming and when the resale formulae include appreciation allowances, it is possible that the resale prices allowable under the program will no longer be affordable to low and moderate income families. When the numbers work out in a way that makes it impossible for eligible purchasers to afford the homes, the homes are sold out of the program to market rate owners.
3. Foreclosure: The event of foreclosure will almost always cause affordable homes to be lost to the market. Unless special measures are taken, foreclosure will wipe out all affordability restrictions and place the homes in the hands of the highest bidders at foreclosure auctions. This is one of the most unfortunate ways to lose a unit and will be discussed in depth in Chapter Four.
4. Inattention: The process by which affordable units are resold to income-eligible owners is very complicated and necessitates timely action by a series of parties. When any one of those actors fails to live up to the responsibilities of their role, or when their role is not clearly defined, units may be lost from the program. The loss of units through inattention is one of most frustrating realities facing those concerned with maintaining long-term affordability.

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By reviewing the way in which affordability restrictions are created, imposed, monitored and enforced, including a detailed examination of the factors which lead to these four circumstances which lead to units being lost, this analysis will recommend ways to increase the likelihood that units will be protected over time. While many of the recommendations will be aimed at addressing the first three circumstances listed above, particular attention will be paid to ways of avoiding losing units due to simply to inattention. The ultimate success of the system depends on whether all involved parties make good faith efforts and take timely action to protect the units. The key is to ensure that incentives exist for all parties to both establish workable procedures for implementing the process and to abide by those procedures when responding to events.

Everyone concerned with affordable housing in Massachusetts is realizing that the use of effective, long term affordability restrictions to protect units over time is more necessary than ever before. Although the system can probably never be failsafe, every effort should be employed to ensure that affordability will remain in place for as long as feasibly possible.

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## OVERVIEW OF REPORT

This report consists of five chapters:

Chapter One lays the foundation for the analysis by providing a broad overview of affordable ownership housing and the emergence of affordability restrictions, including a brief introduction to some of the legal mechanisms and local programs which will be evaluated throughout the report.

Chapter Two describes the features which are unique to Massachusetts. The chapter begins by summarizing the features of the above-mentioned state statute which are relevant to an examination of affordability restrictions in Massachusetts. The second half the chapter provides a detailed overview of three of the five programs which will serve as the basis for this analysis.

Chapter Three begins by describing the overall structure of affordability restrictions, including the ways by which they are made legally enforceable. The second half of the chapter analyses in detail each of the general issues which must be addressed when drafting affordability restrictions by devoting an entire section to each of the nine primary components of affordability restrictions. It is in this chapter that issues of both policy and mechanics begin to be evaluated in depth.

Chapter Four provides summaries of how affordability restrictions are actually drafted under each of the five programs looked at in this analysis. Only unique features and substantial differences are highlighted as many of the processes and elements included in these guidelines are virtually identical to those generally described in Chapter Three. The second half of the chapter describes the actual procedures which are being used to implement the prescribed processes on both the state and local levels. This section highlights some of the challenges which are being faced by those on the ground charged with implementing the system.

Chapter Five wraps up the analysis by summarizing the findings, drawing conclusions, and providing a detailed set of recommendations which may make the system more failsafe.



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## **CHAPTER ONE**

While there are many reasons to try to preserve the affordability of a subsidized home, one of the most obvious is that the monetary costs of replacing the unit far outweigh the administrative costs of maintaining its affordability over time. As will be seen, an enormous amount of time, energy and resources – both monetary and non monetary – are involved with housing development.

The four sections in this chapter serve to provide a foundation for understanding why affordability restrictions are needed and for introducing some of the legal and programmatic instruments which will be evaluated in depth throughout the analysis.

- The first section begins with a brief history of the housing delivery system in the United States and explains how affordability restrictions emerged as one of many tools for keeping housing affordable.
- As a large portion of this analysis will involve detailed examinations of legal mechanisms, the second section sets the stage by providing an overview of the various legal instruments used in homeownership.
- The third section explains what constitutes “affordable” housing, in the context of this analysis, and provides a definition of “low and moderate income” homebuyers.
- Finally, the fourth section discusses what it takes to get housing built and made affordable and introduces the programs which will serve as the basis for much of this analysis.

In preparation for the following chapter, Section 4 ends with a brief description of the state statute which will be shown to have far-reaching implications for the way in which affordable ownership housing is created and maintained in Massachusetts.

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## **SECTION 1: THE EMERGENCE OF AFFORDABILITY RESTRICTIONS**

The use of restrictions aimed specifically at maintaining the affordability of ownership units over time is a relatively recent phenomenon. For many years, the goal of affordable housing activists was simply to help families, unserved by the private market, move into their first homes. Interventions in the form of supply-side development subsidies and demand-side homebuyer assistance did not reach beyond the first tier of families served by their efforts. However, in recent decades, a combination of political, social, and economic forces have led to changes in the affordable housing delivery system and a recognition of the need for more far-reaching interventions. Decreases in public funding and governmental oversight have led to increased reliance on the private market and increased attention to ways of stretching resources as far as possible. For the purposes of homeownership, one of the best techniques for conserving resources is one which preserves the affordability of subsidized homes for future generations of owners.

While this analysis will focus on what is occurring today in the affordable ownership market, it is useful to reflect on the circumstances which have led to the current realities facing designers of affordable housing programs and affordability restrictions.

A “home of one’s own” has long been part of the American dream. However, until the 1930s, the structure of mortgage financing made it very difficult for the average American family to own a home. The typical mortgage loan required downpayments as great as 50%, interest-only payments at rates as high as 25%, and terms as short as five years. Most Americans at all but the highest income levels had to wait until late in their lives before their savings were sufficient to purchase a home.

The structural flaws in the way homeownership was financed became impossible to ignore by the early 1930s when default rates surged to over 50% nationally and over one thousand foreclosures were occurring every day<sup>8</sup>. As lending came to a halt and families lost their homes, the Federal government stepped in to enact a series of New Deal measures which, to this day, are lauded for radically changing the housing finance system.

The creation of the Federal Home Loan Bank in 1932 as a central credit facility, the Federal Housing Administration in 1934 to bolster lending through the provision of federally-backed mortgage insurance, and finally the establishment in 1938 of the Federal National Mortgage Association (Fannie Mae) as a

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<sup>8</sup> “Guide to Federal Housing Programs,” p 4. Barry G. Jacobs, University of Chicago Press, Chicago, 1996.

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secondary market vehicle all helped to ease banks' liquidity needs and loan servicing concerns. While the specific services offered by these agencies were an integral part of revitalizing the failing system, the most important impact was the standardization of the average home financing terms to a 30-year, amortizing loan at 8% interest and with 20% downpayments.

The result of these changes was swift. The 1940s and 1950s experienced a surge in production, finance, and rates of ownership. Throughout the 1950s and 1960s, development costs were cheap, land was available and towns were eager to grow. Reliable financing and generous tax incentives served to extend the dream of ownership to thousands of Americans. When the Department of Housing and Urban Development was created in 1965, the Housing Act of 1949 vision of a "...decent home and a suitable living environment" for all Americans actually seemed possible during a time when owning a home had become cheaper than renting.

By the 1970s, however, as land became more scarce, communities began enacting tougher zoning restrictions which made development more difficult. Meanwhile, soaring inflation was making ownership more expensive. According to a Presidential Report on Housing, interest rates on mortgage loans were fluctuating as much as 3% in a single year by the end of the 1970s.<sup>9</sup> It was during this time that mechanisms such as graduated payment loans and interest subsidies were introduced in an effort to help homeowners make their mortgage payments and much deeper subsidies were being provided to make affordable housing development feasible. Despite the increased costs of ownership, by 1980 the nation's ownership rate had managed to increase to 65.6%.<sup>10</sup>

However, those deep subsidies began to dry up during the Reagan era of government cut-backs. It was during this period that reliance shifted to shallow subsidies and market-driven development. As housing activists recognized that sustained levels of funding might not continue to flow in, they began to look for ways to preserve and recycle the resources they had. Although the private real estate market was booming during this time, the rate of ownership among low and moderate income families was falling fast. From 1980 through 1994, the rate of ownership across all income levels dropped to 64% nationwide. However, that 1.6% drop masks what was happening at lower income levels. Over those

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<sup>9</sup> "To House a Nation: An Overview," The Report of the Presidents Commission on Housing, Washington, 1991 p. xxxix

<sup>10</sup> "State of the States: Homeownership and the Cost of Housing," Commonwealth Magazine, Fall 1998

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fourteen years, the rate of ownership among low income families dropped from 37% to 29% and the rate among moderate income families had dropped an alarming 10% since 1980.<sup>11</sup>

Although rates among all income levels have been recovering since the later half of the 1990s - by 1997 the national homeownership rate had reached an all time high of 65.7%<sup>12</sup> - the reliance on shallow subsidies and market-driven development seems to be here to stay. As a result, techniques to maintain affordability must be designed to function within the constraints of private development with minimal public oversight and minimal public resources.

For the purposes of this analysis, the most important impact of the changes which took place in the affordable housing delivery system during the recent decades was the recognition among housing professionals that: (1) more reliance had to be put on state and local communities to make things happen, (2) that in order to preserve resources, programs had to be altered to use shallower subsidies in conjunction with private market enterprise, and (3) that strategies must be created which will protect the long term affordability of the units which manage to get built.

The strategies used to maintain affordability involve procedural, programmatic and legal mechanisms. The following section provides an overview of the general legal instruments involved in the purchase of real estate in advance of a more detailed discuss on how affordability restrictions are created and imposed.

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<sup>11</sup> Information for this section obtained in large part from Nicolas Retsinas, instructor of class entitled Housing Policy in the US (HUT-264M ) taken by author in 2000.

<sup>12</sup> *ibid*



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## **SECTION 2: LEGAL INSTRUMENTS INVOLVED IN THE PURCHASE PROCESS<sup>13</sup>**

An analysis of affordability restrictions of ownership projects by necessity includes an analysis of the legal mechanisms used to purchase, finance, and sell real estate. The type of deed and deed restriction used, the process by which restrictions are recorded, the type of title search employed, and the way foreclosures are handled will all impact the likelihood that affordable units will be protected over time. Therefore, this section provides a general overview of how these legal instruments work in preparation for more detailed analysis of how they can best be used when crafting affordability restrictions.

### Title, Deeds, and Title Examinations

As will be seen, the detection and enforcement of many of the components of affordability restrictions rely on the title examination process. Legal ownership of a home is established through the conveyance of title from the current owner to the new purchaser. Title refers to all of the instruments needed to prove ownership and is usually conveyed by means of a deed. A deed is a written and recorded instrument which identifies any encumbrances which affect title.

New homebuyers will always want to be certain that the homes they are purchasing have clear title. If the title is clouded, their ownership rights could be compromised. There are generally three ways by which the quality of title can be assessed and guaranteed: (1) warranties by the seller; (2) title searches; or (3) purchase of title insurance.

Warranties by the seller, outlined in deed covenants, provide protection to the purchaser by making the seller liable for any defects in title. General warranty deeds provide the greatest protection by making the seller liable for defects which occurred at any time, including prior to the seller's ownership. Special warranty deeds are somewhat weaker by only covering defects which occurred while the seller owned the property. A quitclaim deed provides the least protection to the purchaser by making no warranties beyond the assurance that the owner is quitting all claims to the property. Most affordable housing programs in Massachusetts only require the use of quitclaim deeds.

When a quitclaim deed is used, the purchaser will employ one of the two other means of title examination. The cheapest method is the title search and is the method most often employed by low and

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<sup>13</sup> Information for this section obtained in large part from Larry Bacow's class entitled "Legal Issues in the Development Process" (CRE 11.340j) taken by author in 2000 as well as from Real Estate Finance and Investment by William B. Brueggeman and Jeffrey D. Fisher (Irwin/McGraw-Hill, Boston, 1997).

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moderate income households. A search, examination, and analysis is undertaken of all publicly recorded documents and claims affecting the property and an opinion is issued on the quality of the title. Claims on real estate must be recorded and made accessible according to a process outlined by state law. A claim may also be recorded in the form of a deed rider attached to the deed. As will be seen, this is how many affordability restrictions are recorded in Massachusetts. A competent title search, usually conducted by an attorney, involves a thorough reading of the deed and any attached riders as well as all separately recorded liens. If defects or encumbrances are discovered later which were not disclosed in the opinion, the lawyer can be found liable for negligence to the extent that those defects were disclosed in lawfully recorded documents.

Title insurance, the third means of ensuring clear title is generally preferred for four reasons: (1) the potential difficulty in recovering losses in the case of sellers' warranties; (2) the difficulty in proving negligence in the case of title searches; (3) the fact that searches by professional title insurers often reveal additional information not easily accessible through a hand search of public records; and, (4) the insurers maintain sufficient reserves to cover damages if a defect is subsequently uncovered. Title insurance is purchased through a lump sum payment and remains in force throughout the period of ownership. However, as noted above, title insurance is frequently rejected in favor of the cheaper title searches by low and moderate income homebuyers. The implications of this will be revealed throughout this analysis.

#### Deed Restrictions

While purchasers want clear title to the property to ensure that their ownership rights will not be challenged, they may accept titles subject to certain deed restrictions which outline particular things they may or may not do with their property. For instance, deed restrictions may be used in historic districts or environmentally sensitive areas. In the context of this analysis, deed restrictions are used to control the affordability of the home for subsequent purchasers and will be discussed in depth in following sections.

#### Mortgage Underwriting

Most households cannot afford to purchase a home without obtaining some type of financing. While some purchasers may be able to finance their acquisitions through a single loan, low and moderate income homebuyers often must obtain second and third loans. The lending institution will usually limit its loan to a certain percentage of the appraised value. While loan-to-value ratios vary, residential real estate is generally financed at between 80%-95% of its value. Downpayments, made at closing, usually fall between 3%-20% of the purchase price.

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The lender will base its loan amount on the value of the property as well as the borrower's ability to repay. Most affordable housing programs limit the amount of income which can be used to cover housing costs. Therefore, in order to underwrite a loan to a low or moderate income household, the lender will have to make sure that total housing-related costs do not exceed the affordable limit. Housing costs include monthly principal and interest payments on the loan, insurance and real estate taxes (PITI) and may also include other costs such as condominium or homeownership association fees. Financing costs vary according to the loan amount, interest rate, term, and amortization period. In order to reduce monthly payments, interest rates may be reduced, payments may be interest-only, and amortization periods may be extended. Section 5 provides examples of the tools used to reduce homebuyer and homeowner costs.

#### Loan Documents

Once a borrower is qualified for a loan, a note and mortgage are issued. A mortgage is the instrument by which the homebuyer (mortgagor) provides the lender (mortgagee) a lien on the property as security for the loan. The note outlines the terms of the mortgage and represents a written promise to repay the loan according to the terms specified. When a purchaser cannot finance the total acquisition costs through a single first mortgage, second and third mortgages are obtained. All mortgage liens are publicly recorded and are filed in order of priority, from first to last. Mortgage liens are removed when the loans are repaid.

#### Foreclosure

If a homeowner defaults on the terms of the mortgage, such as failing to make timely principal and interest payments, the lender has the option to foreclose. Foreclosure is the process by which title is taken from the owner and transferred to the lender (or another third party). The exact process by which foreclosure is conducted varies by state and by lender. However, it is almost always complicated, costly and time-consuming. As a result, most lenders will only opt for foreclosure only in cases of significant default and after other options to workout the problem have been exhausted. Although some lenders may elect to keep the property in their portfolio, in most cases the property is sold and the proceeds are used to repay the outstanding loan balance and any other liens on the property. Proceeds from foreclosure sales are typically disbursed to lien holders by order of priority. While holders of junior mortgages may also opt to foreclose, there is always the possibility that the proceeds will only be sufficient to repay the first mortgage holder. Any proceeds which are leftover after all liens have been released usually go to the owner. Events of foreclosure are one of the four ways affordable units can be lost to the market and will also be discussed in depth in later sections.

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## SECTION 3: WHAT DOES AFFORDABLE MEAN?

There are many misconceptions among the general public when it comes to affordable housing. When the average American is asked to describe what they envision when they think of subsidized housing, the picture which emerges is more often than not an image of run-down, sky-high concrete apartment buildings. Of course anyone involved with affordable housing development knows that subsidized housing takes a variety of forms and that much of it is indistinguishable from that which is market-rate. This is especially true in the case of affordable ownership developments. There are also persistent misconceptions about what types of people live in subsidized housing<sup>14</sup> Almost any affordable housing developer has stories to tell of the outcry some residents make when they learn that a subsidized project is proposed in their neighborhood. While the expectation of some is that the housing will be filled with drug dealers, prostitutes, and thieves, in all but the rarest cases, the families who move in blend peaceably into their new neighborhoods. This section explains what “affordability” means in the context of this analysis.

### Who Are Low and Moderate Income Homebuyers?

Unlike many affordable rental programs which can target very, very low income populations, most affordable ownership programs can only target working households who earn enough income to support a mortgage. The level of assistance provided to the homeowner and the applicable purchase price of the unit will impact what levels of income may be served. Given the fiscal constraints facing public subsidizing agencies coupled with the mixed experiences of past initiatives which provided deep subsidies with little investment from buyers, most programs today do not attempt to reach the lowest income households.<sup>15</sup>

Most affordable ownership programs today are targeted to low and moderate income first-time homeowners. While definitions of low income and of moderate income vary to some extent, as a general rule it may be said that “low income” refers to households earning up to 50% of the area median income as annually set forth by HUD while “moderate income” refers to households earning between 50% to

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<sup>14</sup> It is interesting to note that market-rate homeowners receive the vast majority of government housing subsidies through the mortgage interest deduction. While HUD’s entire budget is only approximately \$28 billion per year, the amount “spent” on the mortgage interest deduction totals over \$100 billion annually (Joint Committee on Taxation, 106<sup>th</sup> Congress, 1<sup>st</sup> Session – “Estimates of Federal Tax Expenditures for Fiscal Years, 2000-2004 (JCS-13-99), December 22, 1999).

<sup>15</sup> For instance, Lang Keyes of MIT notes that HUD’s 235 program, which required very little upfront equity on the part of homebuyers, was fraught with problems as owners had little incentive to maintain their units, and in at least one case in Boston, abandoned the units altogether.

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80% of the area median. The definition of “first-time” homeowner also varies but is most frequently defined as a household who has not owned a home for at least three years.<sup>16</sup>

While the primary goal of ownership programs is to make homebuying accessible to a range of incomes, a secondary goal is to protect the low or moderate income homebuyer from taking on more debt than they can manage. Efforts to serve very low income families through zero downpayment and high loan-to-value mortgages may actually end up jeopardizing their financial stability. There is sometimes a fine line between legitimate sub-prime financing and predatory lending. Furthermore, most affordable ownership programs are limited to owner-occupied housing and prohibit recipients of subsidies from renting their units. For families who experience unstable income and uncertain employment, their housing needs are usually better served through the flexibility of the rental market than through the relative immobility of homeownership.

#### What is affordable?

One way to help ensure that low and moderate income homebuyers do not take on more debt than they can afford is to limit the percentage of their income which is needed to service their housing costs. It is generally believed that a household should spend no more than 30% of its gross income on housing-related expenses. The housing cost ratio varies among programs and according to the type of property purchased. For instance, the ratio may be increased by a few points for households purchasing two or three-family homes since anticipated rental income will help offset expenditures. Conversely, the ratio may be decreased for households with less stable income or less perfect credit.

The components of what constitute housing costs for the average homebuyer were addressed in part in the previous sections on loan underwriting and homebuyer costs. Slight variations in downpayment amounts, interest rates, insurance rates and loan periods will greatly affect what constitutes an affordable home. By reducing the purchase price of the home or by providing subsidies to the household, housing programs can expand the accessibility of homeownership to a greater range of incomes.

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<sup>16</sup> Exceptions may be made for certain potential purchasers, such as those who are victims of spousal abuse.

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## **SECTION 4: MAKING OWNERSHIP AFFORDABLE**

To demonstrate why affordability restrictions are so crucial, the first half of this section provides an overview of what it costs to get ownership housing built and how these costs may be offset through subsidies, loans, and land use concessions. The second half of this section outlines the costs to the homebuyer and how those costs can be reduced through various means to a level where ownership is possible.

### Upfront Costs of Production

Housing is as durable as a good can get. While the production costs of durable goods will always be more than that of consumer items, the unique risks associated with development make the cost of housing even greater. The inputs which go into residential construction – land, labor, and materials – are rarely cheap. Furthermore, unexpected events may arise which place further financial burdens on the developer and the project.

Land costs almost always entail more than the mere purchase of raw land. Before developers take title to land, they must first spend time, money and resources on various due diligence, option agreements, purchase agreements, financing commitments, and closing costs. Furthermore, in order to make the land suitable for development, developers will have to pay for site preparation that may include everything from grading and demolition to extensive environmental remediation.

For many developers, the biggest challenge in the development process is obtaining the necessary zoning and permitting approvals. Massachusetts is known as one of the most difficult places to develop due to its home rule system where each one of its 351 separate cities and towns have their own zoning ordinances. Projects which are developed under by-right zoning are usually approved in a more expedited fashion than those which require variances or special permits. However, many communities in Massachusetts severely limit the type and nature of what can be done under by-right zoning. Therefore, developers of multi-family properties are generally forced to obtain some type of zoning relief. The implications of this aspect of development in Massachusetts and its impact on the use of affordability restrictions will be discussed in detail throughout this analysis.

Once approvals are in place and site preparation is complete, the most substantial component of development costs begin to accrue. While developers may say that the permitting stage is the riskiest,

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there are many ways for a project to incur unexpected costs once groundbreaking occurs. Construction is typically financed by variable rate, short term loans. Changes in interest rates and delays in construction can up construction costs significantly. Delays may be caused by anything from weather to shortages of labor or materials. Massachusetts is currently witnessing unprecedented levels of construction which means that labor and materials are not always readily available. When inputs are in short supply, their price will usually increase.

Aside from land acquisition, site preparation, permitting, and construction, there are other costs which must be borne by the developer. While construction is in progress, the developer must pay for such things as insurance, taxes, security and construction management. Furthermore, in ownership projects, the developer is also usually responsible for marketing the units. Large projects are typically built in phases and marketing often begins while the first phase is still under construction.

#### Reducing Upfront Costs

While some programs are aimed only at providing sufficient assistance to low and moderate income homebuyers that they are able to purchase homes at fair market values, others are aimed only at reducing the homes' sales prices. Many programs target both objectives.

In order to reduce the sale price of a home, ways must be found to either decrease the cost of production or increase profit to the developer. Early project costs may be reduced through land donation, governmentally-sponsored remediation, and pre-development subsidies. Some communities may waive permitting and zoning fees for affordable projects and may help subsidize the cost of bringing utilities to the site. Resources may also be conserved in communities with inclusionary zoning ordinances which expedite approvals of affordable developments.

While a combination of tools may be necessary, thousands of ownership units have been developed in Massachusetts through a single type of assistance. The provision of density relief, in many cases, is all that it takes to enable developers to sell a portion, or even all, of the units at below-market prices. In Massachusetts, one of the most effective ways of obtaining density relief is through the comprehensive permit. A comprehensive permit serves to both streamline the approval process and to increase allowable density for projects which include housing reserved for low and moderate income families. The conditions under which a comprehensive permit may be obtained and used are discussed in detail in the following chapter. The availability of comprehensive permits is especially useful in Massachusetts where

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many communities do not allow multi-family development by-right and limit density to one or even two acres per each residential unit. Given the extraordinary cost of land, such zoning restrictions make the development of affordable units nearly impossible without relief.

#### Programs Available in Massachusetts to Reduce Upfront Costs

In Massachusetts, there are a number of programs that help reduce acquisition, demolition, site preparation, remediation, and development costs through the provision of subsidy funds and low-cost loans. For instance, the Federal Home Loan Bank of Boston's Affordable Housing Program helps offset development costs of affordable projects through grants and low-interest loans. Private lenders, in an effort to meet their Community Reinvestment Act requirements, may also offer financing at favorable terms for affordable projects. There are also programs designed specifically to help create special needs housing. For instance, under the Facilities Consolidation Fund, a bond-financed program administered by the Massachusetts Executive Office of Health and Human Services, nonprofit developers may obtain deferred payment loans for up to 30% of the total development costs of projects which serve clients of the Departments of Mental Health and Retardation.

The most commonly used sources of development subsidies are made available under two programs administered by the Massachusetts Department of Community Development (DHCD). DHCD Housing Stabilization Fund (HSF) funds may be used to help offset a variety of costs for projects located in specified communities. DHCD Project-Based HOME funds may be used to bridge the gap between market and affordable purchase prices. HOME and HSF funds are allocated through competitive biannual funding rounds and may provide up to \$45,000 per affordable unit. Local HOME and Community Development Block Grant (CDBG) funds, allocated by DHCD to certain "entitlement" communities, are often used to match state subsidies. Entitlement communities may also use Housing Development Support Program (HDSP) funds to help subsidize local affordable developments.

Finally, there are three programs which are specifically designed to enable developers to apply for comprehensive permits. The earliest program, the Homeownership Opportunity Program (HOP) was jointly administered by DHCD and the Massachusetts Housing Finance agency (MHFA) but has been inactive since 1991. HOP's successor, DHCD's Local Initiative Program (LIP) has been used extensively since its inception in 1990. In 1999, the Federal Home Loan Bank of Boston's New England Fund (NEF) program began to be used as a qualifying program for comprehensive permits as well.



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All of these programs require that affordability restrictions be put in place in order to ensure that the affordable units built with their subsidies will remain affordable for many years. For the purpose of this analysis, attention will be focused on five of these programs: HOP, LIP, NEF, HOME and HSF.

#### Costs to Homebuyer

While the biggest initial cost for homebuyers is the acquisition price, there are many other costs involved with purchasing and maintaining a home. Average homebuyers will have to pay a variety of expenses before they even begin to pay principal payments and interest on their mortgage loan. Expenses such as mortgage application fees, brokers' fees, title search or title insurance costs, downpayment costs, miscellaneous escrow payments (often equal three months tax payments), mortgage insurance, legal fees, and closing costs may add up to thousands of dollars. Furthermore, there are other expenses which homeowners must shoulder once they become owners. Costs such as condo fees, homeowner association fees, real estate taxes, utilities, and insurance payments can be anticipated. On the other hand, unexpected maintenance and capital improvement needs may arise which may present severe financial difficulties for owners of limited incomes who have not been able to budget properly.

#### Reducing Costs to Homebuyer

In addition to reducing the purchase price of homes, there are a number of ways ownership may be made more accessible to low and moderate income households. Financial considerations aside, many households are deterred from trying to buy a home due to poor credit or a lack of understanding of how the homebuyer process works. One of the most important services offered by local and regional nonprofit organizations are homebuyer training classes. For a nominal fee, these classes prepare potential homebuyers for the complicated process of finding, financing and owning a home. Credit counseling sessions are frequently offered in conjunction with these trainings to assist households with insufficient or imperfect credit improve their credit ratings. Some homebuyer classes also help families prepare for post-closing issues such as home maintenance, budgeting, and foreclosure prevention. In Massachusetts, formal homebuyer trainings are often a prerequisite for families hoping to purchase homes which have been subsidized with local or state funds.

While technical assistance is helpful, most low and moderate income homebuyers also need monetary assistance in order for ownership to become possible. There are a wide range of programs designed to reduce purchase costs for limited income homebuyers. Nonprofit and governmental programs may offer downpayment assistance, mortgage insurance, closing cost assistance and free legal services.

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Many low and moderate income families will also need post-purchase assistance. There are a variety of local, state and national programs that use creative financing methods to reduce homeowners' monthly payments. There are interest subsidy programs which gradually ease borrowers into paying the full monthly payments through the use of graduated interest rate loans. The funds used to subsidize interest payments are typically provided through a soft second mortgage and are only repayable at resale. Some households may be able to obtain mortgage loans at special terms which remain in place for the entire loan period. Some lenders may also extend loan and amortization periods so that monthly payments are reduced. In many cases, low and moderate homebuyers will require both types of assistance: that which reduces the purchase price of the home and that which reduces their monthly housing costs.

#### Implications of Housing Costs in Massachusetts

Given the costs of developing affordable ownership housing and the efforts involved with helping low and moderate income families move into these units, the importance of affordability restrictions is clear. However, while it may be no surprise that local, state and federal housing groups are concerned with the continued affordability of the housing they help secure, in Massachusetts there is a unique incentive for communities, "whether enthusiastic or circumspect in their view of affordable housing,"<sup>17</sup> to push for substantial affordability restrictions. The following chapter provides an overview of a statute known by its official name – Chapter 40B – and by its more frequently used moniker.<sup>18</sup>

The landmark "Anti-Snob Zoning Act" did more for affordable housing than simply getting it built. The statute was aimed at increasing the supply of housing in all communities across the state by reducing the barriers to development in towns whose affordable housing stock was less than 10% of their total stock. Once a community reaches its "Ten Percent Goal", the zoning overrides allowed under 40B are no longer available to developers without the community's consent. Therefore, the very towns which are most opposed to affordable housing initially, will likely be very concerned that what does get built, stays affordable (and "in the count") for as long as possible. This unique incentive system has been likened to an "affordable housing inoculation" where towns accept a little to protect them from a lot.

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<sup>17</sup> *Stuborn Ltd. Partnership v. Barnstable Board of Appeals*

<sup>18</sup> May also be referred to as Chapter 774, The Comprehensive Permit Law, the Ten Percent Rule, and the Anti-Snob Zoning Act

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## **CHAPTER TWO**

As noted, the means by which affordability restrictions are implemented and monitored involves a complex system of legal, programmatic, and procedural elements. To a large extent, the success of the system depends on the extent to which incentives exist for involved parties to act appropriately.

One of the most dominant players in this system are the local municipalities in which the housing is developed as many programs rely on local monitoring and enforcement of affordability restrictions. In the absence of monetary or regulatory incentives, these local players may not be as devoted as they should be to ensuring the continued affordability of the housing stock in their communities. However, in Massachusetts, a state statute has served as an impetus for both getting affordable housing built and for providing an incentive to keep it affordable over time.

- The first section of this chapter provides a synopsis of this statute, known as Chapter 40B, as well as a detailed overview of the implications which it has had on affordable housing in general, and on the process by which affordability restrictions are created, implemented, monitored and enforced.
- In an effort to make the analysis easier to follow, the second section illuminates the relationship among a number of terms which will be used throughout this analysis to describe projects and programs which employ long term affordability restrictions.
- The third section provides a brief list of the programs which qualify under Chapter 40B, including the five which have been chosen to serve as the basis for this analysis.
- The final section of this chapter begins a more in depth analysis of how affordability restrictions are actually being used in Massachusetts by describing three of these programs in greater detail. This section describes the primary features of these programs which are relevant to an analysis of affordability restrictions.

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## **SECTION 1: THE ANTI-SNOB ZONING ACT (CHAPTER 40B)**

Understanding Chapter 40B is fundamental to an understanding of how affordability restrictions are drafted, applied and enforced in Massachusetts. First of all, as the previous section notes, 40B provides a unique incentive for communities to do everything they can to maintain their affordable housing stock. Secondly, as the following section will explain more thoroughly, all projects which include affordability controls are by their nature 40B projects. Furthermore, the processes which must be followed in order to count as a 40B unit are the very processes by which affordability controls are created and monitored. Finally, as will be discussed, new programs designed to take advantage of the benefits provided by 40B have pushed the limits of what the statute allows, and, in some cases, have attempted to dilute its impact.

### The Concept

Chapter 40B of the Massachusetts General Laws was enacted in 1969 to address a wide range of regional planning issues. Only four out of its 29 separate sections focus on affordable housing. However, when reference is made to 40B, the reference is usually intended to be made to those four sections aimed at reducing barriers to developing low and moderate income housing across the state.

The statute contains two tools to facilitate development. The first provision enables developers to apply for comprehensive permits in cities and towns where less than 10% of the year-round housing is affordable to low and moderate income households.\* The second provision allows the Housing Appeals Committee, housed at the Department of Housing and Community Development (DHCD), to override unreasonable conditions and local denials of comprehensive permits unless it can be shown that the proposed project would pose serious risks to health and safety and that those concerns cannot be sufficiently mitigated.

The ability to seek a comprehensive permit in Massachusetts is a real benefit for developers. As noted previously, there are 351 cities and towns in Massachusetts and each one has its zoning regulations and its own development approval processes. As a Home Rule state, with the exception of building codes, health codes and environmental regulations, development activity in Massachusetts is controlled and overseen on the local level. Furthermore, many communities have very rigid zoning which does not allow multi-family development and severely limits density. The comprehensive permit allows developers to seek overrides to local zoning ordinances and to submit a single application to a single local body for all of the

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\* Developers can also apply in communities with over 10% but the community is not required to consider the application.

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needed permitting and zoning approvals. Instead of going through the lengthy and oftentimes unsuccessful process of seeking variances, special permits and subdivision approvals, developers may accomplish everything through the comprehensive permit. Furthermore, by empowering HAC to override local denials of comprehensive permits, Chapter 40B decreases the likelihood that affordable housing projects will be kept out of communities for baseless, NIMBY-oriented reasons.

#### The Affordable Housing Sections of Chapter 40B (Sections 20, 21, 22, and 23)

Although the impact is enormous, the portion of the statute addressing affordable housing is only a few pages long. The statute provides clear direction on how a comprehensive permit application must be submitted, reviewed, approved and appealed. It also clearly defines who is eligible to seek a comprehensive permit. Chapter 40B defines eligible developers as “any public agency or limited or nonprofit organization proposing to build low or moderate income housing.”<sup>19</sup> However, its definition of exactly what constitutes “low or moderate income housing” is much less specific. The exact definition contained in the statute is simply “any housing subsidized by the federal or state government under any program to assist the construction of low or moderate income housing as defined in the applicable federal or state statute.”<sup>20</sup> There is no mention of what percentage of units must be affordable, the degree of affordability required, or the length of time those units must remain affordable. As will be discussed in later sections, the presumption seems to have been that such details would be handled by the provisions of the applicable governmental subsidizing program. Later chapters will demonstrate how the statute’s lack of specificity has, on one hand, allowed housing agencies greater flexibility in designing workable programs, while, on the other hand, its vague language has led to confusion, legal challenges, and efforts to weaken its impact.

#### The Comprehensive Permit Application Process

Chapter 40B provides a clear outline of the process which must be followed by the developer, local authorities, the housing appeals committee, and other interested parties when an application for a comprehensive permit is submitted. Although an understanding of the process may not seem necessary to a discussion of affordability restrictions, it is important to understand the extent of the community’s role in shaping and approving a 40B project as it is during this period that affordability restrictions are put in place.

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<sup>19</sup> Chapter 40B of the Massachusetts General Laws. Note that “limited organization” and applies to forprofit developers

<sup>20</sup> *ibid*

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For instance, municipalities that want to impose restrictions which deviate from those prescribed under the subsidy program being used by the developer, typically do so as a condition of project approval. Furthermore, as will be seen, communities may also require the developer to establish and fund an escrow account which will help offset the costs of long term monitoring. A simplified outline of the process mandated under Chapter 40B is provided below:

1. Developer submits a single application to the local zoning board of appeals (ZBA).
2. The ZBA notifies all related boards and, if it so chooses, circulates copies of the application. Although 40B centralizes all decision-making authority with the ZBA, it explicitly states that the ZBA must seek feedback from all other boards and agencies that would normally be part of the approval process.

Furthermore, municipalities are encouraged to hire consultants or other third party professionals to assist them in their review process. Funding for such services is made available by DHCD and administered by MHP. The use of consultants may help communities shape better projects, negotiate more favorable terms with developers, and strengthen affordability restrictions.

3. Within 30 days of the receipt of the application, the ZBA holds a public hearing. Representatives from all related boards should be present at the hearing and may be asked to testify or make presentations to assist the ZBA in its decision making process.
4. Within 40 days of the public hearing, the ZBA must issue its decision. The decision on whether a comprehensive permit should be granted, granted with conditions, or denied should take into consideration feedback provided by other related parties.
5. If a hearing is not held within 30 days or if no decision is reached within 40 days, the permit is granted by default. In reality the process may take longer than prescribed under 40B as extensions are often granted by the mutual consent of the developer and the ZBA.
6. Any person aggrieved by the decision to grant a permit may appeal to the court as provided under normal state law in Chapter 40A. While it is not necessary to outline the process by which concerned residents can appeal zoning decisions, it is important to note that abutters frequently are able to stall development for years by dragging out the appeal process. Recommendations have been made to develop expedited appeal processes for 40B projects to discourage frivolous lawsuits intended to stop projects.
7. If the application is denied, the developer may appeal to HAC within 20 days of ZBA's decision. Developers will usually appeal if their applications are denied. They may also choose to appeal if they believe that conditions imposed by the ZBA make the project financially infeasible.
8. HAC will notify the ZBA upon receipt of the appeal.
9. Within 10 days, the ZBA will inform HAC of the reasons the application was denied.
10. Within 20 days of the submission of the appeal, HAC will meet to review the case.
11. Within 30 days of its review, HAC will issue a final judgment on whether to uphold local decision.

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### The Role of Local Housing Partnerships

There are several other steps which, although not specifically mandated under 40B, have become part of the comprehensive permit approval process and are relevant to an analysis of affordability restrictions. The first step a developer should take when planning to apply for a comprehensive permit is to meet with the local housing partnership (LHP), if one exists, in the community in which they plan to develop. LHPs were created during the 1980s at the request of Governor Dukakis as a means of fostering local support for affordable housing initiatives. The typical LHP may consist of representatives from local banks, real estate firms, housing authorities, planning departments, and local nonprofits, as well as public officials and concerned residents. As non-decision making bodies, their role is to help negotiate favorable terms with developers in advance of a submission of a comprehensive permit application. When LHP members are well versed in affordable housing policy, they can provide invaluable assistance to both the ZBA and the developer in shaping a project which will meet their community's needs. They can also play an important role in helping to monitor and preserve the affordability of the units once they are built and occupied.

In fact, in many cases, it was assumed that LHPs would play an active role in the long-term monitoring of affordability restrictions in their communities. However, as Massachusetts entered an economic downturn in the early 1990s, attention was diverted to ways to prevent disinvestment and foreclosures. As the level of new construction slowed down, the continued existence of LHPs was no longer a state priority. Unfortunately, as less attention and support were given to LHPs, many of these locally-based housing groups disbanded and became inactive. The lack of an LHP, or other like body, puts communities at a significant handicap as they attempt to maintain their stock of affordable housing. LHPs can provide substantial assistance both at the early stages of project planning as well as during the later stages of monitoring affordability restrictions. However, while many towns still have no independent, knowledgeable group dedicated to housing issues, in recent years there seems to have been a resurgence in locally sponsored housing committees as communities recognize the value such groups provide.

### Site Eligibility Letters

The second step which a developer must take before applying for a comprehensive permit is to obtain what has become known as a "site eligibility letter" from an eligible subsidizing agency. As is described above, Chapter 40B limits the eligibility of projects to those which are eligible for funding under a state

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or federal housing agency's housing program. Although the only agencies explicitly mentioned are the Massachusetts Housing Finance Agency (MHFA) and the Federal Housing Administration (FHA), the following chapter discusses other agencies and programs which, over the years, have been deemed eligible under 40B. It is presumed that in order to ascertain whether a project is "eligible for subsidies," the agency administering the program under which the permit is being sought must perform a detailed review and analysis of the project. Therefore, a developer must first submit an application to the subsidizing agency before proceeding to the ZBA. The subsidizing agency will generally seek feedback from the community in its review of the application. The agency may recommend or require that certain changes be made to the project before the developer may proceed to the ZBA. Once the agency is satisfied with the proposed development, a site eligibility letter will be issued. It is this letter which gives a developer "standing" to appear before the ZBA.

One of the primary things which subsidizing agencies review is the way in which the developer proposes to design, market and monitor the affordable units. Typically, developers will have to abide by the specific affordability requirements prescribed by the subsidy program under which they are applying. As a result, local ZBAs recognize that the subsidizing agency will have reviewed all aspects of the project and will be likely to assume that, if a site eligibility letter has been issued, all issues regarding the affordable units have been sufficiently addressed. While this is true in most cases, later sections will describe in greater detail the implications which local reliance on site eligibility letters may have on the efficacy of a project's affordability restrictions.



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## SECTION 2: TERMINOLOGY

As if the numerous acronyms used in affordable housing discussions are not confusing enough,<sup>21</sup> in Massachusetts a number of different terms have come to be used to reference projects and programs which include affordability restrictions. The purpose of this short section is to highlight the interrelationship of Chapter 40B, comprehensive permits, and affordability restrictions before a detailed analysis of programs is undertaken.

### The Interchangeability of Terminology

In Massachusetts, the terms “40B project” and “40B development” technically describe any project or program which meets the conditions necessary to be counted in the state’s affordable housing inventory. In order for the affordable units in a project to count, the project must meet the conditions outlined in Chapter 40B. As noted, the statute did not explicitly define the ways its conditions must be met. However, through legal and programmatic precedent, the criteria necessary in order for units to “count” have come to include the following:

- The project must be developed under a state or federal subsidizing agency;
- At least 25% of the units in the project must be affordable to households earning up to 80% of the area median income; and
- Affordability restrictions must be imposed on the affordable units which run for no less than 15 years for new construction and no less than five years for substantial rehabilitation.

Therefore, any project or program eligible under 40B, by default, must contain long term affordability restrictions, and, in most cases, any project or program which contains affordability restrictions is eligible under 40B. As a result, references to “40B” and to “affordability restrictions” can often be used interchangeably.

Furthermore, any project or program which qualifies for a comprehensive permit, by default, must comply with the conditions of 40B. As a result, references to “40B” are often really references to projects or programs which use comprehensive permits and references to “comprehensive permit” projects or programs are, by nature, references to projects and programs which include long term affordability restrictions as prescribed by 40B.

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<sup>21</sup> See Appendix I for a glossary of acronyms used in this report

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### **SECTION 3: 40B PROGRAMS**

When the 40B statute was enacted, there were only a limited number of entities involved with affordable housing. As previously noted, the statute references only two agencies: MHFA and the FHA. Activity under 40B began slowly and was primarily limited to rental projects subsidized by MHFA. By the late 1970s, only the Farmer's Home Administration had been added to the list of eligible subsidizing agencies.<sup>22</sup> Over the years, many more agencies have emerged and dozens of programs have been designed specifically for 40B or have been deemed eligible by HAC under 40B.

