

## CHAPTER 6

### AFFORDABLE HOUSING COVENANTS

#### §121. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [PL 1991, c. 373 (NEW).]

**1. Affordable housing covenant.** "Affordable housing covenant" means any agreement among one or more owners, one or more tenants of residential real estate and one or more qualified holders, or between one or more owners and one or more qualified holders, or between one or more tenants and one or more qualified holders, that permits a qualified holder to control, either directly or indirectly, the purchase price of residential housing for the primary purpose of providing that the housing remains affordable to lower income and moderate-income households.

[PL 1991, c. 373 (NEW).]

**2. Lower income and moderate-income households.** "Lower income and moderate-income households" means very low-income, low-income and moderate-income households as defined in the Affordable Housing Partnership Act of 1989.

[PL 1991, c. 373 (NEW).]

**3. Qualified holder.** "Qualified holder" means a governmental entity empowered to hold an interest in real property under the laws of this State or the United States or a nonprofit organization whose purposes include the provision of affordable housing or the increasing of affordable housing opportunities for lower income or moderate-income households including governmental or quasi-governmental entities such as public housing authorities, community action agencies or other similar nonprofit or governmental entities committed to providing opportunities for lower income or moderate-income households to obtain affordable housing.

[PL 1991, c. 373 (NEW).]

#### SECTION HISTORY

PL 1991, c. 373 (NEW).

#### §122. Creation; conveyance; acceptance; duration

**1. Affordable housing covenant.** Except as otherwise provided in this chapter, an affordable housing covenant may be created, conveyed, recorded, assigned, released, modified, terminated or otherwise altered or affected in the same manner as other covenants created by written instrument.

[PL 1991, c. 373 (NEW).]

**2. Right or duty.** A right or duty in favor of or against a qualified holder may not arise under an affordable housing covenant unless it is accepted by the qualified holder.

[PL 1991, c. 373 (NEW).]

**3. Limitation.** Except as provided in this chapter, an affordable housing covenant is unlimited in duration unless:

A. The instrument creating it provides otherwise; or [PL 1991, c. 373 (NEW).]

B. A change of circumstances renders the affordable housing covenant no longer in the public interest as determined in an action under section 123, subsection 3. [PL 1991, c. 373 (NEW).]

[PL 1991, c. 373 (NEW).]

**4. Interest.** An interest in real property in existence at the time that an affordable housing covenant is created is not impaired by the affordable housing covenant unless the owner of the interest is a party to the affordable housing covenant.

[PL 1991, c. 373 (NEW).]

**5. Right to enter land.** The instrument creating an affordable housing covenant must designate the manner in which and the times when representatives of the holder of an affordable housing covenant are entitled to enter the real property to assure compliance.

[PL 1991, c. 373 (NEW).]

#### SECTION HISTORY

PL 1991, c. 373 (NEW).

#### §123. Judicial actions

**1. Owners; qualified holders.** An action affecting an affordable housing covenant may be brought or intervened in by:

A. An owner of an interest in the real property burdened by the covenant; or [PL 1991, c. 373 (NEW).]

B. A qualified holder of the benefit of the affordable housing covenant. [PL 1991, c. 373 (NEW).]  
[PL 1991, c. 373 (NEW).]

**2. State; political subdivision.** An action affecting an affordable housing covenant may be intervened in by the State or a political subdivision of the State in which the real property burdened by the covenant is located.

[PL 1991, c. 373 (NEW).]

**3. Power of court.** This chapter does not affect the power of a court to enforce an affordable housing covenant by injunction or proceeding in equity or to modify or terminate an affordable housing covenant in accordance with principles of law and equity. A court may deny equitable enforcement of an affordable housing covenant when it finds that a change of circumstances has rendered that covenant no longer in the public interest. If the court so finds, the court may allow damages as the only remedy in an action to enforce the affordable housing covenant.

A comparative economic test may not be used to determine under this subsection if an affordable housing covenant is in the public interest.

[PL 1991, c. 373 (NEW).]

#### SECTION HISTORY

PL 1991, c. 373 (NEW).

#### §124. Scope of affordable housing covenant

An affordable housing covenant may include any of the following agreements affecting residential real estate: [PL 1991, c. 373 (NEW).]

**1. Resale price of residential real estate.** To limit the resale price of residential real estate;  
[PL 1991, c. 373 (NEW).]

**2. Amount of equity appreciation.** To limit the amount of equity appreciation that a landowner may derive from ownership of residential real estate;

[PL 1991, c. 373 (NEW).]

