

SUMMARY OF MODEL DEED RIDER

July 1, 2002

The Model Deed Rider (the "Deed Rider") has been designed to offer a range of choices for each major element of the document. Where there are several choices, or the choices are each long, they have been broken out into Addenda at the back of the Deed Rider. Otherwise, the choices are marked in bold and set apart in brackets in the body of the document. The intention in drafting the Deed Rider in this form was to allow parties using the Rider to easily select the choices that best fit a particular set of circumstances.

The Deed Rider will be used as an attachment to the deed of the property that restricts the purchaser's ability to resell the housing unit and the price at which the sale may be made. The Deed Rider establishes both a process for the sale and a price at which the property may be sold.

The parties to the Deed Rider and the reasons they have agreed to encumber the property in such a way are set out in the beginning of the Deed Rider. The options set out in Addendum One cover the most common situations in which a Deed Rider might be used, ranging from the construction of affordable housing by a town's housing agency to a for-profit developer building affordable housing with or without a subsidy program.

The Deed Rider restricts the property, either for a set term of years or in perpetuity, so that it may only be sold to an "Eligible Purchaser." An Eligible Purchaser is a family or individual with an income, adjusted for family size, of no more than a set percentage of the median income for Dukes County. This median income is set by the federal Department of Housing and Urban Development. Perpetual deed riders must be certified by the state Department of Housing and Community Development (DHCD) to be legally enforceable under M.G.L. c. 184 §31, 32, and 33 and to our knowledge DHCD has not approved a deed rider in perpetuity with an income limit greater than 80% or less of median income. At the parties' option, the Eligible Purchaser may also be required to meet criteria set by the town in which the property is located. An interested purchaser's eligibility is reviewed and approved by the Monitoring Agent (a third party that oversees the mechanics of the sales and can enforce the Deed Rider's covenants), which will conduct a lottery in the event that more than one interested purchaser qualifies as an Eligible Purchaser. The parties may choose any third party as the Monitoring Agent, but the Deed Rider contemplates the town in which the property is located, the municipality (i.e. resident homesite committee) or the Dukes County Regional Housing Authority as the most likely choices. It's important that the institution selected as the Monitoring Agent serve in perpetuity.

The grantee under the Deed Rider may sell the property to an Eligible Purchaser for a price that does not exceed a certain amount, referred to as the Maximum Resale Price. There are several options for the method of determining the Maximum Resale Price:

Sale of Completed Dwelling Unit:

- (1) increasing the initial sale price, plus the cost of approved capital improvements, by 5% each year to account for inflation;
- (2) applying the discount rate of the initial sale to the current fair market value of the property;

Sale of Buildable Lot:

- (1) the sum of initial sale price of the lot plus the replacement of any capital improvements;
- (2) increasing the initial sale price of the lot by 3% each year to account for inflation, then adding on the replacement costs of any capital improvements.

However there is a chance that the formulas based on the initial price of the property may cause the Maximum Resale Price to exceed the amount that an Eligible Purchaser could actually afford (as there are no limits to what type of capital improvements can be made to the property for instance). The parties can include various formulas for calculating the Maximum Resale Price but must also cap the Maximum Resale Price by setting an upper limit set with such language:

The Maximum Resale Price shall in no event be greater than an amount established so that a household earning a Base Income for such appropriate size household would pay no more than 30% of the Base Income for the sum of annual debt service for a mortgage loan of 90% of the sale price of the Property (including principal and interest), property taxes, insurance and any homeowner association fees for the Property.

The Deed Rider may also include an option to purchase for the grantor and/or the Monitoring Agent.

If no Eligible Purchasers are available, the property may be sold to any interested purchaser, either subject to the affordability restrictions set out in the Deed Rider or free from them. Alternatively, the owner may first have to request an adjustment to the set income limit for an Eligible Purchaser and re-market the property before selling it to a non-Eligible Purchaser. The Monitoring Agent or the grantor, at the parties' option, have a right to recapture any amount by which the actual resale price exceeds the Maximum Resale Price, in the event that the property is sold free from the affordability restrictions.

The owner may leave the property to his heirs, even if they are not Eligible Purchasers, so long as the heirs abide by the occupancy and leasing restrictions in the Deed Rider. An heir will be bound by all the restrictions and requirements of the Deed Rider if the property is then sold or mortgaged. If an heir refuses to take title and the deceased owner has made no further provisions, the Monitoring Agent will market the Property for sale in the place of the owner.

The Deed Rider sets forth further restrictions, including a requirement that the owner reside on the property for at least nine months of each year and restrictions on leasing. There are several options for the leasing restrictions. The owner may be prevented from leasing to third party unrelated by law without the Monitoring Agent's consent, or simply to any third party without the Monitoring Agent's consent. Alternatively, the owner may be prevented from leasing to any third party who does not qualify for affordable housing under the Monitoring Agent's regulations. Any of these leasing restrictions may be set for leases that extend for more than a particular term (ex. two weeks, a month) or apply to all leases. The parties may also decide that all rents from unauthorized leases goes to the Monitoring Agent or the grantor, or that any rental payment for an authorized lease that exceeds the carrying cost of the property must be paid to the Monitoring Agent or the grantor.

The Deed Rider contemplates that the property will be purchased in part through a mortgage loan. The Deed Rider allows a choice between binding the lender by the Deed Rider in the event of a foreclosure and allowing the lender to take title free of the Deed Rider's restrictions. If the lender has the right to take title free from the restrictions, the Monitoring Agent and the grantor have a chance to purchase the mortgage upon notice of foreclosure. Any excess funds remaining after a foreclosure sale will be paid to either the Monitoring Agent or the Municipality.