The primary programs which have been used to develop affordable homeownership, utilize affordability restrictions, and have been found by HAC to be in compliance with 40B include:

- Homeownership Opportunity Program (HOP)
- Local Initiative Program (LIP)<sup>23</sup>
- Housing Stabilization Fund (HSF)
- HOME Program Project-Based Homeownership
- Federal Home Loan Bank (FHLB) New England Fund Program (NEF)

For the purposes of this analysis, attention is focused on these five programs which are responsible for producing the majority of affordable ownership housing in Massachusetts. Three are comprehensive permit programs: HOP, LIP, and NEF and two are development subsidy programs administered by DHCD: HOME and HSF. All of these programs are "40B programs" in that the affordable units developed with their subsidies and assistance are counted in the state inventory.

Other programs which are used to support affordable ownership and may qualify under Chapter 40B include:

- HOME Program Homeowner Rehab
- EOHHS Facilities Consolidation Fund (FCF) – some uses
- Federal Home Loan Bank (FHLB) Affordable Housing Program – some uses
- CDBG Housing Development Support Program (HDSP) – most uses
- CDBG Community Development Fund (CDF) – some uses

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<sup>22</sup> Stuborn Ltd. Partnership v. Barnstable Board of Appeals

<sup>23</sup> The Local Initiative Program also includes the Local Initiative Units Only (LIP Units Only) option whereby communities are able to qualify units which comply with all LIP program criteria as 40B units.

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The decision not to evaluate in detail the various ways other programs have implemented affordability restrictions is in no way meant to minimize the impact which those programs have had on expanding ownership opportunities. It is simply far too cumbersome, especially in the cases of locally administered programs, to locate and evaluate each individual set of documents. Furthermore, many programs are used in conjunction with each other and thus employ blended forms of restrictions. Although the primary evaluation of affordability restrictions will be limited to the standard model documents used under the five above-mentioned programs, a description and analysis of several instances where communities tailored their own restrictions or where documents represent a hybrid of several programs will be included to highlight alternative ways in which affordability restrictions have been designed and implemented.

The use of a comprehensive permit is not necessary to qualify under 40B. However, the majority of 40B projects currently being developed today require such relief. The following section provides an overview of the major components of the three programs which were specifically designed to be used in conjunction with comprehensive permits.

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## **SECTION 4: COMPREHENSIVE PERMIT PROGRAMS**

### Comprehensive Permit Program Terms

On top of the basic criteria outlined above concerning the percentage of affordable units (at least 25%) and the terms of affordability restrictions (15 years for new construction and 5 years for rehabilitation), comprehensive permit programs have also included additional, more specific criteria. Although the conditions vary somewhat among programs, it has generally been established that the following criteria are mandatory features of the affordability restrictions of comprehensive permit projects and programs:

- If the developer is not a municipality or nonprofit agency, profit from the sales of the homes is restricted to no more than 20% of the total development costs of the project. Any excess sales proceeds must be given to the municipality in which the project is located to be used for other affordable housing initiatives;
- An affirmative marketing plan must be in place to ensure that the affordable units are sold on a “fair and open basis” both at the time of initial sales and later when units are resold to other low and moderate income families;
- Affordable units must be designed to be as indistinguishable as possible from market units from the exterior and must be distributed evenly throughout the project;
- Mechanisms must be in place to oversee developers’ compliance with program conditions during the construction and marketing phases; and finally,
- Mechanisms must be in place to monitor and enforce unit owners’ compliance with affordability restrictions over time.

### Comprehensive Permit Programs

Developers may seek comprehensive permits under a variety of programs other than LIP, HOP or NEF. However, these three programs have been specially designed to complement the comprehensive permit process and are the ones most frequently used when zoning concessions are needed.

### **HOMEOWNERSHIP OPPORTUNITY PROGRAM (HOP)**

The Homeownership Opportunity Program (HOP) was created by DHCD in 1986 with the goal of expanding affordable homeownership opportunities throughout the state. The nation-wide real estate boom of the late 1980s was being experienced in full force at that time in Massachusetts. HOP presented

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an opportunity for the state to advance its affordable housing objectives by harnessing the power of the booming private market. Although interest subsidies were made available to the purchasers of HOP units, the ultimate tool for HOP developers was the comprehensive permit. Jointly administered by DHCD and MHFA, and with involvement from MHP, the HOP program was responsible for creating almost two thousand affordable homes from its inception in 1986 until the program closed in 1991.

### HOP Program Terms

Under HOP, developers had to make at least 25% of the projects' units affordable to low and moderate income families and, in some cases, had to make an additional 5% available for sale to the local housing authority for rental to eligible families. Purchasers obtain financing either directly from MHFA or through qualified lenders certified by DHCD and MHFA. When the program was initially launched, there were a limited number of lenders which were eligible to underwrite HOP mortgage loans. Today, as the result of bank mergers and acquisitions, Fleet Bank is the only official originator of HOP subsidy mortgages. All financing must be consistent with MHFA lending criteria, as MHFA will be the holder of the loan after origination.

As the majority of HOP purchasers are unable to satisfy underwriting standards without additional assistance, graduated interest subsidies are also provided. DHCD provides the funding for these "HOP Assisted Mortgages" and secures the subsidy amount through a second mortgage. It is estimated that at least 90% of the units in every development have HOP Assisted Mortgages. The other ten percent, "Mod HOPs," are financed directly by MHFA and are sold to families earning somewhat higher incomes which do not require additional assistance.

### HOP Program Documents: Note, Mortgage, Deed, and Deed Rider

The legal documents used under the HOP program differ from its successor programs in three significant ways. First of all, the provision of interest subsidies allows the state to impose a second mortgage for each subsidized unit. As following chapters will illustrate, the fact that there is a separately recorded instrument which both references the affordability restrictions in place on that unit and which requires DHCD to be notified in the event of refinance, resale, or foreclosure, greatly impacts the way in which the affordability controls are handled. Although affordability restrictions may also be included in the first mortgages, DHCD may not automatically be notified in the event of a potential change of ownership.

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Second of all, when a unit comes up for resale, it is the state (and not the municipality) that retains the “right of first refusal” to either purchase the unit or to find another eligible buyer.<sup>24</sup> As a result, in almost every case, the responsibility for tracking, monitoring and enforcing the resale restrictions rests officially with DHCD. As will be seen, there are inherent problems to relying on a centralized, Boston-based, agency for tracking and marketing units located all over the state.

Furthermore, times have greatly changed since the mid 1980s. This is significant in two ways. First of all, when HOP was created, the use of computerized databases was not commonplace. Therefore, many of the details concerning HOP projects were kept only in paper form, catalogued in file cabinets at DHCD. Information regarding the specific HOP owners, units, and restrictions has thus been far less accessible than that of more recently created programs. Secondly, the drafters of HOP program documents and guidelines were stepping into “a brave new world” without the benefit of past programs to guide them.<sup>25</sup> Over the years, ways to improve and strengthen program terms have been recognized and addressed in newer program documents.

#### The Discontinuation of HOP

The demise of the HOP program was due to two factors. While the early years of HOP witnessed high levels of activity, by the late 1980s and early 1990s the real estate market had fallen out everywhere and new construction of all types had virtually come to a standstill. HOP projects were no exception. HOP units which became ready for sale in the early 1990s saw little if any differential between the affordable and market prices. A number of projects slated for construction never broke ground. In some cases, HOP projects under construction in the early 1990s were not ready for occupancy for years. Although the need for affordable housing continued, attention among activists became more focused on foreclosure prevention and revitalization in urban areas than on suburban new development.

Meanwhile, concerns were being raised by local officials that municipalities had too little control over the way in which affordable housing, in general, and HOP projects, in particular, were being developed. A special legislative committee was established in 1989 to address ways to provide greater incentives and control to local municipalities. Until that time, it was understood that in order for an affordable unit to “count” in the state’s inventory, the unit must have received some form of direct, monetary subsidy from a state or federal agency. Therefore, communities had little incentive to develop housing on their own as

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<sup>24</sup> There are some exceptions as is the case in Lincoln and Boston.

<sup>25</sup> Catherine Racer, Associate Director of Private Housing, DHCD (interviewed by author on March 29, 2001)

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the units constructed would not count towards their “Ten Percent.” The commission argued that the definition of subsidies could be expanded to include in-kind support and technical assistance and still meet the objectives outlined by the statute. As a result, DHCD was able to create a new program to replace HOP.

### **LOCAL INITIATIVE PROGRAM (LIP)**

The Local Initiative Program was established in 1990 as a successor to HOP. While many of the program terms remain identical, LIP differs from HOP in two substantial ways: (1) the program does not provide monetary subsidies; and (2) LIP projects must be initiated on the local level. As will be seen, these features will have an impact on the ways by which affordability restrictions are imposed, monitored and enforced with regard to LIP units.

LIP was designed to encourage local communities to initiate affordable ownership projects on their own. The hope was that local housing partnerships (LHPs), in conjunction with municipal officials, would look to find ways to satisfy their community’s housing needs. In reality, most LIP projects are actually initiated by private developers. However, the program provides local communities greater flexibility in the way in which projects are conceived, designed, developed and monitored. Even if the project does not truly originate on the local level, the program requires the active participation of municipal officials and LHPs throughout the approval, development and monitoring phases.

### **LIP Program Terms**

Although LIP can be used for rental development, the vast majority of projects developed under LIP have been homeownership. Under LIP, at least 25% of the homes in a development must be affordable to households earning no more than 80% of the area median income. Although owners of LIP units may obtain financing from any source, all end-loan terms must be reviewed and approved by DHCD. DHCD always recommends that developers encourage owners to seek financing through MHFA or one its pre-approved lenders which are both familiar with the program and provide below-market financing. As a result, MHFA holds approximately 50% of LIP mortgages.<sup>26</sup>

LIP adds an additional step to the process a developer must follow when seeking a comprehensive permit. While the program continues to recommend that the developer first meet with an LHP, if one exists, LIP

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<sup>26</sup> Miryam Bobadilla, Homeownership Program Coordinator, DHCD(interviewed by author on March 6, 2001)

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then requires the developer to submit an application to the chief elected official for review. The requirement of a local sign-off was intended to ensure that the project, as proposed, was indeed “locally initiated.” Under HOP and other programs, it is possible for developers to avoid all community processing until the time they appear before the local ZBA. Although, the lack of a local “pre-approval” process may not ultimately impact the quality of the project or the likelihood of its approval, zoning board members may be more likely to find fault with the project’s design and consistency with local plans when they are seeing the proposal for the first time. Therefore, in an effort to increase the likelihood that a project will be locally approved by the ZBA, LIP provides a process where the initial project concept must first be accepted by the chief elected official.

LIP Program Documents: Regulatory Agreement, Deed, and Deed Rider

LIP was designed to place far greater responsibility on local communities for overseeing all aspects of the project. Although DHCD continues to monitor the process, particularly during the development phases, the municipalities are responsible for carrying out the bulk of the oversight functions. This affords them the opportunity to tailor DHCD’s model documents in ways which will strengthen or expand the minimum affordability requirements.

In order to ensure that all participants in the process understand their roles and agree to abide by program terms, LIP includes a “regulatory agreement” which must be executed by DHCD, the municipality and the developer. This is particularly necessary under LIP because all of the affordability restrictions will be outlined in the rider to the deeds of the affordable units. As the previous chapter explained, deed riders are imposed by the owner of a property on future owners. Neither the community nor DHCD will have any direct ownership interest in the property and thus must ensure that the developer, as the owner of the yet-to-be-sold homes, imposes the appropriate restrictions at the time of sale to eligible purchasers.

Because LIP does not provide actual monetary subsidies to purchasers of affordable units, DHCD does not hold a second mortgage on LIP units. All of the affordability restrictions are recorded through deed riders which, together with the deed, are recorded as a single document. Later chapters will explain how title searches, conducted at events of refinance, resale or foreclosure, have missed the affordability restrictions when careless attorneys do not thoroughly read the deed and attached riders.

The terms of the deed rider and regulatory agreement provide, in most cases, the rights of first refusal to the municipalities. As a result, monitoring of the affordability restrictions and marketing of units is the



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community's responsibility. Although DHCD must be notified in the event of a refinancing, resale, or foreclosure, there is a much greater reliance on the community to ensure that LIP projects function correctly. In designing LIP to rely heavily on local participation, DHCD hoped to stimulate greater local support for affordable housing.

However, the requirement that applications receive preliminary, written approval on the local level before they may be reviewed on the state level, has been a problem for some LIP projects. Although the local approval is only preliminary, elected officials often request that a wide variety of studies be prepared to assist them in their decision-making process despite the fact that the project is only in its initial design phase. Reports such as traffic studies and environmental impact assessments are often expensive and time-consuming to produce and are not necessary to an initial review. Furthermore, the chief elected official, whether it is the mayor or the chairman of the board of selectmen, will often be loathe to approve projects which are receiving vast community opposition. In some rare cases, DHCD has agreed to accept proposals for "Private LIP" projects when, despite the best efforts on the part of the developer, local officials will not grant approval. In fact, there have been cases where the local officials have informed DHCD that they privately support projects but officially deny approval in order to avoid public criticism.

As a result of the problems associated with the way LIP projects are approved, developers and housing activists have been looking for ways to streamline the process. The solution for many has been NEF.

### **NEW ENGLAND FUND (NEF)**

The Federal Home Loan Bank of Boston (FHLBB) supports low and moderate income housing development by making below-market funds available to its over one hundred member banks through a variety of affordable housing programs. One of these programs, the New England Fund (NEF), has recently begun to be used by developers seeking comprehensive permits. In less than two years, over a dozen NEF projects have been built and dozens more are in the pipeline.<sup>27</sup> However, despite its evident success at stimulating affordable ownership development activity, NEF differs from LIP and HOP in many ways which may negatively impact the way in which affordability restrictions are implemented, monitored and enforced.

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<sup>27</sup> Robert Engler, Stockard, Engler and Brigham development consultants (interviewed by author on April 3, 2001)

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### NEF Background

Housing activists, impatient for increased suburban development activity, and developers, frustrated with the oftentimes cumbersome LIP process, recognized the potential of NEF as a vehicle for obtaining comprehensive permits. Given the FHLBB's classification as a quasi-Federal agency, they believed that housing developed under its NEF program would meet 40B's definition of housing subsidized by a state or federal agency. However, under NEF, families earning up to 140% of median income could qualify as moderate income homebuyers. Furthermore, under NEF, the FHLBB does not fund projects directly. Instead, it makes low-cost funds available to its member banks to use for economic development and housing initiatives. As a result, the FHLBB would not be the entity directly involved with reviewing applications and issuing site eligibility letters. Rather, any one of its banks would be eligible to issue site approvals and thus provide the standing necessary for developers to apply to the ZBA for comprehensive permits. By using NEF as the vehicle for obtaining site eligibility, developers could circumvent the LIP process of obtaining prior local approval and proceed directly to the ZBA. The campaign to certify NEF as an eligible comprehensive permit program began in 1996 and was finally resolved in 1999.

### Certification of NEF as Comprehensive Permit Program

Questions concerning a program's eligibility under 40B have generally been resolved through the Housing Appeals Committee. That was the case with NEF.

In 1998, a developer applied to a local ZBA for a comprehensive permit to build an affordable ownership development in an area zoned for business use.<sup>28</sup> The project had been approved under the FHLBB's NEF program. The ZBA denied approval on jurisdictional grounds asserting that NEF was not an eligible program and that the project did not conform to the affordability and programmatic conditions ordinarily required under 40B programs. The case was appealed to HAC in 1999.

The first time HAC had reviewed an NEF-related case was in 1996 where they found that neither the specific project terms nor the NEF program guidelines met the eligibility standards put forth under 40B.<sup>29</sup> However, in this second case, the program had been redefined to more closely match understood 40B guidelines and the developer was proposing to use documents and affordability controls which closely resembled those used under LIP. In its landmark March 1999 "Stuborn Decision," HAC ruled that the project proposed met the necessary criteria and remanded the case back to the ZBA for comprehensive

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<sup>28</sup> *Stuborn Ltd. Partnership v. Barnstable Board of Appeals*

<sup>29</sup> *Zoning Board of Appeals of the Town of Wellesley, et al vs. Ardmore Apartments Limited Partnership, et al*

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permit review. The decision opened the door for developers to use NEF as a rapid and efficient means of seeking comprehensive permits.

NEF Documents: Regulatory Agreement, Deed, Deed Rider, & Monitoring Agreement

There is only a single guideline put forth by the FHLBB regarding NEF and comprehensive permits: at least 25% of the units must be affordable to households earning up to 80% of the median income. There are no official model documents, program guidelines, or required procedures. However, the Stuborn decision clearly lays out the conditions which all NEF projects must meet in order to qualify for comprehensive permit review.

HAC carefully instructed developers on what additional measures needed to be taken in order to satisfy the conditions of 40B. For instance, in order to address the fact that under NEF, unlike LIP or HOP, there was no public agency in place to perform necessary review and monitoring functions, HAC ruled that a qualified monitoring agency must be identified and made responsible for overseeing developer and project compliance. The particular project involved in the Stuborn decision proposed to retain the Citizens Housing and Planning Association (CHAPA), a prominent statewide nonprofit agency, to act as monitoring agent. Although HAC agreed to accept CHAPA as a certified monitor, the committee warned that there were potential risks to using a non-public agency to perform long term monitoring functions.<sup>30</sup> Unlike public agencies, private organizations are not subject to public scrutiny or control. Furthermore, private organizations may not enjoy the same degree of permanency as public agencies such as DHCD, MHFA or local housing authorities.

One of the primary proponents of NEF has been Robert Engler, a prominent local affordable housing development consultant. An active participant in affordable housing activity for decades, Mr. Engler is credited by many as the “father of NEF.” He has drafted program guidelines to assist municipalities and FHLBB member banks when reviewing NEF projects. He has drafted model program documents which, though very similar to LIP, include additional language aimed at increasing the strength of affordability restrictions. He also created a model “monitoring agent agreement,” a new document unique to NEF. And finally, Mr. Engler has personally advised both developers and communities on the best ways to approach NEF developments.

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<sup>30</sup> Stuborn Ltd. Partnership v. Barnstable Board of Appeals

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However, Mr. Engler is not involved in all NEF projects and his model documents may not always be used by developers and by communities. Although he has provided invaluable assistance by establishing a framework within which NEF can work, there are concerns that not all projects will follow his recommended path. While NEF provides even greater flexibility to communities to design mechanisms which are even stronger than those typically used under LIP, in the absence of involvement by state-level public agencies, responsibility for every oversight function rests with the community and the selected monitoring agent. Depending on the entity selected, the affordability restrictions of NEF projects may enjoy greater or less skilled monitoring.

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### CHAPTER THREE

This chapter provides an in depth examination of the issues which must be addressed when drafting affordability restrictions. By evaluating the means by which restrictions are created, recorded, and monitored, this chapter will help demonstrate the need, emphasized throughout this analysis, for all elements of the system to be made as failsafe as possible.

- The first section describes how affordability restrictions are designed to legally restrict what owners of affordable homes can and cannot do with their properties. As has been noted, for affordability restrictions to work effectively, they must be self-monitoring to the extent that mechanisms are in place which will automatically be triggered by the occurrence of an event, such as refinancing, resale, or foreclosure, which could jeopardize the unit's continued affordability. However, this section will show that the particular way in which affordability restrictions are currently being recorded in Massachusetts may fail to ensure that such actions are automatically triggered when issues arise.
- The remaining sections provide detailed overviews of each of the issues which affordability restrictions must address including: lock-in period terms, recapture provisions, resale processes, resale price formulae, use restrictions, treatment of capital improvements, events of foreclosure, and monitoring. The way in which each component is drafted has far-reaching implications. As a result, an entire section will be devoted to each one of these components and will highlight both the broad practical and policy questions raised when drafting and implementing each component.

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## SECTION 1: OVERVIEW OF AFFORDABILITY RESTRICTIONS

For affordability restrictions to work effectively, they must be legally tied to the land as a condition of a deed, mortgage, or underlying zoning. The actual mechanism used to ensure the long term affordability of an ownership unit varies among programs and communities. Possible techniques include the use of land trusts and ground leases, limited equity cooperatives, and mechanisms tied to the deed such as mortgage liens and deed riders. Although mechanisms such as ground leases are becoming more popular, the vast majority of affordable ownership projects in Massachusetts rely on instruments tied to the deed. As a result, the majority of this analysis will focus on the ways in which deed restrictions are structured, imposed, and implemented.

### Deed Riders

For the designers of affordable housing programs, deed riders are a practical way to legally restrict what owners of affordable homes can and cannot do with their properties. Program administrators only need to create a single, boiler-plate deed rider which lays out all of the terms of the applicable affordability restrictions under the program and then personalize it slightly for each transaction. However, although deed restrictions may be the simplest way to record restrictions, they might not be the most effective means of ensuring that the restrictions will be observed.

In order for affordability restrictions to be “self-monitoring,” they must be recorded in a way which will ensure that, as issues arise, procedures will automatically be triggered to protect the unit’s continued affordability. Almost every type of event which could affect the security of a unit’s affordability will necessitate that a title examination be undertaken. As long as the title examiner picks up the presence of the affordability restrictions, the restrictions should be abided by successfully. For instance, when an owner wants to refinance, the bank providing the refinancing will want to be in first position and will thus have to inform and receive permission from all other mortgagees of the property. In order to identify those lien holders, the bank will conduct a title search. When deciding on methods to record its affordability restrictions, DHCD believed that the most secure way to ensure that the restrictions were observed was to record them as a rider to the deed, as any competent search would include a thorough examination of the deed and any attached riders.

However, as previous sections have noted, not all title searches are picking up the restrictions. The fact that deed riders are recorded as attachments to the deed so that, unlike other mechanisms, they do not

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appear as separate liens during title examinations, opens the door to the possibility that the affordability restrictions will be overlooked. In fact, it is even possible that title examiners will thoroughly read the deed, but will stop when they reach the signature pages, unaware that a deed rider is also attached.<sup>31</sup> Some programs, such as HOME have tried to decrease the likelihood of such mistakes by including language on the first page of the deed, in large bold font, notifying examiners that a rider is attached.<sup>32</sup>

Nevertheless, although problems do arise, such occurrences are generally the exceptions to the rule. Furthermore, even if the restrictions are overlooked initially, they are usually discovered eventually. In fact, senior DHCD staff estimate that at least once or twice each year they receive calls from attorneys - at the closing table - who had just become aware that affordability restrictions were attached to the home their clients were about to sell.<sup>33</sup> In those cases, the sellers' attorneys likely neglected to conduct a thorough search and the restrictions were picked up by the buyers' attorneys at the last minute. If the proposed purchaser is income-eligible under the applicable program, the sale can proceed without extensive delay. However, in cases where the purchaser is not eligible, additional problems may arise. The fact that sellers are not able to retain proceeds in excess of the maximum allowable sales price should mean that they have no incentive to wait out the right of first refusal period. From their perspective, it should make no difference whether the purchaser is income-eligible or not. However, if a seller has signed a purchase and sales agreement with a purchaser and it is discovered that that purchaser cannot buy the home under the program, then the seller may try to drag out the process so that the home can be sold out of the program in order to avoid potential issues of liability.

Although there are no apparent cases where units were actually sold without the knowledge of the appropriate authority, and although mechanisms are in place to correct the problem if such events occur, many concede that once "the horse is out of the barn" it would be difficult to cure the default.<sup>34</sup> If units are actually sold without prior consent, the deed rider and its affordability restrictions would remain in place and title of the new owner would be clouded. However, although the applicable enforcement entity would have legal recourse to sue for any "windfall" profits the prior owner received from the sale, the unit would still effectively be lost.<sup>35</sup>

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<sup>31</sup> Harriet Moss, Counsel, DHCD (interviewed by author on March 29, 2001)

<sup>32</sup> *ibid* (she noted that the town of Weston has also used this method).

<sup>33</sup> Miryam Bobadilla, DHCD

<sup>34</sup> Clark Ziegler, Executive Director, MHP (interviewed by author on March 29, 2001)

<sup>35</sup> Miryam Bobadilla, DHCD

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However, if there is a secondary mortgage on record which references the deed rider, as is usually the case under HOP, HOME and HSF, the odds that the affordability restrictions will be overlooked are greatly reduced. In fact, there have been discussions on both the local and state levels of ways to create an instrument which would resemble a deed rider but which could be signed, notarized and recorded separately.<sup>36</sup> Attorneys in several communities are currently working on developing a way to do this. However, in the meantime, most programs in Massachusetts continue to use the deed rider as the instrument by which affordability restrictions are imposed.

### Components of Affordability Restrictions

Typically, every affordability restriction, regardless of form, will address the following:

- Lock-in Period: the time period during which the controls will apply, including possible extensions;
- Recapture Provisions: the manner in which subsidy funds, if provided, are repaid or forgiven;
- Resale Process: the procedure owners must follow if they want to sell or refinance their home;
- Maximum Resale Price/Eligible Purchaser Information: the formula for calculating the maximum resale price and maximum income limits for eligible purchasers;
- Use Restrictions: restrictions against certain uses such as renting and limitations on certain activities such as refinancing and other junior liens;
- Capital Improvements: to what extent, if any, capital improvements are allowed;
- Foreclosure Process: the rights, roles and responsibilities of all related parties in the event of foreclosure; and,
- Oversight and Enforcement Process: the processes by which compliance with the controls will be monitored, enforced, and remedied.

The way in which each component is drafted has far-reaching implications. The following sections provide detailed overviews of each feature, including a discussion of the broad practical and policy questions each raises, and specific examples of how each component is applied under different programs and in various communities.

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<sup>36</sup> Harriet Moss of DHCD, Judith Jacobson of MHP, and Laura Shufelt of CCLC all informed author that attorneys are currently working on this.



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## SECTION 2: LOCK-IN PERIODS

The terms of affordability controls generally vary according to the type and amount of subsidy provided. When only small amounts of subsidy are used, or when subsidy is provided only to homebuyers rather than the overall development, the affordability “lock-in period” may be only a few years.<sup>37</sup> However, when substantial subsidies, whether monetary or non-monetary, are provided to reduce the actual cost of development, much more restrictive conditions are commonly imposed.

### Chapter 40B and Lock-In Periods

In Massachusetts, most programs impose lock-in periods of sufficient length to qualify the units under Chapter 40B. In fact, communities have a special incentive to push for the longest affordability periods possible. As previously explained, any municipality in which less than 10% of its overall year-round housing stock is certified as affordable must consider applications for comprehensive permits and cannot deny projects without substantiated good cause.\* In order to know which communities have met their “Ten Percent Goal,” DHCD tracks the number of units in each of the state’s 351 cities and towns which qualify under 40B as affordable housing. The “Affordable Housing Inventory,” made available to the public on the web, indicates the total number of year-round housing units, the total number of qualified affordable units, and the percentage of those units to the total stock for each community.<sup>38</sup>

Generally, a unit will remain in the inventory only for as long as it remains affordable. When terms expire or when units are lost to the market, that loss will be reflected in a decrease in that community’s 40B percentage. The exception to this rule are HOP units which remain in the count for the entire length of the intended affordability period even if they are lost to the market before their terms expire.<sup>39</sup> That policy was intended to reward communities for having made the concessions necessary to build the projects in the first place despite the fact that units may be lost over time. However, it also served to remove the incentive for communities to remain seriously concerned that the restrictions are monitored over time. Programs developed after HOP, and which place greater responsibility on communities, reflect changed policy whereby only currently affordable units are included in the current 40B inventory.

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<sup>37</sup> For instance, under DHCD’s Home-Buyer Assistance program, recipients of subsidies are only required to comply with restrictions for 5 years. \* communities which have reached their 10% may also choose to consider comprehensive permit applications

<sup>38</sup> A detailed discussion of this inventory, how it is updated, and current statistics is included in [Appendix IV](#).

<sup>39</sup> Miryam Bobadilla, DHCD and “Notes to Subsidized Housing Inventory – Eligibility Summary”

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### Minimum Lock-In Periods

However, Chapter 40B is silent on what constitutes the minimum time a unit must remain restricted in order to be included in the inventory. Over the years, the meaning of “long term” has become commonly understood to mean at least 15 years. In 1999, in issuing its Stuborn decision, the Housing Appeals Committee made this minimum period official as part of its determination of whether the Federal Home Loan Bank’s NEF program terms would qualify under 40B. HAC noted that although the statute does not indicate a specific minimum, “it has always been understood that there must be a significant public benefit” in exchange for the public land use concessions made when granting a comprehensive permit and that restrictions which run for terms of “less than 15 years are [therefore] not acceptable.”<sup>40</sup> Although some programs and communities impose lock-in periods for restrictions that run much longer, there has been debate over whether restrictions can be perpetual.

### Maximum Lock-In Periods

The lock-in period of restrictions can not be so long as to make the project financially infeasible for the developer. However, this consideration is only really relevant to rental projects where the continuation of affordability restrictions directly impacts project feasibility by limiting the profit a developer/owner will earn throughout the lock-in period. In the case of homeownership, as long as sufficient sales proceeds are obtained at the initial sale of the units, the length of affordability controls will have no effect on developers’ profit or the feasibility of the project. In fact, in March 2000, the Norfolk County Superior Court issued what has become known as the “Wellesley Decision” which determined that, in the absence of a specified expiration date, affordability restrictions must effectively remain in place in perpetuity.<sup>41</sup> Although the project involved in that particular case was a rental development, the decision is being applied equally to ownership projects. As a result, most owners of units developed in compliance with 40B, must adhere to all affordability controls for no less than fifteen years and possible forever.

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<sup>40</sup> Stuborn Ltd. Partnership v. Barnstable Board of Appeals

<sup>41</sup> The case was brought by the Town of Wellesley (in conjunction with the town’s zoning board) against Ardmore Apartments Limited Partnership, a for-profit corporation. Ardmore believed that all affordability restrictions on the mixed-income rental property it had acquired in 1996 had been wiped out when its MHFA mortgage was repaid. The project had been developed using a comprehensive permit and received SHARP subsidies from MHFA; the comprehensive permit did not specify a time limit to its affordability restrictions. The town argued that any affordability restrictions which were included as part of MHFA financing were on top of the existing restrictions in place under the comprehensive permit, and that the fact that the comprehensive permit noted no expiration date for affordability meant that the restrictions must be kept in perpetuity. The court agreed, relying on the absence of term definitions in Chapter 40B and noting that a “statute must be interpreted according to the intent of the Legislature” (citing *From Mellor v Berman* 1983 Mass), that the legislature enacted the “Anti-Snob Zoning Act both to provide relief from exclusionary zoning practices and to address the need for low and moderate income housing” and that the fact that the statute is silent on the matter of terms means that that the court cannot set an expiration date itself.

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### Program Lock-in Periods

Under HOME, HOP, LIP and NEF, affordability restrictions must run for at least 15 years for new construction and for at least five years for substantial rehabilitation. Under DHCD's Housing Stabilization Fund (HSF), restrictions must run for 30 years. Most projects developed under City of Boston programs, oftentimes in conjunction with other DHCD programs, are subject to even longer lock-in periods of at least 30 years with options for the City to renew for additional 20 year terms. Furthermore, an increasing number of communities in Massachusetts are requiring that units remain restricted in perpetuity. Towns which gave up valuable concessions in the form of relaxed zoning or donated land frequently impose stricter controls than required under 40B. While for some communities, the incentive to maintain their affordable housing is simply to retain their 40B affordable housing count, the incentive for many municipalities is to make good on their public duty to preserve the housing which local resources helped build.

### Implications of Lock-In Periods

Aside from the administrative burdens of monitoring affordability restrictions over long periods of time, there are few reasons why the affordability lock-in period should not be as long as possible. However, there may be circumstances which justify prematurely terminating the restrictions. Homebuyers cannot be expected to accept long term conditions on ownership unless they are in some way benefiting. When the price of market rate units falls to a level equal to that of the restricted units, as has happened in a number of distressed communities in Massachusetts, it is unreasonable to expect that those units will remain in the program at resale. In fact, some owners have found that the market value of their units is actually lower than what they paid to acquire the home. Therefore, even if the anticipated term of restrictions is thirty years or longer, there may be instances where, at the discretion of the monitoring agency, the lock-in period is waived. This is one of the four ways in which units can be lost from the program.

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### **SECTION 3: RECAPTURE PROVISIONS**

Whenever subsidy funds are provided to the homebuyer, it is customary for affordability restrictions to include a recapture provision if the owner chooses to sell before the end of the lock-in period. However, the imposition of recapture provisions does not also necessitate the imposition of resale provisions. As noted in previous chapters, stricter controls on the future use of a unit are generally only imposed when assistance is provided to reduce the upfront costs of production rather than the homebuyer's costs of acquisition. As a result, there are many programs which impose restrictions aimed only at recapturing unused subsidy funds and do not address the long term affordability of the unit. For instance, under MHP's Soft Second Loan Program (SSLP), recipients of subsidies are subject to recapture provisions but are not limited by resale provisions. Furthermore, although beneficiaries of DHCD's Home-Buyer Assistance funds are subject to resale provisions, the lock-in period is only five years.\*

#### Implications of Recapture Provisions

While programs which do not include resale controls will not be addressed in depth in this report, attention will be given to programs, such as HOP, which impose both resale and recapture provisions. This is because subsidy funds are usually secured by a junior mortgage held by the same entity responsible for monitoring the resale provisions. The same events which impact broader affordability restrictions will likely also trigger the recapture provisions outlined in the second mortgage note. Therefore, there is twice the likelihood that the proper entity will be made aware of any event that might impact the continued effectiveness of the affordability controls.

However, even when the entity holding the second mortgage is not directly involved with monitoring the affordability restrictions, the presence of a junior lien may help prevent restrictions from being overlooked. For instance, in one case, a community only learned that an owner of a LIP unit was refinancing due to the fact that the owner had also received SSLP subsidies.<sup>42</sup> In order to refinance, the owner had to repay outstanding SSLP subsidies. Fortunately, despite the fact that the lender had not noticed the affordability restrictions limiting refinancing, the entity charged with overseeing the Soft Second loans thought to inform the community that a refinancing was occurring. As a result, the town was able to step in and address the problem. Later sections will explain why it is important that owners receive prior approval before they refinance and will examine this case in greater detail.

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\* In fact, according to Jo Ann McGuirk of DHCD, the decision to impose any resale controls was apparently made in order to comply with HUD regulations regarding the use of HOME funds and does not necessarily indicate that DHCD believes such controls are appropriate when subsidy is only used to offset downpayment and closing costs.

<sup>42</sup> Story told by Laura Shufelt regarding a unit in Barnstable (interview with author on March 28, 2001)

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#### **SECTION 4: RESALE PROCESS**

To a large extent, the teeth of an affordability restriction are in its resale provisions. The deed rider will lay out the exact procedure which must be followed when an owner wants to sell a restricted unit. Although this process will vary among projects and programs, there are certain characteristics which are universal to all resale provisions. There must be at least one entity responsible for overseeing the process. Typically, this entity will also enjoy the right of first refusal to either purchase the unit itself, to locate an eligible purchaser, or to take both actions. In Massachusetts, depending on the program, this “entity” may be a local non-profit, a municipality, DHCD, a monitoring agent, or the even original developer or project sponsor. The resale process will prescribe a specific procedure by which the intentions of the owner and of the entity are communicated. In many cases, copies of notifications must also be sent to other interested parties, some of which may also hold rights of second refusal. However, even when a broader notification is not mandated by the terms of the resale provisions, it is often done so informally in an effort to maximize the number of people working to find an eligible purchaser and thereby protect the unit’s affordability.

In most cases, the ability for an entity (or entities) to exercise the right of first refusal expires after a predefined period of time. After the end of this period, the owner may sell to any family, at any price, at any time. However, the owner is usually not allowed to retain the additional proceeds which result from selling the unit at its market price. The monitoring agency will require that all proceeds in excess of the maximum allowable sales prices be returned for use on other affordable housing projects. To ensure that this procedure is followed, all affordability restrictions will remain in place until all provisions are satisfied. In other words, even if a home is sold out of the program to a market rate purchaser, that unit will be subject to all of the affordability restrictions in place under the prior owner until the monitoring agency formally releases control. The release of affordability restrictions is accomplished through the issuance of a “compliance certificate.”

The following sections will outline in greater detail the specific actions required under various programs’ resale provisions. However, in general terms, the process proceeds according to the following path:

- 1) Owner notifies the “entity” of his or her intention to sell;
- 2) The entity, within a predefined time period, provides a written response to the owner. In most cases, this response starts the clock on the time allowed to find an eligible purchaser. The notice will inform the seller whether the “entity” intends to exercise its right of first refusal to purchase

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the unit itself or whether it will proceed to locate an eligible purchaser. The notice should also include the calculation of the maximum allowable resale price (MSP) and the maximum income of an eligible purchaser.

- 3) If the entity does not purchase the unit itself, one or many entities (including the seller) will market the unit during the predefined time allotted. Potential purchasers will be screened to ensure eligibility with program guidelines.
- 4) If an eligible purchaser is found during the allowed time period – typically 90 days from the response notice – the closing will occur and new restrictions will be put in place for the new owner. The seller, once any unused subsidies are repaid, will be free from the restrictions.
- 5) In some cases, a second entity will have a right of second refusal. This may or may not be implemented.
- 6) However, if no entity exercises its rights to purchase the unit and no eligible purchaser is found within the time period allowed, the seller may (in most cases) sell their home at any price to households of any income. When units are sold out of the program, it is usually required that any sales proceeds in excess of the MSP be returned to the entity. Upon receipt of these proceeds, and as long as the seller has not violated any terms of the affordability agreement, all affordability restrictions become null and void and the unit becomes market-rate.

Although the basic process remains the same, each program uses a different variation. Furthermore, there may be variations within programs depending on where the project is located and who is responsible for overseeing the resale process. Later sections will describe the process by which affordability restrictions are implemented, monitored and enforced, including the way in which the resale process is handled, under HOP, LIP, NEF, HOME, and HSF and in several selected communities.

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## **SECTION 5: MAXIMUM SALES PRICE FORMULAE**

The way in which the maximum sales price (MSP) is calculated is the single most important component of affordability restrictions. Two of the four scenarios by which affordable units can be sold out of the program occur when either the value of the MSP and its restrictions cannot be supported by the market or when the amount of the MSP is greater than what income-eligible purchasers can afford to pay. A program can set limits on future purchasers' incomes, but if the MSP is greater than what "eligible purchasers" can afford, those units will be lost to the market. Likewise, when maximum sales prices of units are equal to, or greater than, the prices at which similar homes are selling for without restrictions, those units too may become market-rate.

As an owner of an affordable unit should not be expected to agree to sell for any less than the applicable MSP, and if the numbers work out so that it is impossible to ever find an income-eligible purchaser, let alone to do so within the right of first refusal period, the owner will be allowed to sell out of the program to a market rate purchaser. Following chapters will provide specific examples of cases where such situations have arisen and will examine ways by which the problem can be addressed. However, this chapter will simply lay out the types of MSP formulae in use in Massachusetts.

It should be made clear that the MSP only applies to the resale price of the home. The original purchase price is usually set by the applicable program and does not vary substantially over time. For instance, under LIP, for the last six years, there have only been two initial price limits: \$94,500 for homes in the Boston Metropolitan Area and \$80,500 for the remainder of the state.<sup>43</sup> Although most programs, including LIP, have expanded the way in which initial purchase prices are established, the formulae do not necessarily relate to the way in which the resale prices are calculated.

The two primary pieces of the MSP are (1) the "base price" amount, which may be tied to the original purchase price, the original appraised value, the new appraised value, or other factors; and (2) other possible amounts which allow the seller to recapture such things as sales costs, original downpayments, capital improvement expenditures, and appreciation. This chapter will only outline the way in which the base amounts are calculated. Later sections will explain exactly how the full MSP is developed under different programs and in different communities.

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<sup>43</sup> "Local Initiative Program (LIP) Guidelines," Page 11. Figures shown are for 3-BR units. Prices for 1-BR units were \$89,000 and \$75,000.

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Although the methods used under different programs vary and may be further modified by individual communities or developers, there are essentially three types of maximum resale price formulae in Massachusetts. For simplicity sake, they will be referred to as the “Discount Rate Model”, the “Fixed-Rate Appreciation Model” and the “CPI-Based Appreciation Model.” This report will also recommend the use of a new model which will be referred to as the “Purchaser-Based Model.” \*

**Discount Rate Model**

Under this model, the MSP is based on the new appraised value of the home, reduced by a certain discount rate. The discount rate, recorded in the deed rider as part of the affordability restrictions, is based on the percentage difference of the original affordable purchase price to the market appraised value of the home at the time of original purchase. For example, under the following scenario, the discount rate would be 42%.

Original Purchase Price:	\$75,000
Original Appraised Value:	\$180,000
Discount Rate:	42% (75,000 divided by 180,000)
Reduction:	58% (100% less 42%)

Therefore, if the unit is appraising at \$200,000 at the time of resale, the base price component of the MSP before other allowable costs are added would be \$83,334, as shown below:

New Appraised Value:	\$200,000
Maximum Sales Price:	\$83,334 (200,000 multiplied by 42%)

It should be noted that the discount rate and the reduction rate are often confused. Some people erroneously reverse the terms and refer to the reduction rate when they mean the discount rate. In fact, there have been cases where the language was reversed in the deed rider so that the reduction, and not the discount, rate has actually been recorded in the deeds of some owners.<sup>44</sup> This would obviously impact the legally allowable resale price. In the previous example, if the reduction rate was used, the base MSP would be increased to \$116,667. However, as one senior DHCD staff member points out, the discount rate is rarely less than 50%, and, as the following example demonstrates, it is usually to the owner’s benefit to agree for the mistake to be corrected at resale as the base MSP would be increased.<sup>45</sup> In this case from \$50,000 to \$150,000:

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\* Tables of actual resales and prices using different methods are included in Appendix II.

