



July 13, 2016

Attn: Ian Meyer, Legal Office Manager
MA Department of Housing and Community Development
100 Cambridge Street, Suite 300
Boston, MA 02114

RE: Comments on Amendments to Regulation 760 CMR 64.00- Publicly-Assisted Affordable Housing Preservation Program

Submitted via email to ian.meyer@state.ma.us

Dear Mr. Meyer:

On behalf of the Massachusetts Association of Community Development Corporations (MACDC), I am pleased to offer these comments on Amendments to Regulation 760 CMR 64.00- Publicly-Assisted Affordable Housing Preservation Program.

We are pleased that the proposed regulations explicitly establish an expectation of thirty years of continuing affordability in order to qualify for an exemption from the Right of First Offer/Right of First Refusal process on the basis that the sale preserves affordability.

We offer the following comments with the goals of preserving affordability for the longest term allowed by the statute, and providing notice to the longest extent allowed by the statute.

Affordability:

Under [64.02(2)(d) Standards for “Preserve Affordability”, Minimum Expectations], DHCD states the Affordability Restriction requirements for a request for a Certificate of Exemption on the basis of Preserving Affordability. The draft regulations state that, when an affordability restriction other than one pursuant to rental assistance applies to the housing, the Owner and Purchaser must assure that affordability restrictions on the property will be maintained for at least 30 years from the date of the applicable sale for the same total number of units and the same number of units restricted to each of Low Income, Very Low Income, and Extremely Low Income households as are covered by Affordability Restrictions at the time of sale.

Comments:

Many subsidized properties have both rental assistance and other affordability restrictions. The final regulations should explicitly say that the 30-year renewal obligation applies to all other affordability restrictions in a property that may also have rental assistance.

The proposed exception for exceptional circumstances, including the unavailability of subsidies or their availability only on “uneconomic terms”, is problematic. Under the current language, a sale involving no long-term affordability could qualify for a Certificate of Exemption on the basis of Preserving Affordability. It should be changed to require that the Owner and Purchaser demonstrate the exceptional circumstances that prevent them from meeting the requirements of 760 CMT 64.02 (2) (d) 1. or 2 (as is required in the current language) and to require that the Owner and Purchaser demonstrate that they will nonetheless preserve affordability to the maximum feasible extent (new language). If the Owner and Purchaser can’t demonstrate to DHCD’s satisfaction that the sale will meet both of these requirements, they should be required to offer the property to DHCD or its designee pursuant to the Right of First Offer/Right of First Refusal provisions.

Notice Associated with Exempt Transactions:

Under [64.03(4)(c) Timing of Notices], A Notice of Intent to Sell to a Preservation Purchaser shall be delivered prior to the Owner entering into any Purchase Contract with a prospective Preservation Purchaser.

Comments:

The Owner should be required to send a non-binding preliminary notice of intent to sell in every case, indicating whether the sale is expected to be an exempt preservation sale, a non-exempt sale, or undecided. This notice should be prior to entering into a purchase contract, and prior to any written solicitation of offers to purchase. This is consistent with the statutory provision requiring written notice of the Owner’s intention to sell the property regardless of whether an exemption is being sought (40T, S. 2c, second sentence).

Conclusion:

MACDC believes that the changes DHCD has made to 760 CMR 64.00 clarify and improve the statute. We appreciate the changes, and DHCD’s efforts to collaborate with members of the Preservation Advisory Committee and others interested in long-term preservation of affordable housing.

If you have any questions or want additional information, please do not hesitate to contact me at joek@macdc.org, or at 617-379-5922. You can also contact MACDC Senior Policy Advocate Don Bianchi at donb@macdc.org or at 617-379-5926. Thank you for the opportunity to comment.

Sincerely,

A handwritten signature in black ink, appearing to read "Joe Kriesberg". The signature is fluid and cursive, with a long horizontal stroke at the end.

Joe Kriesberg, President and CEO