

Affordability Preservation Project: Homebuyer's Guide to Affordable Housing Restrictions

A Product of Community Legal Resources
Affordability Preservation Project
www.clronline.org/app

I. What Does Affordable Housing Mean?

The cost of housing of all types has increased in the United States in the past decade, and in some communities has increased greatly. While these increases have taken place at all levels, they have had a particularly severe impact on persons of low and moderate income who wish to become homeowners. Federal, state, and local governments, as well as numerous nonprofit organizations, have attempted to come up with solutions for this problem. The result has been the creation of programs of various types that seek to assist low- and moderate-income homebuyers in the purchase of homes. These programs are often described as affordability or affordable housing programs.

II. Why Do Affordable Housing Programs Involve Restrictions?

Community organizations that create and maintain affordable housing programs typically provide direct or indirect financial assistance, usually described as a subsidy, to the low- or moderate-income homebuyer. The purpose of this subsidy is not only to assist the first homebuyer in purchasing the property, but also to ensure that the property remains affordable for the next buyer and into the future. In order for the community organization to ensure that property will continue to remain affordable, it is necessary for the organization to impose some type of restrictions on the property before selling.

III. What Types of Restrictions May Apply To A Home I Purchase?

Restrictions may include one or a combination of (a) conditions that require any future buyer of the home to meet low-income or other affordable housing income guidelines; and/or (b) limitations that control the resale price of the house, which will restrict the amount of profit to be made.

For example, a home with a restriction limiting the resale value cannot be “flipped”: the home cannot be purchased at a low, affordable housing price and then re-sold for the market value. However, the homeowner will be able to make a profit on resale of the home if the home appreciates in value. The amount of profit **will** be limited according to a stated formula or percentage.

IV. How Are These Restrictions Applied

Affordability restrictions can be imposed in a variety of ways. Usually, the community organization that wishes to maintain the affordability of a particular property will record the restriction in the chain of title to the property before selling it to the first buyer. The purpose of this is to make sure the restriction is binding on each person who buys the property in the future.

A recorded restriction can be made more effective if the restriction document is attached to the deed or by having the deed specifically mention the restriction. Generally, the restriction document will say that it is to be referred to or attached to each future deed.

The community organization may also require the first buyer, and each later buyer that receives a subsidy, to sign a mortgage. The mortgage will secure repayment to the community organization of the subsidy (where repayment is required) and may also include typical affordability restrictions as to future sales. A mortgage may also allow the community organization the first right to buy the property back at a formula price if the homeowner wishes to sell.

In addition to the deed restriction and mortgage, if the affected property is part of a condominium project, affordability restrictions may also be written into the condominium's master deed and/or its bylaws.

Finally, affordability restrictions may also be imposed through an ownership structure called a Community Land Trust (CLT). In a CLT structure, the community organization owns the land on which the affordable housing unit is located. It leases the land to the purchaser of the unit (who owns the home, but not the underlying land), and the "ground lease" contains the applicable restrictions.

V. Does The Subsidy That Makes Housing Affordable Ever Have To Be Repaid?

Sometimes the community organization that provides the subsidy will require that it be repaid, either over time in periodic payments or out of the profit when the property is sold. If repayment is required, the buyer will be asked to sign a promissory note that spells out the repayment terms. In this case, the community organization will typically require that the buyer also sign a mortgage to secure repayment.

This document is a product of the Community Legal Resources Affordability Preservation Project. Please check the CLR Affordability Preservation Project website for updates to this document:

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This publication is intended to provide general information, and is not a substitute for legal advice. If you have additional questions about this issue, contact Community Legal Resources at 313/964-4130.

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