<sup>44</sup> Alex Whiteside, Chief Counsel, DHCD (interviewed by author on March 29, 2001)

<sup>45</sup> *ibid.*



Original Purchase Price:	\$75,000
Original Appraised Value:	\$100,000
Discount Rate:	75%
Reduction:	25%
New Appraised Value:	\$200,000
Maximum Sales Price:	\$150,000 (200,000 multiplied by 75%)
MSP based on reduction:	\$50,000 (200,000 multiplied by 25%)

Implications of the Discount Rate Model

Those who advocate the use of the Discount Rate Model argue that it allows the same appreciation benefits to accrue to owners of affordable units as are enjoyed by their market-rate neighbors. While it may be the fairest method from a pure equity building perspective, it may also fail to serve the purpose of limiting the resale price to a level which is affordable to low and moderate income families. Temporary slumps in the real estate market present at the time of purchase will lead to discount rates as high as 100%. If the market has picked up by the time the unit is up for resale, the base MSP for that unit may be the full appraised value, an amount which is frequently no longer affordable. Furthermore, even if the reduction rate is substantially higher than zero, units located in communities which experience high levels of appreciation may become unaffordable at resale.

The two programs responsible for creating the largest number of restricted units, HOP and LIP, employ the Discount Rate Model. In most cases, NEF projects are using the Discount Rate model as well. The formulae have been especially problematic for HOP units given the market conditions which were in place when many developments were built. In fact, some developers in the late 1980s and early 1990s discovered that, by the time the units were ready for sale, there was very little difference between the affordable prices set by the program and the market prices obtainable at the time. As a result, some affordable homes were sold at little or no discount. In order to compensate for the fact that these purchasers were not being given an extraordinary advantage at purchase, DHCD staff occasionally increased the maximum allowable price those owners could obtain at resale. For a few years, the unwritten policy was that whenever the reduction rate was less than 15% (i.e. the discount rate was equal to or greater than 85%), DHCD staff could decide, on a case by cases basis, to waive the discount rate altogether.<sup>46</sup> Somewhere along the way, the unwritten policy became standardized and recorded with the deeds.<sup>47</sup> Although DHCD has corrected this and no longer lowers the reduction rate under any circumstances, the repercussions of this policy have added to the number of units being lost to the market. The following example may help highlight the problem:

<sup>46</sup> Catherine Peagler, Housing Specialist, DHCD (interviewed by author on March 29, 2001) and Clark Ziegler, MHP

<sup>47</sup> Alexander Whiteside, DHCD

Original Purchase Price (does not vary over time):	\$85,000
Original Appraised Value:	\$100,000
Discount Rate:	85%
New Appraised Value at time of potential resale:	\$150,000
MSP if no discount rate used:	\$150,000
(MSP when discount rate used:	\$127,500)

Although the “15% rule” exacerbated the problems, such cases have occurred naturally as well. Other examples of how the discount rate, combined with certain market conditions, have made the MSP inaccessible to low and moderate income buyers will be discussed in later chapters. It should be noted that DHCD is in the process of reviewing ways to write-down the purchase prices in such cases so that these units will not be lost. This will also be discussed later in the analysis.

**Fixed-Rate Appreciation Model**

Unlike the Discount Rate method, the Fixed-Rate Appreciation Model is not vulnerable to market changes. The MSP is calculated simply by increasing the original purchase price amount by a pre-established, annually compounded rate. Both the City of Boston and the Town of Lincoln have elected to use this methodology to set their maximum allowable resale prices. In Boston, appreciation accrues at an annually compounded rate of 5%, while in Lincoln appreciation accrues at a substantially less generous 3% per annum. Therefore, using the same example as above, and assuming that the purchase was made in 1989 and that the unit was sold in 1998, the base MSPs would be\* :

<b>Boston base MSP</b>	
Purchase Price (1989):	\$75,000
MSP (1998):	\$116,349 (5% compounded over 9 years)
<b>Lincoln base MSP</b>	
Purchase Price (1989):	\$75,000
MSP (1998):	\$97,857 (3% compounded over 9 years)

**Implications of the Fixed-Rate Appreciation Model**

One advantage of this method is its simplicity and ease of use. While an owner subject to the Discount Rate Model must obtain a formal appraisal to determine the base MSP, any owner at any time will be able to calculate the potential maximum resale value of their home under the Fixed-Rate Model. Furthermore, as noted, the fixed-rate formula is not vulnerable to temporary booms and busts in the real estate market. However, at the same time, the use of an arbitrary appreciation factor may lead to increases in MSPs

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\* Administrators may choose to pro-rate the figures, as is done in Boston.

which are out of step with real increases in median incomes and which may thus lead to units being lost from the program. Furthermore, as noted, none of the examples shown in this chapter include the other possible components of the MSP such as capital improvements and sales expenses. For instance, in the case of Boston, the seller may increase the MSP by an additional 6% to cover the costs related to the sale.

The fixed-rate model is not widely used. However, DHCD Private Housing staff have expressed interest in revising LIP program restrictions to set the MSP at the lower of either the price resulting from the Discount Rate method or that which results from the Fixed Rate method using a 3% annually compounded rate.<sup>48</sup>

### **CPI-Based Appreciation Model**

The third methodology for calculating the MSP differs from the Fixed-Rate Method by basing the appreciation factor on changes in the Consumer Price Index, rather than an arbitrarily set rate. The tables on the following page provide the CPI indices from 1988 through 2000. The percentages shown represent the index increase over the previous year. While the precise way in which the CPI is used to calculate the base MSP will vary among programs and projects, the concept is fairly straightforward. The percent change in CPI will be applied to a portion, or all, of the investment made by the owner in the home. This investment may include downpayments, capital improvements, and financing costs. The base MSP would then be calculated by adding the investment amount and the appreciation factor to the original purchase price.

*Consumer Price Index - Urban Wage Earners and Clerical Workers  
(All items, not seasonally adjusted, Base Period: 1982-84=100)*

U.S. City Average		
1988	117.0	
1989	122.6	4.79%
1990	129.0	5.22%
1991	134.3	4.11%
1992	138.2	2.90%
1993	142.1	2.82%
1994	145.6	2.46%
1995	149.8	2.88%
1996	154.1	2.87%
1997	157.6	2.27%
1998	159.7	1.33%
1999	163.2	2.19%
2000	168.9	3.49%

Northeast Average		
1988	120.6	
1989	127.4	5.64%
1990	134.9	5.89%
1991	140.8	4.37%
1992	145.2	3.12%
1993	149.2	2.75%
1994	152.7	2.35%
1995	156.6	2.55%
1996	161.1	2.87%
1997	164.8	2.30%
1998	166.9	1.27%
1999	170.4	2.10%
2000	176.3	3.46%

<sup>48</sup> Miryam Bobadilla, DHCD

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Using the same example provided above, a base MSP using national CPI averages might be as follows:

Purchase Price (1989):	\$75,000
CPI Index (1989):	122.6
CPI Index (1998):	159.7
Percentage Change:	30.26%
Total investment:	\$8,000
Allowable Appreciation:	\$2,420 (8000 multiplied by .3026)
MSP (1998):	<b>\$85,420</b> (75,000 + 8,000 + 2,420)

#### Implications of the CPI-based Appreciation Model

Used under HOME and HSF, the CPI-based Appreciation model may result in MSPs which are greater or lower than those of the other models. It is not possible to draw direct comparisons without knowing what other expenses are allowed to be recouped under programs which use other models. However, while the average annual rate of appreciation in the example above is only approximately 1.5% per year, if the total recouped investment amount was much higher, the average appreciation rate would be comparable to that used in Boston. For example, in the case below, the average annual appreciation rate would be 4.82%:

Purchase Price (1989):	\$75,000
CPI Change:	30.26%
Total investment:	\$25,000
Allowable Appreciation:	\$7,565 (25000 multiplied by .3026)
MSP (1998):	<b>\$107,565</b> (75,000 + 25,000 + 7,565)

Some programs use more specific housing-related indices to ensure that the MSPs are in step with actual changes in housing costs.

#### Purchaser-Based Model

It is the recommendation of this analysis that a fourth methodology be used in place of the other three as a means of ensuring that the homes will be guaranteed to remain affordable to low and moderate income families at the time of resale. The Purchaser-Based Method would require that the base MSP be set at exactly what a family earning 75% of the median area income could afford given prevailing interest rates, median income figures, and available financing terms. For clarity's sake, the examples shown here do not account for other possible costs which would be imbedded in the MSP. In practice, the formula may need to be expanded in order to provide a means by which the owner can recoup certain allowable costs.

For instance, in 2000, the HUD-defined median income for a family of four living in Boston was \$65,500. Therefore, a family earning 75% of the median income should spend no more than \$1,228 per month on housing-related costs:

Median Income:	\$65,500
Median "Affordable" Income:	\$49,125 (65,500 multiplied by .75)
Allowable Annual Costs:	\$14,737 (49,125 multiplied by .30)
Allowable Monthly Costs:	\$1,228 (14,737 divided by 12)

The total MSP must set so as to ensure that the resulting monthly costs to the new purchaser are equal to or less than \$1,228. Assuming that prevailing interest rates on mortgage loans are 8%, that loan terms are fully amortized over 30 years, that downpayments are 5%, that insurance payments and condo fees total approximately \$50 per month, and using the most recent residential tax rate in place in Boston, the monthly expenses associated with a \$150,000 home in Boston would be as follows:

Purchase Price:	\$150,000
Less Downpayment:	\$142,500 (150,000 multiplied by .95)
Monthly P&I payment:	\$1,046 (based on 30 year term at 8%)
Monthly insurance & fees:	\$50
Tax Rate in Boston:	13.44%
Monthly tax expenses:	\$168 (150,000 divided by 1000, multiplied by 13.44, divided by 12)
Total Monthly Costs:	\$1,264

As the total monthly costs associated with a \$150,000 purchase price exceed the median monthly income limit of \$1,228, the MSP must be set lower than \$150,000. By using a financial calculator or spreadsheet program, the maximum allowable resale price can be exactly calculated. In this case, it would be \$145,598. While this amount may seem high, especially to those who are unfamiliar with the current real estate market in Massachusetts, it is in fact exactly what is affordable to moderate income families in Boston. Furthermore, if the tax rates increased or the financing terms became less affordable at the actual time of the resale, the MSP would be substantially lower.\*

Programs may opt to set the MSP at a level affordable to lower income purchasers. However, as the formula contains no mechanism for an automatic inclusion of appreciation, it is recommended that sufficient consideration be given to the impact of basing the MSP on what is affordable to families earning less than 75% of the area median income. For example, in Boston, families earning 50% of the median income would have only \$819 available for monthly housing-related costs. Therefore, the MSP

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\* Appendix III provides examples of what the MSPs could be in each of the states 351 cities and towns.

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would have to be no greater than \$95,000. Depending on what the original owner paid for the home, this may or may not be reasonable.

### Implications of the Purchaser-Based Method

The Purchaser-Based Method is thus sensitive to changes in prevailing financing terms over the years and variances in residential tax rates throughout communities across the state. By “backing into” the maximum allowable resale price, the efficacy of the resale restrictions is not vulnerable to variances in the real estate market which are not in step with changes in median income rates. However, changes in median incomes are not completely dislocated from changes in real estate appreciation.<sup>49</sup> As a result, despite the absence of an automatic appreciation factor, the Purchaser-Based Model should provide sellers a reasonable return on their investment.

Although there is no evidence that this method has actually yet been employed to calculate resale prices, DHCD is currently revising its LIP program documents to require that this method be used to calculate the original purchase prices. Furthermore, Mr. Engler has recommended that purchase prices under NEF use this formula as well, and one project on the Cape recently proposed that both original and resale prices be based on the Purchaser-Based model although the proposal has yet to be approved.<sup>50</sup>

The Purchaser-Based Model is recommended because it will ensure that, at resale, homes will be marketed at exactly the price a lower income family can afford. However, there may be no “right” method for all projects in all communities and given market conditions and initial sales prices, other methods may actually result in resale prices which are lower than the “backed-in” price. Appendix III provides examples of the prices which result under each of the different methods in all 351 cities and towns in Massachusetts.

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<sup>49</sup> Graphs which show this correlation are included in Appendices V and VI.

<sup>50</sup> Laura Shufelt, speaking of pending Stuborn project in Barnstable.

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## SECTION 6: REFINANCING

All affordability restrictions must include limitations on the degree to which the ownership units may be refinanced. Refinancing provisions are aimed at protecting both the owner and the lender, as well as protecting the affordability of the unit. Typically, the amount lenders are willing to refinance is based on a percentage of the appraised value of the home. However, when a home is subject to resale provisions, that appraisal-based amount may easily exceed the maximum amount recoverable at resale. Therefore, the actual collateral value of the home cannot exceed its maximum resale value. As a result, refinancing is usually limited to 95% of the estimated MSP and requires the prior written consent of DHCD, in the case of HOP, HOME or HSF units, and of the municipality, in the case of LIP and NEF units.

The issue of whether entities charged with approving proposed refinancing should consider as part of their decision-making process the reasons for which the refinancing is being sought, is open to debate. On one hand, owners who plan to use the funds unwisely may be putting themselves at financial risk and could thus jeopardize the security of their homes and the attached affordability restrictions. On the other hand, it is questionable whether entities should have the authority to make moralizing judgments on the owners' intentions. At one point, DHCD did in fact base the decision to approve refinancing on whether or not the intended use of the funds was deemed acceptable by state staff. For instance, an owner who wanted to pay off credit card bills might have been denied while an owner who wanted to pay for college tuition or medical treatments would have been approved. Although DHCD quickly abandoned this policy, recognizing that to "import a value judgment on the intention of the owner"<sup>51</sup> overstepped its reasonable authority, not doing so may in fact be putting the units at risk of foreclosure. Nevertheless, while it may not be reasonable for the entity to approve the reasons for refinancing, it is vitally important that they are notified of the potential occurrence of refinancing in order to ensure that the monies taken out do not exceed the maximum allowable resale price. Given the robustness of the current real estate market, refinancing is occurring at high levels. However, if the market falls out and banks do not abide by the terms of the restrictions, they and the borrowers could be in trouble.<sup>52</sup>

Given the fact that lenders must receive permission to refinance from all other mortgagees of the property, it is nearly guaranteed that that DHCD, as a holder of secondary mortgages, will be notified when the refinancing of HOP, HOME or HSF units is proposed. However, in cases where the state or

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<sup>51</sup> Harriet Moss, DHCD Counsel

<sup>52</sup> Alexander Whiteside, DHCD Chief Counsel

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municipality do not hold junior mortgages, notification will depend on whether the lender thoroughly reads the deed and its attached rider.

In fact, a study of affordable units located in communities on Cape Cod revealed that while HOP units had been refinanced in compliance with program terms, there were many instances in which LIP units had been refinanced without the knowledge of either the municipality or DHCD. More alarmingly, some of the units had been refinanced for over their maximum sales prices. In one instance, the Town of Barnstable began legal proceedings against a lender, based out of Salt Lake City, to cure this violation of the legally imposed deed restrictions. In that case, the maximum *allowable* resale price of the home was \$40,000 less than the amount for which the lender had agreed to refinance based on the estimated *obtainable* resale value of the home. Although the situation was quickly resolved when the bank agreed to limit its collateral value of the home to an amount equal to the MSP, the owner had to put up her own personal assets as collateral for the difference. Had the bank been reluctant to settle the suit, the town was prepared to take actions which would have made the case as public as possible in an effort to prevent further transgressions by lenders in the future.

The Cape Cod report will be discussed in greater detail in the following section, as the impetus for the study was the discovery of a pending LIP foreclosure. However, its findings provide credence to the belief that deed riders alone may not be sufficient to ensure compliance with affordability restrictions.



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## SECTION 7: FORECLOSURE

The event of foreclosure almost always wipes out all affordability restrictions on a home. When designing affordable housing programs, a middle ground needs to be found where both the security of the end-loan financing and the maintenance of the affordability restrictions can be protected. Although affordability restrictions have priority over all other liens, a compromise was made by DHCD to subordinate the restrictions during events of foreclosure. The decision was made after thorough discussions with MHFA, local lenders, and Fannie Mae revealed that, without subordination, end-loans would not be eligible for purchase on the secondary market and would probably be made at less favorable terms for the borrower.

Therefore, properly designed affordability restrictions should contain mechanisms that will provide opportunities for interested parties to step in and resolve problems before foreclosure becomes inevitable. Foreclosure prevention may involve measures to help owners become current on their mortgage loan payments or may involve the assumption of the mortgage payments by interested parties in lieu of foreclosure by the lender. In the latter case, a local, state, or nonprofit agency would take title to the property, and charge rent to the owners until such time as they could either purchase the home back or be relocated to another housing situation. In both cases, the success of foreclosure prevention often depends on how early the intervention occurs in the process.

### The Need for Timely Intervention

As mentioned, the most common cause of foreclosure is failure to make timely interest and principal payments. Depending on the lender and the nature of default, the foreclosure process may move quickly or may stay open for many months.<sup>53</sup> By the time foreclosure proceedings actually begin, it is likely that the homeowner will have accumulated substantial late fees on top of several months' outstanding payments. Therefore, the best chance of preventing foreclosure is to intervene at the earliest opportunity before it becomes too expensive to cure the default. This can be accomplished by including language in the deed restriction requiring the lender to provide sufficient prior notice of its intent to foreclose to all other interested parties, including those monitoring the restrictions.

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<sup>53</sup> In Massachusetts, the "Soldiers and Sailors" act imposes a 3-6 week waiting period following a public hearing before a foreclosure date can be set. The act was passed during World War II to stop foreclosures on anyone in active military service.

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Losing an affordable unit through foreclosure is unfortunate for everyone involved - the homeowner, the lender, the community, and the subsidy providers. Although a number of communities have systems in place to save units from foreclosure, these systems can only be put to use if the communities receive prior notification. Once a foreclosure auction is underway, the lender has an obligation to sell the unit to the highest bidder so that it can recoup its outstanding debt and pay off other existing liens. As previously noted, proceeds from foreclosure are distributed in order of priority and any monies remaining after all mortgage liens are paid off are returned to the owner.

Although, in an effort to salvage some benefit from foreclosure, some affordability restrictions have been drafted to require that any surpluses be made available to the municipality to support other affordable housing initiatives, it is not clear to what extent this is legally enforceable. Units subject to restrictions which do not contain such provisions will be a total loss at foreclosure. A community's only option at that point is to get in line at the auction and hope that they are the highest bidder. Therefore, paths of communication should be fostered among the parties concerned with affordability restrictions so that potential problems can be resolved early on and to everyone's advantage.

#### The Need for Advanced Notification

This advance notification, in theory, should allow action to take place on the local or state level to save the unit from being lost through foreclosure. However, the foreclosing entity is only legally required to notify other mortgagees of the property and to publish foreclosure notices for three weeks in widely circulated newspapers. Unless the notification process is also outlined in the terms of a recorded mortgage lien, collection attorneys may fail to notice, or to abide by, the process stipulated in the deed rider. As a result, some communities have only learned of impending foreclosures through notices in the newspaper.

In fact, it was just such a notice that prompted communities on Cape Cod to undertake the detailed investigation of the status of their affordable housing stock mentioned in the previous chapter. The Town of Barnstable discovered through a notice in a local paper that one of its LIP units was at risk of foreclosure.<sup>54</sup> Although the town was able to regain control of the unit, town officials became concerned that other such notices may have been missed and that other units may already have been lost.<sup>55</sup> The County, through the Cape Cod Commission, retained a consultant to research the status of each

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<sup>54</sup> Information provided by Laura Shufelt of the Cape Cod Loan Consortium (CCLC)

<sup>55</sup> Although the unit was saved, the town was unable to stop the foreclosure process and was forced to purchase the unit, for \$30,000 over the MSP, at the foreclosure auction. Had the town not been the highest bidder, or had the town not had sufficient funds to repurchase the home, the unit would have been lost.

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subsidized unit in all 15 towns on the Cape. Although the consultant only managed to complete approximately three-quarters of the project, his research revealed a trend which should be alarming for housing activists in Massachusetts.

Although the title examinations revealed that the HOP units were still intact, it was discovered that a large percentage of LIP units had been refinanced without prior permission.<sup>56</sup> It would appear that the existence of state-held second mortgages on HOP units had ensured that lenders had been made aware of the attached affordability restrictions, either because the mortgage notes referenced the deed riders or because the lender was legally obliged to inform DHCD of impending action and was informed by DHCD that restrictions were in place. However, in the case of the LIP units, where there are usually no secondary mortgage liens, lenders apparently did not read the deed riders and thus did not abide by the conditions of the legally imposed affordability restrictions. Although the Cape activists were relieved that they had not missed other foreclosures and that the HOP units appeared to be secure, there was a realization that if the LIP units had been refinanced without their knowledge and in violation of the affordability restrictions, other more serious events could occur, such as foreclosure, which they might not learn of until it was too late. Furthermore, by the time a notice is published, the situation may have become too costly to resolve.

#### Lender Discretion

As discussed earlier, lenders have discretion when deciding whether or not foreclosure proceedings should be initiated and will generally opt to delay foreclosure until all other options have been exhausted. Given the time and cost involved with foreclosure, lenders will often be receptive to efforts by state and local officials to help cure defaults and prevent foreclosure. However, it should not be assumed that lenders are only concerned about the costs of foreclosure to the bank. Many lenders are also genuinely interested in protecting the affordability of the units and make efforts to work with interested parties to ensure that the affordability restrictions remain in place. This is particularly true in the case of many HOP and LIP units, where the lender holding the first mortgage, the Massachusetts Housing Finance Agency, has a public purpose duty to try to protect the units' affordability.

One way to impress upon the lender the importance of the restrictions – and the fact that the restrictions exist – is for municipalities and interested parties to foster good working relationships with the

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<sup>56</sup> Laura Shufelt, CCLC

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individuals at the bank overseeing the loans. Although such relationships clearly exist between the state's two housing agencies, DHCD and MHFA, they have also emerged among private banks. For instance, almost every bank on Cape Cod participates in the Cape Cod Loan Consortium, an association which helps support affordable housing initiatives. Therefore, communication between local banks and municipalities is made administratively easy. As a result, banks on the Cape are both aware of the restrictions and of the prescribed processes and work closely with municipalities and local housing activists to resolve issues which could jeopardize the security of the restrictions. A less formal though equally effective system is in place in Boston where former City employees have left to work at local banks and former private loan officers have come to work for the City.<sup>57</sup> As a result, those charged with monitoring the units at the city level will have better opportunities to negotiate favorable outcomes with their former colleagues at the bank.

However, as the group which originates loans is rarely the same group performing portfolio management, the fact that some bank employees are concerned with protecting a unit's affordability does not guarantee that that concern will be shared equally by those in the banks' collections department. Surprisingly, this has unfortunately become true in the case of MHFA. Interviews with a number of local and state officials revealed that the Massachusetts Housing Finance Agency, the holder of the mortgages of many affordable homes, had initiated foreclosure proceedings on LIP units without providing any prior notification to the entity with rights of first refusal. Until MHFA actually has ownership control, which does not occur until the foreclosure auction actually begins, MHFA believes that it does not have the right to initiate potential workouts with "third parties."<sup>58</sup> However, that does not explain why MHFA cannot at least provide notification that a potential foreclosure may occur. Otherwise, an impossible situation is formed where MHFA is relying on communities to initiate workouts directly with the owners while failing to notify communities that such actions need to be initiated. This is of especial concern given the fact that if measures to cure defaults are unsuccessful, or never undertaken, MHFA will almost always proceed to auction.

Given the current market for housing, if MHFA held on to the units they would likely have little difficulty rapidly reselling them to eligible purchasers. However, past experiences which took place when the market was much colder have led to an avoidance of such practices. Apparently, there was a time when MHFA did actually maintain a substantial OREO portfolio of foreclosed units. However, a combination

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<sup>57</sup> Jerry McWilliams, Compliance Manager, DND, speaking of Citizens Bank (interviewed by author on April 6, 2001)

<sup>58</sup> Miryam Bobadilla, DHCD

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of poor market conditions and less desirable homes made it difficult for MHFA to sell the units. As the portfolio grew, and as agency administration changed, MHFA began a new policy of minimizing its portfolio of foreclosed property. Although occasionally they may still decide to hold on to some units, the vast majority of homes are sold at public auction to the highest bidder.<sup>59</sup>

While that may explain in part why MHFA does not hold on to units, it does not explain their failure to provide timely notification. According to senior DHCD employees, although they have good working relationships with MHFA staff, they have found the attorneys handling foreclosures to be “extremely aggressive” and unresponsive to requests to change the way in which the process is being managed.<sup>60</sup> Conversations with the staff in MHFA’s Single Family Asset Management Department confirmed that at least one of the law firms they retained to handle collections was unfamiliar with the procedures necessitated under LIP and had indeed failed to notify DHCD and the municipalities on at least several occasions.<sup>61</sup> There were four explanations for this oversight.

First of all, according to MHFA, it is difficult for them to know when an impending foreclosure involves a LIP unit because although MHFA has lists of the LIP project names and the towns in which the projects are located, they do not have a complete list of addresses. Unless the street address makes it clear, they may not recognize LIP units. Secondly, when the Barnstable case happened in 1998, the attorneys were new then and were “just getting familiarized with the documents and the programs.” As the bulk of foreclosure proceedings handled by these attorneys are on loans made under programs with which they are familiar, a number of their collections attorneys apparently do not actually read the deeds or deed riders assuming that they are all the same. Furthermore, according to MHFA, the fact that LIP units do not have second mortgages and the fact that the LIP deeds and deed riders are held at DHCD has made it more difficult to recognize the required procedures. As a result, these problems have not been occurring with HOP units because HOP has been in existence for years and the existence of DHCD’s second mortgage makes the process clear.<sup>62</sup>

Although DHCD has indicated that, at their request, MHFA has stopped foreclosure proceedings in several cases when notification was not provided, the Town of Yarmouth was not so fortunate.<sup>63</sup>

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<sup>59</sup> *ibid*

<sup>60</sup> Harriet Moss, DHCD

<sup>61</sup> Gwen Fournier, Asset Management Officer, MHFA (interviewed by author on April 2, 1001)

<sup>62</sup> *ibid*

<sup>63</sup> Alexander Whiteside, Harriet Moss, and Catherine Racer, DHCD

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According to the executive director of the Yarmouth Housing Authority, the town learned of a pending LIP foreclosure through the newspaper several years ago.<sup>64</sup> Despite their requests to halt proceedings, and the fact that notification was legally required under the terms of the program, they were told by MHFA that the process was too far along and that their only option was to buy the unit back at public auction. The town actually had a foreclosure prevention strategy in place which would have allowed them to purchase the unit from MHFA and either sell it back to the owner or to another eligible family once the owner had been appropriately relocated. In fact, had they been notified in a timely manner, they could have provided upfront assistance to the owner to prevent the process from being initiated in the first place. Unfortunately, in that case, Yarmouth was not the highest bidder at the foreclosure sale and the unit was sold to a market rate purchaser.

MHFA has said that staff are making a “more concerted effort to try to protect units” and noted that, in response to concerns raised by DHCD and by several communities, MHFA has taken measures to prevent such events from occurring in the future.<sup>65</sup> They are in the processing of retaining two new law firms to handle the process and the lawyers will “be brought up to speed on all these issues,” including the need to read the deed and deed rider in full for each foreclosure incident.<sup>66</sup> However, at least one community continues to grapple with the problem. In fact, the City of Boston has assigned a staff person to read, on a daily basis, all of the foreclosure notices which get published in local city papers because they cannot rely on sufficient notification through the proper channels.<sup>67</sup> According to the Deputy Director of DND, the City has is meeting with MHFA to formally discuss the way foreclosures are being handled and to try to develop ways by which the units can be kept affordable at foreclosure by selling to eligible purchasers and keeping the affordability restrictions in place .<sup>68</sup>

One DHCD employee points out that MHFA’s extreme attention to detail can be both good and bad.<sup>69</sup> Although she concedes that on the back-end, rapid and inflexible reaction by MHFA has led to the loss of units, the agency is equally aggressive on the front-end to ensure that potential owners do not fraudulently hide assets to qualify for subsidized units. Furthermore, MHFA can help enforce the restrictions in place.

For instance, MHFA has the ability to foreclosure for violations of the affordability restrictions contained in its mortgage even if the owners are current on their loan payments. It can be assumed that the impetus

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<sup>64</sup> Jeanne Bullock, Yarmouth Housing Authority (interviewed by author on March 28, 2001)

<sup>65</sup> *ibid*

<sup>66</sup> Gwen Fournier, MHFA

<sup>67</sup> Jerry McWilliams, DND

<sup>68</sup> Sheila Dillon, Deputy Director, DND

<sup>69</sup> Miryam Bobadilla, DHCD

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for including provisions which permit foreclosure for violations of affordability restrictions was to provide interested parties with mechanisms by which the restrictions could be enforced. As a result, foreclosure for this reason would only occur in cases where: (1) efforts to get owners to abide by the terms of the affordability restrictions were fruitless, and (2) a system was in place whereby title to the unit would be transferred through foreclosure to a party which would retain the affordability restrictions. The intention was undoubtedly not to provide MHFA, or another lender, the ability to foreclose and to sell the unit to uninterested third parties through public auction. Although it is confirmed that MHFA works closely with DHCD to protect the unit in cases where DHCD is involved, it is unclear what happens when DHCD is not involved with monitoring.<sup>70</sup> There has been at least one case in Boston in which MHFA began foreclosure proceedings because an owner of an affordable unit was found to have been renting his home without permission. Although renting was a violation of the affordability restrictions, as will be discussed in the next chapter, the City of Boston was understandably upset that a unit could have been lost for this reason alone.<sup>71</sup> Although it is likely that this was a one-time oversight attributable to inadequate attention on the part of prior law firms handling loan administration, the example highlights one of the ways units may be lost from the program.

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<sup>70</sup> Alexander Whiteside, Harriet Moss, and Miryam Bobadilla, DHCD

<sup>71</sup> Jerry McWilliams, DND

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## SECTION 8: RENTING

Units developed under affordable housing programs are not intended to be used as investment properties. Therefore, most affordability restrictions include owner-occupancy conditions that prohibit owners from renting their homes.<sup>72</sup> Owners who lease their homes without obtaining prior written consent, are vulnerable to losing all rental proceeds. Most affordability restrictions contain enforcement procedures whereby action can be taken on the local or state level to go after and recoup all proceeds earned out of compliance with program requirements. However, unlike the other components of affordability restrictions, an infraction such as renting usually does not automatically trigger any legal responses. Furthermore, most private lenders do not care what owners do with their properties as long as payments are made on time.\* As a result, parties must rely on other means to monitor the occupancy status of subsidized ownership units. Although approaches to long term monitoring will be discussed in depth in following chapters, it is worth noting here some of the ways in which restrictions on renting have been monitored and enforced.

For instance, under the HSF program, DHCD recommends that the initial project sponsor send annual letters by certified mail to each owner of a subsidized unit. Although it would be unreasonable to impose such requirements on private developers, under HSF, almost all developers are nonprofit organizations whose mission includes long term involvement with the housing they helped create. By using certified mail, the owner will have to sign for the letter and, if the owner is not present or the signatures do not match, it will be revealed that the unit is no longer owner-occupied.<sup>73</sup>

Furthermore, in some cases, internal monitoring takes place within developments when owners keep track of what their neighbors are doing. For instance, in Concord, town officials were informed by a resident of a HOP development that an owner of an affordable unit had moved into another home in town and was renting his subsidized condominium at market rate rents. The town took action, and despite initial resistance from the owner, was able to regain control of the unit (without resorting to foreclosure) and to sell the home to another qualified family.<sup>74</sup> Although it may be argued that in that particular case, where all of the units were affordable, neighbors felt a special obligation to ensure that everyone was abiding by the spirit of the program, similar cases have occurred in mixed-income developments. For instance, in

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<sup>72</sup> Renting restrictions were not included in original HOP deed riders

\* The exception, as described in the previous chapter, is MHFA which may opt to foreclose when an owner insists on renting. If the foreclosure is not accompanied by actions which will protect the unit's affordability, the violation of the restrictions could cause the unit to be lost from the program. As the previous chapter described, such absurdities have in fact occurred.

<sup>73</sup> Jo Ann McGuirk, DHCD

<sup>74</sup> Gillian Anderson, Concord Planning Department (interviewed by author on March 16, 2001)



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Lincoln, town officials were made aware of the same type of situation several years ago by market rate owners and more recently in another case by the management company. The latter occurrence was only discovered when the management company attempted to locate the owner because a pipe had burst in his house. In the end, neither the owner nor his market-rate tenant could be found. When the management company informed the Lincoln Foundation, the group responsible for monitoring affordability restrictions in Lincoln, they were able to take measures to sell the home to another eligible family. As a result, although such notification is not a formal part of the management agent's contract, an informal system has evolved in which all parties in Lincoln have agreed to work together to help monitor and enforce the restrictions in the future.

It should be noted that although renting is generally prohibited, exceptions may be made by the applicable monitoring entity in cases where the owner is unable to sell the home but, due to various circumstances, can no longer use the home as a primary residence. For instance, if an owner needs to move to another community for job or family-related reasons, but is having difficulty selling the home, provisions may be made to allow that owner to rent the home in compliance with program terms. In such cases, rents are usually limited to the HUD-defined limits for low or moderate income households. In the cases described above, the owners had not received permission to rent their homes, were charging market rents, and had purchased primary residences elsewhere in the community. As a result, in each of the cases, the towns forced the owners to sell their subsidized homes to other eligible families, according to the terms of the applicable resale processes.

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## SECTION 9: CAPITAL IMPROVEMENTS

The degree to which capital improvements are allowed to be made will impact the continued affordability of ownership units in a number of direct and indirect ways. Clearly, when the maximum resale price formulae include a recapture of capital improvement investment, the unit will be less affordable. The impact is compounded when the resale price is based on the new appraised value, as the improvements will usually increase the value of the home. However, even in cases where the resale price is not based on appraised values and capital improvement costs are not recoverable, the affordability of the homes for future purchasers may be decreased. While the purchase price may remain the same, the improvements will usually make the home more expensive to maintain in terms of utility costs, maintenance, and insurance.

### A Philosophical Issue

There is a range of opinions among affordable housing professionals on how capital improvements of assisted ownership units should be treated. Those in favor of no limits argue that there must be some benefit which differentiates owning a home from renting an apartment. Interviews with state-level public officials revealed that this perspective is widely held. One senior DHCD staff person emphasized that it is absolutely not the intention of the affordable ownership programs to keep low and moderate income owners “under the state’s boot...They should be like any other homeowner - otherwise, they might as well rent.”<sup>75</sup> Another senior DHCD employee expressed similar sentiments that the state is in no position to “tell homeowners what to do and what not to do”<sup>76</sup> Even when policy makers want to set limits, the “best intentions in the world may not make workable policy” as setting limits can become a “slippery slope.”<sup>77</sup>

However, others believe that every effort should be made to restrict capital improvements so that the units will remain starter homes forever. For instance, one active participant in the affordable housing arena on the Cape, believes that few, if any, capital improvements should be allowed to be made to subsidized homes.<sup>78</sup> For her, the priority of affordability restrictions is to ensure that there remains a sufficient stock of starter homes for families of limited means. She believes that as the incomes and space needs of owners of assisted units expand, those families should be encouraged to move to new houses and free up their existing homes for other families just starting out. She points out that, contrary to common beliefs,

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<sup>75</sup> Catherine Racer, DHCD

<sup>76</sup> Alex Whiteside, DHCD

<sup>77</sup> Clark Ziegler, MHP

<sup>78</sup> Laura Shufelt of the Cape Cod Loan Consortium and member of many affordable housing-related boards

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there is no evidence that a prohibition on capital improvements will stigmatize the owners and their homes and encourage disinvestment. In fact, a number of projects developed on the Cape have used modified program documents which severely limit owners' rights to improve their homes and the experience has been that these homes are just as desirable and just as well maintained as both their market rate neighbors and other subsidized homes in the community. A Cambridge-based development consultant agrees that allowing capital improvements may jeopardize the future affordability of the homes but does not believe that improvements should be legally restricted.<sup>79</sup>

### The Standard Approach

In the end, the state sets the standard by which capital improvements are treated and, as a result, the general rule is that capital improvements are allowed but are not encouraged. As one state official puts it, "there has to be some recognition given to why they choose to own homes while balancing the state's objective to preserve resources."<sup>80</sup> Furthermore, even if the state felt such controls were necessary, there is not sufficient personnel or resources available to review, approve, and monitor owners' capital improvement work.<sup>81</sup>

Therefore, given the lack of formal restrictions, there are two factors which influence homeowners' decisions to make capital improvements: (1) whether there is financing available to cover the costs of improvements, and (2) whether their investment will be recoupable given the applicable MSP formula.

To some extent, improvements will be limited automatically by the amount of debt the property can carry. Some owners may be unable to obtain home improvement loans and will thus be limited in what improvements they can afford to make. For instance, under HOP, the existence of the second mortgage subsidy loans means that owners are usually unable to obtain additional financing to cover capital improvement costs.

However, units developed under LIP, which usually do not include junior encumbrances, have experienced higher rates of renovation. In fact, some LIP units were actually designed to accommodate future improvements. The policy that affordable homes be designed to appear from the exterior to be as indistinguishable as possible from the market rate units led to a practice whereby the second and third

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<sup>79</sup> Robert Engler, development consultant

<sup>80</sup> Catherine Racer, DHCD

<sup>81</sup> Alexander Whiteside, DHCD

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floors of some LIP units were left unfinished. It was expected that as incomes and space needs increased, families would be able to expand into those unfinished floors. While such a practice may encourage stable ownership, it also means that units will be less affordable for the next family to purchase and to maintain. In some cases, renovations have been so extensive, and new appraised values so high, that units can no longer remain in the program despite deep reduction rates.

Furthermore, there are cases where owners have been able to pay for the cost of improvements without obtaining additional debt. For instance, in one case, an owner was able add bathrooms and additions to his home by trading in-kind services with friends and acquaintances. As an air conditioner installer, he traded his services with carpenters, electricians, and plumbers without obtaining any additional financing.<sup>82</sup> Furthermore, as one senior-level state employee points out, some owners may decide to make improvements despite the possibility that their investments will not be recouped.<sup>83</sup> For instance, she suggested that owners may “recoup” the value of a new deck through its useful enjoyment during ownership rather than through monetary return at sale.

However, it is generally believed that resale formulae should include provisions for recapturing investments. Otherwise, all of the benefits (and burdens) of the improvements will be passed, free of charge, to the next owners. Nevertheless, even when capital improvement allowances are included in the resale price formulae, in reality most owners make minimal, if any, improvements to their homes. Despite the lack of controls, owners recognize that there is a disincentive to make substantial changes to their homes because it is not guaranteed that the resale price will provide a reasonable return on their investment. For instance, in one project, owners were advised not to purchase garages with their homes because the value of the garages, according to the terms of the deed restrictions, would likely not be recouped at resale.<sup>84</sup> Thus the disincentive to make improvements, combined with the fact that financing might not be available, has made the issue moot in many cases.

The treatment of capital improvements is a tough issue and, as DHCD admits, “there is no perfect way.”<sup>85</sup> In the end, a balance must be struck between allowing homeowners to make reasonable improvements to their homes without encouraging them to turn their starter homes into castles.

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<sup>82</sup> According to Paul Carney, a real estate broker in Tewksbury, when the unit came up for sale, it appraised at \$225,000. As an income of over \$71,000 was necessary to qualify for financing, the home was sold out of the program.

<sup>83</sup> Judy Jacobson, Deputy Director and General Counsel, MHP (interviewed by author on March 29, 2001)

<sup>84</sup> Russ Tanner, private developer (interviewed by author on April 3, 2001)

<sup>85</sup> Catherine Racer, DHCD

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## SECTION 10: MONITORING

Once the ribbon-cuttings are over and the units are occupied, many of those who were actively involved with the project move on to other things and assume that the restrictions put in place will be “self-monitoring.” However, even the best designed restrictions cannot succeed without some degree of ongoing supervision. Following sections will outline in detail the various ways in which affordability restrictions are monitored, enforced, and remedied under different programs and in different communities. However, this section will provide a general overview of some of the issues.

Effective monitoring must ensure: (1) that the affordability restrictions are crafted appropriately before the project even breaks ground, (2) that the developer abides by the terms of the applicable restrictions once construction is underway, (3) that potential purchasers are made fully aware of the restrictions as the marketing process begins, (4) that owners abide by the terms of the restrictions once occupancy occurs, and (5) that procedures are followed to protect units over time as events arise such as refinancing, resale and foreclosure which make the homes vulnerable to becoming market rate.

### Potential Obstacles

However long term monitoring is always problematic. It is not easy to design a system that both predicts the issues which may potentially arise and that lays out procedures which prevent those issues from negatively impacting the continued affordability of the homes. The monitoring process can become very complicated and include a variety of different players whose roles may overlap. The process may get derailed when incorrect assumptions are made that someone else is handling a particular piece of the process when an event arises. Furthermore, even if the best systems are in place, such events occur sporadically. There are many communities with only a single development and which experience a resale once every three years or less. As staff overturns, the historical memory of how issues are handled is diminished. As one senior state official points out, this is particularly true in the case of small towns which rely on unpaid volunteer committees.<sup>86</sup>

Finally, the person responsible for each part of the process may not be clearly identified. Although in some cases, a professional monitoring agent will be responsible for the entire process, in most cases, the entity responsible for monitoring will change as the project proceeds from its early conception stages to a state of full occupancy.

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<sup>86</sup> Clark Ziegler, MHP

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To simply say that the “municipality” is responsible for overseeing the resale process is not sufficient. Responsibilities must be allocated on the local level to determine which person, or at least which town agency, will take on the role of the municipality. Such specificity is not explicitly required in most affordability restrictions. As a result, as local involvement dies down after the development is built and occupied, many municipalities neglect to lay out internal processes for handling future events. Typically, notification of an event is sent to the chief elected official. However, interviews in a number of communities, revealed that the process can break down immediately thereafter. A number of local officials candidly admitted that there had been instances where the staff in the chief elected official’s office had disregarded notices of first refusal, not understanding their importance. Additionally, even when there is recognition by some local officials that a process must be implemented, oftentimes no one is officially put in charge. Although the process will usually require assistance from a range of players, communities which are on top of their responsibilities will designate a specific point person to oversee monitoring tasks. That person may be located in the planning department, the housing authority, the selectmen or mayor’s office, or may be a member of a local nonprofit or LHP. Some communities actually relinquish control altogether and provide private foundations the rights of first refusal and responsibility of monitoring.<sup>87</sup> Although some communities are fortunate to have concerned residents on staff who voluntarily try their best to manage the process, monitoring is both time-consuming and expensive and thus most of these individuals admit that they are unable to provide sufficient attention to monitoring.