**3. Improvements to residential real estate.** To limit the extent or dollar value of improvements that may be made to residential real estate;

[PL 1991, c. 373 (NEW).]

**4. Class of persons to whom residential real estate may be sold.** To restrict the class of persons to whom residential real estate may be sold or leased, as long as that restriction does not discriminate based upon actual or perceived race, color, sex, sexual orientation, gender identity, physical or mental disability, religion, ancestry or national origin or familial status and does not otherwise contravene the Constitution of Maine or the United States Constitution, except that the prohibition under this subsection regarding discrimination on the basis of familial status does not apply to housing for older persons, as defined in Title 5, section 4581, subsection 2;  
[PL 2021, c. 553, §21 (AMD).]

**5. Options to purchase.** To grant rights of first refusal or options to purchase to qualified holders;  
[PL 1991, c. 373 (NEW).]

**6. Maintenance and insurance of residential real estate.** To maintain and insure residential real estate;  
[PL 1991, c. 373 (NEW).]

**7. Right of qualified holders to enter and inspect.** In accordance with section 122, subsection 5, to provide to qualified holders the right to periodic entry and inspection of residential real estate at reasonable times and after reasonable notice;  
[PL 1991, c. 373 (NEW).]

**8. Construction and materials.** To restrict, limit or specify types of construction and materials that may be used in the construction of or improvements to residential real estate; and  
[PL 1991, c. 373 (NEW).]

**9. Acts that may enhance affordability of residential real estate.** To prohibit, limit or require other acts that may enhance the affordability of residential real estate over time to lower income or moderate-income households.  
[PL 1991, c. 373 (NEW).]

#### SECTION HISTORY

PL 1991, c. 373 (NEW). PL 2021, c. 348, §51 (AMD). PL 2021, c. 553, §21 (AMD).

#### §125. Validity

An affordable housing covenant is valid and enforceable even when any of the following apply.  
[PL 1991, c. 373 (NEW).]

**1. Not appurtenant to interest in real property.** The affordable housing covenant is not appurtenant and does not run with an interest in real property.  
[PL 1991, c. 373 (NEW).]

**2. Assignable to another holder.** The affordable housing covenant can be or has been assigned to another qualified holder.  
[PL 1991, c. 373 (NEW).]

**3. Not recognized at common law.** The affordable housing covenant is not of a character traditionally recognized at common law.  
[PL 1991, c. 373 (NEW).]

**4. Imposes a negative burden.** The affordable housing covenant imposes a negative burden.  
[PL 1991, c. 373 (NEW).]

**5. Imposes affirmative obligations.** The affordable housing covenant imposes affirmative obligations upon the owner of an interest in the burdened property or upon the qualified holder.  
[PL 1991, c. 373 (NEW).]

**6. Benefit does not touch or concern real property.** The benefit of the affordable housing covenant is held by a qualified holder who has not retained property that would benefit from

enforcement of the affordable housing covenant against the burdened property, or the benefit does not touch or concern real property in any other way.

[PL 1991, c. 373 (NEW).]

**7. No privity of estate or contract.** There is no privity of estate or privity of contract.

[PL 1991, c. 373 (NEW).]

**8. Does not run to successors or assigns.** The affordable housing covenant does not run to the successors or assigns of the qualified holder.

[PL 1991, c. 373 (NEW).]

**9. Unreasonable restraint on alienability.** The affordable housing covenant may be construed by a court to be an unreasonable restraint on alienability.

[PL 1991, c. 373 (NEW).]

**10. In violation of rule against perpetuities.** The affordable housing covenant may be construed by a court to violate the rule against perpetuities.

[PL 1991, c. 373 (NEW).]

#### SECTION HISTORY

PL 1991, c. 373 (NEW).

#### §126. Application

**1. Interest created after effective date.** This chapter applies to any interest that complies with this chapter created after the effective date of this chapter, whether designated as an affordable housing covenant or an equitable servitude, restriction easement or other interest.

[PL 1991, c. 373 (NEW).]

**2. Affordable housing covenant created before effective date.** This chapter applies to any affordable housing covenant created before the effective date of this chapter if the affordable housing covenant would have been enforceable had it been created after the effective date of this chapter, unless retroactive application contravenes the Constitution of Maine or the United States Constitution.

[PL 1991, c. 373 (NEW).]

**3. Chapter does not invalidate interest.** This chapter does not invalidate any interest, whether designated as an affordable housing covenant or an equitable servitude, restriction, easement or other interest, that is enforceable under other laws of this State.

[PL 1991, c. 373 (NEW).]

#### SECTION HISTORY

PL 1991, c. 373 (NEW).

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