

## AFFORDABILITY PRESERVATION PROJECT

### Statutory Affordable Housing Covenant

#### ***How does the Model work?***

Michigan does not currently have an applicable statute, therefore, affordable housing covenants that are **not** linked to real property interests (*i.e.*, a restriction imposed or reserved in a deed conveying the property) provide a weak legal foundation for assuring that affordability is preserved. It is likely that such a covenant will be treated as an ordinary contract, posing significant risks, such as: (1) the obligations being treated as a personal obligation of the parties, as opposed to encumbering the property, (2) the inability of the covenant's beneficiary to transfer his or her rights under the covenant; and (3) the unavailability of specific performance.

These issues are not unique to affordable housing covenants. When similar issues have arisen in other contexts in Michigan, one effective solution has been creating a statutory basis. For example, MCL § 324.2140 *et seq.* concerning conservation and historic preservation easements establishes these easements as interests in real estate that can be assigned and enforced. Similarly, MCL §§ 324.20120b and 324.21310a establish the enforceability of restrictive covenants used in connection with environmental remediation.

#### ***Implications of the Model.***

A statute authorizing affordable housing restrictive covenants could be tailored to provide the desired results for any number of issues, such as (1) an enforcement mechanism (including parties entitled to enforce), (2) the effect on property taxes (including consideration of restriction in determining value), and (3) the ability to release restrictions (including for the benefit of a foreclosing lender). Other states have adopted a variety of statutes that provide examples of approaches worth considering. See, *e.g.*, Connecticut (C.G.S.A. § 12-81bb), Massachusetts (M.G.L.A. 184 § 31, *et seq.*), Maine (33 M.R.S.A. § 121, *et seq.*), and Vermont (27 V.S.A. § 610).

To the extent that other affordability preservation models are not adequate to address particular goals and/or circumstances, it is worth considering whether a statutory scheme can be crafted that achieves the desired results.

***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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