However, even if when the monitoring entity is clearly defined, the process will still involve participation and timely action by other actors. For instance, under HOP, although DHCD is formally responsible for monitoring the units, the municipalities still have a substantial role to play. Under LIP, the responsibility rests primarily with the municipalities which, as described above, can sometimes lead to problems. Even in cases where a professional monitoring agency is in place, such as under NEF, HOME and HSF, there is an expectation that assistance will be provided on the local level to help resolve issues appropriately.

#### The Role of the Monitor

The role of the monitor begins during project construction and continues indefinitely until the end of the affordability period or until all units have become market-rate through attrition. At a minimum, there

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<sup>87</sup> As is the case in Lincoln with the Lincoln Foundation

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must be an entity in charge of overseeing the project during its early stages and an entity in charge of handling issues as they arise once the units are occupied. As noted, this entity may be one and the same, or a number of “point persons” specifically designated to take on different roles. While the “monitor” is rarely a single individual or even a single entity, for simplicity sake, the following sections will simply refer to a single “monitor”. (Appendix VII contains tables which illustrate the allocations of responsibility for each part of the monitoring duties under HOP, LIP, NEF, HOME and HSF)

### Early Action

The efficacy of the monitoring process can be enhanced if proper actions are taken during the earliest stages of the project. The most obvious example is the drafting of the restrictions themselves. For instance, in the case of comprehensive permit projects, before a subsidizing agency will be willing to issue a site approval letter, the developer must either agree to use pre-approved model documents or must present satisfactory alternatives. Therefore, thoughtful consideration should be given to how the terms of the affordability restrictions will be implemented and overseen. Later in the process, when granting a comprehensive permit, the local ZBA may stipulate certain conditions which must be met as a condition of approval. For instance, some communities may require the developer to capitalize an escrow account which will help offset the costs of monitoring the restrictions.

### Initial Marketing Phase

Marketing occurs at two points in a project: (1) initially, to the original owners of affordable units, and (2) later, as units are resold. As the initial marketing phase begins, the monitor’s responsibilities increase. In some cases, the monitor itself will market the units, screen applicants, and conduct lotteries. In cases where another entity is performing these tasks, the monitor will have to ensure that the process is being conducted in compliance with the agreed upon terms. Initial marketing duties usually begin while the project is still under construction.

Compliance with affordability restrictions will be greatly enhanced by thoroughly educating potential homebuyers on the meaning of the conditions during the initial marketing phases. Homeowners who are fully aware of the restrictions and their responsibilities at the onset will be far more likely to adhere to the conditions as issues arise and events occur. Although selected homebuyers will be required at the closing to sign a “disclosure statement” outlining the restrictions, it is easy to imagine how nervous first-time homebuyers may not fully absorb the information contained in one document among the stacks of papers

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they are being told to execute.<sup>88</sup> Therefore, very early efforts on the part of the developer or marketing agent should be made to clearly explain the nature and implications of affordability restrictions to potential purchasers of the newly built units.

For example, one local developer tries to make sure that owners are as aware as possible of the restrictions by providing in depth training sessions as part of the marketing process and by preparing modified, more readable versions of the disclosure statements.<sup>89</sup> While no program specifically requires such efforts, such a practice will greatly facilitate the monitoring process. In fact, it is exactly what DHCD officials have identified as an essential first step to ensuring effective long-term monitoring.<sup>90</sup>

### Occupancy Phase

Once the units are built and occupied, the monitor's role becomes more passive. The affordability restrictions are structured so that the monitor (or other appropriate party) will be notified in the event that some action must be taken. These events primarily include refinancing, foreclosures and resales. Following sections will outline the exact processes which are prescribed under each of the programs when any of these events occur. However, as described above, the use of a deed rider may increase the likelihood that interested parties are not notified in a timely manner that an event is occurring. Furthermore, although the entities entitled to notification are identified in the deed rider, they may not be the same parties who actually are responsible for taking action. For instance, even if DHCD is notified by an owner that a resale is imminent, DHCD must then inform the appropriate person on the local level. In some cases, communities have claimed that DHCD has sent no notification at all. In other cases, as mentioned, the notification was sent but disregarded on the local level. The ways in which DHCD and municipalities have tried to address this potential breakdown in the process will be discussed at the end of the analysis. However, if certain actions are taken before issues arise, the process would run more smoothly.

### Periodic Outreach

Families who purchased their homes in the late 1980s are very likely to have forgotten the detailed process to follow when selling their home over ten years later unless periodic reminder notices are sent. Ideally, the monitor should take a proactive role by conducting periodic outreach to the owners of

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<sup>88</sup> Catherine Racer, DHCD

<sup>89</sup> Russ Tanner, private developer

<sup>90</sup> Catherine Racer and Jo Ann McGuirk, HOME/HSF Program Director, DHCD (interviewed by author on March 29, 2001)



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affordable units. The purpose of the outreach is to verify that they are abiding by the conditions of the restrictions and to remind them of the steps to take if they want to refinance or resell. Unfortunately, such proactive practices are rarely followed and may lead to one of the four ways by which units are lost: inattention.

In many cases, it may simply not occur to communities that such processes are important. Furthermore, communities may not have easily accessible lists of the addresses of their affordable units. Although the addresses are on file somewhere at the local level, they may not be kept in a database form from which mail merges and form letters could easily be created.

While formal processes should be established by the monitoring entity to conduct regular outreach to the owners of subsidized homes, more informal means of monitoring can also reinforce the system. One example of this is in Lincoln where, as described in the section on renting restrictions, the property management company has been made aware of the general terms of the restrictions and will inform the monitor when potential problems are observed. Although the internal monitoring described in Concord can also be helpful, it is not reasonable to expect owners to monitor each other. Furthermore, owners are not informed which units are affordable and which are market rate and many other problems could arise if market rate owners were encouraged to monitor the behavior of their lower-income neighbors.

Another example of informal monitoring is the system recommended by DHCD under the HSF program, whereby project sponsors are encouraged to touch base with owners annually through certified mail. The letter provides the owner with useful information on the program requirements and the need for a signature ensures that the owner is still living at the residence. Although, as noted, this system could not work under every program, projects developed by entities which retain connections to their projects could make use of this process.

However, one of the best examples of informal monitoring is occurring in Tewksbury. In that town, a local real estate broker is actually performing almost all of the monitoring duties. The story of how this situation emerged is interesting and could be applied to other communities. When a local real estate broker first joined his firm and needed to identify a market area not already being served by his colleagues, he decided to focus on the town's several mixed-income developments.<sup>91</sup> In order to introduce himself and market his services, he began sending personalized calendars each holiday season

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<sup>91</sup> Paul Carney, REMAX (interviewed by author on March 27, 2001)

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to all of the owners in each of the developments. Over time, he has become the primary broker handling all of the transactions which occur in both the market and the affordable units. As a result, he has become very familiar with the processes required under LIP and HOP and has even begun to include a flier with his calendars informing all owners that, if they own a subsidized unit, he is the broker who understands what to do. The situation in Tewksbury and implications of extensive broker involvement will be discussed in greater depth in the last section.

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## CHAPTER FOUR

As has been noted throughout this analysis, the system by which units are kept affordable overtime involves a complex network of checks and balances. While it is vitally important that the restrictions are drafted and recorded in a way which will help ensure the continued affordability of the homes over time, it is equally important that procedures are developed to actually implement the program guidelines. The purpose of this chapter is to demonstrate what is supposed to be occurring in theory, and to show what is actually happening in practice.

- Building on the general components outlined in the Chapter Three, the first half of this chapter examines how major issues are addressed under each of the five programs looked at in this analysis. The overview includes a summary of each program’s restrictions, resale processes, and MSP formulae. As many of the elements of the program guidelines are virtually identical to the general descriptions provided in the previous chapter, the section only highlights unique features and substantial differences.
  
- The second half of the chapter discusses how involved parties on the state and local levels have come to terms with carrying out, in practice, these prescribed sets of rules and regulations. The first half of this section focuses on the procedures being implemented on the state level, highlighting places where problems have arisen, and describing ways in which these problems are being addressed. The second half of this section looks at how the system is being implemented on the local level. Using five different communities as examples, this portion of the analysis is intended to highlight the challenges which are being faced by those on the ground charged with implementing the system. As will be seen, while some communities have developed workable procedures to implement the prescribed processes, others have tenuous systems which rely simply on “the kindness of strangers” to perform their oversight functions.<sup>92</sup>

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<sup>92</sup> Langley Keyes, MIT

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## **SECTION 1: AFFORDABILITY RESTRICTIONS & PROCESSES BY PROGRAM**

Although most programs in Massachusetts use fairly similar affordability restrictions, there are some differences. This section provides an overview of the restrictions, resale processes, and MSP formulae prescribed under the HOP, LIP, NEF, HOME and HSF program guidelines. Following sections will demonstrate the different ways by which the required processes are actually being implemented on both the state and local levels.

### **HOMEOWNERSHIP OPPORTUNITY PROGRAM**

By 1994, over 1800 affordable homes had been developed under HOP in 104 single family developments throughout Massachusetts.<sup>93</sup> According to the most recent HOP activity report, as of December 2000 there had been 595 transfers of ownership.<sup>94</sup> Of that amount, 478 were resales and 117 were foreclosures. Although it cannot be easily determined from available data how many of those resales were sold out of the program, senior DHCD staff estimate that approximately 20% of HOP units have become market rate over the 12 years since the program's inception. That is not a terrible record considering the newness of the program concept when HOP was launched and the market changes the program has had to sustain.

#### HOP Restrictions

The components of HOP affordability restrictions are virtually identical to those summarized in Chapter 3. However, a few specific features should be highlighted:

Lock-in Period: Under HOP, the lock-in period is 40 years from the date on which the deed rider is recorded. If the home is later sold to an eligible purchaser, a new deed rider with the same restrictions is issued. If the home is lost from the program, the lock-in period will terminate and all restrictions become null and void, as described in detail below.

Recapture Provisions: In the case of units subject to "HOP Assisted Mortgages," interest subsidies have to be returned to DHCD, unless no profit is realized by the owner. If profit is realized, the owner must repay the lesser of: (1) 20% of free and clear profit, or (2) the actual amount of interest subsidy provided to the owner.

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<sup>93</sup> Draft memorandum from Jeff McQueen of MHFA and Carl White of MHP to Kate Racer of DHCD re: "request to approve the transfer of surplus interest rate subsidy funds from the HOP Project Commitment Account"

<sup>94</sup> "Schedule B of the Semi-Annual Homeownership Opportunity Program Report: Paid HOP Subsidy Loans as of 12/30/00"

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Refinancing & Renting: HOP deed riders currently do not include any mention of restrictions on renting or refinancing of the properties. Although such restrictions are included in the terms of the second mortgage note, they should also be included in the deed rider as “Mod HOP” units do not receive interest subsidies. DHCD is in the process of correcting this oversight by drafting a revised deed rider for future purchasers.<sup>95</sup> The proposed language will be similar to that described below under LIP.

Foreclosure: Similarly, HOP deed riders are being amended to include language requiring lenders to provide 60 days prior written notice of their intent to foreclose. The current deed riders only require that lenders provide “prompt notice of any such claim and shall not object to intervention...in any proceeding relating thereto.” Any windfall profits must be returned to DHCD. Windfall profits are defined as any amount in excess of the greater of: (1) the MSP, or (2) the “sum of outstanding principal mortgage...plus all future advances, accrued interest and all reasonable [foreclosure] costs.”<sup>96</sup>

Monitoring, Compliance & Enforcement: The owner must agree to provide DHCD the right to “enter upon the Property for the purpose of enforcing any and all of the restrictions, covenants and agreements” and to provide, upon request, a written statement setting forth information regarding the home, including its condition and ownership status.

Maximum Allowable Resale Price: Under HOP, the MSP is calculated by using the Discount Rate Methodology and does not provide for any other expenses to be recouped.

### **HOP Resale Process**

The resale process stipulated by the HOP affordability restrictions proceeds as follows:

#### Seller’s Notice

Owners of HOP units must provide written notice to DHCD of their intent to sell. This notice must also be accompanied by an appraisal of the fair-market value of the home without restrictions. The appraisal must be prepared using standards acceptable to DHCD. Although the deed rider says that the notice must also include the applicable discount rate and the maximum resale price, in reality this is calculated by DHCD.

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<sup>95</sup> Alexander Whiteside and Harriet Moss, DHCD

<sup>96</sup> “Homeownership Opportunity Program Deed Rider” p 4 (dated 1989)

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### DHCD's Right of First Refusal

Within 30 days of receiving the owner's notice, DHCD must notify the owner whether it will exercise its right of first refusal to either purchase the home or to proceed to locate another eligible purchaser.

DHCD is in the process of updating the boiler-plate right of first refusal it has used since the program began. The current letter informs the owner that DHCD is exercising its rights, provides the expiration date of the refusal period, and cites the relevant passages from the deed rider. The new letter is being designed to be more useful and understandable by including the MSP, using more straightforward language, and emphasizing the need for the owner to assist DHCD in locating an eligible purchaser.

If the right of first refusal is exercised, DHCD has 90 days from the date of its notice to either find a buyer or purchase the home. If more than one eligible purchaser is identified, DHCD will conduct a lottery or other like procedure to select the buyer.

It should be noted that DHCD is also including language in its revised HOP deed riders which will require the owner to cooperate with DHCD for the first 30 days of the 90 days "by using diligent efforts to assist in locating an eligible purchaser." This language reflects that which is used in the model NEF riders, discussed in depth below. It is likely that such language may also be inserted in new LIP deed riders.

### Closing and Release of Restrictions

Any third party taking a security interest in the property, including purchasers or lenders, may rely on the following documents as conclusive evidence that the HOP unit was conveyed in accordance with all applicable restrictions:

1. If the property is conveyed to an eligible purchaser, DHCD will execute and record an "Eligible Purchaser Certificate." A new deed rider will be executed and attached to the new owner's deed and recorded on the day of closing.
2. If the property is conveyed to a third party, as discussed below, DHCD will execute and record a "Compliance Certificate."
3. If the property is conveyed to DHCD, no certificate is issued. DHCD's acceptance of the deed alone constitutes acceptance that the property has been conveyed in accordance with all applicable restrictions and covenants.

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### Sale to a Third Party

The owner can sell out of the program if DHCD fails to notify the seller that it is exercising its rights of first refusal within the first 30 days, or if DHCD fails to find an eligible purchaser or to buy the home itself within the first 90 days after DHCD sends notice to the owner.

In such cases, the owner may convey the property to any third party free from all restrictions, provided that the resale price has been approved by DHCD. DHCD is expanding this section to require that the home be sold for no less than 10% of the appraised market value and that 80% of all excess proceeds be paid to DHCD.<sup>97</sup> In both the new and existing riders, excess proceeds are defined as any amounts in excess of the MSP and do not allow capital improvements and sales costs to be included.

Upon receipt of this excess amount, DHCD will issue a Compliance Certificate to the new owner, as noted above. This certificate is recorded as conclusive evidence that DHCD has recaptured all applicable funds and that all affordability restrictions are null and void.

### **LOCAL INITIATIVE PROGRAM**

Over 700 affordable units have been developed under LIP in at least 90 separate developments.<sup>98</sup> Under LIP, the municipality has primary responsibility for overseeing the monitoring and resale processes. Although DHCD has a substantial role in the processes and must receive copies of all correspondence between the seller and the municipality, DHCD does not maintain a central database of all LIP activity after initial occupancy is achieved. As a result, specific data regarding the extent of resales, foreclosures, and financing of LIP units is dispersed throughout individual communities and not easily obtainable. However, DHCD has begun to keep a log of LIP unit activity and estimates that there is approximately one LIP resale for every four or five HOP resales.<sup>99</sup>

### **LIP Restrictions**

The components of LIP affordability restrictions are also virtually identical to those previously described. However, a few specific characteristics should be highlighted:

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<sup>97</sup> Draft "Homeownership Opportunity Program Deed Rider" – black lined and dated 2000

<sup>98</sup> DHCD LIP database as of January 2001

<sup>99</sup> Catherine Peagler, DHCD

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Lock-in Period: The lock-in period is at least 15 years for new construction and at least 5 years for substantial rehabilitation, although many municipalities elect to impose longer terms.

Recapture Provisions: As owners do not receive direct subsidies under LIP, subsidy recapture provisions are not necessary. However, there are provisions regarding the recapture of “windfall profits” when units are sold out of the program for over the MSP as will be discussed below.

Refinancing & Renting: The exact language in the deed rider says that a LIP unit “shall not be leased, refinanced, encumbered (voluntarily or otherwise) or mortgaged without the prior consent of DHCD and the municipality.” If prior approval is not obtained, “any rents, profits, or proceeds from any such transaction .... shall be paid directly to Municipality.” Only DHCD and the municipality, in their sole discretion, may grant consent for any such “lease, refinancing, encumbrance or mortgage” and any proceeds in excess of the carrying costs of the property must be given to the municipality.<sup>100</sup>

Foreclosure: Under LIP, if a lender acquires a unit through foreclosure, any subsequent purchaser is free from affordability restrictions, as long as the lender has provided DHCD and the municipality “not less than (60) days prior written notice of its intention to foreclose...or to accept conveyance of the Property in lieu of foreclosure.” However, any windfall profits must be returned the municipality “in consideration for loss of value and benefits.”<sup>101</sup> Windfall profits are defined using the same language as described above under HOP.

Monitoring, Compliance & Enforcement: The owner must agree to provide DHCD and the municipality the right to “enter upon the Property for the purpose of enforcing any and all of the restrictions, covenants and agreements” and must agree, upon request, to provide a written statement setting forth information regarding the home, including its condition and ownership status.<sup>102</sup>

Maximum Allowable Resale Price: Under LIP, the base MSP is calculated by using the Discount Rate Methodology. The actual MSP will include the cost of “approved” capital improvements and marketing expenses, although there is no mention of how these additional costs are approved. The deed rider also contains language noting that the “seller must understand that nothing in this deed rider in any way constitutes a guarantee or promise by DHCD or municipality that [the seller] will actually receive [the MSP] or any other price” at resale.<sup>103</sup>

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<sup>100</sup> “Local Initiative Program Deed Rider For Ownership Project” (dated May 19, 1997)

<sup>101</sup> *ibid*

<sup>102</sup> *ibid*

<sup>103</sup> *ibid*



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## **LIP Resale Process**

Under LIP, both DHCD and the municipality have the right to purchase the home or to find another eligible purchaser according to a specific timeline:

### Seller's Notice

When owners of LIP units want to sell their homes, they must provide written notice to both DHCD and the municipality. This notice must also be accompanied by an appraisal of the fair-market value of the home without restrictions. The appraisal must be prepared using standards acceptable to DHCD. Like HOP, although the deed rider says that the notice must also include the applicable discount rate and the maximum resale price, in reality this is calculated by DHCD.

### Municipality's Right of First Refusal

Within 30 days of receiving the owner's notice, the municipality must notify the owner whether it will exercise its right of first refusal to either purchase the home or to proceed to locate another eligible purchaser. If the right of first refusal is exercised, the municipality has 90 days from the date of its notice to either find a buyer or purchase the home.

### DHCD's Right of Second Refusal

If the municipality does not exercise its rights or fails to provide notice within 30 days, DHCD has the right of second refusal for another ten days. From the 31<sup>st</sup> day to the 40<sup>th</sup> day following receipt of the seller's notice, DHCD may notify the seller and the municipality that it will either purchase the unit or proceed to find another eligible purchaser.<sup>104</sup>

DHCD also has a right of second refusal if the municipality does exercise its rights but fails to either find a buyer or purchase the home itself within 90 days of its notice. In that case, DHCD has an additional two weeks (between the 91<sup>st</sup> day and the 105<sup>th</sup> day of the municipality's notice) to find someone or purchase the unit.

### Buyer Selection

If more than one eligible purchaser is identified, a lottery or other like procedure is held to select the buyer. This responsibility for implementing this procedure rests with either the municipality or DHCD, depending on which entity found the purchasers.<sup>105</sup>

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<sup>104</sup> *ibid*

<sup>105</sup> *ibid*

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### Closing & Documentation of Sale

The purchaser will set the closing date. The property will be conveyed on that date by the seller to the applicable purchaser by a “good and sufficient quitclaim deed conveying good and clear record free from all encumbrances except taxes for the then current year not payable on sale date.”<sup>106</sup>

One of four types of documentation is issued, executed and recorded as conclusive evidence that that the property was conveyed in compliance with all applicable restrictions and covenants contained in the original deed rider.

1. If the property is conveyed to an eligible purchaser, DHCD and the municipality will execute and record an “Eligible Purchaser Certificate.” A new deed rider will be executed and attached to the new owner’s deed and recorded on the day of closing.
2. If the property is conveyed to a third party, as discussed below, DHCD and the municipality will execute and record a “Compliance Certificate.”
3. If the property is conveyed to the municipality, DHCD and the municipality will execute and record a “Municipal Purchaser Certificate.”
4. If the property is conveyed to DHCD, no certificate is issued. DHCD’s acceptance of the deed alone constitutes acceptance that the property has been conveyed in accordance with all applicable restrictions and covenants.

Any third party taking a security interest in the property, including purchasers or lenders, may rely on a Compliance Certificate, an Eligible Purchaser Certificate, Municipal Purchaser Certificate or acceptance of the deed by DHCD as conclusive evidence that the property was conveyed in accordance with all applicable restrictions.

### Sale to a Third Party

If neither the municipality within 90 days nor DHCD within 105 days exercise their rights of first and second refusal, the owner may “convey the Property to any third party at fair market value, free of all restrictions” provided that “all consideration and payments of any kind received by [the

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<sup>106</sup> *ibid*

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seller]....which exceeds the Maximum Resale Price shall be immediately and directly paid to the Municipality.”<sup>107</sup>

The sale price to the third party is subject to DHCD’s approval, “with due consideration” given to the market value of the home as laid forth in the appraisal. (DHCD’s review of the sale price is intended to prevent sellers from selling to friends or relatives for the MSP and then sharing the proceeds saved and also to ensure that the maximum amount possible is recoupable by the municipality).

Upon receipt of this excess amount by the municipality, and approval of the sale price by DHCD, the municipality and DHCD will issue a Compliance Certificate, noted above, to the new owner. This certificate is recorded as conclusive evidence that the municipality has recaptured all applicable funds and that all affordability restrictions are null and void.

## **NEW ENGLAND FUND**

It is difficult to access exactly how many projects have been developed under NEF the approval of each project has been undertaken on the local level with involvement from a variety of FHLBB member banks. However, it is estimated that at least ten projects have been completed or are under construction and that many more are in the pipeline.<sup>108</sup>

The processes by which affordability restrictions are drafted, implemented and enforced will vary under NEF. Although each municipality may design its own affordability restrictions, to date most projects are assumed to have used variations of the model NEF documents prepared by Bob Engler. In an effort to ensure that municipalities have sufficient assistance preparing these documents, the Housing Appeals Committee recently issued a ruling requiring all developers to provide 10 days written notice to DHCD prior to the submission of an NEF application.<sup>109</sup> The fact that DHCD will now be informed when a potential NEF project is underway will provide a means by which NEF activity can be centrally tracked and will provide opportunities for DHCD to confirm that municipalities do not need additional assistance in drafting program documents.

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<sup>107</sup> ibid

<sup>108</sup> Robert Engler, development consultant

<sup>109</sup> Letter from Robert J. Ebersole, Deputy Director, DHCD to Local Officials, provided to author by Judith Jacobson

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The NEF program documents are modeled after those used under the LIP program but include some unique features:

Regulatory Agreements: As previously noted, both LIP and NEF use “regulatory agreements” in order to ensure that developers will impose deed restrictions on the affordable units they sell. While under LIP, the regulatory agreement is executed by the developer, DHCD and the municipality, under NEF the regulatory agreement is only executed by the developer and the FHLBB member bank.

Monitoring Agreements: Given the fact that no state-level public agency is involved with NEF projects, HAC also requires that a “monitoring agreement” be executed between the developer and a designated “monitoring agent.” To date, the monitoring agent for most projects has been either the local housing authority or local planning board, although CHAPA has been retained for several projects.<sup>110</sup>

Under the terms of the model monitoring agreement prepared by Bob Engler, the agent is responsible for overseeing that the developer abides by the terms of the project during construction, does not retain proceeds over the allowable limit, and monitors the resales of units as they occur over time.

The monitor receives \$5,000 at the execution of the agreement and will receive .05% of the MSP at resale.<sup>111</sup> The monitor can enforce the terms of the affordability restrictions through legal action against either the developer or the owners but cannot receive compensation from the FHLBB or the applicable member bank.

### **NEF Restrictions & Resale Process**

The nature of affordability restrictions under NEF model documents are almost identical to those used by LIP although all approvals must be obtained by the monitoring agent rather than DHCD or the municipality. However, several features were added to the NEF resale process, some of which, as noted above, may also be included by DHCD under their programs.

#### Seller’s Notice

Owners of NEF units must “first notify the Monitoring Agent and subsequently the Municipality” of their intent to sell their homes. The written notice must be accompanied by an appraisal of the market-value of the property. (Like LIP, NEF also requires the owner to calculate the MSP)

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<sup>110</sup> According to interviews with Robert Engler, Aaron Gornstein, and Russ Tanner

<sup>111</sup> “Monitoring Services Agreement [FHLBB-New England Fund] For Ownership Projects”

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### Municipality's Right of First Refusal

Within 30 days of receiving the owner's notice, the municipality must notify the owner whether it will exercise its right to either purchase the home or to proceed to locate another eligible purchaser.

### Mandatory Marketing

If the municipality fails to provide notice or declines its right of first refusal, the owner must put the unit "on the market" and use "diligent efforts to find a buyer" within 60 days from end of the first 30 days of the municipality's right of first refusal period.<sup>112</sup> The unit will be considered to be "on the market" as of the date of the first advertisement of its sale. "Diligent efforts" are defined as:

1. Placement of an advertisement in the real estate section of at least one newspaper of general circulation for a three consecutive weeks
2. The advertisement must set forth the MSP, the owner's telephone number, and the phrase: "Sale of unit subject to certain guidelines and restrictions with respect to maintenance and retention of affordable housing for households of low and moderate income."

### Municipality's Right of Second Refusal

If an eligible purchaser is not found within the 60 day period, the municipality has an additional 30 days to notify the owner that it intends to either purchase the home itself or find another eligible purchaser. Within 60 days of that notice, the municipality must locate a buyer or purchase the unit.

### Maximum Allowable Resale Price

Under NEF, the base MSP is calculated by using the Discount Rate Methodology. The actual MSP will not be less than the original purchase price plus the costs of approved capital improvements and marketing expenses as determined by Monitoring Agent.

### Sale to a Third Party

If no purchaser can be found within 120 days from the date the home is put on the market, the owner may sell to any third party, free from restrictions using the same guidelines and restrictions as put forth under LIP.

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<sup>112</sup> "Deed Rider for FHLBB New England Fund Ownership Project"

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## HOME & HOUSING STABILIZATION FUND

Most of the developers of ownership projects financed under HSF, and many of the developers of HOME projects, are nonprofit agencies which retain close connections to their developments. As a result, there is less risk of losing units as the developers are “generally active in the community and on top of all of their developments.”<sup>113</sup> According to the director of the HOME & HSF programs, there have only been approximately 10-12 resales of HSF units and even fewer resales of HOME units.

The documents used under both HOME and HSF for ownership projects are virtually identical. Therefore, this section will outline the general terms and processes and highlight where the programs differ. Although the developers often play a role, DHCD retains a professional monitoring firm, OKM Management, to oversee all of its HOME and HSF projects.

### HOME/HSF Restrictions

The components of HOME and HSF affordability restrictions are very similar to those described above under the other programs, with three exceptions:

Lock-in Period: Under HSF, the lock-in period is 30 years and under HOME, the lock-in period is 15 years.

Recapture Provisions: DHCD specifies the applicable “Assistance Amount” which has been provided in order to make the sales prices of HOME and HSF units affordable. If an owner of a HOME or HSF unit sells to a third party before the end of the applicable lock-in period, the owner must return to DHCD an amount equal to the greater of:

- (1) the original Assistance Amount reduced by 1/15 for each year elapsed, or
- (2) ½ the amount by which the net proceeds from the sale exceed the sum of the downpayment amount, plus principal payments, plus any capital improvements.
- (3) Except in cases where agreement is violated, will not have to pay back an amount greater than the amount by which the sale price exceeds the sum on mortgage plus any brokers fees, recording costs, deed stamps etc “net proceeds”.

Maximum Allowable Resale Price: Under HOME and HSF, the base MSP is calculated by using the CPI-Based Appreciation Model. Specifically, the “Base Price” equals the sum of:

- (1) the purchase price,
- (2) the documented cost of any capital improvements,

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<sup>113</sup> Jo Ann McGuirk, DHCD

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- (3) excise taxes in connection with sale,
  - (4) plus a return on the owner's investment.

The return on investment is equal to the sum of the owner's original downpayment plus ½ of the aggregate principal payments made, multiplied by the change in the CPI indices.

## **HOME/HSF Resale Processes**

### Seller's Notice

When owners of HOME or HSF units want to sell their homes, they must provide written notice to both DHCD and the developer.<sup>114</sup> This notice must set forth the amount of debt secured on the property, the total amount of principal payments made, and the nature and cost of any capital improvements which the owner wants recovered. The notice must also be accompanied by an appraisal of the fair-market value of the home without restrictions.

### Developer's Right of First Refusal

Within 40 days of receiving the owner's notice, the developer must notify the owner (with a copy to DHCD) whether it will exercise its right of first refusal to either purchase the home or to proceed to locate another eligible purchaser. This notice will also set forth the MSP.

### DHCD's Right of First Refusal

If the developer does not exercise its rights or fails to provide notice within 30 days, DHCD has the right to either purchase the property or find another buyer. If the right of first refusal is exercised by either DHCD or the developer, either party must either purchase the home within 90 days or find another buyer to purchase the home within 135 days. If a buyer cannot purchase within the 135 days, DHCD or the developer may still exercise their option to purchase.<sup>115</sup>

### Closing & Documentation of Sale

The purchaser will set the closing date. The property will be conveyed on that date by the seller to the applicable purchaser by a "good and sufficient quitclaim deed conveying good and clear record free from all encumbrances except taxes for the then current year not payable on sale date."<sup>116</sup> As

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<sup>114</sup> The documents actually refer to the "grantor" who is either the developer or the project sponsor and is usually a nonprofit.

<sup>115</sup> "Home Investment Partnerships Program Developer Loan for Homeownership Project – Deed Rider (Single-Family), (Resale/Recapture)" and "Housing Stabilization Fund Rehabilitation Initiative, Deed Rider (Single-Family), (Resale/Recapture)"

<sup>116</sup> *ibid.*

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used under the other programs, DHCD will either issue an Eligible Purchaser Certificate or a Compliance Certificate depending on whether or not the unit was sold within the program.

Sale to a Third Party

If neither DHCD nor the developer exercise their rights or find another buyer, the owner may convey the property at fair market value. However, if the developer exercised its rights but was unsuccessful, DHCD has an additional 10 days to purchase the property at the MSP.

When selling to a third party, the owner must provide DHCD with the applicable “Recapture Amount” which is based on the amount of the Assistance Amount, the amount of net proceeds, and other costs such as principal payments, capital improvements, and sales costs.

The tables in Appendix VII illustrate how the monitoring processes are handled under each of the five programs. The following sections focus on how the HOP and LIP processes are actually being handled on the state level by DHCD and on the local level by a number of selected communities.



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## SECTION 2: PROCESS AT THE STATE LEVEL

Although the program documents may provide general procedures for monitoring and enforcing affordability restrictions, experience has shown that the prescribed processes are not enough on their own. In the first few years after HOP and LIP were created, each of the relevant parties did in fact follow the processes outlined in the affordability restriction essentially to the letter, and some parties continue to do so. However, as noted, it is not enough to simply send notification to the “municipality” unless there is someone in place on the local level able and willing to handle the particular situation. Likewise, it is not enough to simply say that DHCD “will proceed to find an eligible purchaser” unless some workable process is in place by which DHCD can actually accomplish this.

Over the last several years, DHCD has refined the way in which it handles activity under both HOP and LIP. Under HOP, DHCD is officially responsible for handling resales and marketing available units. Although the agency continues to play a role in the process, there is a clear recognition on the state level that marketing of units throughout the state cannot be adequately performed by a centralized, Boston-based agency, as “real estate is local and must be marketed locally.”<sup>117</sup> As a result, DHCD has made several changes to the way it participates in the marketing process.

First of all, DHCD has created a webpage which advertises HOP and LIP units as they become available. At least every two weeks, Private Housing staff at DHCD update the webpage with new listings.<sup>118</sup> Recognizing that the webpage is not enough, DHCD has also expanded its notification processes to include not only the chief elected officials and local housing authorities but also the planning boards, local nonprofits, and any other relevant parties it can identify.<sup>119</sup> Furthermore, the Deputy Director of DHCD has recently recommended that notification also be sent to all of the regional nonprofits, particularly in cases when units become available in smaller communities which “see little activity and are ill-equipped to handle the process.”<sup>120</sup> Much of these actions are attempts by DHCD to bring municipalities into the process. From the perspective of state officials, municipalities should feel obligated to participate as the “units were built with local land concessions and those municipalities gave up a lot - they have a duty to try protect their resources.”<sup>121</sup>

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<sup>117</sup> *ibid*

<sup>118</sup> Catherine Peagler, DHCD

<sup>119</sup> Catherine Racer and Catherine Peagler, DHCD

<sup>120</sup> Catherine Peagler speaking of Robert Ebersole

<sup>121</sup> Catherine Racer, DHCD

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The current DHCD staff person in charge of overseeing resales has made it her goal to identify “that single point-person” in every community who can best handle the process.<sup>122</sup> Although DHCD always maintained a database of the names and addresses of local officials, there is a recognition that those individuals may not be the same people who are actually overseeing the process. As a result, the DHCD staff person is building a database of local contacts and checks in regularly with them whenever a resale is pending.<sup>123</sup>

DHCD is also currently in the process of revising program documents. For instance, as noted, staff have reviewed the standard right of first refusal letter and will be producing a newer version which provides more clarity to the owners on the procedures to follow when selling their homes. The current letter, used since program inception, does not include the MSP and only cites the exact language used in the deed rider. The new letter will provide much more information and guidance to owners and will encourage them to make diligent efforts on their own to find eligible purchasers.<sup>124</sup>

DHCD is also updating the deed riders for HOP and LIP projects.<sup>125</sup> However, careful attention is being paid to ensure that changes are not so substantial that they reduce the value of currently occupied homes. While new LIP riders can be completely revamped as new projects are developed, HOP riders are only being modified in necessary ways.<sup>126</sup> For instance, as noted in the previous sections, HOP deed riders are being amended to include restrictions on both leasing or refinancing. Language is also being added, similar to that used in the model NEF documents, to require that units be affirmatively marketed during the right of refusal period. Furthermore, greater specificity concerning the required early notification of potential foreclosures is being added to the HOP riders. Finally, DHCD has proposed adding additional language concerning the acceptable sales prices of homes when sold out of the program. In an effort to avoid situations where owners, either unintentionally or intentionally, sell their units to market rate purchasers at prices at or barely above the MSP, DHCD is considering requiring that the price must be no less than 10% below the fair-market appraised value.<sup>127</sup> This restriction is aimed at eliminating the potential for owners to sell their subsidized homes, at subsidized rates, to family or friends and at ensuring that the maximum amount of money will be recaptured by either DHCD or the municipality for use on other housing initiatives.

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<sup>122</sup> Catherine Peagler, DHCD

<sup>123</sup> *ibid*

<sup>124</sup> Alexander Whiteside and Catherine Peagler, DHCD

<sup>125</sup> “Homeownership Opportunity Program Deed Rider” – black lined version dated 2000 given to author by Harriet Moss of DHCD

<sup>126</sup> Alexander Whiteside, DHCD

<sup>127</sup> Catherine Peagler, DHCD

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Although new program documents will require mandatory marketing of the units by owners during the right of first refusal period, DHCD staff are also personally encouraging owners to contact real estate brokers in towns which do not maintain a ready list of potential buyers.<sup>128</sup> However, there may be unintentional implications to relying on brokers to market affordable units. If brokers' commissions are based on the price at which the unit is sold, there exists the possibility that brokers may try to wait out the right of first refusal period so that they can sell at full price and gain a larger commission.

When questioned about this, DHCD said that they inform brokers that the owners, their clients, will only receive the MSP regardless of whether the unit is sold in or out of the program and that commissions should thus be based on the MSP. However, no formal process has been developed to ensure that brokers act in the best interests of preserving affordability.

DHCD has also recognized that MHFA's underwriting criteria can be prohibitive for some owners and has responded by allowing purchasers to buy HOP units with financing from other lenders. For instance, until recently, MHFA required that potential buyers provide evidence that a substantial portion of the downpayment had been in a bank account for a specified period of time. Although this is standard lending practice, some units were at risk of being lost and the only identified buyers could not meet the full terms of this requirement. As a result, a number of households on the Cape opted to purchase through the Cape Cod Five Cents Savings Bank, despite not being able to obtain HOP interest subsidies through MHFA. Although MHFA relaxed its standards in November 2000, by expanding the number of lenders who may finance HOP units, DHCD has helped expand the pool of eligible applicants.

However, the vast majority of HOP owners continue to receive financing from Fleet Bank. Given the level of resale and refinancing activity, a specific loan officer has actually been identified to handle all HOP-related underwriting and certification. Located in a privately rented office in Chelmsford, this loan officer has become the point-person for many owners and communicates regularly with both DHCD and municipalities.<sup>129</sup> While for years, local municipalities or even real estate brokers<sup>130</sup> were responsible for screening and pre-qualifying potential homebuyers, the process has been greatly streamlined so that a single loan officer now handles almost all HOP resales. Whenever DHCD receives a notice of intent to

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<sup>128</sup> Catherine Peagler, DHCD

<sup>129</sup> The loan officer's name is Donna Koulas.

<sup>130</sup> Paul Carney, REMAX

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sell from a HOP owner, a staff person immediately sends a completed form to the Fleet loan officer informing her of the owner's name, location of the home, the name and number of the broker if one is being used, and the maximum resale price.<sup>131</sup> The loan officer will then determine the minimum income level necessary to qualify for MHFA financing and will help municipalities and DHCD find eligible purchasers. In some cases, communities will send her long lists of interested buyers which were identified on the local level.<sup>132</sup> However, in most cases, both DHCD and the municipalities simply inform interested purchasers, as part of their marketing material, to contact the loan officer for information. She will then see if they are qualified and either accept the first eligible purchaser, or send a list to the community for the community to conduct a lottery.

It should be noted that while this system has received rave reviews from owners, local officials, DHCD, and brokers, some have expressed concerns that the process is not appropriate for inexperienced first-time homebuyers.<sup>133</sup> This comment was made by a housing activist based on the Cape where potential owners would likely have to undergo the qualification process by phone. However, despite the validity of her concern, the fact that there is someone who is both knowledgeable about the program requirements and available to rapidly approve financing has been extremely useful for many communities. Furthermore, by having a private bank employee take on the certification process, a substantial amount of public resources is being saved.

Finally, DHCD staff are looking at ways by which units can be protected even when the maximum allowable resale prices are beyond the reach of low and moderate income families. As previously mentioned, the use of Discount Rate Model has led to the loss of a substantial number of affordable units. In order to respond to this problem, DHCD is hoping to develop a way to write-down the purchase prices in cases where the MSPs are too high for eligible purchasers to afford.<sup>134</sup> Funding for this program may be already available. Under HOP, when an owner sells a home, any unused interest subsidy as well as windfall profits must be returned to DHCD. There is currently approximately \$1.5 million in the "HOP Resale Account" which could be used to write down these purchase prices.<sup>135</sup> Although it is unclear how far those funds will go to solve the problem, DHCD is making considerable efforts to begin trying.

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<sup>131</sup> Donna Koulas and Cathy Peagler; and many examples of the form provided to author by Ms. Koulas

<sup>132</sup> As is done in Concord

<sup>133</sup> Laura Shufelt, CCLC

<sup>134</sup> Catherine Racer and Alex Whiteside, DHCD

<sup>135</sup> Judith Jacobson, MHP

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### SECTION 3: PROCESSES ON THE LOCAL LEVEL

Although each of the programs' procedures describes what is expected to occur on the local level, in practice, experiences vary greatly by municipality. At one extreme, there are communities who are actively involved with monitoring and by closely following well laid-out procedures, lose few if any units. On the other extreme, there are communities that have no procedures in place and rely completely on other parties to ensure that units are not lost. From all accounts, the majority of communities fall somewhere in between the two extremes by having processes but no one ready to implement them, or having point persons but ineffective processes to follow.<sup>136</sup>

Local officials were extremely candid in discussions on how affordability restrictions are being monitored in their communities. While mention will be made of some of the challenges communities are facing, it is unnecessary to identify exactly which communities' processes and procedures are most deficient. Far more useful is an identification of which communities are successfully maintaining their affordable housing stock so that their processes may serve as models for less proficient municipalities.

This chapter will provide an overview of how affordability restrictions are being handled in five communities and will discuss the issues which local officials have identified as most challenging. As will be seen, each of these communities is handling the monitoring process somewhat differently. The particular communities described here were selected as means of highlighting the different ways the monitoring process may be handled on the local level and are not meant to be representative of all communities in Massachusetts.

#### Lincoln

One of the most affluent communities in Massachusetts, Lincoln is credited in the local affordable housing arena as being the only suburban community in the state which has reached its "Ten Percent" affordable housing goal. Although its status may slip when the results of the updated inventory are revealed, there is no question that the town takes its affordable housing very seriously and has one of the best local systems for making sure that restrictions are monitored appropriately.\* While the town has an Affordable Housing Commission, a type of local housing partnership, which actively pursues new

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<sup>136</sup> According to DHCD staff including Catherine Racer and Miryam Bobadilla  
\* The inventory and the current update are discussed in [Appendix IV](#).

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housing initiatives, another local entity is responsible for monitoring and enforcing existing affordability restrictions.<sup>137</sup> Lincoln was one of the first communities to see a HOP development, and unlike most municipalities, requested that the right of first refusal be maintained on the local level rather than with DHCD.

Founded in 1968 as a 501(c)4 corporation, The Lincoln Foundation's mission is to "contribute to the preservation of a diverse stock of housing," develop new housing opportunities, and to help preserve open space in the Town of Lincoln.<sup>138</sup> Although the Foundation's seven member board helps enforce the restrictions, a single individual has been primarily responsible for overseeing marketing and resales within the project. Originally part of the development team, Dana Anderson has been retained as the "certifying agent" for Battle Road Farms and has become Lincoln's "point person" for all HOP unit activity.\*

The Lincoln Foundation maintains regular contact with all of the owners of affordable units, particularly when problems have been discovered. For instance, in May 2000, after one of the owners was discovered to have been renting (as mentioned earlier), a letter was sent out to all owners to "review some of the specific responsibilities [owners] agreed to when [they] became a part of the program."<sup>139</sup> The letter reminds owners that they cannot rent their homes and that, if they do so without prior permission, The Lincoln Foundation may exercise its rights to purchase the home in order to enforce the restriction. This enforcement mechanism is made possible through the inclusion of an "Affordability Preservation Option" clause in the initial disclosure statements and deed riders providing the Foundation the right to purchase units at violations of deed restrictions.<sup>140</sup> The letter was also accompanied by a two page sheet outlining the process to follow when owners want to sell their homes.

The accompanying note, entitled "Summary of Seller's of Affordable Units Responsibilities," reminds potential sellers to first notify the Foundation, through Mr. Anderson, of their desire to sell their unit. Once notified, the Foundation will provide the owner names of firms to contact to prepare an appraisal of the home. The Foundation, in conjunction with DHCD, will use the appraisal to establish the MSP and will begin the process of finding an eligible purchaser. The memo continues to outline how the closing

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<sup>137</sup> Rana Kaplan, Lincoln (interviewed by author on March 19, 2001)

<sup>138</sup> Lincoln Foundation mission statement, provided to author by Katharine Preston

\* The original entity responsible for monitoring the restrictions was actually a nonprofit subsidiary of the developer led by Dana Anderson. In 1998, The Lincoln Foundation took over responsibility and continues to retain the services of Mr. Anderson

<sup>139</sup> Memorandum from The Lincoln Foundation to Battle Road Farm Affordable Homeowners dated May 2000.

<sup>140</sup> Battle Road Farm deed rider and disclosure statement

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process and sale occur and includes a reminder that “there are also special rules for using your home as equity for a loan.” Contact information for Mr. Anderson and for the Lincoln Foundation is provided. As a result, all owners of affordable units have been made aware of the restrictions and have a clearly written procedure to follow when issues arise. The Foundation also meets annually with owners “to review how the program is working.”<sup>141</sup>

In order to offset the costs of monitoring, the Town and developer had the foresight to include language in the project’s documents which would enable the monitoring entity to charge a 4.5% fee for every resale. As The Lincoln Foundation points out to owners, this fee is in lieu of the 5-6% commission private brokers would ordinarily charge.<sup>142</sup> A small percentage of this fee, approximately 1.5% is provided to Mr. Anderson for his services in finding and qualifying eligible purchasers.<sup>143</sup> The remaining amount is kept in an escrow account to be used for other housing initiatives or for the purchase of affordable units when purchasers cannot be found. Mr. Anderson keeps and maintains a list of eligible purchasers and gives first priority to the next eligible household on the list when units become available.

Lincoln intends for these homes to be affordable in perpetuity. As a result, capital improvements are usually not allowed and the lock-in period of the affordability restrictions is indefinite, although deed riders include the language that if the “Rule Against Perpetuities” limits the allowable lock-in period, then the expiration of the period “shall not occur later than the expiration of twenty (20) years after the death of the last living [owner] hereunder.”<sup>144</sup>

To date, Lincoln has not lost a single unit. However, plans are in place in the event that the Foundation must purchase a home to prevent it from becoming market rate. Although there is only a little over \$60,000 in the escrow account, consideration has been given to other ways to obtain the necessary financing.<sup>145</sup> Although its first mission is housing-related, its second mission is to preserve open space. As a result, the Foundation recognizes that it would be able to obtain bridge financing to purchase units vulnerable of being lost by temporarily mortgaging some of its land holdings.<sup>146</sup> The fact that the Discount Rate Model is used to calculate the MSP, despite the fact that the affordable units in Battle Road

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<sup>141</sup> Memorandum from The Lincoln Foundation to Battle Road Farm Affordable Homeowners dated May 2000.

<sup>142</sup> Memorandum entitled “Summary of Sellers of Affordable Units Responsibilities” prepared by Lincoln Foundation.

<sup>143</sup> Katharine Preston, Lincoln Foundation (interviewed by author on March 21, 2001)

<sup>144</sup> “Homeownership Opportunity Program Deed Rider” for Battle Road Farm project in Lincoln, undated.

<sup>145</sup> Katharine Preston, Lincoln Foundation

<sup>146</sup> *ibid*

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Farm have deep reduction rates, makes it possible that such a procedure will have to be taken before long as values continue to appreciate.

### Concord

Although as of 1997, Concord had only reached 2.35% of its affordable housing goal, the town has been making diligent efforts to expand its stock of affordable housing. In fact, a ground breaking for a new LIP development has just been scheduled for June 2001, the fourth LIP project to be built in Concord.<sup>147</sup> While Concord shares the right of first refusal with DHCD with respect to its HOP development, a 100% affordable condominium project known as the Emerson Annex, the town is extremely actively involved with marketing the units. Local responsibility for overseeing activity in both the HOP and the LIP projects rests with the Town's planning department.

Interviews with a number of planning staff members revealed that the entire department has been involved with monitoring and can provide a clear description of how the processes work.<sup>148</sup> To date, resales have only occurred in Concord's HOP project. However, although the LIP units have yet to overturn, a fairly high level of refinancing has been occurring.<sup>149</sup> Like Lincoln, Concord too maintains regular contact with the owners of affordable units in town and has clearly written procedures for owners to follow when they want to sell or refinance their homes.<sup>150</sup>

Furthermore, the planning department, on behalf of the town, makes substantial efforts to affirmatively market available units. Although all communities are required to take special measures to ensure that a certain percentage of the units in every project are purchased by minority households during the initial occupancy period, many communities fail to continue to maintain the minority participation goal as units overturn. However, in Concord, the town has made sure that marketing efforts reach non-residents as well as residents and has been careful to maintain a level of minority ownership.<sup>151</sup>

Concord maintains a waiting list of over 100 households that have been preliminarily pre-qualified as potentially eligible purchasers.<sup>152</sup> Each time a unit comes up for sale, the planning department notifies everyone on the list as part of its marketing process. The only way to get off list is for the letter to be

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<sup>147</sup> Toby Kramer of TCB who is also active in affordable housing issues in Concord

<sup>148</sup> Gillian Carlson and Elizabeth Newman, Concord Planning Department

<sup>149</sup> Elizabeth Newman, Concord (interviewed by author on March 16, 2001)

<sup>150</sup> "Emerson Annex Resale Procedure" revised August 1995

<sup>151</sup> Gillian Carlson, Concord

<sup>152</sup> *ibid*



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returned with no forwarding address.<sup>153</sup> Each time a unit becomes available, the town develops a timeline for the resale process. A letter is sent to all interested purchasers laying out the process and the deadlines. The letter informs potential applicants that the unit will be sold by lottery and whether there will be any local or minority preference. The letter also includes the sale price and the maximum allowable income limits.<sup>154</sup>

Until recently, the former planning director was responsible for pre-qualifying all of the applicants who expressed interest in purchasing. However, Concord now sends applicants' information to the loan officer at Fleet who has become responsible for screening and qualifying purchasers. The loan officer then forwards the names and contact information of those applicants who are both eligible under the program and qualify for financing to the planning department for the lottery. For instance, in September 1999, the planning board sent a letter to all "interested applicants" which described the unit, outlined the restrictions, and provided information on how to obtain an application.<sup>155</sup> The unit was appraised at \$255,000 but was selling for only \$136,935. The letter lays out the financing terms and anticipated monthly payments. Applications were due one month later and the lottery was scheduled for the beginning of November. Over 36 applicants participated in the lottery and the unit was successfully kept in the program.<sup>156</sup>

That particular unit became available after it was discovered that the original owner had purchased another home in town and was renting his affordable condominium at market rents. A review of the various correspondence between the planning department and the owner, the planning department and the town, and the town and DHCD reveals that the owner had refinanced his MHFA mortgage and had been under the impression that the owner-occupancy restriction had been released. In fact, it appears that MHFA itself believed this to be true.<sup>157</sup> However, the town researched its rights under the HOP affordability restrictions and informed the owner that it was prepared to take legal action if he did not agree to sell his unit immediately. As has been previously mentioned, the situation came to light when several residents "expressed their outrage that the program was being abused."<sup>158</sup>

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<sup>153</sup> Elizabeth Newman, Concord (interviewed by author on March 26, 2001)

<sup>154</sup> Memorandum from Town of Concord Department of Planning and Land Management to: "Interested Applicants for Affordable Housing in Concord"

<sup>155</sup> *ibid*

<sup>156</sup> Letter to [owner] from Gillian Carlson dated October 15, 1999 regarding lottery results

<sup>157</sup> Letter from Marcia Ast Rasmussen, Planning Director to Christopher Whelan, Town Manager dated December 10, 1998

<sup>158</sup> *ibid*

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Concord has lost no units to date and credits its success to “the tight timeline that [they] stick to well.”<sup>159</sup> Like Lincoln, Concord expects to retain its stock of affordable housing in perpetuity and appears genuinely concerned that all monitoring processes are run fairly, effectively, and smoothly.

### Boston

In Boston, most affordable ownership units are controlled and monitored by two different agencies: the Boston Redevelopment Authority (BRA) and the Department of Neighborhood Development (DND). To date, over 867 affordable ownership units have been created by these agencies.<sup>160</sup>

The story of how affordable housing restrictions are handled in the City of Boston could easily consume 100 pages on its own. In fact, only a year ago, the process by which affordable units were being monitored made headlines when it was revealed that an affordable condominium unit in Charlestown had been sold to a senior level BRA staff member. In response, Mayor Menino issued an Executive Order that all of the City’s affordable units must be sold only to income-eligible purchasers and that a thorough examination of the status of every unit in every project in the city must be undertaken. He also wanted recommendations on how the processes could be improved. CHAPA was retained to conduct this investigation and reported its findings in 27-page report in February 2000.<sup>161</sup>

CHAPA found that at least 12 separate sets of documents have been used to enforce restrictions on the city’s stock of affordable housing.<sup>162</sup> In some cases, the restrictions failed to include income-eligibility requirements as part of the resale controls.<sup>163</sup> This is how the Charlestown case occurred. Furthermore, there was no centralized system by which the 867 units were being tracked and monitored. In many cases, even the addresses of the units were difficult to locate.<sup>164</sup> Although the investigation revealed that the majority of affordability restrictions were still intact, it was clear to all involved that improved systems had to be developed. Recommendations included creating a standardized deed rider, developing a complete inventory of all units and applicable restrictions, establishing a clearinghouse to market available units, and streamlining the monitoring process to be more effective.

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<sup>159</sup> Gillian Carlson, Concord

<sup>160</sup> “Ensuring the Long-Term Affordability of Homeownership Units in the City of Boston: A Report”

<sup>161</sup> Report entitled: “Ensuring the Long-Term Affordability of Homeownership Units in the City of Boston: A Report”

<sup>162</sup> *ibid*, p 9

<sup>163</sup> *ibid*, p 10

<sup>164</sup> Aaron Gornstein, Executive Director, CHAPA (interviewed by author on April 11, 2001)

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Both the BRA and DND were quick to respond to the recommendations outlined in CHAPA's report.<sup>165</sup> The Boston Home Center, housed at DND, is available to help sellers and the city locate eligible purchasers. A model deed rider has been developed which includes all necessary affordability restriction components. A central database has been created which lists information about each unit. The database includes information on the type of affordability restrictions in place on approximately 80% of the units and DND and BRA staff are continuing to research deed restrictions and add information to the database.<sup>166</sup> Furthermore, a system has been established whereby every two weeks, BRA and DND staff meet to review current activity and discuss further ways of facilitating monitoring.<sup>167</sup> These meetings are attended by all of the staff members directly overseeing the various processes as well as many high level senior officials. An update on units currently available for sale or at risk of foreclosure is put on the agenda which has helped prevent units from falling through the cracks through oversight.<sup>168</sup>

Although Boston continues to periodically lose units through foreclosure or when the MSP is too high to remain affordable, it is the hope of both DND and BRA staff that measures will soon be developed to reduce the incidences of such losses. According to DND, staff have been working on ways to protect units at risk of foreclosure and of writing down unaffordable purchase prices.<sup>169</sup>

### Westford

The Town of Westford has been less successful at developing a workable process by which its affordable housing stock can be monitored and protected. However, the municipality is fortunate that the executive director of the Westford Housing Authority has been willing to try her best to manage the process in the absence of a formalized system.<sup>170</sup> In fact, Westford was one of the communities where notification had been disregarded on the local level because no one understood what to do with it. According to the executive director, the town had received its first notification from DHCD two years ago. As stipulated by program terms, DHCD provided a copy of the right of first refusal letter, sent out to the owner, to the chief elected official in the municipality. In that case, the letter was sent both to the Board of Selectmen and to the housing authority but everyone ignored it because they did not think that they had to do anything. They believed that as DHCD had primary responsibility for overseeing HOP and as the letter

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<sup>165</sup> Jerry McWilliams and Mary Kanasas of DND, and Aaron Gornstein of CHAPA

<sup>166</sup> Sheila Dillon, DND

<sup>167</sup> *ibid*

<sup>168</sup> Jerry McWilliams, DND

<sup>169</sup> Sheila Dillon and Jim Creamer, DND

<sup>170</sup> Christine Pudie, Executive Director, Westford Housing Authority (interviewed by author on March 26, 2001)

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was between DHCD and the owner, they could literally throw out the notice. When the notices began to be forwarded to the executive director by default, she “picked up the ball and did some investigating” to find out whether units had been lost.<sup>171</sup>

Although DHCD was making minimal efforts to market the units, there was an assumption that more intensive efforts would be made on the local level. As a result of this miscommunication, at least one unit has been lost and has become market rate and the town fears that many more may have suffered the same fate.<sup>172</sup> To make matters worse, Westford is one of the communities which is also experiencing high levels of loss due to excessively high MSPs. Although the initial reduction rates for the first homeowners were substantial, many were resold in the early 1990s when the market had dipped substantially. Households who purchased units at that time received very little discount in their purchase prices. As a result, the discount rate for many of Westford’s affordable units is as high as 100% so that when units come up for resale, the MSP is essentially the market appraised value of the home. For instance, in December 2000, a unit came up for sale in Westford’s Haystack Meadows HOP project which had an MSP of \$147,000.<sup>173</sup> Based on MHFA underwriting criteria, the income a household would have had to earn \$53,000 per year, which was \$2,000 over the maximum allowable income limit for the Westford area. As a result, the unit was sold out of the program to a market rate purchaser.<sup>174</sup>

Although the Town Manager, Assistant Town Manager and Board of Selectmen have all expressed concern about what is happening to Westford’s stock of affordable housing, the town has yet to identify a specific point person to oversee the process. As the HA executive director notes, she is performing this service on top of her full-time job and believes that the housing authority is already too strained to handle the process sufficiently. In the meantime, when units come up for sale, she advertises in local papers, family public housing developments, and with local brokers. She has also put together a waiting list of approximately 12 households whom she contacts when units become available. However, given the high MSPs and the lack of a reduction, she concedes that it would make no sense to buy these units with restrictions. Although in some cases, buyers may be willing to purchase restricted homes at market prices in order to obtain DHCD’s interest subsidies. However, given current low rates, even this incentive is not enough to save the units.

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<sup>171</sup> *ibid*

<sup>172</sup> Christine Pudie of Westford and, Ky Melhado, a local broker

<sup>173</sup> Memo from Catherine Peagler of DHCD to Donna Koulas of Fleet, with handwritten notes made by Ms. Koulas

<sup>174</sup> Christine Pudie, Westford

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## Tewksbury

The Town of Tewksbury is having similar problems to those experienced in Westford. According to the executive director of the Tewksbury Housing Authority, when HOP developments began to be seen, the town “scurried to set up a committee to review proposals.”<sup>175</sup> However, although the Affordable Housing Committee has handled that task very well since its inception in the late 1980s, they do not have any involvement with the ongoing monitoring of completed projects. In fact, the town recently held a lottery for a new mixed-income project which involved over 300 applicants for the affordable units. However, there little attention was paid on the local level to the ongoing monitoring needs of existing projects over time.

Although the housing authority has reluctantly taken on the responsibility for the marketing process, the director notes that a willing and able point person must be identified who can do a thorough job. That is not to say that the HA director is not trying her best given the constraints of time, resources, and the realities of the program. When the housing authority receives its copy of DHCD’s right of first refusal letter, she creates and distributes fliers to the residents of the town’s family public housing and posts notices around town. However, to her knowledge, none of her efforts have resulted in finding an eligible purchaser. In fact, she notes that many of the town’s Section 8 rental tenants actually have incomes in excess of program limits. She estimates that she has received at least 15 resale notices in the past year alone but is not sure what happened to the units. Conversations with staff in the planning department, clerk’s office, and town manager’s office revealed that they too did not know what had happened to these units.

In fact, it turns out that, despite the lack of a formally identified point person, an unusual situation has arisen in Tewksbury whereby a local real estate broker, in conjunction with the loan officer at Fleet, has essentially been monitoring the affordability restrictions. This broker has become the primary contact person for owners of both market and subsidized units in Tewksbury’s mixed-income developments. Not only does he oversee the resale process, but he does an amazingly thorough job of identifying and abiding by the applicable affordability restrictions. Furthermore, as previously noted, even though the town conducts no outreach to owners, this broker, through his annual marketing letters, has succeeded in keeping owners aware of how the restrictions on their properties must be handled. In fact, he includes a

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<sup>175</sup> Corinne Delaney, Tewksbury (interviewed by author on March 19, 2001)

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flier in his annual holiday greeting which informs owners that he is familiar with HOP program and that HOP/MHFA owners should feel free to contact him with questions. Over his ten years as a broker in Tewksbury, he has handled 80 transactions among the town's 225 units. Although he concedes that some units have been lost when low deduction rates or extensive capital improvements have inflated MSPs too high for eligible purchasers, he actually takes substantial measures to try to locate eligible purchasers.

When interested sellers contact him, he "looks up the deed to assess the applicable discount rate." He then orders an appraisal, at the seller's expense, calculates the MSP, and sends the package to DHCD for verification. He both maintains a waiting list of pre-qualified potential buyers as well as advertises "locally around town and in the papers." He sends the names of all interested applicants to the Fleet loan officer for certification. The broker noted that for many years, he actually certified buyers himself, a process which could be "awkward and off-putting to potential purchasers" and greatly appreciates the ability to now send applicants to an official banker for income and asset verification.

The loan officer sends him back notification of whether or not someone qualifies, and applicants who are not selected but found to be eligible are added to his waiting list. He says that the subsidized units sell very rapidly and he has no trouble finding eligible purchasers if the MSP is feasible. He also notes that he never informs residents of which units are subsidized, and that all of the homes, regardless of ownership status, are very well maintained.

However, although this particular broker genuinely values the program's intent and is careful to abide by the terms of the affordability restrictions, there are potentially serious implications to relying on brokers to monitor resales.

Whether a home is subsidized or not, over 60% of all sales are conducted through a broker.<sup>176</sup> Without the funds or resources to do their own searches, many communities rely on the services of private real estate brokers to find and screen potential purchasers. However, this reliance on brokers to find eligible buyers may be problematic. As brokers' commissions are based on the actual sales prices, there may be little or no incentive for them to market and sell homes at the reduced MSP when waiting out the right of first refusal period and selling at market rates could greatly their profits.

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<sup>176</sup> Statistic cited by Paul Carney, REMAX Realty

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Conversations with several brokers, including the one in Tewksbury, revealed that this was a legitimate possibility and that steps should be taken to ensure that brokers only base commissions on the MSP, even when units are sold out of the program at market prices. As one broker points out, brokers are “familiar with disclosure statements and waivers and frequently must sign such paperwork in the course of an ordinary transaction.”<sup>177</sup> Although the mandatory marketing language currently included in NEF deed riders, and, soon to be included in LIP and HOP documents, will help ensure that owners market the units during the first 90 days, an additional requirement for brokers should be drafted. For instance, a “broker’s covenant” could be developed which requires the seller’s broker, if one is being used, to sign a waiver certifying that the ultimate commission will be based on the MSP irregardless of the price at which the home is actually sold. The addition of such further paperwork, according to several brokers, would be represent little or no additional burden to an already paper-heavy process.<sup>178</sup>

However, it should be noted that not only is there is no evidence that brokers have in fact abused affordable housing programs in this way, there are in fact some disincentives for brokers to do so. In this current real estate market, homes are selling very rapidly. Unless sellers and brokers actually collude to share the additional profit, in most cases sellers will want to sell their homes as quickly as possible and will be dissatisfied if brokers drag out the process for their own benefit. In fact, a broker’s reputation could be severely compromised if it was revealed that they held properties for as long as three months. It would also be “suspicious, if word got out” that a property “sat at the affordable price for 90 days” and then suddenly the broker decided to increase the price months later.<sup>179</sup>

The situation in Tewksbury may not be unique. Although many of the players involved with monitoring and enforcing affordability restrictions recognize that brokers can be extremely valuable during the resale process, careful consideration must be given to ways to mitigate potential conflicts of interest.

### Implications of Five Case Studies

Although most communities recognize that producing affordable housing is not enough, many have failed to develop local procedures for controlling what happens to the housing in the long run. While some communities, such as Concord, Lincoln and Boston, have designated individuals to oversee the process and have well written procedures for the individuals and owners to follow, other communities are doing

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<sup>177</sup> Ky Melhado of DeWolf in Westford (interviewed by author on March 26, 2001)

<sup>178</sup> Ky Melhado and Paul Carney

<sup>179</sup> Ky Melhado

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very little to ensure that their stock of diversified housing remains affordable. In some cases, such as in Westford and Tewksbury, informal processes have helped offset the risks which the absence of formalized procedures pose. However, while those informal processes may work for straightforward resales, they will not save units in more complicated situations where units become vulnerable to being lost. Municipalities must develop strategies to protect units in cases where MSPs are too high or when units are at risk of foreclosure. The concluding chapter will highlight some of the actions which communities should consider taking to better preserve their stock of affordable ownership housing.



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## CHAPTER FIVE

### **CONCLUSION & RECOMMENDATIONS**

Although the goal remains the same – keep the homes affordable – the actual processes by which affordability restrictions are created, implemented, monitored and enforced can radically impact the likelihood that units will be protected. When designing affordability restrictions, there are two very different factors at play.

On one hand, the creation of restrictions involves legitimate policy choices. To what extent should owners be precluded from recapturing appreciation on their homes in order to keep those homes affordable for the next families? To what extent should the protection of restrictions be compromised to satisfy lenders' needs for loan security? There are no easy or right answers. However, the decisions will have far-reaching impacts on how successfully the restrictions will protect the long-term affordability of the homes. Resale price formulae which provide generous recapture benefits to original owners may make the units unaffordable for future purchasers. Subordinating the restrictions during events of foreclosure may lead to units being lost to the market. The best possible middle ground must be found where the interests of all parties can be fairly and reasonably met without unnecessarily risking the continued affordability of the homes. Despite some ongoing debate, it appears that after years of tinkering, a reasonable middle ground has been found.

However, there is a second factor at play. Decisions on how to structure the mechanics of affordability restrictions may be as important as the policy choices behind them. As has been demonstrated, the process can be easily derailed by swings in the real estate market, problematic program design, and inattention by those who have important roles to play. While market changes cannot be avoided, the impact can in fact be moderated. Sensitively created resale formulae can help offset market risks. Resourceful use of recaptured subsidies can write-down unaffordable resale prices. Although the complexities of the processes and programs cannot be avoided, the development of clear and detailed procedures will help the system run as effectively as possible. Though there is no easy cure for incompetence, the inattention of owners, monitors, lenders, title examiners, and local and state officials can be countered by well working legal mechanisms, well laid-out procedures, and well directed communication. When each party understands its role, the process proceeds smoothly and units are

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protected. When communities conduct regular outreach to owners few, if any, units are lost. Restrictions which are recorded in easily detectable ways will be less likely to be overlooked by even the most careless attorneys and title examiners.

This analysis has revealed that the success of the system depends in large part on the presence of incentives for involved parties to pay attention. Each of the primary players in the process – owners, lenders, municipalities, and state officials – must be cognizant of both the importance and the impact of their actions. For instance, as has been seen, there are serious implications for owners who violate affordability restrictions during their period of ownership. There is also no incentive for owners to influence the resale process as their sales proceeds are fixed regardless of the actual sales price. In fact, as most owners want to sell their units as quickly as possible, there are real incentives to keep the homes in the program as DHCD will oftentimes require a few additional weeks to review what went wrong when approving a sale to a market rate purchaser.<sup>180</sup> Furthermore, while lenders may not be explicitly concerned with the continued affordability of the homes, there are many reasons for lenders to want to avoid events such as foreclosure. When real alternatives to foreclosure are developed and made available, lenders will have an incentive to help protect those units. As has been emphasized throughout this analysis, municipalities should feel a public duty to preserve housing which local resources made possible. However, even when such concerns are not enough on their own to spur action, the existence of Chapter 40B should serve a substantial incentive for municipalities to pay attention. Finally, DHCD has an incentive to do its job well as other programs such as NEF threaten to overshadow state programs and calls for private monitoring of the state’s inventory become more widespread. It is the responsibility of state officials to stay on top of the process and make efforts to reevaluate processes, procedures, and programmatic design to ensure that the best possible mechanisms are in place to protect the units.

This analysis has provided a glimpse at both the policy choices being made and the mechanisms being used to protect Massachusetts’ stock of affordable ownership housing. Although recommendations on how the system can be made more effective are outlined below, it must be noted that the process overall has been working surprisingly well. Although units should never be lost due to inattention by those charged with protecting them, steps are already being taken on both the state and the local levels to improve the monitoring processes. In almost every case, when cracks in the system have been identified, measures have been taken to fix them. However, given the complexity of the processes, the dispersion of

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<sup>180</sup> Harriet Moss, DHCD

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responsibilities, the infrequency with which events occur, and the idiosyncrasies of each project, program, and locality, it is unlikely that a single failsafe system can ever be developed. That said, the following strategies may help bring the system closer:

While there are certain specific programmatic changes which merit consideration, this analysis has revealed that the biggest obstacles to successfully protecting affordability are procedural. The key is to develop workable procedures by which affordability restrictions can be created properly in the first place and monitored over time. The monitoring process occurs at different stages, is both active and passive, and requires the active participation of a range of players. It is essential that all participants in the process clearly understand their roles and the significance of their actions.

In an effort to provide order to the recommendations, they are presented in three categories: actions which improve the upfront processes, actions which facilitate ongoing monitoring, and actions which address events as they arise over time.

#### **ACTIONS WHICH IMPROVE UPFRONT PROCESSES**

1. Drafting Affordability Restrictions: This analysis has provided an overview of the different components which should be included in affordability restrictions. However, as some programs have already done, inclusion of the following additional features should also be considered when drafting legal and programmatic documents:
  - Second rights of first refusal periods should be included to provide sufficient time to find eligible purchasers and to provide second opportunities for entities to act;
  - Mandatory marketing language like that used in the model NEF documents should be included to ensure that owners participate in the process of finding eligible purchasers;
  - A clause concerning sales' commissions should be added to the resale process section. Many owners use brokers who charge 5-6% commissions. As sales costs are often recoupable, the use of brokers may increase the MSP. An option should be provided which would allow entities overseeing the resale process, including municipalities, to charge sellers a smaller commission for finding an eligible purchaser. This would help offset monitoring costs, decrease the MSP, and increase the incentives for monitors to make diligent efforts to market the units.
  - A separate "Broker's Covenant" should be developed for brokers to sign, agreeing to base their commission on the MSP. This covenant should also be referenced in the above-mentioned clause.
  - Foreclosure language: Although all restrictions examined contain language concerning notification by lenders in events of impending foreclosure, the language could be strengthened by specifying a minimum advance notification period, such as the 60 day prior notice required under LIP and NEF.

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Furthermore, a clause should be added concerning measures lenders should take prior to initiating foreclosure. A specific phrase should be added which notes that the owner, by signing the deed rider and agreeing to the terms of the restrictions, understands that the lender may contact the holder(s) of rights of first refusal at any time after default. This should address concerns of lenders, such as MHFA, that they do not have the right to initiate contact with third parties to workout alternatives to foreclosure until they actually take title to the property.

2. Recording Affordability Restrictions: Fairly simple changes to the legal mechanisms used to record restrictions would help protect restrictions:
  - If deed riders are used to record affordability restrictions, a notice should be inserted on the first page of the deed in large, bold font clearly stating that an important deed rider is attached.
  - Preferably, an alternative instrument for recording restrictions should be developed which could be executed and recorded separately from the deed and which would be instantly detectable during title examinations.
  
3. Early Outreach to Participants: Beginning at project conception and continuing through initial occupancy, formal and informal outreach should be conducted to all participants in the process:
  - Local Groups: There must be some entity on the local level which can help draft, review and approve affordability restrictions during the initial development phase. Where they exist, LHPs and other housing-related groups should be encouraged to play an active role in helping municipalities design restrictions. When possible, such groups should also help monitor restrictions overtime. Where such groups do not exist, have become inactive, or do not have the necessary expertise, technical assistance and training can be accessed through MHP or DHCD, or by other established LHPs.
  - Municipalities: Even where LHPs do exist, local officials need to understand the process to ensure that municipalities play an active role in protecting housing which local resources made affordable. Training and instruction on the need for and use of affordability restrictions should be provided directly to local officials, planning boards, housing authorities and any other local body participating in the process. Such assistance is currently available through MHP and DHCD. DHCD recently held a series of well-attended training sessions on 40B and restrictions which have already helped raise awareness of municipalities' roles in the process.
  - Other Municipal Employees: Not only must municipalities designate point persons, or at least individual departments, to represent the community in the monitoring process, but they must provide all local boards and agencies with contact information for this person. Telephone calls to municipalities to identify appropriate people to interview for this analysis revealed that staff in departments not directly overseeing monitoring are often completely unaware of and misinformed about the way the process works. This is problematic as owners may experience the same difficulties getting accurate information when issues or problems arise with their homes.
  - Initial Marketing: Developers, municipalities, LHPs or marketing agents should make sure that potential buyers understand the significance of the restrictions and how the processes will work. Simplified written materials summarizing the contents of disclosure statements should be provided to every purchaser to ensure that owners are fully aware of and abide by all restrictions.
  - Other Housing Entities: Outreach should also be conducted to parties who can enhance monitoring even if they do not have a direct role. For instance, as an added assurance that the

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appropriate party will be informed of potential refinancing, sale or foreclosure, notices could be sent to SSLP administrators in each community advising them of the restrictions, noting which owners have SSLP funding, and informing them of the appropriate person to contact if an event occurs. Although notification of such events should also be provided through formal channels, this analysis has shown that this does not always occur. Such working relationships could also be fostered with local banks, management companies, real estate brokers, and the holders of the homes' first mortgages.

- NEF Funders: In the case of NEF projects, outreach and instruction may need to be provided to FHLBB member banks sponsoring comprehensive permit projects to ensure that they are aware of the significance of issuing site eligibility letters, as NEF is placing lenders in a completely new role. Lenders are accustomed to issuing commitment letters when projects are financially feasible, NEF forces them to evaluate projects from a completely different perspective.

#### **ACTIONS WHICH FACILITATE ONGOING MONITORING**

1. Identification of Point-Persons: As noted throughout this analysis, many communities do not have designated individuals who represent the community's interests throughout the monitoring process:
  - Every community which has an affordable ownership development must identify a specific point-person who is willing and able to handle local monitoring responsibilities.
  - Contact information for that person should be provided to all relevant parties including owners, lenders, professional monitors, and the state.
2. Provision of Resources and Funding: Interviews with local officials in many communities revealed that insufficient resources are being made available to enable monitoring to be performed effectively:
  - Sufficient resources must be allocated to that point person, or to that person's department, to offset the time and cost of local monitoring.
  - If funding is not available through local budgets, other sources must be found. While the state may choose to directly allocate funding for this purpose, municipalities may also apply for HOME or CDBG funds and may be eligible for special funding as part of Executive Order 418.
  - Municipalities (or other applicable monitoring agencies) should also begin to require, as a condition of project approval, that developers capitalize escrow accounts to help offset the cost of monitoring.
  - As noted, monitoring agencies, including municipalities if applicable, should be allowed to charge small fees for finding eligible buyers, as described above.
3. Processes, Periodic Outreach and the Maintenance of Databases: Certain processes and procedures need to be developed and implemented as soon as projects are approved:
  - Although it has been stated many times, and will be discussed throughout this section, it is absolutely essential that written procedures are developed early on which describe in detail all of the steps of all of the processes which all parties must follow. Although informal systems can be helpful as back-up methods of monitoring, such processes cannot be relied upon. All involved parties – owners, lenders, developers, and local & state officials – must be familiarized with these procedures.

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- Periodic outreach must be conducted to all of the owners of affordable units reminding them of the restrictions, offering their assistance, and explaining the repercussions of violations. This outreach may be performed by communities, LHPs, monitoring agents or other appropriate parties. The letter should also include contact information if owners have questions or issues needing to be addressed.
  - In researching information for this report, it became clear that information on projects and individual owners is not always easily available on the local level and, in some cases, on the state level. Therefore, centralized databases should be created to both record owner information and to track activity as units overturn or are refinanced. This will both facilitate the process of touching base with owners and, inversely, outreach to owners will help keep the database current as changes in ownership will be more easily detected.

### **ACTIONS WHICH ADDRESS EVENTS AS THEY ARISE OVER TIME**

1. Workable Resale Procedures and Processes: As units become occupied, monitoring becomes more passive. However, actions should be taken to ensure that all participants are prepared to respond to events when they occur. This section addresses actions which can help streamline and safeguard the resale process while the next section focuses on foreclosure prevention strategies:

- MSP Formulae: This analysis has shown that careful consideration must be given when deciding what type of MSP formula will be used to calculate resale prices. It is strongly recommended that a version of the “Purchaser-Based” MSP model be used to ensure that the homes will be sold at prices which low and moderates income families can actually afford.
- Process Overview: The resale process must be laid out in explicit detail. Details should include information as specific as how to retain an appraiser and what type of appraisal is “acceptable.”<sup>181</sup>
- Notifications: Resale notification processes should also be improved. Although recorded documents will only provide general contact information, the exact names of the actual individuals overseeing resales should be distributed to all parties to ensure that notification falls in the correct hands.

Furthermore, the notification letters themselves should be made more clear. For instance, as DHCD is currently doing, the right of first refusal letter should be made more useful to both owners and to other parties which receive copies. Notification letters must emphasize that unless timely action is taken, units may be lost.

Notices should be sent to as many appropriate parties as can be identified, including local housing authorities, planning departments, and local and regional nonprofits. Although DHCD has already expanded its notification process, other parties should do the same.

- Marketing: When entities overseeing resales are notified that an owner intends to sell a home, substantial efforts must be made to find an eligible purchaser.

This should include advertising in both local and regional papers, posting notices in highly frequented public areas such as libraries, schools, post offices, stores, and rental housing developments, and advertising on town internet sites and local cable stations. Notice should be also be sent to local housing authorities, local and regional nonprofits and real estate brokers.

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<sup>181</sup> The costs associated with ordering an appraisal are not insignificant for many low and moderate income households and conversations with one owner revealed that, after having ordered two “unacceptable” appraisals she became fed up with the process and intends to wait out the right of first refusal period to spite DHCD.

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Diligent affirmative marketing must be made in order to retain minority ownership participation.

As proposed above, if entities actively market a unit and find a purchaser, they should be allowed to take small fee in lieu of a broker's fee to help offset costs and capitalize housing accounts.

- Regional Marketing: Some municipalities, particularly those on the Cape, would like regional non-profits to take over the monitoring of affordability restrictions, including marketing and resales. They are requesting that over \$1 million be earmarked for such regional marketing efforts. Although this might be beneficial for smaller communities which have limited staff and no capable local housing organizations, and could help expand the pool of potential homebuyers, there is no reason to believe that regional nonprofits will necessarily be better at monitoring than municipalities. Like municipalities, some regional groups are very sophisticated while others are not.
- Waiting Lists: Every municipality (or other applicable party) should create and maintain a waiting list of potential purchasers who can be readily contacted when units become available. Each time a unit comes up for sale, names and contact information of households who were interested and eligible to purchase the unit should be entered into a database. When the next unit becomes available, a ready pool of potential purchasers can easily be contacted.
- Follow-up Action: If such good faith efforts fail to locate an eligible purchaser within a few weeks, the entity overseeing the process should immediately inform other parties and ask for additional assistance. The letter should state clearly that the unit is at risk of being lost.

As noted above, an extended right of first refusal period, in conjunction with follow-up action, could provide the time necessary to find an eligible purchaser, although the period should not be so long as to seriously inconvenience the owner.

- Write-Down of Purchase Prices: All interested parties, including municipalities and local non profits, in communities where units are at risk of being lost by excessively high MSPs must work to find ways to save those units. Although DHCD is already looking at ways to write-down purchase prices, such efforts should also be made immediately on the local level. Those charged with monitoring affordability restrictions should have plans in place which enable them to actually exercise their right of first refusal to purchase units.

2. Workable Foreclosure Procedures and Processes: As currently written, affordability restrictions are wiped out in events of foreclosure. While efforts may be made to negotiate different terms with lenders, there are a number of measures which should be taken immediately to help prevent the loss of the units through foreclosure:

- As discussed at the beginning of the analysis, foreclosure prevention programs are available to owners across the state. At a minimum, owners should be made aware of these programs so that they have someone to contact if they run into difficulties.
- Strategies must also be developed on the local level to help prevent foreclosure in the first place and to gain control of the homes if foreclosure becomes inevitable.
- As noted above, lenders must be encouraged to contact and work with interested parties to ensure that the units are not lost at public auction. At a minimum, lenders must provide sufficient prior notice to allow interested parties to take action. Lenders should also encourage owners to contact the municipality, DHCD, and local nonprofits for assistance.

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- When contacted, these parties should have mechanisms in place to allow them to act quickly to solve the situation. Options include providing assistance and short term loans to the borrower or taking over the mortgage and leasing the home back to the owner until the household is relocated or can repurchase the home.

This analysis has shown that units can be lost when: sales prices are too high, when market prices are too low, when units are sold through foreclosure, and when inadequate attention is paid to designing and implementing, and following monitoring procedures.

There are a limited number of ways to address the first three circumstances: alternative MSP formula can be used, sales prices can be subsidized, entities can exercise rights to purchase units at risk, and foreclosure prevention strategies can be developed.

However, there is no acceptable excuse for losing units simply through inattention on the part of those involved with protecting affordability. By strengthening the restrictions and the means by which they are recorded, by increasing outreach to all parties to remind them of their duties and to expand the number of players actively concerned with preserving affordability, and by developing detailed, workable procedures and processes which anticipate potential problems before they arise and contain mechanisms to address problems when they occur will increase the chances that the affordability of ownership units will be protected over time.



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## **POSTSCRIPT: Proposed Legislative Changes & the 40B Inventory**

As of this writing, there are currently over a dozen bills pending review by the state legislature which, if passed, would weaken the impact of Chapter 40B and decrease the incentives to maintain existing affordable housing. The proposed changes include reducing the “Ten Percent” to a lesser amount and expanding the types of housing that can be included in the Affordable Housing Inventory. The impetus for changes which would make it easier for communities to satisfy their 40B affordable housing goal is threefold. In some cases, legislators are responding to concerns by some communities which will be hard-pressed to ever reach the existing ten-percent goal given the amount of their existing housing stock and the amount of existing buildable land. In other cases, legislators are responding to claims that private developers use the powers of 40B as a means of forcing communities to accept unreasonable developments. Finally, although not stated publicly, some legislators may also be responding to NIMBY-oriented concerns of constituents who simply want to minimize the amount of affordable housing in their communities.

Legislation which would either decrease the percentage goal or increase the type of housing which “counts” is ill-timed during a period in Massachusetts’ history when housing for so many families remains unattainable. Although the “Ten Percent” was only meant to be a goal and may or may not be the “right amount” of affordable housing for every community, there is no question that most communities do not yet have a sufficiently diversified stock of housing. While it is true that some communities may be unable to easily reach the existing ten percent goal, as [Appendix IV](#) illustrates, many of them could do so with only one or two new rental developments, where all units would count as described below.

Furthermore, current proposals to expand of the types of housing which could “count” in the inventory run contrary to the intent of Chapter 40B. For instance, some legislators are proposing that the market units in mixed-rate ownership developments also be included in the inventory. According to DHCD policy, all rental units in 40B developments are counted in the inventory, including those which are market-rate. This policy was meant to be an incentive for communities to increase their stock of rental housing and was based on the recognition that while increased rental housing is needed in general, it is particularly needed in the very communities where ownership is typically more acceptable. However, legislators who want to extend this benefit to ownership housing appear to have missed the intent of the policy.

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Other proposed changes include allowing units which are occupied by Section 8 tenants and units which are “naturally affordable” without intervention to be included in the Affordable Housing Inventory. However, the statute was intended to encourage communities to develop housing which would be certain to remain affordable for many years. Although units in project-based Section 8 developments do count, there is no guarantee that tenants with mobile Section 8 vouchers will remain in the given community. Similarly, while some communities may currently have “affordable” market-rate housing, without long term affordability restrictions in place there is no guarantee that that housing will remain affordable in the future. In fact, there already exists ways for communities to “count” existing affordable housing. Under DHCD’s “LIP Units Only” program, communities have the option of imposing affordability restrictions on individual units of housing – whether newly constructed or existing – and may thus include those units in their affordable inventory. Furthermore, it is unlikely that comprehensive permit projects would even be proposed in communities with depressed real estate markets as developers would be unable to design financially feasible projects despite the availability of zoning concessions.

However, it is unfortunately true that there have been cases where developers appear to have used the power of 40B as a coercive means to get communities to approve market-rate developments. One developer has described how he used 40B in exactly this manner.<sup>182</sup> The developer had purchased a parcel of waterfront property which had been subdivided by the previous owner a number of years earlier. When the city balked at approving his proposal for a luxury housing development at the density he proposed, he responded by resubmitting his application as a comprehensive permit project, subsidized under NEF, at an even greater density. He reported that although his original project consisted mostly of one-bedroom units, he intentionally reconfigured the 40B project to include mostly family-sized units so that the city would likely have to school hundreds of additional children. Although the story is more complicated than the summary presented here and involved lengthy lawsuits and negotiations, the end result was that the city agreed to approve his original market-rate proposal. While such tactics are the exception to the rule, such cases have alarmed communities and have served as the one of the motivations for changing the way 40B works. However, such concerns can be addressed in other ways without having to resort to weakening the statute itself.

Communities should understand that not all denials of comprehensive permits will be upheld on appeal by the developer. Had the project described above actually proceeded as far as the Housing Appeals Committee, it is possible that a decision would have been reached in the city’s favor. HAC conducts a

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<sup>182</sup> Dean Stratoulli speaking to Prof. Timothy Riddiough’s class entitled “Real Estate Finance and Investment” (11.431j) taken by author in 2000.

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thorough examination of the projects it reviews and while it may overturn local decisions involving conditions or denials which are unreasonable, it may also uphold local decisions involving projects which are unreasonable. In fact, a recent review of HAC decisions has revealed that many appeals by developers to overturn local denials of projects have been decided in the communities' favor. Furthermore, it has been predicted by some that HAC will some day soon uphold a local denial by a community which can demonstrate that it is making genuine efforts to reach its housing goals and that the project proposed is inconsistent with a well-laid out and actively-pursued housing strategy.<sup>183</sup> Finally, there are also many resources available to help communities respond to and shape comprehensive permit project proposals. For instance, direct technical assistance is available from DHCD and the Massachusetts Housing Partnership and funds have been specifically earmarked for communities to use in their review and approval processes.

Given the discretion of HAC and the clear need for affordable housing, there seems little justification to relax the standards prescribed under 40B. Despite the flood of negative attention 40B is currently receiving, the process overall is "fundamentally sound" and does not need legislative alteration.<sup>184</sup>

Many cities and towns are genuinely concerned about the lack of housing options in their communities for reasons having nothing to do with their 40B count. When residents and local officials recognize that their police officers, firefighters, teachers and children cannot afford live in town, there is more of an incentive locally to increase and preserve their assisted housing. Furthermore, given the amount of time and political capital spent on negotiating the terms of projects during the initial stages, and the amount of resources - be they monetary or concessionary- which are spent to get projects off the ground, many communities recognize that it is their public duty to preserve their stock of affordable units for as long as possible. Nevertheless, despite the many reasons why towns should want to expand and maintain housing opportunities, if the pending legislation is actually implemented, it is likely that many communities will become less concerned with ways to diversify and maintain their available housing stock.

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<sup>183</sup> Clark Ziegler, MHP

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## **APPENDICES:**

Appendix I: Glossary of Acronyms

Appendix II: Comparison of MSPs by Methodology

Appendix III: Purchaser-Based MSPs by Community

Appendix IV: Affordable Housing Inventory

Appendix V: Changes to Median Incomes and Sales Prices by HUD Area

Appendix VI: Correlation of Median Incomes and Sales Prices by HUD Area

Appendix VII: Allocations of Monitoring Responsibility By Program



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Appendix I: Glossary of Acronyms

AHP – Affordable Housing Program  
BRA – Boston Redevelopment Authority  
CDBG – Community Development Block Grant  
CDF – Community Development Fund  
CHAPA – Citizens Housing and Planning Association  
CRA – Community Reinvestment Act  
DHCD – Department of Community Development and Housing  
DND – City of Boston’s Department of Neighborhood Development  
FCF – Facilities Consolidation Fund  
FHA – Federal Housing Administration  
FHLB – Federal Home Loan Bank  
FHLBB – Federal Home Loan Bank of Boston  
HAC – Housing Appeals Committee  
HDSP – Housing Development Support Program  
HOME – HOME program (not an acronym)  
HOP – Homeownership Opportunity Program  
HSF – Housing Stabilization Fund  
HUD – Department of Housing and Urban Development  
LIP – Local Initiative Program  
LHP – Local Housing Partnership  
MHFA – Massachusetts Housing Finance Agency  
MHP – Massachusetts Housing Partnership Fund  
MSP – Maximum allowable sales price  
NEF – New England Fund  
OREO – Other Real Estate Owned  
PITI – Principal, Interest, Taxes, Insurance  
RHS – Rural Housing Services program  
SSLP – MHP’s Soft Second Loan Program  
ZBA – Zoning Board of Appeals





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## Appendix II: Comparison of MSPs by Methodology

The table on the following page uses actual HOP resale data contained in DHCD's Resale Database, provided to the author by Catherine Peagler of DHCD, to show how prices would vary according to the type of methodology, the locality of the unit, and the date of the resale.

- The first six columns identify the project name and location, the year of initial purchase, the year of resale, the initial purchase price paid for the unit, and the appraised value of the home at time of original purchase.
- The seventh and eighth columns show the actual and the effective discount rates. Note that in several cases, the "15% rule" was used when the reduction rate was less than 15%.
- The ninth column shows what the appraised value was at the time of resale.
- The tenth and eleventh columns indicate the base and the actual MSPs using the Discount Rate Model, as recorded by DHCD. Note that the effective MSPs are higher when allowable cost are recaptured.
- The twelfth and thirteenth columns demonstrate what the base MSPs would have been using the Fixed-Rate Appreciation model at 3% and 5%.
- The fourteenth column estimates what the base MSP would have been had the Purchaser-Based Model been used. The amounts are based on the HUD median income figures in effect at the time of resale in the applicable HUD area. Assumptions used to calculate the MSPs are outlined in the table's footnote.
- The fifteen column shows the price at which the home was actually sold, according to DHCD's database. The sixteenth column indicates whether or not the unit was lost from the program. Note that there are cases where units were lost even though the MSP appears to have been affordable to eligible purchasers (ie the effective Discount Rate MSP was less than or equal to the estimated Purchaser-Based MSP).

**Appendix II: Comparison of MSPs by Methodology**

Community	Development Name	Initial Purchase Year	Resale Year	Initial Purchase Price	Initial Appraised Value	Actual Discount Rate	Effective Discount Rate	New Appraised Value	DISCOUNT RATE MODEL	DISCOUNT RATE MODEL	FIXED-RATE MODEL	FIXED-RATE MODEL	PURCHASER BASED MODEL	Actual Sale Price
									Base MSP	Effective MSP	Base MSP @ 3%	Base MSP @ 5%	MSP	
Barnstable	Sea Meadow Village	1989	1990	77,000	101,000	76.24%	76.2%	91,000	69,376	77,000	79,310	80,850	79,571	77,000
Barnstable	Sea Meadow Village	1989	1992	78,000	82,000	95.12%	100.0%	79,000	79,000	79,000	85,233	90,295	81,414	64,000
Barnstable	Sea Meadow Village	1988	1995	87,000	119,000	73.11%	73.1%	85,000	62,143	85,000	106,999	122,418	86,944	65,000
Bolton	Bolton Woods	1993	1995	94,500	140,500	67.26%	67.3%	145,000	97,527	101,573	100,255	104,186	112,059	97,953
Boston	Main Street Townhouses	1990	1999	86,000	143,000	60.14%	60.1%	224,000	134,713	153,424	112,210	133,414	138,327	153,423
Brewster	Yankee Village	1990	1998	88,000	134,000	65.67%	65.7%	109,000	71,582	88,000	111,476	130,016	96,852	88,000
Brewster	Belmont Park	1990	1999	88,000	116,000	75.86%	75.9%	150,000	113,793	113,850	114,820	136,517	100,538	112,332
Cambridge	125 Portland St.	1990	1997	60,000	120,000	50.00%	50.0%	161,000	80,500	80,406	73,792	84,426	131,184	80,406
Chatham	Chatham Housing	1988	1994	88,683	135,000	65.69%	65.7%	105,000	68,976	88,683	105,892	118,844	85,101	88,683
Chatham	Chatham Housing	1988	1999	88,683	135,000	65.69%	65.7%	144,000	94,595	95,040	122,758	151,678	100,538	94,608
Chelmsford	The Courtyard	1991	1994	69,900	91,000	76.81%	76.8%	89,000	68,364	69,900	76,382	80,918	112,059	69,900
Chelmsford	The Courtyard	1993	1994	64,900	75,000	86.53%	100.0%	81,500	81,500	81,500	66,847	68,145	112,059	78,500
Chelmsford	The Courtyard	1992	1998	77,900	92,000	84.67%	84.7%	117,000	99,068	99,450	93,017	104,393	132,106	99,450
Chelsea	Suffolk Street	1987	1996	82,000	101,000	81.19%	81.2%	85,000	69,010	82,000	106,991	127,209	124,041	28,000
Concord	Emerson School Annex	1989	1994	86,000	200,000	43.00%	43.0%	185,000	79,550	86,000	99,698	109,760	112,059	86,000
Concord	Emerson School Annex	1990	1995	112,000	171,000	65.50%	65.5%	205,000	134,269	135,300	129,839	142,944	112,059	135,300
Concord	Emerson School Annex	1988	1999	86,000	252,000	34.13%	34.1%	280,000	95,556	95,200	119,044	147,089	138,327	94,050
Dover	County Court Condominium	1994	1997	85,000	143,000	59.44%	59.4%	196,000	116,503	116,620	92,882	98,398	131,184	116,620
Fall River	Point Gloria	1988	1997	78,500	96,000	81.77%	81.8%	72,000	58,875	78,500	102,425	121,779	101,921	56,000
Fall River	Point Gloria	1988	1997	78,500	78,500	100.00%	100.0%	76,500	76,500	76,500	102,425	121,779	101,921	62,000
Falmouth	Valley Ridge	1988	1995	99,900	140,000	71.36%	71.4%	89,000	63,508	89,000	122,864	140,569	86,944	89,000
Groton	Brookfield Commons	1989	1990	86,000	139,000	61.87%	61.9%	136,000	84,144	86,000	88,580	90,300	100,538	86,000
Lincoln	Battle Road Farm	1989	1998	86,000	210,000	40.95%	41.0%	213,000	87,229	87,330	112,210	133,414	132,106	87,330
Lincoln	Battle Road Farm	1994	1999	86,000	169,900	50.62%	50.6%	226,000	114,397	115,260	99,698	109,760	138,327	115,260
Lowell	Ledgebrook Village	1987	1990	78,500	104,000	75.48%	75.5%	89,900	67,857	78,500	85,779	90,874	99,617	78,500
Lowell	Ledgebrook Village	1988	1999	78,500	78,500	100.00%	100.0%	63,900	63,900	78,500	108,662	134,262	136,253	63,900
New Bedford	Brailey Farms	1989	1995	98,000	119,900	81.73%	81.7%	115,000	93,995	98,000	117,017	131,329	76,806	98,000
New Bedford	Brailey Farms	1989	1998	98,000	116,000	84.48%	84.5%	107,500	90,819	98,000	127,868	152,030	88,096	98,000
Newton	Woodmere Commons	1990	1998	85,000	200,000	42.50%	42.5%	250,000	106,250	105,000	107,675	125,584	132,106	105,000
Peabody	Stoneybrook	1991	1994	98,000	98,000	100.00%	100.0%	131,000	131,000	131,000	107,087	113,447	112,059	125,000
Peabody	Stoneybrook	1990	1994	78,500	127,000	61.81%	61.8%	88,000	54,394	78,500	88,352	95,417	112,059	78,500

\*Barnstable Income for years 1990-1993 is estimated

\*\*Purchaser-Base Model assumes 8%, 30 yr loan and is based on \$50/fees and average insurance rate of 14%. Prices affordable to households earning 75% of median income.

**Appendix II: Comparison of MSPs by Methodology**

Community	Development Name	Initial Purchase Year	Resale Year	Initial Purchase Price	Initial Appraised Value	Actual Discount Rate	Effective Discount Rate	New Appraised Value	DISCOUNT RATE MODEL	DISCOUNT RATE MODEL	FIXED-RATE MODEL	FIXED-RATE MODEL	PURCHASER BASED MODEL	Actual Sale Price
									Base MSP	Effective MSP	Base MSP @ 3%	Base MSP @ 5%	MSP	
Pittsfield	The Pines	1988	1991	78,500	122,000	64.34%	64.3%	83,000	53,406	78,500	85,779	90,874	86,713	78,500
Pittsfield	The Pines	1988	1998	78,500	122,000	64.34%	64.3%	76,000	48,902	78,500	105,497	127,868	95,700	78,500
Tewksbury	Merrimack Meadows	1991	1996	89,900	102,000	88.14%	100.0%	116,000	116,000	116,000	104,219	114,738	122,428	116,000
Tewksbury	Merrimack Meadows	1989	1999	78,500	109,500	71.69%	71.7%	131,000	93,913	94,320	105,497	127,868	136,253	93,927
Westford	Haystack Estates	1992	1994	75,000	90,000	83.33%	83.3%	93,500	77,917	77,605	79,568	82,688	110,677	77,500
Westford	Haystack Estates	1992	1997	75,000	90,000	83.33%	83.3%	110,000	91,667	91,700	86,946	95,721	130,032	100,000

\*Barnstable Income for years 1990-1993 is estimated

\*\*Purchaser-Base Model assumes 8%, 30 yr loan and is based on \$50/fees and average insurance rate of 14%. Prices affordable to households earning 75% of median income.



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### Appendix III: Purchaser-Based MSPs by Community

The table on the following pages demonstrates base MSPs for each of the state's 351 communities using the Purchaser-Based Model.

- The table includes the median sales prices of all homes sold during the year 2000, based on information made available to the public on the internet by The Warren Group (<http://rers.thewarrengroup.com/townstats/search.asp>), publisher of *Banker and Tradesman*. This site provides data on the median sales prices of single family homes, condos, and “both” for each city and town in the state. The figures shown are from the “both” category.
- The table also indicates whether the community is listed as having any eligible 40B housing in the Affordable Housing Inventory, last updated in 1997.
- Unless noted, tax rates are based on information contained in the “Municipal Data Bank/Local Aid Section” of the Massachusetts Department of Revenue’s website located on the internet at: [www.state.ma.us/dls/mdm.htm](http://www.state.ma.us/dls/mdm.htm). In cases where the Municipal Data Bank did not include 2001 tax rates, rates were based either on the most recent available rates listed on the DOR website, or on rates obtained from the Massachusetts Municipal Association web-site at: [www.mma.org/Tango3/city\\_town\\_info/Demographic.taf?function=form..](http://www.mma.org/Tango3/city_town_info/Demographic.taf?function=form..)

Appendix III: Purchaser-Based MSPs by Community

Community	Median Sale Price (2000)	HUD Median Income	HUD Area Definition	Tax Rate (FY2001)	30% of 75%	95%	Annual	Monthly	Totally		
					Monthly Income					MSP	Mortgage
1 ABINGTON*	182,900	57,700	PMSA: Brockton	19.10	1,082	120,512	114,486	840	2,302	192	1,082
2 ACTON	307,990	65,500	PMSA: Boston MA-NH	16.33	1,228	141,404	134,334	986	2,309	192	1,228
3 ACUSHNET*	120,000	43,600	MSA: New Bedford	17.34	818	91,198	86,638	636	1,581	132	817
4 ADAMS	87,000	47,500	MSA: Pittsfield	17.56	891	99,670	94,686	695	1,750	146	891
5 AGAWAM	130,000	47,500	MSA: Springfield	15.17	891	102,080	96,976	712	1,549	129	891
6 ALFORD	210,000	44,300	Non-Metropolitan Area: Berkshire	7.74	831	102,501	97,376	715	793	66	831
7 AMESBURY	170,000	65,500	PMSA: Boston MA-NH	18.28	1,228	138,699	131,764	967	2,535	211	1,228
8 AMHERST	155,000	47,500	MSA: Springfield	19.66	891	97,644	92,762	681	1,920	160	891
9 ANDOVER	347,500	60,800	PMSA: Lawrence	14.92	1,140	132,699	126,064	925	1,980	165	1,140
10 ARLINGTON	307,000	65,500	PMSA: Boston MA-NH	13.17	1,228	146,020	138,719	1,018	1,923	160	1,228
11 ASHBURNHAM	129,000	53,100	MSA: Fitchburg-Leominster	18.31	996	111,295	105,730	776	2,038	170	996
12 ASHBY	151,500	53,100	MSA: Fitchburg-Leominster	17.17	996	112,553	106,925	785	1,933	161	996
13 ASHFIELD	115,000	46,000	Non-Metropolitan Area: Franklin	15.90	863	97,942	93,044	683	1,557	130	862
14 ASHLAND	250,000	65,500	PMSA: Boston MA-NH	16.07	1,228	141,773	134,684	988	2,278	190	1,228
15 ATHOL*	91,000	48,100	Non-Metropolitan Area: Worcester	14.95	902	103,677	98,493	723	1,550	129	902
16 ATTLEBORO	158,000	49,800	PMSA: Providence-Fall River-Warwick	15.80	934	106,637	101,306	743	1,685	140	934
17 AUBURN	149,900	54,400	MSA: Worcester	12.94	1,020	120,510	114,485	840	1,559	130	1,020
18 AVON	179,000	57,700	PMSA: Brockton	12.79	1,082	128,397	121,977	895	1,642	137	1,082
19 AYER	157,000	65,500	PMSA: Boston MA-NH	11.01	1,228	149,352	141,884	1,041	1,644	137	1,228
20 BARNSTABLE*	180,000	47,700	MSA: Barnstable-Yarmouth	12.80	894	105,055	99,803	732	1,345	112	894
21 BARRE	133,455	54,400	MSA: Worcester	13.92	1,020	119,300	113,335	832	1,661	138	1,020
22 BECKET	59,900	44,300	Non-Metropolitan Area: Berkshire	11.28	831	98,679	93,745	688	1,113	93	831
23 BEDFORD	375,000	65,500	PMSA: Boston MA-NH	11.79	1,228	148,131	140,724	1,033	1,746	146	1,228
24 BELCHERTOWN	143,500	47,500	MSA: Springfield	18.98	891	98,291	93,376	685	1,866	155	891
25 BELLINGHAM	171,000	65,500	PMSA: Boston MA-NH	13.14	1,228	146,065	138,762	1,018	1,919	160	1,228
26 BELMONT	415,000	65,500	PMSA: Boston MA-NH	11.86	1,228	148,022	140,621	1,032	1,756	146	1,228
27 BERKLEY	232,400	65,500	PMSA: Boston MA-NH	12.23	1,228	147,451	140,079	1,028	1,803	150	1,228
28 BERLIN	280,000	65,500	PMSA: Boston MA-NH	14.48	1,228	144,070	136,867	1,004	2,086	174	1,228
29 BERNARDSTON	114,585	46,000	Non-Metropolitan Area: Franklin	17.41	863	96,478	91,654	673	1,680	140	863
30 BEVERLY	223,900	65,500	PMSA: Boston MA-NH	14.20	1,228	144,483	137,258	1,007	2,052	171	1,228
31 BILLERICA	244,900	64,900	PMSA: Lowell	13.36	1,217	144,342	137,125	1,006	1,928	161	1,217
32 BLACKSTONE*	150,000	54,400	MSA: Worcester	14.96	1,020	118,042	112,140	823	1,766	147	1,020
33 BLANDFORD	125,900	51,900	Non-Metropolitan Area: Hampden	13.80	973	113,675	107,991	792	1,569	131	973
34 BOLTON	405,000	65,500	PMSA: Boston MA-NH	16.05	1,228	141,802	134,712	988	2,276	190	1,228
35 BOSTON**	309,000	65,500	PMSA: Boston MA-NH	13.44	1,228	145,614	138,333	1,015	1,957	163	1,228
36 BOURNE	152,900	47,700	Non-Metropolitan Area: Barnstable	13.02	894	104,816	99,575	731	1,365	114	894
37 BOXBORO	137,000	65,500	PMSA: Boston MA-NH	15.50	1,228	142,588	135,459	994	2,210	184	1,228
38 BOXFORD	325,000	60,800	PMSA: Lawrence	12.80	1,140	135,615	128,835	945	1,736	145	1,140
39 BOYLSTON	187,000	54,400	MSA: Worcester	17.92	1,020	114,602	108,872	799	2,054	171	1,020
40 BRAintree	220,000	65,500	PMSA: Boston MA-NH	12.55	1,228	146,961	139,613	1,024	1,844	154	1,228

- Median Sale Price based on Banker and Tradesman Data (includes SF sales and condos)  
 - HUD Median Income based on 2000 figures  
 - Tax Rates based on DOR 2001 data (\*most recent year available, \*\*MMA data)

Appendix III: Purchaser-Based MSPs by Community

41 BREWSTER	225,000	47,700	MSA: Barnstable-Yarmouth	11.08	894	106,963	101,615	746	1,185	99	894
42 BRIDGEWATER	212,000	57,700	PMSA: Brockton	14.46	1,082	126,211	119,901	880	1,825	152	1,082
43 BRIMFIELD	115,000	51,900	Non-Metropolitan Area: Hampden	16.53	973	110,577	105,048	771	1,828	152	973
44 BROCKTON	137,000	57,700	PMSA: Brockton	16.62	1,082	123,493	117,318	861	2,052	171	1,082
45 BROOKFIELD	119,900	54,400	MSA: Worcester	16.16	1,020	116,623	110,791	813	1,885	157	1,020
46 BROOKLINE**	335,000	65,500	PMSA: Boston MA-NH	16.91	1,228	140,589	133,559	980	2,377	198	1,228
47 BUCKLAND	113,000	46,000	Non-Metropolitan Area: Franklin	18.06	863	95,862	91,068	668	1,731	144	863
48 BURLINGTON	270,000	65,500	PMSA: Boston MA-NH	9.60	1,228	151,610	144,029	1,057	1,455	121	1,228
49 CAMBRIDGE**	325,112	65,500	PMSA: Boston MA-NH	11.05	1,228	149,289	141,824	1,041	1,650	137	1,228
50 CANTON*	257,325	65,500	PMSA: Boston MA-NH	14.21	1,228	144,468	137,244	1,007	2,053	171	1,228
51 CARLISLE	534,000	65,500	PMSA: Boston MA-NH	15.02	1,228	143,282	136,118	999	2,152	179	1,228
52 CARVER	170,000	65,500	PMSA: Boston MA-NH	18.62	1,228	138,238	131,326	964	2,574	214	1,228
53 CHARLEMONT	105,000	46,000	Non-Metropolitan Area: Franklin	19.61	863	94,423	89,701	658	1,852	154	863
54 CHARLTON	162,500	47,500	MSA: Springfield	14.31	891	102,977	97,828	718	1,474	123	891
55 CHATHAM*	250,000	47,700	MSA: Barnstable-Yarmouth	10.08	894	108,104	102,699	754	1,090	91	894
56 CHELMSFORD	200,000	64,900	PMSA: Lowell	15.76	1,217	140,857	133,814	982	2,220	185	1,217
57 CHELSEA**	169,000	65,500	PMSA: Boston MA-NH	15.39	1,228	142,747	135,609	995	2,197	183	1,228
58 CHESHIRE*	92,580	47,500	MSA: Pittsfield	11.50	891	106,018	100,717	739	1,219	102	891
59 CHESTER	80,000	51,900	Non-Metropolitan Area: Hampden	16.34	973	110,787	105,248	772	1,810	151	973
60 CHESTERFIELD	55,000	51,900	Non-Metropolitan Area: Hampshire	18.88	973	108,042	102,640	753	2,040	170	973
61 CHICOPEE	95,000	47,500	MSA: Springfield	17.02	891	100,204	95,194	699	1,705	142	891
62 CHILMARK	511,000	53,200	Non-Metropolitan Area: Dukes	1.96	998	132,813	126,172	926	260	22	998
63 CLARKSBURG	76,000	44,300	Non-Metropolitan Area: Berkshire	12.38	831	97,548	92,671	680	1,208	101	831
64 CLINTON	152,000	54,400	MSA: Worcester	16.05	1,020	116,751	110,914	814	1,874	156	1,020
65 COHASSET	395,000	65,500	PMSA: Boston MA-NH	14.59	1,228	143,909	136,714	1,003	2,100	175	1,228
66 COLRAIN	109,000	46,000	Non-Metropolitan Area: Franklin	16.38	863	97,472	92,598	679	1,597	133	862
67 CONCORD	457,000	65,500	PMSA: Boston MA-NH	12.54	1,228	146,976	139,627	1,025	1,843	154	1,228
68 CONWAY	114,500	46,000	Non-Metropolitan Area: Franklin	17.80	863	96,107	91,302	670	1,711	143	863
69 CUMMINGTON	90,000	51,900	Non-Metropolitan Area: Hampshire	14.15	973	113,268	107,604	790	1,603	134	973
70 DALTON	120,000	47,500	MSA: Pittsfield	17.74	891	99,493	94,518	694	1,765	147	891
71 DANVERS	232,000	65,500	PMSA: Boston MA-NH	12.80	1,228	146,580	139,251	1,022	1,876	156	1,228
72 DARTMOUTH	150,000	43,600	MSA: New Bedford	11.35	818	96,948	92,101	676	1,100	92	818
73 DEDHAM	241,000	65,500	PMSA: Boston MA-NH	12.76	1,228	146,641	139,309	1,022	1,871	156	1,228
74 DEERFIELD	125,000	46,000	Non-Metropolitan Area: Franklin	14.75	863	99,086	94,132	691	1,462	122	863
75 DENNIS	140,000	47,700	MSA: Barnstable-Yarmouth	7.54	894	111,115	105,559	775	838	70	894
76 DIGHTON*	148,900	65,500	PMSA: Boston MA-NH	13.67	1,228	145,269	138,006	1,013	1,986	165	1,228
77 DOUGLAS	160,000	54,400	MSA: Worcester	15.56	1,020	117,328	111,461	818	1,826	152	1,020
78 DOVER	549,000	65,500	PMSA: Boston MA-NH	11.34	1,228	148,833	141,391	1,037	1,688	141	1,228
79 DRACUT	145,000	64,900	PMSA: Lowell	16.10	1,217	140,377	133,358	979	2,260	188	1,217
80 DUDLEY	138,000	54,400	MSA: Worcester	12.50	1,020	121,062	115,009	844	1,513	126	1,020
81 DUNSTABLE	300,000	64,900	PMSA: Lowell	15.80	1,217	140,801	133,761	981	2,225	185	1,217
82 DUXBURY	351,000	65,500	PMSA: Boston MA-NH	13.17	1,228	146,020	138,719	1,018	1,923	160	1,228
83 EAST BRIDGEWATER	168,000	57,700	PMSA: Brockton	15.38	1,082	125,039	118,787	872	1,923	160	1,082

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Appendix III: Purchaser-Based MSPs by Community

84	EAST BROOKFIELD	115,500	54,400	MSA: Worcester	11.84	1,020	121,899	115,804	850	1,443	120	1,020
85	EAST LONGMEADOW	150,000	47,500	MSA: Springfield	21.29	891	96,127	91,321	670	2,047	171	891
86	EASTHAM*	182,500	47,700	MSA: Barnstable-Yarmouth	11.71	894	106,256	100,943	741	1,244	104	894
87	EASTHAMPTON	129,900	47,500	MSA: Springfield	15.85	891	101,383	96,314	707	1,607	134	891
88	EASTON	200,000	57,700	PMSA: Brockton	14.57	1,082	126,070	119,767	879	1,837	153	1,082
89	EDGARTOWN	281,000	53,200	Non-Metropolitan Area: Dukes	5.14	998	128,056	121,653	893	658	55	997
90	EGREMONT	146,000	44,300	Non-Metropolitan Area: Berkshire	9.38	831	100,694	95,660	702	945	79	831
91	ERVING*	98,000	46,000	Non-Metropolitan Area: Franklin	3.54	863	111,826	106,235	780	396	33	862
92	ESSEX	263,200	65,500	PMSA: Boston MA-NH	11.54	1,228	148,520	141,094	1,035	1,714	143	1,228
93	EVERETT	220,000	65,500	PMSA: Boston MA-NH	10.53	1,228	150,113	142,607	1,046	1,581	132	1,228
94	FAIRHAVEN	124,000	43,600	MSA: New Bedford	15.14	818	93,229	88,567	650	1,411	118	817
95	FALL RIVER	123,750	49,800	PMSA: Providence-Fall River-Warwick	9.77	934	113,521	107,845	791	1,109	92	934
96	FALMOUTH	185,000	47,700	Non-Metropolitan Area: Barnstable	10.58	894	107,530	102,154	750	1,138	95	894
97	FITCHBURG	100,000	53,100	MSA: Fitchburg-Leominster	17.82	996	111,832	106,240	780	1,993	166	996
98	FLORIDA*	65,000	44,300	Non-Metropolitan Area: Berkshire	9.45	831	100,619	95,588	701	951	79	831
99	FOXBORO	234,500	65,500	PMSA: Boston MA-NH	14.96	1,228	143,369	136,201	999	2,145	179	1,228
100	FRAMINGHAM	217,600	65,500	PMSA: Boston MA-NH	16.55	1,228	141,094	134,039	984	2,335	195	1,228
101	FRANKLIN	227,500	65,500	PMSA: Boston MA-NH	12.82	1,228	146,549	139,222	1,022	1,879	157	1,228
102	FREETOWN	150,000	43,600	MSA: New Bedford	13.13	818	95,165	90,407	663	1,250	104	818
103	GARDNER	102,000	53,100	MSA: Fitchburg-Leominster	19.92	996	109,564	104,086	764	2,183	182	996
104	GAY HEAD	no data	53,200	Non-Metropolitan Area: Dukes	6.38	998	126,292	119,978	880	806	67	998
105	GEORGETOWN	267,300	60,800	PMSA: Lawrence	12.10	1,140	136,607	129,777	952	1,653	138	1,140
106	GILL	96,000	46,000	Non-Metropolitan Area: Franklin	16.54	863	97,316	92,450	678	1,610	134	862
107	GLOUCESTER	195,000	65,500	PMSA: Boston MA-NH	13.27	1,228	145,869	138,576	1,017	1,936	161	1,228
108	GOSHEN	80,000	51,900	Non-Metropolitan Area: Hampshire	16.34	973	110,787	105,248	772	1,810	151	973
109	GOSNOLD	no data	2	not sure	2.51	0	-6,959	-6,611	-49	-17	-1	0
110	GRAFTON	189,000	54,400	MSA: Worcester	13.86	1,020	119,373	113,405	832	1,655	138	1,020
111	GRANBY	126,900	47,500	MSA: Springfield	15.86	891	101,373	96,304	707	1,608	134	891
112	GRANVILLE	90,000	51,900	Non-Metropolitan Area: Hampden	16.10	973	111,054	105,501	774	1,788	149	973
113	GREAT BARRINGTON	139,000	44,300	Non-Metropolitan Area: Berkshire	16.12	831	93,892	89,197	654	1,514	126	831
114	GREENFIELD	98,000	46,000	Non-Metropolitan Area: Franklin	22.36	863	91,973	87,375	641	2,057	171	863
115	GROTON	320,000	64,900	PMSA: Lowell	19.33	1,217	135,974	129,175	948	2,628	219	1,217
116	GROVELAND	225,000	60,800	PMSA: Lawrence	12.90	1,140	135,475	128,701	944	1,748	146	1,140
117	HADLEY	165,000	47,500	MSA: Springfield	13.68	891	103,643	98,461	722	1,418	118	891
118	HALIFAX	152,000	57,700	PMSA: Brockton	14.88	1,082	125,673	119,390	876	1,870	156	1,082
119	HAMILTON	352,000	65,500	PMSA: Boston MA-NH	15.12	1,228	143,137	135,980	998	2,164	180	1,228
120	HAMPDEN	155,733	47,500	MSA: Springfield	18.87	891	98,396	93,476	686	1,857	155	891
121	HANCOCK	72,000	44,300	Non-Metropolitan Area: Berkshire	5.40	831	105,195	99,935	733	568	47	831
122	HANOVER	328,000	65,500	PMSA: Boston MA-NH	18.17	1,228	138,849	131,907	968	2,523	210	1,228
123	HANSON	238,000	57,700	PMSA: Brockton	16.43	1,082	123,727	117,541	862	2,033	169	1,082
124	HARDWICK	125,000	48,100	Non-Metropolitan Area: Worcester	15.72	902	102,874	97,730	717	1,617	135	902
125	HARVARD	398,000	65,500	PMSA: Boston MA-NH	14.96	1,228	143,369	136,201	999	2,145	179	1,228
126	HARWICH	168,000	47,700	MSA: Barnstable-Yarmouth	9.66	894	108,591	103,161	757	1,049	87	894

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Appendix III: Purchaser-Based MSPs by Community

127 HATFIELD	155,900	47,500	MSA: Springfield	12.32	891	105,112	99,856	733	1,295	108	891
128 HAVERHILL*	150,000	60,800	PMSA: Lawrence	17.25	1,140	129,634	123,153	904	2,236	186	1,140
129 HAWLEY	no data	46,000	Non-Metropolitan Area: Franklin	14.79	863	99,046	94,094	690	1,465	122	863
130 HEATH*	no data	46,000	Non-Metropolitan Area: Franklin	19.42	863	94,597	89,867	659	1,837	153	863
131 HINGHAM	350,000	65,500	PMSA: Boston MA-NH	13.75	1,228	145,150	137,893	1,012	1,996	166	1,228
132 HINSDALE	76,900	47,500	MSA: Pittsfield	16.92	891	100,304	95,289	699	1,697	141	891
133 HOLBROOK	160,000	65,500	PMSA: Boston MA-NH	16.55	1,228	141,094	134,039	984	2,335	195	1,228
134 HOLDEN	172,500	54,400	MSA: Worcester	16.70	1,020	115,995	110,195	809	1,937	161	1,020
135 HOLLAND	84,500	54,400	MSA: Worcester	16.47	1,020	116,261	110,448	810	1,915	160	1,020
136 HOLLISTON*	304,000	65,500	PMSA: Boston MA-NH	17.98	1,228	139,109	132,153	970	2,501	208	1,228
137 HOLYOKE*	88,000	47,500	MSA: Springfield	15.93	891	101,301	96,236	706	1,614	134	891
138 HOPEDALE	276,500	65,500	PMSA: Boston MA-NH	15.40	1,228	142,732	135,596	995	2,198	183	1,228
139 HOPKINTON	317,500	65,500	PMSA: Boston MA-NH	15.66	1,228	142,358	135,241	992	2,229	186	1,228
140 HUBBARDSTON*	69,000	48,100	Non-Metropolitan Area: Worcester	16.41	902	102,165	97,056	712	1,677	140	902
141 HUDSON	209,900	65,500	PMSA: Boston MA-NH	12.27	1,228	147,390	140,020	1,027	1,808	151	1,228
142 HULL	195,000	65,500	PMSA: Boston MA-NH	14.48	1,228	144,070	136,867	1,004	2,086	174	1,228
143 HUNTINGTON	87,000	47,500	MSA: Springfield	15.77	891	101,464	96,391	707	1,600	133	891
144 IPSWICH	269,900	65,500	PMSA: Boston MA-NH	11.40	1,228	148,739	141,302	1,037	1,696	141	1,228
145 KINGSTON	226,250	60,800	PMSA: Lawrence	13.77	1,140	134,265	127,552	936	1,849	154	1,140
146 LAKEVILLE	202,000	57,700	PMSA: Brockton	13.87	1,082	126,975	120,626	885	1,761	147	1,082
147 LANCASTER	250,000	65,500	PMSA: Boston MA-NH	15.99	1,228	141,887	134,793	989	2,269	189	1,228
148 LANESBORO	60,000	47,500	MSA: Pittsfield	16.96	891	100,264	95,251	699	1,700	142	891
149 LAWRENCE	119,900	60,800	PMSA: Lawrence	15.61	1,140	131,776	125,187	919	2,057	171	1,140
150 LEE	120,840	47,500	MSA: Pittsfield	16.64	891	100,584	95,555	701	1,674	139	891
151 LEICESTER	134,000	54,400	MSA: Worcester	16.89	1,020	115,776	109,987	807	1,955	163	1,020
152 LENOX	280,000	47,500	MSA: Pittsfield	12.70	891	104,697	99,462	730	1,330	111	891
153 LEOMINSTER	127,900	53,100	MSA: Fitchburg-Leominster	15.31	996	114,669	108,935	799	1,756	146	996
154 LEVERETT	70,000	46,000	Non-Metropolitan Area: Franklin	19.59	863	94,441	89,719	658	1,850	154	863
155 LEXINGTON	412,000	65,500	PMSA: Boston MA-NH	12.11	1,228	147,636	140,254	1,029	1,788	149	1,228
156 LEYDEN	no data	46,000	Non-Metropolitan Area: Franklin	18.31	863	95,627	90,845	667	1,751	146	863
157 LINCOLN	485,000	65,500	PMSA: Boston MA-NH	10.27	1,228	150,528	143,002	1,049	1,546	129	1,228
158 LITTLETON	325,000	65,500	PMSA: Boston MA-NH	12.82	1,228	146,549	139,222	1,022	1,879	157	1,228
159 LONGMEADOW	200,000	47,500	MSA: Springfield	19.60	891	97,701	92,816	681	1,915	160	891
160 LOWELL	129,900	64,900	PMSA: Lowell	18.32	1,217	137,321	130,455	957	2,516	210	1,217
161 LUDLOW	98,500	47,500	MSA: Springfield	18.32	891	98,927	93,981	690	1,812	151	891
162 LUNENBURG	195,000	53,100	MSA: Fitchburg-Leominster	15.95	996	113,932	108,235	794	1,817	151	996
163 LYNN	175,000	65,500	PMSA: Boston MA-NH	16.46	1,228	141,221	134,160	984	2,324	194	1,228
164 LYNNFIELD	332,500	65,500	PMSA: Boston MA-NH	13.74	1,228	145,165	137,907	1,012	1,995	166	1,228
165 MALDEN	214,000	65,500	PMSA: Boston MA-NH	13.12	1,228	146,095	138,790	1,018	1,917	160	1,228
166 MANCHESTER	355,000	65,500	PMSA: Boston MA-NH	8.72	1,228	153,054	145,402	1,067	1,335	111	1,228
167 MANSFIELD	220,000	65,500	PMSA: Boston MA-NH	18.75	1,228	138,063	131,160	962	2,589	216	1,228
168 MARBLEHEAD	336,800	65,500	PMSA: Boston MA-NH	10.23	1,228	150,593	143,063	1,050	1,541	128	1,228
169 MARION	248,000	43,600	MSA: New Bedford	12.70	818	95,590	90,810	666	1,214	101	817

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170 MARLBOROUGH**	202,000	65,500	PMSA: Boston MA-NH	16.59	1,228	141,038	133,986	983	2,340	195	1,228
171 MARSHFIELD	200,000	65,500	PMSA: Boston MA-NH	15.63	1,228	142,401	135,281	993	2,226	185	1,228
172 MASHPEE	182,900	47,700	MSA: Barnstable-Yarmouth	12.99	894	104,849	99,606	731	1,362	113	894
173 MATTAPOISETT	184,000	43,600	MSA: New Bedford	14.96	818	93,399	88,729	651	1,397	116	818
174 MAYNARD*	201,400	65,500	PMSA: Boston MA-NH	17.95	1,228	139,150	132,192	970	2,498	208	1,228
175 MEDFIELD	364,900	65,500	PMSA: Boston MA-NH	13.75	1,228	145,150	137,893	1,012	1,996	166	1,228
176 MEDFORD	245,000	65,500	PMSA: Boston MA-NH	12.52	1,228	147,007	139,656	1,025	1,841	153	1,228
177 MEDWAY	236,450	65,500	PMSA: Boston MA-NH	16.31	1,228	141,433	134,361	986	2,307	192	1,228
178 MELROSE	263,500	65,500	PMSA: Boston MA-NH	13.65	1,228	145,299	138,034	1,013	1,983	165	1,228
179 MENDON	287,334	65,500	PMSA: Boston MA-NH	12.23	1,228	147,451	140,079	1,028	1,803	150	1,228
180 MERRIMAC*	220,000	60,800	PMSA: Lawrence	15.61	1,140	131,776	125,187	919	2,057	171	1,140
181 METHUEN	167,000	60,800	PMSA: Lawrence	15.05	1,140	132,524	125,898	924	1,994	166	1,140
182 MIDDLEBORO	156,000	57,700	PMSA: Brockton	14.98	1,082	125,546	119,269	875	1,881	157	1,082
183 MIDDLEFIELD	115,000	51,900	Non-Metropolitan Area: Hampshire	17.05	973	110,006	104,506	767	1,876	156	973
184 MIDDLETON	267,062	65,500	PMSA: Boston MA-NH	13.10	1,228	146,125	138,819	1,019	1,914	160	1,228
185 MILFORD	179,500	65,500	PMSA: Boston MA-NH	14.79	1,228	143,617	136,436	1,001	2,124	177	1,228
186 MILLBURY	145,000	54,400	MSA: Worcester	18.82	1,020	113,595	107,915	792	2,138	178	1,020
187 MILLIS	220,000	65,500	PMSA: Boston MA-NH	20.00	1,228	136,398	129,578	951	2,728	227	1,228
188 MILLVILLE	106,900	65,500	PMSA: Boston MA-NH	17.61	1,228	139,617	132,636	973	2,459	205	1,228
189 MILTON	315,000	65,500	PMSA: Boston MA-NH	15.45	1,228	142,660	135,527	994	2,204	184	1,228
190 MONROE	no data	46,000	Non-Metropolitan Area: Franklin	14.00	863	99,847	94,855	696	1,398	116	863
191 MONSON	116,000	47,500	MSA: Springfield	18.69	891	98,569	93,641	687	1,842	154	891
192 MONTAGUE	82,000	46,000	Non-Metropolitan Area: Franklin	16.74	863	97,122	92,266	677	1,626	135	863
193 MONTEREY	200,000	44,300	Non-Metropolitan Area: Berkshire	9.32	831	100,759	95,721	702	939	78	831
194 MONTGOMERY	115,000	47,500	MSA: Springfield	14.14	891	103,156	97,998	719	1,459	122	891
195 MT WASHINGTON	87,500	44,300	Non-Metropolitan Area: Berkshire	3.94	831	106,948	101,601	746	421	35	831
196 NAHANT	257,000	65,500	PMSA: Boston MA-NH	11.03	1,228	149,320	141,854	1,041	1,647	137	1,228
197 NANTUCKET**	479,000	62,300	Non-Metropolitan Area: Nantucket	5.83	1,168	149,951	142,454	1,045	874	73	1,168
198 NATICK	250,000	65,500	PMSA: Boston MA-NH	12.74	1,228	146,671	139,338	1,022	1,869	156	1,228
199 NEEDHAM	410,000	65,500	PMSA: Boston MA-NH	12.06	1,228	147,713	140,327	1,030	1,781	148	1,228
200 NEW ASHFORD	172,000	44,300	Non-Metropolitan Area: Berkshire	6.80	831	103,566	98,388	722	704	59	831
201 NEW BEDFORD	110,000	43,600	MSA: New Bedford	15.49	818	92,900	88,255	648	1,439	120	818
202 NEW BRAintree	165,000	48,100	Non-Metropolitan Area: Worcester	16.22	902	102,359	97,241	714	1,660	138	902
203 NEW MARLBORO	125,000	44,300	Non-Metropolitan Area: Berkshire	9.74	831	100,306	95,291	699	977	81	831
204 NEW SALEM	117,000	46,000	Non-Metropolitan Area: Franklin	14.60	863	99,237	94,276	692	1,449	121	863
205 NEWBURY	295,000	65,500	PMSA: Boston MA-NH	11.01	1,228	149,352	141,884	1,041	1,644	137	1,228
206 NEWBURYPORT	239,900	65,500	PMSA: Boston MA-NH	17.44	1,228	139,852	132,859	975	2,439	203	1,228
207 NEWTON	435,000	65,500	PMSA: Boston MA-NH	11.57	1,228	148,473	141,050	1,035	1,718	143	1,228
208 NORFOLK	310,000	65,500	PMSA: Boston MA-NH	14.69	1,228	143,763	136,575	1,002	2,112	176	1,228
209 NORTH ADAMS	72,500	44,300	Non-Metropolitan Area: Berkshire	13.99	831	95,940	91,143	669	1,342	112	831
210 NORTH ANDOVER	270,000	60,800	PMSA: Lawrence	13.18	1,140	135,083	128,329	942	1,780	148	1,140
211 NORTH ATTLEBORO	161,500	49,800	PMSA: Providence-Fall River-Warwick	15.27	934	107,209	101,848	747	1,637	136	934
212 NORTH BROOKFIELD	110,000	54,400	MSA: Worcester	12.18	1,020	121,466	115,393	847	1,479	123	1,020

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213 NORTH READING	265,000	65,500	PMSA: Boston MA-NH	15.46	1,228	142,646	135,513	994	2,205	184	1,228
214 NORTHAMPTON	150,000	47,500	MSA: Springfield	15.58	891	101,659	96,576	709	1,584	132	891
215 NORTHBORO	239,900	54,400	MSA: Worcester	15.23	1,020	117,719	111,833	821	1,793	149	1,020
216 NORTHBRIDGE	150,200	54,400	MSA: Worcester	15.75	1,020	117,104	111,248	816	1,844	154	1,020
217 NORTHFIELD	109,700	46,000	Non-Metropolitan Area: Franklin	12.85	863	101,037	95,985	704	1,298	108	863
218 NORTON	175,000	65,500	PMSA: Boston MA-NH	14.71	1,228	143,733	136,547	1,002	2,114	176	1,228
219 NORWELL	317,000	65,500	PMSA: Boston MA-NH	15.45	1,228	142,660	135,527	994	2,204	184	1,228
220 NORWOOD	239,900	65,500	PMSA: Boston MA-NH	12.65	1,228	146,808	139,468	1,023	1,857	155	1,228
221 OAK BLUFFS	215,000	53,200	Non-Metropolitan Area: Dukes	12.80	998	117,886	111,992	822	1,509	126	998
222 OAKHAM	71,500	54,400	MSA: Worcester	13.33	1,020	120,026	114,024	837	1,600	133	1,020
223 ORANGE	86,000	46,000	Non-Metropolitan Area: Franklin	20.87	863	93,284	88,620	650	1,947	162	863
224 ORLEANS	219,000	47,700	MSA: Barnstable-Yarmouth	6.54	894	112,347	106,730	783	735	61	894
225 OTIS	120,000	44,300	Non-Metropolitan Area: Berkshire	8.50	831	101,656	96,573	709	864	72	831
226 OXFORD	121,500	54,400	MSA: Worcester	17.40	1,020	115,191	109,432	803	2,004	167	1,020
227 PALMER	98,000	47,500	MSA: Springfield	18.93	891	98,339	93,422	685	1,862	155	891
228 PAXTON	169,072	54,400	MSA: Worcester	15.18	1,020	117,779	111,890	821	1,788	149	1,020
229 PEABODY	222,000	65,500	PMSA: Boston MA-NH	8.29	1,228	153,770	146,082	1,072	1,275	106	1,228
230 PELHAM	175,000	51,900	Non-Metropolitan Area: Hampshire	20.71	973	106,148	100,840	740	2,198	183	973
231 PEMBROKE	190,000	65,500	PMSA: Boston MA-NH	14.43	1,228	144,144	136,937	1,005	2,080	173	1,228
232 PEPPERELL	223,000	64,900	PMSA: Lowell	16.00	1,217	140,518	133,492	980	2,248	187	1,217
233 PERU	88,000	44,300	Non-Metropolitan Area: Berkshire	16.53	831	93,507	88,832	652	1,546	129	831
234 PETERSHAM	122,000	48,100	Non-Metropolitan Area: Worcester	12.80	902	105,988	100,689	739	1,357	113	902
235 PHILLIPSTON	98,000	48,100	Non-Metropolitan Area: Worcester	14.62	902	104,026	98,824	725	1,521	127	902
236 PITTSFIELD*	90,000	47,500	MSA: Pittsfield	18.80	891	98,463	93,540	686	1,851	154	891
237 PLAINFIELD	79,050	51,900	Non-Metropolitan Area: Hampshire	15.31	973	111,940	106,343	780	1,714	143	973
238 PLAINVILLE	197,000	65,500	PMSA: Boston MA-NH	16.17	1,228	141,631	134,550	987	2,290	191	1,228
239 PLYMOUTH	167,000	65,500	PMSA: Boston MA-NH	16.30	1,228	141,447	134,375	986	2,306	192	1,228
240 PLYMPTON	211,100	57,700	PMSA: Brockton	16.36	1,082	123,814	117,623	863	2,026	169	1,082
241 PRINCETON	177,500	54,400	MSA: Worcester	16.37	1,020	116,378	110,559	811	1,905	159	1,020
242 PROVINCETOWN	231,000	47,700	Non-Metropolitan Area: Barnstable	7.42	894	111,262	105,699	776	826	69	894
243 QUINCY	203,000	65,500	PMSA: Boston MA-NH	15.94	1,228	141,958	134,860	990	2,263	189	1,228
244 RANDOLPH	170,200	65,500	PMSA: Boston MA-NH	17.46	1,228	139,824	132,833	975	2,441	203	1,228
245 RAYNHAM	173,000	57,700	PMSA: Brockton	12.80	1,082	128,384	121,965	895	1,643	137	1,082
246 READING	287,500	65,500	PMSA: Boston MA-NH	13.51	1,228	145,509	138,233	1,014	1,966	164	1,228
247 REHOBOTH*	165,000	49,800	PMSA: Providence-Fall River-Warwick	13.85	934	108,770	103,332	758	1,506	126	934
248 REVERE	179,000	65,500	PMSA: Boston MA-NH	17.12	1,228	140,296	133,281	978	2,402	200	1,228
249 RICHMOND	214,500	47,500	MSA: Pittsfield	14.50	891	102,777	97,638	716	1,490	124	891
250 ROCHESTER	146,000	43,600	MSA: New Bedford	14.26	818	94,067	89,363	656	1,341	112	817
251 ROCKLAND	175,000	65,500	PMSA: Boston MA-NH	17.20	1,228	140,185	133,175	977	2,411	201	1,228
252 ROCKPORT	275,000	65,500	PMSA: Boston MA-NH	11.61	1,228	148,411	140,990	1,035	1,723	144	1,228
253 ROWE	80,000	46,000	Non-Metropolitan Area: Franklin	3.36	863	112,057	106,454	781	377	31	863
254 ROWLEY	260,000	65,500	PMSA: Boston MA-NH	14.98	1,228	143,340	136,173	999	2,147	179	1,228
255 ROYALSTON	105,000	48,100	Non-Metropolitan Area: Worcester	13.20	902	105,551	100,273	736	1,393	116	902

- Median Sale Price based on Banker and Tradesman Data (includes SF sales and condos)

- HUD Median Income based on 2000 figures

- Tax Rates based on DOR 2001 data (\*most recent year available, \*\*MMA data)

Appendix III: Purchaser-Based MSPs by Community

256 RUSSELL	100,000	47,500	MSA: Springfield	14.51	891	102,767	97,628	716	1,491	124	891
257 RUTLAND	174,000	54,400	MSA: Worcester	14.73	1,020	118,318	112,402	825	1,743	145	1,020
258 SALEM	190,000	65,500	PMSA: Boston MA-NH	13.42	1,228	145,644	138,361	1,015	1,955	163	1,228
259 SALISBURY	169,000	65,500	PMSA: Boston MA-NH	14.27	1,228	144,379	137,160	1,006	2,060	172	1,228
260 SANDISFIELD	190,000	44,300	Non-Metropolitan Area: Berkshire	10.18	831	99,836	94,844	696	1,016	85	831
261 SANDWICH	177,000	47,700	MSA: Barnstable-Yarmouth	13.40	894	104,406	99,186	728	1,399	117	894
262 SAUGUS	235,000	65,500	PMSA: Boston MA-NH	11.00	1,228	149,367	141,899	1,041	1,643	137	1,228
263 SAVOY	no data	44,300	Non-Metropolitan Area: Berkshire	15.19	831	94,775	90,036	661	1,440	120	831
264 SCITUATE	305,000	65,500	PMSA: Boston MA-NH	14.70	1,228	143,748	136,561	1,002	2,113	176	1,228
265 SEEKONK	265	49,800	PMSA: Providence-Fall River-Warwick	15.78	934	106,659	101,326	743	1,683	140	934
266 SHARON	306,000	65,500	PMSA: Boston MA-NH	17.44	1,228	139,852	132,859	975	2,439	203	1,228
267 SHEFFIELD	267	44,300	Non-Metropolitan Area: Berkshire	14.20	831	95,734	90,947	667	1,359	113	831
268 SHELBURNE	147,400	46,000	Non-Metropolitan Area: Franklin	13.81	863	100,042	95,040	697	1,382	115	863
269 SHERBORN	520,000	65,500	PMSA: Boston MA-NH	14.82	1,228	143,573	136,394	1,001	2,128	177	1,228
270 SHIRLEY	155,000	65,500	PMSA: Boston MA-NH	13.36	1,228	145,734	138,447	1,016	1,947	162	1,228
271 SHREWSBURY	220,000	54,400	MSA: Worcester	12.45	1,020	121,125	115,069	844	1,508	126	1,020
272 SHUTESBURY	272	46,000	Non-Metropolitan Area: Franklin	22.19	863	92,121	87,515	642	2,044	170	863
273 SOMERSET**	273	49,800	PMSA: Providence-Fall River-Warwick	13.40	934	109,275	103,811	762	1,464	122	934
274 SOMERVILLE**	308,000	65,500	PMSA: Boston MA-NH	13.97	1,228	144,823	137,582	1,010	2,023	169	1,228
275 SOUTH HADLEY	121,200	47,500	MSA: Springfield	16.51	891	100,715	95,679	702	1,663	139	891
276 SOUTHAMPTON	159,900	47,500	MSA: Springfield	15.22	891	102,029	96,927	711	1,553	129	891
277 SOUTHBOROUGH	341,250	65,500	PMSA: Boston MA-NH	13.38	1,228	145,704	138,418	1,016	1,950	162	1,228
278 SOUTHBRIDGE	110,500	54,400	MSA: Worcester	15.78	1,020	117,068	111,215	816	1,847	154	1,020
279 SOUTHWICK	125,000	47,500	MSA: Springfield	15.55	891	101,689	96,605	709	1,581	132	891
280 SPENCER	122,500	54,400	MSA: Worcester	11.27	1,020	122,631	116,499	855	1,382	115	1,020
281 SPRINGFIELD	80,000	47,500	MSA: Springfield	20.35	891	96,996	92,146	676	1,974	164	891
282 STERLING	225,000	54,400	MSA: Worcester	14.33	1,020	118,801	112,861	828	1,702	142	1,020
283 STOCKBRIDGE	232,500	47,500	MSA: Pittsfield	9.60	891	108,178	102,769	754	1,039	87	891
284 STONEHAM	230,000	65,500	PMSA: Boston MA-NH	15.38	1,228	142,761	135,623	995	2,196	183	1,228
285 STOUGHTON	175,000	65,500	PMSA: Boston MA-NH	16.05	1,228	141,802	134,712	988	2,276	190	1,228
286 STOW	329,900	65,500	PMSA: Boston MA-NH	16.65	1,228	140,953	133,906	983	2,347	196	1,228
287 STURBRIDGE	146,000	54,400	MSA: Worcester	18.72	1,020	113,706	108,021	793	2,129	177	1,020
288 SUDBURY*	460,000	65,500	PMSA: Boston MA-NH	16.66	1,228	140,939	133,892	982	2,348	196	1,228
289 SUNDERLAND	139,900	47,500	MSA: Springfield	15.65	891	101,587	96,508	708	1,590	132	891
290 SUTTON	194,900	54,400	MSA: Worcester	16.37	1,020	116,378	110,559	811	1,905	159	1,020
291 SWAMPSCOTT	285,000	65,500	PMSA: Boston MA-NH	14.44	1,228	144,129	136,923	1,005	2,081	173	1,228
292 SWANSEA	127,000	49,800	PMSA: Providence-Fall River-Warwick	13.39	934	109,286	103,821	762	1,463	122	934
293 TAUNTON*	141,750	65,500	PMSA: Boston MA-NH	13.34	1,228	145,764	138,476	1,016	1,944	162	1,228
294 TEMPLETON	no data	53,100	MSA: Fitchburg-Leominster	12.03	996	118,599	112,670	827	1,427	119	996
295 TEWKSBURY	204,900	64,900	PMSA: Lowell	12.65	1,217	145,406	138,136	1,014	1,839	153	1,217
296 TISBURY**	247,500	53,200	Non-Metropolitan Area: Dukes	12.75	998	117,947	112,050	822	1,504	125	997
297 TOLLAND	no data	51,900	Non-Metropolitan Area: Hampden	5.40	973	124,398	118,178	867	672	56	973
298 TOPSFIELD	350,000	65,500	PMSA: Boston MA-NH	13.90	1,228	144,927	137,681	1,010	2,014	168	1,228

- Median Sale Price based on Banker and Tradesman Data (includes SF sales and condos)

- HUD Median Income based on 2000 figures

- Tax Rates based on DOR 2001 data (\*most recent year available, \*\*MMA data)

Appendix III: Purchaser-Based MSPs by Community

299 TOWNSEND	158,000	65,500	PMSA: Boston MA-NH	17.80	1,228	139,356	132,388	971	2,481	207	1,228
300 TRURO	250,000	47,700	MSA: Barnstable-Yarmouth	7.96	894	110,606	105,075	771	880	73	894
301 TYNGSBORO	210,000	64,900	PMSA: Lowell	16.70	1,217	139,538	132,561	973	2,330	194	1,217
302 TYRINGHAM	127,500	44,300	Non-Metropolitan Area:Berkshire	8.60	831	101,546	96,468	708	873	73	831
303 UPTON	162,000	65,500	PMSA: Boston MA-NH	12.60	1,228	146,884	139,540	1,024	1,851	154	1,228
304 UXBRIDGE	170,000	54,400	MSA: Worcester	14.79	1,020	118,246	112,333	824	1,749	146	1,020
305 WAKEFIELD	261,900	65,500	PMSA: Boston MA-NH	14.04	1,228	144,719	137,483	1,009	2,032	169	1,228
306 WALES	103,000	51,900	Non-Metropolitan Area: Hampden	19.14	973	107,769	102,381	751	2,063	172	973
307 WALPOLE	250,000	65,500	PMSA: Boston MA-NH	15.76	1,228	142,215	135,104	991	2,241	187	1,228
308 WALTHAM**	274,000	65,500	PMSA: Boston MA-NH	12.74	1,228	146,671	139,338	1,022	1,869	156	1,228
309 WARE	100,000	47,500	MSA: Springfield	19.02	891	98,252	93,340	685	1,869	156	891
310 WAREHAM	124,000	65,500	PMSA: Boston MA-NH	13.56	1,228	145,434	138,162	1,014	1,972	164	1,228
311 WARREN	105,000	48,100	Non-Metropolitan Area: Worcester	18.17	902	100,399	95,379	700	1,824	152	902
312 WARWICK	99,900	46,000	Non-Metropolitan Area: Franklin	17.36	863	96,526	91,700	673	1,676	140	863
313 WASHINGTON*	119,000	44,300	Non-Metropolitan Area:Berkshire	13.09	831	96,833	91,991	675	1,268	106	831
314 WATERTOWN**	290,000	65,500	PMSA: Boston MA-NH	14.21	1,228	144,468	137,244	1,007	2,053	171	1,228
315 WAYLAND	405,000	65,500	PMSA: Boston MA-NH	15.62	1,228	142,416	135,295	993	2,225	185	1,228
316 WEBSTER	115,000	54,400	MSA: Worcester	14.47	1,020	118,631	112,700	827	1,717	143	1,020
317 WELLESLEY	515,000	65,500	PMSA: Boston MA-NH	8.85	1,228	152,839	145,197	1,065	1,353	113	1,228
318 WELLFLEET*	190,000	47,700	Non-Metropolitan Area: Barnstable	9.43	894	108,859	103,416	759	1,027	86	894
319 WENDELL	78,350	46,000	Non-Metropolitan Area: Franklin	21.08	863	93,097	88,442	649	1,962	164	863
320 WENHAM	373,590	65,500	PMSA: Boston MA-NH	12.71	1,228	146,717	139,381	1,023	1,865	155	1,228
321 WEST BOYLSTON	153,000	54,400	MSA: Worcester	19.27	1,020	113,098	107,444	788	2,179	182	1,020
322 WEST BRIDGEWATER	190,000	57,700	PMSA: Brockton	14.70	1,082	125,903	119,608	878	1,851	154	1,082
323 WEST BROOKFIELD	119,000	54,400	MSA: Worcester	14.23	1,020	118,922	112,976	829	1,692	141	1,020
324 WEST NEWBURY	301,000	60,800	PMSA: Lawrence	11.72	1,140	137,151	130,294	956	1,607	134	1,140
325 WEST SPRINGFIELD	107,000	47,500	MSA: Springfield	18.50	891	98,753	93,815	688	1,827	152	891
326 WEST STOCKBRIDGE	135,000	44,300	Non-Metropolitan Area:Berkshire	14.92	831	95,035	90,283	662	1,418	118	831
327 WEST TISBURY	277,500	53,200	Non-Metropolitan Area: Dukes	7.20	998	125,153	118,895	872	901	75	998
328 WESTBOROUGH	300,000	54,400	MSA: Worcester	14.03	1,020	119,166	113,207	831	1,672	139	1,020
329 WESTFIELD*	126,500	47,500	MSA: Springfield	16.40	891	100,825	95,784	703	1,654	138	891
330 WESTFORD	310,000	64,900	PMSA: Lowell	17.32	1,217	138,681	131,747	967	2,402	200	1,217
331 WESTHAMPTON	no data	51,900	Non-Metropolitan Area: Hampshire	17.43	973	109,592	104,113	764	1,910	159	973
332 WESTMINSTER	139,000	53,100	MSA: Fitchburg-Leominster	15.20	996	114,796	109,056	800	1,745	145	996
333 WESTON	639,000	65,500	PMSA: Boston MA-NH	12.92	1,228	146,398	139,078	1,021	1,891	158	1,228
334 WESTPORT	142,000	49,800	PMSA: Providence-Fall River-Warwick	10.20	934	113,000	107,350	788	1,153	96	934
335 WESTWOOD	370,000	65,500	PMSA: Boston MA-NH	13.37	1,228	145,719	138,433	1,016	1,948	162	1,228
336 WEYMOUTH	175,000	65,500	PMSA: Boston MA-NH	15.07	1,228	143,209	136,049	998	2,158	180	1,228
337 WHATELY	150,000	46,000	Non-Metropolitan Area: Franklin	19.00	863	94,984	90,235	662	1,805	150	863
338 WHITMAN	175,000	57,700	PMSA: Brockton	20.60	1,082	118,778	112,839	828	2,447	204	1,082
339 WILBRAHAM	182,000	47,500	MSA: Springfield	17.44	891	99,788	94,799	696	1,740	145	891
340 WILLIAMSBURG	105,000	47,500	MSA: Springfield	15.25	891	101,998	96,898	711	1,555	130	891
341 WILLIAMSTOWN	no data	44,300	Non-Metropolitan Area:Berkshire	15.06	831	94,900	90,155	662	1,429	119	831

- Median Sale Price based on Banker and Tradesman Data (includes SF sales and condos)

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**Appendix III: Purchaser-Based MSPs by Community**

342 WILMINGTON	244,000	65,500	PMSA: Boston MA-NH	12.16	1,228	147,559	140,181	1,029	1,794	150	1,228
343 WINCHENDON	115,000	53,100	MSA: Fitchburg-Leominster	16.79	996	112,979	107,330	788	1,897	158	996
344 WINCHESTER	385,000	65,500	PMSA: Boston MA-NH	13.11	1,228	146,110	138,805	1,018	1,916	160	1,228
345 WINDSOR*	117,500	44,300	Non-Metropolitan Area: Berkshire	13.24	831	96,683	91,849	674	1,280	107	831
346 WINTHROP	200,000	65,500	PMSA: Boston MA-NH	13.04	1,228	146,216	138,905	1,019	1,907	159	1,228
347 WOBURN	230,000	65,500	PMSA: Boston MA-NH	10.17	1,228	150,689	143,154	1,050	1,533	128	1,228
348 WORCESTER	122,000	54,400	MSA: Worcester	18.47	1,020	113,984	108,285	795	2,105	175	1,020
349 WORTHINGTON	105,000	51,900	Non-Metropolitan Area: Hampshire	14.82	973	112,497	106,872	784	1,667	139	973
350 WRENTHAM*	271,500	65,500	PMSA: Boston MA-NH	14.82	1,228	143,573	136,394	1,001	2,128	177	1,228
351 YARMOUTH	150,000	47,700	MSA: Barnstable-Yarmouth	10.76	894	107,325	101,959	748	1,155	96	894

- Median Sale Price based on Banker and Tradesman Data (includes SF sales and condos)
- HUD Median Income based on 2000 figures
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## Appendix IV: Affordable Housing Inventory

The Affordable Housing Inventory, maintained by DHCD and made available to the public on its web-page, is supposed to be periodically updated to reflect the addition of new units created and the loss of units when terms expire or units are sold outside of the program. However, maintaining an accurate list has been fraught with problems for years. While DHCD may be aware of many changes to the affordable stock, they are not involved with all programs and projects, and although communities are supposed to inform DHCD on an annual basis of any changes to their count, from all appearances this has never been practiced. In fact, towns in many cases have just as little information about their affordable units as the state. As a result, the manner by which the inventory is updated involves conducting a periodic census of what projects have come on-line since the last count and asking communities to confirm the accuracy of the new estimate. The resulting figures may be inaccurate for two reasons. While some communities may be disinclined to admit that the real count is lower than that estimated, others may genuinely be unable to determine the exact number of eligible affordable units without undertaking a full-fledged deed search such as being done on the Cape. However, efforts are currently underway to update the existing inventory list (which has not been amended since 1997) and to devise ways to facilitate more regular revisions to the count.

The tables on the following pages present data from the inventory obtained from the internet at: [www.state.ma.us/dhcd/components/hac/ch40bnotes.html](http://www.state.ma.us/dhcd/components/hac/ch40bnotes.html). The figures listed include: the number of year-round housing units, the number of 40B-eligible housing units, and the associated percentages. Note that 56 communities are not listed in the inventory because they had no 40B eligible housing as of the most recent update in 1997. An additional column has been added to the table which demonstrates the number of 40B units needed to be developed in order for each community to reach its 10% goal.

Note that of the 295 communities listed:

- 24 had reached their 10% goal
- 62 need less than 100 additional units
- 75 need between 100 and 200 additional units
- 51 need between 200 and 300 additional units
- 41 need between 300 and 500 additional units
- 39 need between 500 and 1000 units, and
- 4 need between 1000 and 1500 units

**Appendix IV: Affordable Housing Inventory**

COMMUNITY	TOTAL UNITS	40B ELIGIBLE UNITS	%	UNITS NEEDED
ABINGTON	4,942	112	2.27%	382
ACTON	6,871	144	2.10%	543
ACUSHNET	3,517	78	3.07%	274
ADAMS	4,338	339	7.81%	95
AGAWAM	10,840	446	4.11%	638
AMESBURY	5,925	295	4.98%	298
AMHERST	8,763	963	11.24%	NA
ANDOVER	10,849	980	9.32%	105
ARLINGTON	19,391	859	4.43%	1080
ASHBURNHAM	1,972	25	1.27%	172
ASHFIELD	711	2	0.28%	69
ASHLAND	4,809	216	4.82%	265
ATHOL	4,770	230	4.82%	247
ATTLEBORO	15,013	1,015	6.76%	486
AUBURN	5,884	190	3.23%	398
AVON	1,663	70	4.21%	96
AYER	2,875	77	2.68%	211
BARNSTABLE	18,569	813	4.71%	1044
BARRE	1,737	66	3.80%	108
BEDFORD	4,588	210	5.23%	249
BELCHERTOWN	3,941	304	8.58%	90
BELLINGHAM	5,163	245	6.28%	271
BELMONT	9,958	276	2.77%	720
BERLIN	829	72	8.69%	11
BERNARDSTON	803	22	2.74%	58
BEVERLY	15,589	1,586	10.17%	NA
BILLERICA	11,986	212	1.77%	987
BLACKSTONE	2,975	104	3.50%	194
BLANDFORD	451	1	0.22%	44
BOLTON	1,085	14	2.58%	95
BOSTON	249,976	48,579	19.52%	NA
BOURNE	6,812	375	5.53%	306
BOXFORD	2,065	15	2.71%	192
BOYLSTON	1,359	24	1.77%	112
BRAINTREE	12,149	1,015	8.35%	200
BREWSTER	3,616	199	6.42%	163
BRIDGEWATER	6,201	170	2.74%	450
BRIMFIELD	1,127	60	5.32%	53
BROCKTON	35,321	4,218	11.94%	NA
BROOKFIELD	1,184	2	0.17%	116
BROOKLINE	25,219	1,960	7.77%	562
BUCKLAND	766	9	1.17%	68
BURLINGTON	8,030	622	7.75%	181
CAMBRIDGE	41,803	6,450	15.43%	NA
CANTON	6,772	640	9.45%	37
CARLISLE	1,491	18	1.21%	131
CARVER	3,725	76	2.04%	297
CHARLEMONT	530	9	1.70%	44
CHARLTON	3,282	76	2.32%	252
CHATHAM	3,552	123	3.46%	232
CHELMSFORD	11,796	457	5.39%	723

COMMUNITY	TOTAL UNITS	40B ELIGIBLE UNITS	%	UNITS NEEDED
CHELSEA	11,568	1,918	16.62%	NA
CHESHIRE	1,330	3	0.23%	130
CHESTER	491	16	3.26%	33
CHESTERFIELD	407	1	0.25%	40
CHICOPEE	23,658	2,305	9.97%	61
CLINTON	5,629	486	8.63%	77
COHASSET	2,679	76	2.84%	192
COLRAIN	653	4	0.61%	61
CONCORD	5,903	139	2.35%	451
CUMMINGTON	362	16	4.42%	20
DALTON	2,720	156	5.74%	116
DANVERS	9,093	279	3.07%	630
DARTMOUTH	9,609	652	6.79%	309
DEDHAM	8,747	343	3.92%	532
DEERFIELD	2,072	24	1.16%	183
DENNIS	7,490	239	3.32%	510
DIGHTON	1,982	85	5.75%	113
DOUGLAS	2,004	137	6.84%	63
DOVER	1,690	17	3.31%	152
DRACUT	9,266	283	4.74%	644
DUDLEY	3,525	88	2.50%	265
DUXBURY	4,827	172	3.56%	311
E BRIDGEWATER	3,689	147	4.09%	222
E LONGMEADOW	4,778	383	9.06%	95
EASTHAM	2,200	20	0.91%	200
EASTHAMPTON	6,411	274	4.27%	367
EASTON	6,698	217	4.09%	453
ERVING	565	2	0.35%	55
ESSEX	1,362	40	2.94%	96
EVERETT	15,399	952	6.18%	588
FAIRHAVEN	6,639	454	6.84%	210
FALL RIVER	40,313	4,794	12.13%	NA
FALMOUTH	12,540	470	3.98%	784
FITCHBURG	16,629	1,429	8.60%	234
FOXBOROUGH	5,458	217	3.98%	329
FRAMINGHAM	26,325	2,429	9.23%	204
FRANKLIN	7,675	531	8.40%	237
FREETOWN	2,835	4	0.14%	280
GARDNER	8,606	1,277	14.84%	NA
GAY HEAD	90	34	37.78%	NA
GEORGETOWN	2,215	140	6.32%	82
GLOUCESTER	12,301	766	6.23%	464
GRAFTON	5,027	218	4.34%	285
GRANBY	2,000	60	3.00%	140
GT BARRINGTON	2,998	179	5.97%	121
GREENFIELD	8,032	1,052	13.26%	NA
GROTON	2,676	93	4.45%	175
GROVELAND	1,813	60	3.31%	121
HADLEY	1,699	77	4.53%	93
HALIFAX	2,411	28	1.16%	213
HAMILTON	2,540	69	3.43%	185



**Appendix IV: Affordable Housing Inventory**

COMMUNITY	TOTAL UNITS	40B ELIGIBLE UNITS	%	UNITS NEEDED
HAMPDEN	1,648	56	3.40%	109
HANOVER	3,832	270	7.05%	113
HANSON	2,937	90	3.06%	204
HARDWICK	953	56	5.88%	39
HARVARD	3,084	33	1.07%	275
HARWICH	5,025	133	2.95%	370
HATFIELD	1,294	44	3.40%	85
HAVERHILL	21,272	1,612	7.58%	515
HEATH	264	2	0.76%	24
HINGHAM	7,128	166	2.33%	547
HINSDALE	761	8	1.05%	68
HOLBROOK	4,034	392	9.72%	11
HOLDEN	5,420	148	3.10%	394
HOLLAND	837	2	0.24%	82
HOLLISTON	4,403	78	1.77%	362
HOLYOKE	16,907	3,457	20.45%	NA
HOPEDALE	2,055	80	3.89%	126
HOPKINTON	3,274	114	4.95%	213
HUBBARDSTON	999	36	3.60%	64
HUDSON	6,668	522	8.13%	145
HULL	4,277	68	1.59%	360
HUNTINGTON	735	32	4.35%	42
IPSWICH	4,933	349	7.07%	144
KINGSTON	3,319	155	4.67%	177
LAKEVILLE	2,731	4	0.15%	269
LANCASTER	1,994	70	3.51%	129
LAWRENCE	26,893	3,828	14.26%	NA
LEE	2,401	139	5.79%	101
LEICESTER	3,574	132	3.69%	225
LENOX	2,015	124	6.15%	78
LEOMINSTER	15,508	1,276	8.23%	275
LEXINGTON	10,816	629	5.82%	453
LEYDEN	237	2	0.84%	22
LINCOLN	1,742	175	14.18%	NA
LITTLETON	2,658	240	9.03%	26
LONGMEADOW	5,477	172	3.14%	376
LOWELL	40,262	5,130	12.90%	NA
LUDLOW	7,166	170	2.37%	547
LUNENBURG	3,358	54	1.61%	282
LYNN	34,615	4,272	12.34%	NA
LYNNFIELD	4,017	78	2.39%	324
MALDEN	23,180	2,407	10.38%	NA
MANCHESTER	2,220	84	3.78%	138
MANSFIELD	6,340	577	9.10%	57
MARBLEHEAD	8,597	311	3.62%	549
MARION	1,647	28	1.70%	137
MARLBORO	12,976	592	4.68%	706
MARSHFIELD	7,837	361	4.72%	423
MASHPEE	3,787	181	4.78%	198
MATTAPOISETT	2,321	68	2.93%	164
MAYNARD	4,206	314	7.47%	107

COMMUNITY	TOTAL UNITS	40B ELIGIBLE UNITS	%	UNITS NEEDED
MEDFIELD	3,498	179	5.12%	171
MEDFORD	22,614	1,566	6.92%	695
MEDWAY	3,386	208	6.56%	131
MELROSE	11,274	796	7.06%	331
MENDON	1,423	30	2.11%	112
MERRIMAC	1,984	76	3.83%	122
METHUEN	15,403	922	6.24%	618
MIDDLEBORO	6,365	280	4.70%	357
MIDDLETON	1,882	125	6.64%	63
MILFORD	9,810	942	9.60%	39
MILLBURY	4,742	211	4.87%	263
MILLIS	2,830	100	5.34%	183
MILLVILLE	832	18	2.16%	65
MILTON	8,982	360	4.01%	538
MONSON	2,734	105	3.84%	168
MONTAGUE	3,689	297	8.92%	72
NAHANT	1,637	48	2.93%	116
NANTUCKET	3,424	86	2.51%	256
NATICK	12,624	661	5.24%	601
NEEDHAM	10,363	377	3.64%	659
NEW BEDFORD	41,706	4,907	11.84%	NA
NEWBURY	2,147	94	4.38%	121
NEWBURYPORT	7,180	509	7.09%	209
NEWTON	30,263	1,485	4.94%	1541
NORFOLK	2,493	84	3.37%	165
N ADAMS	7,211	921	12.77%	NA
N ANDOVER	8,220	529	6.44%	293
N ATTLEBORO	9,840	289	2.94%	695
N BROOKFIELD	1,815	121	7.82%	61
N READING	4,157	44	1.06%	372
NORTHAMPTON	11,637	1,379	12.07%	NA
NORTHBORO	4,178	134	3.21%	284
NORTHBRIDGE	5,004	323	7.09%	177
NORTHFIELD	1,191	28	2.35%	91
NORTON	4,827	318	6.59%	165
NORWELL	3,064	97	3.26%	209
NORWOOD	11,563	846	7.32%	310
OAK BLUFFS	1,611	8	0.50%	153
ORANGE	2,982	432	14.49%	NA
ORLEANS	2,996	242	8.08%	58
OXFORD	4,645	346	7.45%	119
PALMER	5,041	275	5.46%	229
PEABODY	18,206	1,279	7.38%	542
PEMBROKE	4,804	213	5.22%	267
PEPPERELL	3,495	117	3.78%	233
PITTSFIELD	21,072	1,584	7.64%	523
PLAINVILLE	2,716	40	1.47%	232
PLYMOUTH	16,860	727	4.38%	959
PRINCETON	1,090	16	1.47%	93
PROVINCETOWN	2,385	76	3.19%	163
QUINCY	37,616	3,186	8.47%	576

**Appendix IV: Affordable Housing Inventory**

COMMUNITY	TOTAL UNITS	40B ELIGIBLE UNITS	%	UNITS NEEDED
QUINCY	37,616	3,186	8.47%	576
RANDOLPH	11,252	654	5.81%	471
RAYNHAM	3,501	193	6.14%	157
READING	8,095	375	4.63%	435
REVERE	18,680	1,753	9.38%	115
ROCHESTER	1,303	4	0.31%	126
ROCKLAND	5,735	468	8.96%	106
ROCKPORT	3,584	134	3.74%	224
ROWLEY	1,567	78	4.98%	79
ROYALSTON	436	3	0.69%	41
RUTLAND	1,848	25	1.35%	160
SALEM	17,091	2,053	12.01%	NA
SALISBURY	2,660	110	4.14%	156
SANDWICH	6,033	150	3.94%	453
SAUGUS	9,510	587	6.17%	364
SCITUATE	6,260	280	4.47%	346
SEEKONK	4,609	80	1.74%	381
SHARON	5,320	276	5.19%	256
SHEFFIELD	1,254	30	2.39%	95
SHELBURNE	832	46	5.53%	37
SHIRLEY	2,178	24	1.10%	194
SHREWSBURY	10,007	559	5.59%	442
SOMERSET	6,597	139	2.11%	521
SOMERVILLE	31,760	2,622	8.26%	554
SOUTH HADLEY	6,192	328	5.30%	291
SOUTHAMPTON	1,578	40	2.53%	118
SOUTHBORO	2,354	66	2.80%	169
SOUTHBRIDGE	7,463	470	6.30%	276
SOUTHWICK	2,847	108	3.79%	177
SPENCER	4,537	218	4.80%	236
SPRINGFIELD	61,198	9,492	15.53%	NA
STERLING	2,275	40	1.76%	188
STOCKBRIDGE	1,031	61	5.92%	42
STONEHAM	8,898	488	5.48%	402
STOUGHTON	9,675	701	7.25%	267
STOW	1,834	117	7.36%	66
STURBRIDGE	2,966	160	5.39%	137
SUDBURY	4,867	204	4.19%	283
SUTTON	2,348	40	1.70%	195
SWAMPSCOTT	5,628	128	2.27%	435
SWANSEA	5,413	192	3.55%	349
TAUNTON	20,253	1,469	7.25%	556
TEMPLETON	2,253	118	5.24%	107
TEWKSBURY	8,935	393	6.45%	501
TISBURY	1,661	47	2.83%	119
TOPSFIELD	1,958	84	4.29%	112
TOWNSEND	2,875	50	1.74%	238
TRURO	826	5	0.61%	78
TYNGSBORO	3,014	116	3.85%	185
UPTON	1,882	163	8.66%	25
UXBRIDGE	3,952	214	5.41%	181

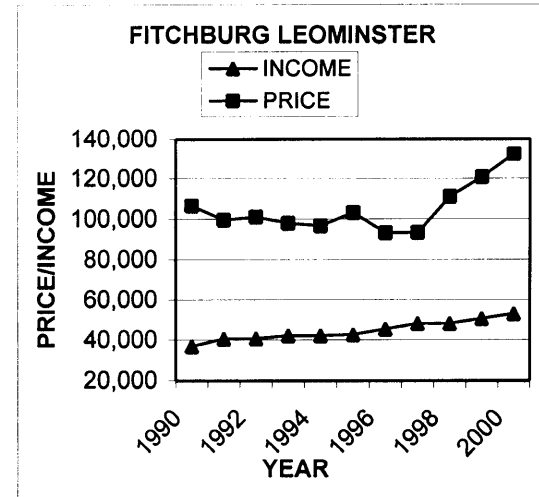
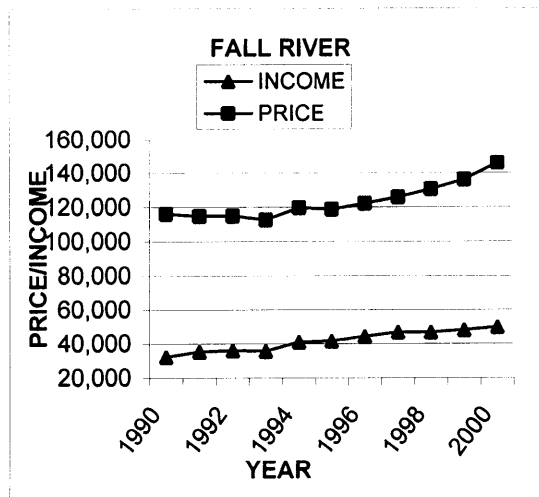
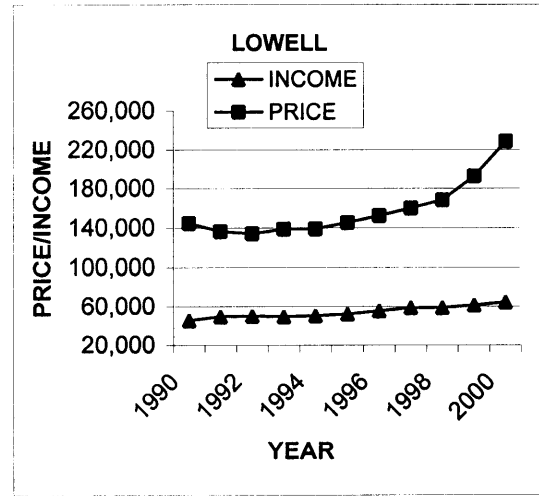
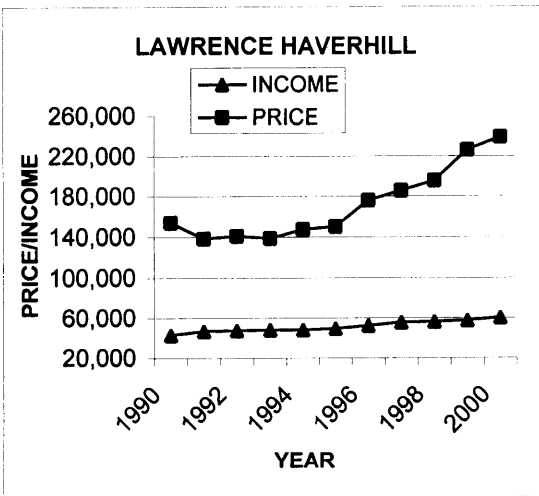
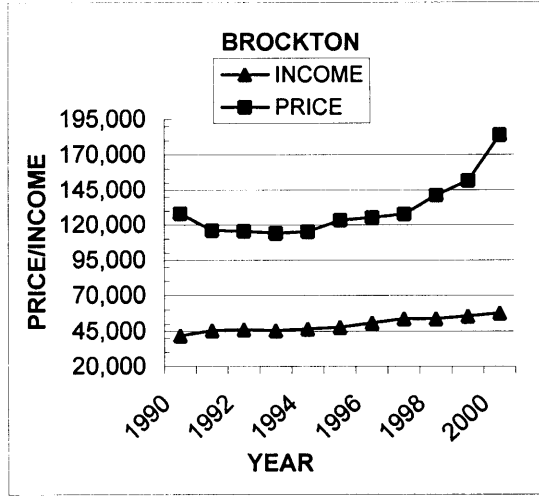
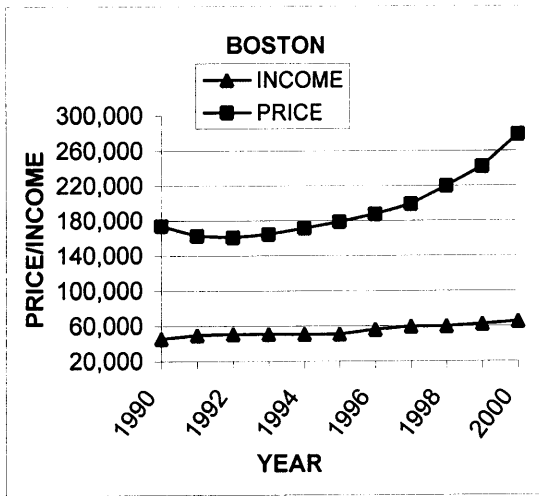
COMMUNITY	TOTAL UNITS	40B ELIGIBLE UNITS	%	UNITS NEEDED
WAKEFIELD	9,495	433	4.56%	517
WALES	616	2	0.32%	60
WALPOLE	6,982	138	1.98%	560
WALTHAM	21,675	1,079	4.98%	1089
WARE	4,055	292	7.20%	114
WAREHAM	8,250	423	5.13%	402
WARREN	1,810	70	3.87%	111
WARWICK	260	2	0.77%	24
WATERTOWN	14,725	792	5.38%	681
WAYLAND	4,372	139	3.18%	298
WEBSTER	7,078	422	5.96%	286
WELLESLEY	8,724	396	4.54%	476
WELLFLEET	1,315	16	1.22%	116
WENDELL	371	72	19.41%	NA
WENHAM	1,204	92	7.64%	28
W BOYLSTON	2,264	70	4.15%	156
W BRIDGEWATER	2,294	48	2.09%	181
W BROOKFIELD	1,305	54	4.14%	77
W NEWBURY	1,145	26	2.27%	89
W SPRINGFIELD	12,070	359	2.97%	848
WESTBORO	5,754	209	3.82%	366
WESTFIELD	14,398	847	5.88%	593
WESTFORD	5,439	120	2.21%	424
WESTMINSTER	2,266	67	5.56%	160
WESTON	3,482	76	2.18%	272
WESTPORT	5,227	93	1.78%	430
WESTWOOD	4,540	375	10.84%	79
WEYMOUTH	21,890	1,720	7.86%	469
WHITMAN	4,591	186	4.05%	273
WILBRAHAM	4,613	219	4.75%	242
WILLIAMSBURG	959	29	3.02%	67
WILLIAMSTOWN	2,841	128	4.51%	156
WILMINGTON	5,659	159	5.85%	407
WINCHENDON	3,221	293	9.10%	29
WINCHESTER	7,532	137	1.82%	616
WINTHROP	8,076	593	7.34%	215
WOBURN	14,062	866	6.16%	540
WORCESTER	69,201	9,344	13.50%	NA
WORTHINGTON	427	22	5.15%	21
WRENTHAM	2,910	139	4.78%	152
YARMOUTH	11,188	271	2.42%	848

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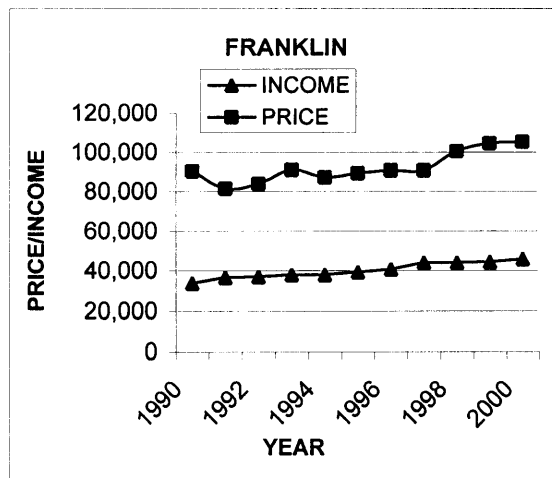
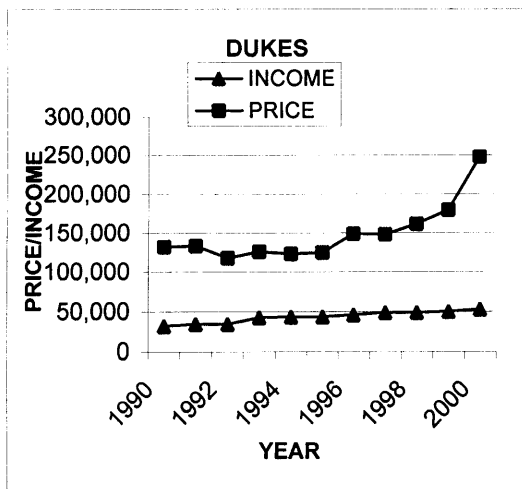
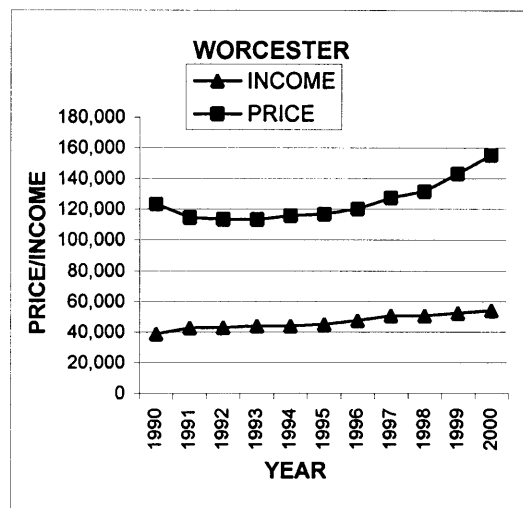
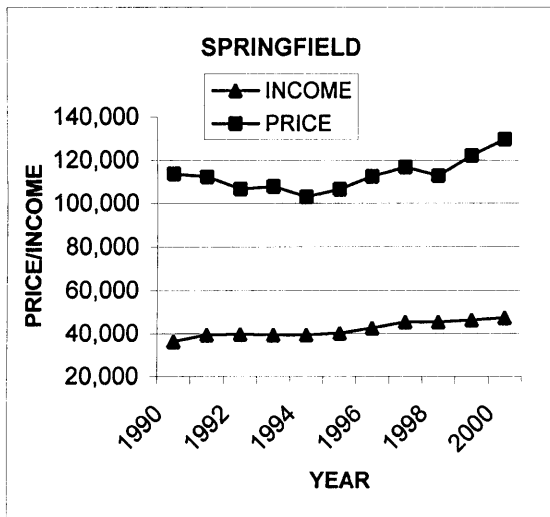
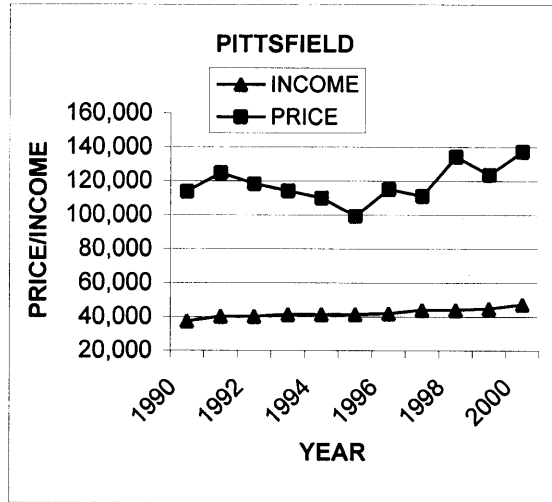
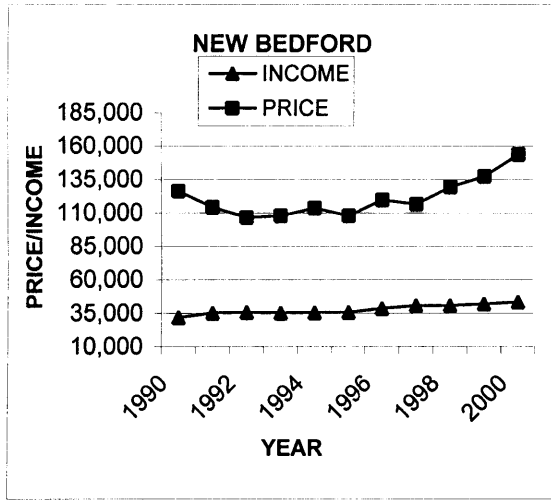
### Appendix V: Changes to Median Incomes and Sales Prices by HUD Area

The following pages include graphs which show the changes in median sales prices and the in the HUD-defined median incomes over the last ten years, for each HUD-defined area in Massachusetts. Median sales price data is based on the figures obtained for Appendix III, averaged by HUD area. Income figures were obtained from the HUD website at: [www.huduser.org/datasets/il/fmr00/index.html](http://www.huduser.org/datasets/il/fmr00/index.html).

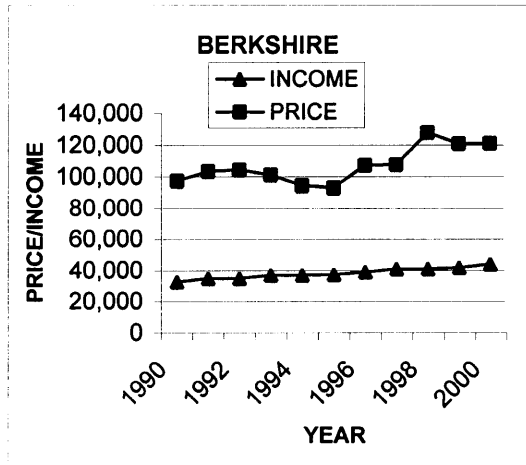
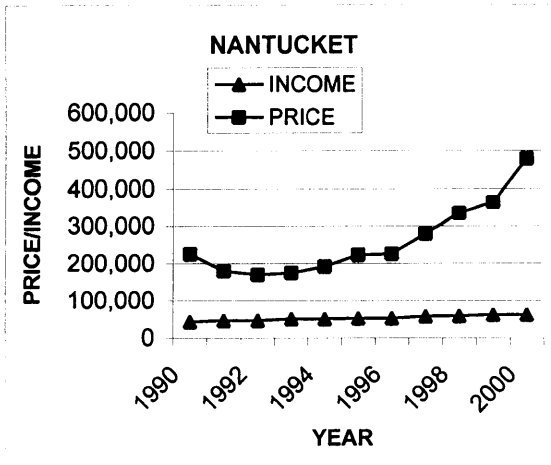
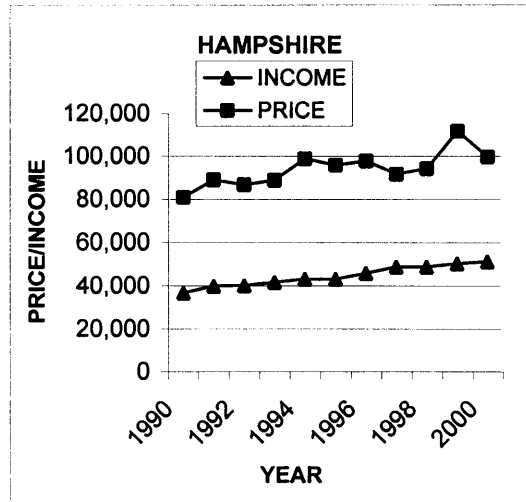
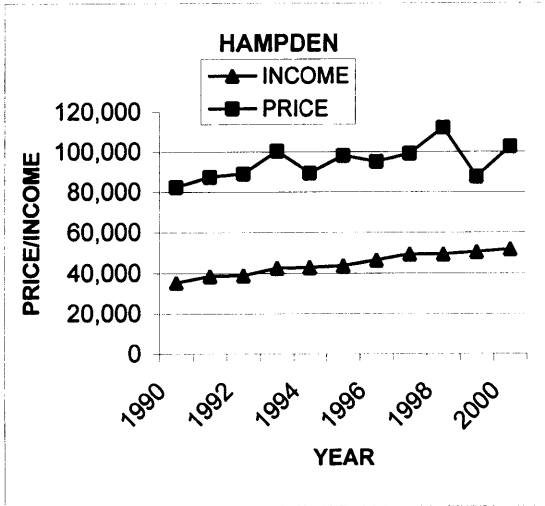
Appendix V: Changes to Median Incomes and Sales Prices by HUD Area



Appendix V: Changes to Median Incomes and Sales Prices by HUD Area



Appendix V: Changes to Median Incomes and Sales Prices by HUD Area



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Appendix VI: Correlation of Median Incomes and Sales Prices by HUD Area

It is not surprising that there is a correlation between changes to median incomes and changes in median homes sales. However, the following pages, which demonstrate the extent of this correlation, are included as support for the theory that the Purchaser-Based Model will result in MSPs which reflect a reasonable degree of appreciation even though no appreciation factor is included in the methodology.

### Appendix VI: Correlation of Median Incomes and Sales Prices by HUD Area

Correlations			
		PMSA: Boston MA-NH income	PMSA: Boston MA-NH price
PMSA: Boston MA-NH income	Pearson Correlation	1.000	.911*
	Sig. (2-tailed)	.	.000
	N	11	11
PMSA: Boston MA-NH price	Pearson Correlation	.911**	1.000
	Sig. (2-tailed)	.000	.
	N	11	11

\*\*. Correlation is significant at the 0.01 level (2-tailed).

Correlations			
		PMSA: Brockton income	PMSA: Brockton price
PMSA: Brockton income	Pearson Correlation	1.000	.790*
	Sig. (2-tailed)	.	.004
	N	11	11
PMSA: Brockton price	Pearson Correlation	.790**	1.000
	Sig. (2-tailed)	.004	.
	N	11	11

\*\*. Correlation is significant at the 0.01 level (2-tailed).

Correlations			
		PMSA: Lawrence income	PMSA: Lawrence price
PMSA: Lawrence income	Pearson Correlation	1.000	.918*
	Sig. (2-tailed)	.	.000
	N	11	11
PMSA: Lawrence price	Pearson Correlation	.918*	1.000
	Sig. (2-tailed)	.000	.
	N	11	11

\*\*. Correlation is significant at the 0.01 level (2-tailed).

Correlations			
		PMSA: Lowell income	PMSA: Lowell price
PMSA: Lowell income	Pearson Correlation	1.000	.883*
	Sig. (2-tailed)	.	.000
	N	11	11
PMSA: Lowell price	Pearson Correlation	.883**	1.000
	Sig. (2-tailed)	.000	.
	N	11	11

\*\*. Correlation is significant at the 0.01 level (2-tailed).

Correlations			
		Fall River income	Fall River price
Fall River income	Pearson Correlation	1.000	.875*
	Sig. (2-tailed)	.	.000
	N	11	11
Fall River price	Pearson Correlation	.875**	1.000
	Sig. (2-tailed)	.000	.
	N	11	11

\*\*. Correlation is significant at the 0.01 level (2-tailed).

Correlations			
		MSA: Barnstabl e-Yarmou th income	MSA: Barnstabl e-Yarmou th price
MSA: Barnstable-Yarmouth income	Pearson Correlation	1.000	.768*
	Sig. (2-tailed)	.	.006
	N	11	11
MSA: Barnstable-Yarmouth price	Pearson Correlation	.768**	1.000
	Sig. (2-tailed)	.006	.
	N	11	11

\*\*. Correlation is significant at the 0.01 level (2-tailed).



## Appendix VI: Correlation of Median Incomes and Sales Prices by HUD Area

Correlations			
		Non-Metr area: Dukes income	Non-Metr Area: Dukes price
Non-Metr area: Dukes income	Pearson Correlation	1.000	.693*
	Sig. (2-tailed)	.	.018
	N	11	11
Non-Metr Area: Dukes price	Pearson Correlation	.693*	1.000
	Sig. (2-tailed)	.018	.
	N	11	11

\*. Correlation is significant at the 0.05 level (2-tailed).

Correlations			
		Non-Metr Area: Franklin income	Non-Metr Area: Franklin price
Non-Metr Area: Franklin income	Pearson Correlation	1.000	.789**
	Sig. (2-tailed)	.	.004
	N	11	11
Non-Metr Area: Franklin price	Pearson Correlation	.789**	1.000
	Sig. (2-tailed)	.004	.
	N	11	11

\*\*. Correlation is significant at the 0.01 level (2-tailed).

Correlations			
		Non-Metr Area: Hampden income	Non-Metr Area: Hampden price
Non-Metr Area: Hampden income	Pearson Correlation	1.000	.653*
	Sig. (2-tailed)	.	.029
	N	11	11
Non-Metr Area: Hampden price	Pearson Correlation	.653*	1.000
	Sig. (2-tailed)	.029	.
	N	11	11

\*. Correlation is significant at the 0.05 level (2-tailed).

Correlations			
		Non-Metr Area: Hampshire income	Non-Metr Area: Hampshire price
Non-Metr Area: Hampshire income	Pearson Correlation	1.000	.761**
	Sig. (2-tailed)	.	.006
	N	11	11
Non-Metr Area: Hampshire price	Pearson Correlation	.761**	1.000
	Sig. (2-tailed)	.006	.
	N	11	11

\*\*. Correlation is significant at the 0.01 level (2-tailed).

Correlations			
		Non-Metr Area: Nantucket income	Non-Metr Area: Nantucket price
Non-Metr Area: Nantucket income	Pearson Correlation	1.000	.840**
	Sig. (2-tailed)	.	.001
	N	11	11
Non-Metr Area: Nantucket price	Pearson Correlation	.840**	1.000
	Sig. (2-tailed)	.001	.
	N	11	11

\*\*. Correlation is significant at the 0.01 level (2-tailed).

Correlations			
		Non-Metr Area:Berks hire income	Non-Metr Area:Berks hire price
Non-Metr Area:Berks hire income	Pearson Correlation	1.000	.756**
	Sig. (2-tailed)	.	.007
	N	11	11
Non-Metr Area:Berks hire price	Pearson Correlation	.756**	1.000
	Sig. (2-tailed)	.007	.
	N	11	11

\*\*. Correlation is significant at the 0.01 level (2-tailed).

## Appendix VI: Correlation of Median Incomes and Sales Prices by HUD Area

Correlations			
		MSA: Fitchburg- Leominster income	MSA: Fitchburg- Leominster price
MSA: Fitchburg- Leominster income	Pearson Correlation	1.000	.607*
	Sig. (2-tailed)	.	.048
	N	11	11
MSA: Fitchburg- Leominster price	Pearson Correlation	.607*	1.000
	Sig. (2-tailed)	.048	.
	N	11	11

\*. Correlation is significant at the 0.05 level (2-tailed).

Correlations			
		MSA: New Bedford income	MSA: New Bedford price
MSA: New Bedford income	Pearson Correlation	1.000	.685*
	Sig. (2-tailed)	.	.020
	N	11	11
MSA: New Bedford price	Pearson Correlation	.685*	1.000
	Sig. (2-tailed)	.020	.
	N	11	11

\*. Correlation is significant at the 0.05 level (2-tailed).

Correlations			
		MSA: Pittsfield income	MSA: Pittsfield price
MSA: Pittsfield income	Pearson Correlation	1.000	.537
	Sig. (2-tailed)	.	.088
	N	11	11
MSA: Pittsfield price	Pearson Correlation	.537	1.000
	Sig. (2-tailed)	.088	.
	N	11	11

Correlations			
		MSA: Pittsfield income	MSA: Pittsfield price
MSA: Pittsfield income	Pearson Correlation	1.000	.537*
	Sig. (1-tailed)	.	.044
	N	11	11
MSA: Pittsfield price	Pearson Correlation	.537*	1.000
	Sig. (1-tailed)	.044	.
	N	11	11

\*. Correlation is significant at the 0.05 level (1-tailed).

Correlations			
		MSA: Springfield income	MSA: Springfield price
MSA: Springfield income	Pearson Correlation	1.000	.730*
	Sig. (2-tailed)	.	.011
	N	11	11
MSA: Springfield price	Pearson Correlation	.730*	1.000
	Sig. (2-tailed)	.011	.
	N	11	11

\*. Correlation is significant at the 0.05 level (2-tailed).

Correlations			
		MSA: Worcester income	MSA: Worcester price
MSA: Worcester income	Pearson Correlation	1.000	.810**
	Sig. (2-tailed)	.	.003
	N	11	11
MSA: Worcester price	Pearson Correlation	.810**	1.000
	Sig. (2-tailed)	.003	.
	N	11	11

\*\*. Correlation is significant at the 0.01 level (2-tailed).

Appendix VII: Allocations of Monitoring Responsibility By Program

**HOMEOWNERSHIP OPPORTUNITY PROGRAM (HOP)**

	<b>MONITORING TASKS</b>	<b>ENTITY PRIMARILY RESPONSIBLE</b>	<b>OTHER ENTITIES WHICH MAY ASSIST OR BE INVOLVED</b>
(1)	Project Concept	DHCD	LHP, ZBA, local officials
(2)	Legal Documents, including affordability restrictions	DHCD	Developer or LHP may suggest and ZBA & local officials may require modifications
(3)	Construction Oversight, including phasing, costs, and profit	DHCD	
(4)	Initial Marketing of New Homes	DHCD and Municipality	Lotteries often run on local level
(5)	Periodic Outreach to Owners (although not mandated by any program)	DHCD & Municipality should be responsible, although rarely done	
(6)	Refinancing - receive notification & grant approval	DHCD	
(7)	Resale Process - receive notification from owner of intent to sell	DHCD and Municipality	
(8)	Resale Process - has right of first refusal	DHCD	
(9)	Resale Process - instructs owner on steps to take and provides MSP and income limits	DHCD	Municipality may also provide assistance
(10)	Resale Process - marketing (locates eligible purchasers)	DHCD	DHCD would like municipalities to play a more active role.
(11)	Resale Process - marketing (certifies eligible purchasers)	DHCD	As most owners of HOP units obtain financing from Fleet, there is a designated Fleet loan officer who handles certification
(12)	Resale Process - imposes new restrictions if sold in program, releases restrictions if sold out of program	DHCD	
(13)	Foreclosure - receive notification	DHCD and Municipality	(DHCD will almost always be notified because holds a second mortgage)
(14)	Foreclosure - take some sort of action	DHCD and Municipality	

**LOCAL INITIATIVE PROGRAM (LIP)**

	<b>MONITORING TASKS</b>	<b>ENTITY PRIMARILY RESPONSIBLE</b>	<b>OTHER ENTITIES WHICH MAY ASSIST OR BE INVOLVED</b>
(1)	Project Concept	DHCD and Municipality	LHP, ZBA, local officials
(2)	Legal Documents, including affordability restrictions	DHCD and Municipality	Developer or LHP may suggest and ZBA & local officials may require modifications
(3)	Construction Oversight, including phasing, costs, and profit	DHCD	
(4)	Initial Marketing of New Homes	Municipality	DHCD provides assistance when needed
(5)	Periodic Outreach to Owners (although not mandated by any program)	Municipality should be responsible, although rarely done	
(6)	Refinancing - receive notification & grant approval	Municipality and DHCD	
(7)	Resale Process - receives notification from owner of intent to sell	Municipality and DHCD	
(8)	Resale Process - has right of first refusal	Municipality	DHCD also plays a role
(9)	Resale Process - instructs owner on steps to take and provides MSP and income limits	Municipality, although DHCD calculates MSP	
(10)	Resale Process - marketing (locating eligible purchasers)	Municipality	DHCD may also provide assistance. Significant reliance on local brokers.
(11)	Resale Process - marketing (certifying eligible purchasers)	Municipality and DHCD	Local lenders may also play a role.
(12)	Resale Process - imposing new restrictions if sold in program, releasing restrictions if sold out of program	Municipality and DHCD	
(13)	Foreclosure - receive notification	Municipality and DHCD	
(14)	Foreclosure - take some sort of action	Municipality and DHCD	Local nonprofits may provide assistance.

**NEW ENGLAND FUND (NEF)**

	<b>MONITORING TASKS</b>	<b>ENTITY PRIMARILY RESPONSIBLE</b>	<b>OTHER ENTITIES WHICH MAY ASSIST OR BE INVOLVED</b>
(1)	Project Concept	FHLB Member Bank & Municipality	Development consultants may be retained by municipality to assist
(2)	Legal Documents, including affordability restrictions	Municipality	Knowledgeable consultant may assist.
(3)	Construction Oversight, including phasing, costs, and profit	Official Monitoring Agent	
(4)	Initial Marketing of New Homes	Official Monitoring Agent	Municipality may also provide assistance
(5)	Periodic Outreach to Owners (although not mandated by any program)	Official Monitoring Agent	Municipalities should assist.
(6)	Refinancing - receive notification & grant approval	Official Monitoring Agent	Municipalities also involved
(7)	Resale Process - receives notification from owner of intent to sell	Official Monitoring Agent	Municipalities also involved
(8)	Resale Process - has right of first refusal	Municipality & Monitoring Agent	
(9)	Resale Process - instructs owner on steps to take and provides MSP and income limits	Official Monitoring Agent	Municipality may also provide assistance
(10)	Resale Process - marketing (locating eligible purchasers)	Official Monitoring Agent	Municipalities should assist.
(11)	Resale Process - marketing (certifying eligible purchasers)	Official Monitoring Agent	Municipalities should assist.
(12)	Resale Process - imposing new restrictions if sold in program, releasing restrictions if sold out of program	Official Monitoring Agent	Municipalities should assist.
(13)	Foreclosure - receive notification	Municipality & Monitoring Agent	
(14)	Foreclosure - take some sort of action	Municipality & Monitoring Agent	

**DHCD's HOME & HOUSING STABILIZATION FUND PROGRAMS (HOME & HSF)**

	<b>MONITORING TASKS</b>	<b>ENTITY PRIMARILY RESPONSIBLE</b>	<b>OTHER ENTITIES WHICH MAY ASSIST OR BE INVOLVED</b>
(1)	Project Concept	DHCD	
(2)	Legal Documents, including affordability restrictions	DHCD	
(3)	Construction Oversight, including phasing, costs, and profit	DHCD	
(4)	Initial Marketing of New Homes	Project Sponsor/Developer	DHCD will oversee
(5)	Periodic Outreach to Owners (although not mandated by any program)	Official Monitoring Agent	Under HSF, DHCD requests project sponsor to send annual certified letters
(6)	Refinancing - receive notification & grant approval	Official Monitoring Agent	
(7)	Resale Process - receives notification from owner of intent to sell	DHCD and Project Sponsor	
(8)	Resale Process - has right of first refusal	DHCD and Project Sponsor	
(9)	Resale Process - instructs owner on steps to take and provides MSP and income limits	DHCD and Project Sponsor	Official Monitoring Agent will assist
(10)	Resale Process - marketing (locating eligible purchasers)	Project Sponsor and Official Monitoring Agent	
(11)	Resale Process - marketing (certifying eligible purchasers)	Official Monitoring Agent	
(12)	Resale Process - imposing new restrictions if sold in program, releasing restrictions if sold out of program	DHCD	
(13)	Foreclosure - receive notification	DHCD, Project Sponsor, and Monitoring Agent	
(14)	Foreclosure - take some sort of action	DHCD, Project Sponsor, and Monitoring Agent	

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## BIBLIOGRAPHY AND SOURCES

### PROGRAM DOCUMENTS

#### Homeownership Opportunity Program – boiler plate documents prepared by DHCD

- “Homeownership Opportunity Program Deed Rider” – dated July 1987
- “Homeownership Opportunity Program Deed Rider” – dated 1989
- “Homeownership Opportunity Program Deed Rider” – black lined version dated 2000 given to author by Harriet Moss and Alexander Whiteside of DHCD.

#### Homeownership Opportunity Program – correspondence, memorandum, reports

- Memorandum from DHCD’s Division of Private Housing to MHFA & DHCD staff, re: “Resale procedures for HOP and MHFA units located in Homeownership Opportunity Programs,” dated January 1998.
- Memorandum from DHCD’s Division of Private Housing to HOP Sellers and Other Interested Parties, re: “Resale Procedure for HOP and MHFA units located in the Homeownership Opportunity Program Projects,” dated November 3, 1999.
- Various memoranda from Catharine Peagler to Donna Koulas of Fleet Bank, re: “HOP or LIP unit for sale,” sent during 2000 and 2001, provided to author by Ms. Koulas.
- Draft memorandum from Jeff McQueen of MHFA and Carl White of MHP to Kate Racer of DHCD re: “request to approve the transfer of surplus interest rate subsidy funds from the HOP Project Commitment Account,” dated May 2, 1994.
- Report entitled “Schedule B of the Semi-Annual Homeownership Opportunity Program Report: Paid HOP Subsidy Loans as of 12/30/00” prepared by MHFA and submitted to MHP in December 2000.

#### HOP – miscellaneous documents, memorandum, and correspondence prepared by municipalities

- Copy of recorded document entitled “Unit Deed of the Condominium” for Roxbury Crossing project in Boston dated March 14, 1988
- Boiler plate document entitled “Homeownership Opportunity Program Deed Rider” for Battle Road Farm project in Lincoln, undated.
- Boiler plate document entitled “Homeownership Opportunity Program Resale Purchase and Sale Agreement (for sale of affordable unit)” for Battle Road Farm project in Lincoln, undated.
- Letter from Town of Concord Planning Department to an owner regarding pending resale dated October 15, 1999. [owner’s name known to author and on file at Town of Concord].
- Memorandum from Town of Concord Department of Planning and Land Management to: “Interested Applicants for Affordable Housing in Concord” dated September 8, 1999.
- Letter from Marcia Ast Rasmussen, Concord Planning Director to Miryam Bobadilla, DHCD, re: “Emerson Annex lottery results,” dated November 24, 1999.
- Memorandum entitled “Emerson Annex Resale Procedures” created by Concord Planning Department, revised August 1995.
- Boiler plate document entitled “Exhibit B: Initial Disclosure Statement” for Battle Road Farm project in Lincoln, undated.

- 
- Memorandum entitled “Summary of Sellers of Affordable Units Responsibilities” prepared by Lincoln Foundation, undated.
  - Memorandum from The Lincoln Foundation to Battle Road Farm Affordable Homeowners, May 2000.
  - Various letters from Executive Office of Communities and Development (aka DHCD) to [an owner] re: Permission to Rent a Homeownership Opportunity Program (HOP) unit, sent during 1993-2000 and on record at MHP.
  - Various letters from Executive Office of Communities and Development (aka DHCD) to [an owner] exercising right of first refusal, sent during 1991-2000 and on record at MHP.
  - Town of Amherst Affordable Housing Agreement & Exhibits including: Exhibit A: Requirements, Exhibit B Option to Purchase Real Estate, Exhibit C: Deed Rider

Local Initiative Program – boiler plate documents prepared by DHCD

- “Local Initiative Program (LIP) Guidelines” - updated August 2000.
- “Local Initiative Program Deed Rider For Ownership Project”- dated May 19, 1997
- “Local Initiative Program: Affordable Unit Resale Procedure” - undated
- “Local Initiative Program Regulatory Agreement and Declaration of Restrictive Covenants for Ownership Project” - undated

LIP – documents for particular projects

- “Harvard Green Condominium Unit Deed”
- “Harvard Green Condominium Master Deed” – recorded March 31, 1998
- “Harvard Green Condominium Trust” – Declaration of Trust dated June 30, 1998
- “Local Initiative Program Regulatory Agreement and Declaration of Restrictive Covenants for Ownership Project” for the Dickson Meadow project in Weston, undated.

New England Fund – Boiler plate model documents and guidelines prepared by Robert Engler

- “Monitoring Services Agreement [FHLBB-New England Fund] For Ownership Projects” prepared by Bob Engler, undated.
- “Regulatory Agreement (FHLBB- New England Fund) For Ownership Projects”, prepared by Bob Engler, undated.
- “Deed Rider for FHLBB New England Fund Ownership Project”, prepared by Bob Engler, undated.
- Memorandum from Bob Engler to Aaron Gornstein Re: “Affordability Analysis for pricing units under NEF,” dated December 7, 2000 provided to the author via fax from Peter Conant on March 16, 2001.
- Document entitled “NEF and Chapter 40B” created by Bob Engler outlining what should be included in site eligibility letters, undated, provided to author via fax from Peter Conant on March 16, 2001.
- Letter from Robert J. Ebersole, Deputy Director, Department of Housing and Community Development to Local Officials dated March 9, 2001 regarding HAC regulation change requiring notice to DHCD from developer 10 days after filing an application, provided to author by Judith Jacobson.

HOME and HSF – Boiler Plate program documents prepared by DHCD



- 
- “Home Investment Partnerships Program Developer Loan for Homeownership Project – Deed Rider (Single-Family), (Resale/Recapture)” – undated.
  - “Home Investment Partnerships Program Developer Loan for Homeownership Project –Homebuyer Disclosure Statement” – undated.
  - “Housing Stabilization Fund Rehabilitation Initiative, Deed Rider (Single-Family), (Resale/Recapture)”

#### GENERAL ARTICLES, SOURCES, AND REPORTS

- “Chapter 40B Subsidized Housing Inventory”, updated as of July 1, 1997, obtained from the internet on February 11, 2001 at: [www.state.ma.us/dhcd/components/hac/ch40bnotes.html](http://www.state.ma.us/dhcd/components/hac/ch40bnotes.html).
- “Notes to Subsidized Housing Inventory – Eligibility Summary” obtained from the internet on February 11, 2001 at: [www.state.ma.us/dhcd/components/hac/ch40bnotes.html](http://www.state.ma.us/dhcd/components/hac/ch40bnotes.html).
- Report entitled “Recommendations to Improve Chapter 40B, the Massachusetts Comprehensive Permit Law” dated January 2001, created by CHAPA and subcommittees.
- “Overview: Controlling Affordability Over Time in Subsidized Owner-Occupied Housing” prepared by Peter Werwaith, Senior Program Director, The Enterprise Foundation. Dated June 5, 1995 and obtained from the internet on February 23, 2001 at: [www.enterprisefoundation.org/model%20documents/e484.htm](http://www.enterprisefoundation.org/model%20documents/e484.htm).
- Report entitled “Ensuring the Long-Term Affordability of Homeownership Units in the City of Boston: A Report” prepared by Citizens’ Housing and Planning Association for Mayor Thomas Menino and dated February 2000.
- Chapter 40B of the Massachusetts General Laws, Sections 21-23 obtained from the internet on February 16, 2001 at: [www.state.ma.us/legis/laws/mgl/40B-21.htm](http://www.state.ma.us/legis/laws/mgl/40B-21.htm).
- Law case: “Zoning Board of Appeals of the Town of Wellesley, and the Town of Wellesley, acting by and through its Board of Selectmen, Plaintiffs vs. Ardmore Apartments Limited Partnership & others, Defendant,” Commonwealth of Massachusetts, Norfolk Superior Court, “Memorandum of Decision and Order” dated September 28, 2000.
- Law case: “Stuborn Ltd. Partnership v. Barnstable Board of Appeals, Commonwealth of Massachusetts Housing Appeals Committee, Decision on Jurisdiction,” dated March 5, 1999
- Article entitled “Partners in Housing: The Massachusetts Experience” by Philip B. Herr, published in the Journal of Real Estate Development Vol 5, No 1, Summer 1989.
- Report entitled “Issue Brief: Homeownership: Progress and Work Remaining, Office of Policy and Research: Issue Brief No. III” prepared by the US Department of Housing and Urban Development, dated December 2000.
- Article entitled “Lower-Income Homeowners: Struggling to Keep the Dream Alive” by Nicolas P. Retsinas. FannieMae Foundation’s Housing Facts & Figures, Fall 1999, Volume 1, Issue 3 obtained from the internet on February 23, 2001 at: [www.fanniemaefoundation.org/programs/hff/vli3-struggling.shtml](http://www.fanniemaefoundation.org/programs/hff/vli3-struggling.shtml).
- Report entitled “State of the States: Homeownership and the Cost of Housing” published by The Massachusetts Institute for a New Commonwealth (MassINC) in its Commonwealth Magazine Fall 1998. Obtained off the internet on February 24, 2001 at: [www.massinc.org/handler.cfm?type=1&target=1998-4/states\\_f98.html](http://www.massinc.org/handler.cfm?type=1&target=1998-4/states_f98.html).
- Pamphlet entitled “Acquisition Cost and Income Limits” prepared by the Massachusetts Housing Finance Agency regarding its Homeownership Programs, undated.

- 
- “Bringing Down the Barriers: Changing Housing Supply Dynamics in Massachusetts” prepared by the Commonwealth of Massachusetts’ Executive Office for Administration and Finance, 2000.

## INTERVIEWS

I would like to thank the following individuals for providing me invaluable assistance in preparing this thesis. Their generosity of time and consideration is greatly appreciated.

## **STATE AGENCIES**

### Department of Housing and Community Development

- Miryam Bobadilla, Homeownership Program Coordinator, Private Housing Division, DHCD. Interviewed in person on March 6; multiple follow-up phone conversations.
- Jo Ann McGuirk, HOME/HSF Program Director, Private Housing Division, DHCD. Interviewed in person on April 2, 2001.
- Harriet Moss, Counsel, DHCD. Interviewed in person on March 29, 2001.
- Catherine Peagler, Housing Specialist, Private Housing Division, DHCD. Interviewed in person on March 29, 2001.
- Catherine Racer, Associate Director, Private Housing Division, DHCD. Interviewed in person on April 2, 2001.
- Alexander Whiteside, Chief Counsel, DHCD. Interviewed in person on March 29, 2001.

### Massachusetts Housing Partnership Fund

- Matthew Engel, Community Assistance Department, MHP. Interviewed in person on March 7, 2001.
- Judith S. Jacobson, Deputy Director, MHP. Interviewed in person on March 29, 2001.
- Clark L. Ziegler, Executive Director, MHP. Interviewed in person on March 29, 2001.

### Massachusetts Housing Finance Agency

- Gwen Fournier, Asset Management Officer, Single Family Asset Mgt Dept, MHFA. Interviewed by telephone on April 2, 2001.
- Virginia Healy, Senior Production Officer, Single Family Division, MHFA. Interviewed by telephone on March 30, 2001.

## **MUNICIPALITIES**

### Boston

- Jim Creamer, Counsel, DND, City of Boston. Interviewed in person on April 6, 2001.
- Sheila Dillon, Deputy Director, DND, City of Boston. Interviewed by telephone on March 30, 2001.
- Jerry McWilliams, Compliance Manager, DND, City of Boston. Interviewed in person on April 6, 2001.
- Mary Kanasas, Senior Program Manager, DND, City of Boston. Interviewed in person on April 6, 2001.

### Cape Cod

- Jeanne Bullock, Executive Director, Yarmouth Housing Authority. Interviewed in person on March 28, 2001.
- Nancy Davisson, Housing Assistance Corporation. Interviewed by telephone on March 19, 2001.
- Laura Shufelt, Consultant to Barnstable HA. Member of Cape Cod Loan Consortium. Director of numerous housing-related boards. Interviewed in person on March 28, 2001.

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### Concord

- Gillian Carlson, Admin. Assistant, Concord Planning Dept. Interviewed in person on March 16, 2001.
- Elizabeth Newman, Staff Planner, Concord Plng Dept. Interviewed by telephone on March 26, 2001.

### Lincoln

- Rana Kaplan, Lincoln Housing Commission. Interviewed by telephone on March 19, 2001.
- Katharine Preston, Lincoln Foundation. Interviewed in person on March 21, 2001.

### Tewksbury

- Coreen Delaney, Executive Director, Tewksbury Housing Authority. Interviewed by telephone on March 19, 2001.

### Westford

- Christine Pudie, Executive Director, Westford Housing Authority. Interviewed in person on March 26, 2001.

### Chelmsford

- Andrew Sheehan, Director, Chelmsford Planning Department. Interviewed in person on March 16, 2001.

### Wilmington

- Lynn Duncan, Town of Wilmington Planning Director. Interviewed by telephone on March 20, 2001.

### **OTHER INTERVIEWS (Consultants, Developers, Lenders, Brokers, Owners, Nonprofits)**

- Paul Carney, REMAX Realtors. Interviewed by telephone on March 27, 2001.
- Peter Conant, Developer, Conant Associates. Interviewed by telephone on March 19, 2001.
- Elaine Donahue, former HOP unit owner, Hyannis. Interviewed by telephone on April 22, 2001.
- Robert Engler, Stockard, Engler & Brigham. Interviewed in person on April 3, 2001.
- Aaron Gornstein, Executive Director, CHAPA. Interviewed in person on April 11, 2001.
- Donna Koulas, Loan Officer, Fleet Bank. Interviewed in person on March 16, 2001.
- Toby Kramer, The Community Builders. Interviewed by telephone on March 19, 2001.
- Ky Melhado, DeWolf Realtors. Interviewed in person on March 26, 2001.
- Chris Norris, CHAPA. Interviewed in person on April 11, 2001.
- Russ Tanner, Private Developer. Interviewed in person on April 3, 2001.

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