

Long-term Affordability or Resale Restrictions Q&A

What is a deed restriction?

Property is transferred from one owner to another by a deed. A deed restriction is a legal document that places limitations or restrictions on real estate. A property owner who desires to transfer his or her property subject to certain terms and conditions may transfer the property subject to the terms of a deed restriction. The property you are considering buying is subject to a long-term affordability deed restriction.

This affordability deed restriction is placed on the property to preserve it as a low- and moderate-income housing unit. This means it can only be sold to a buyer whose household meets certain income requirements and at a price that is affordable to that household.

What is affordable housing?

Housing is considered to be affordable when a household of low- or moderate-income can afford to buy the home without spending more than 30 percent of their gross household income on direct housing costs. Income levels are established by the U.S. Department of Housing and Urban Development and verified by a Monitoring Agent assigned to this property. Affordable housing is sold at a price established by the Monitoring Agent as being affordable to a low- or moderate-income household. That price is generally below what the home could be sold for without the deed restriction. Should the owner of a deed-restricted home sell the home during the term of the deed restriction, the Monitoring Agent would again establish the sales price at an affordable price that will, as previously noted, generally be lower than the market value. Properties of this type are developed with public subsidies for the specific purpose of creating safe, decent and affordable housing for households that could not otherwise afford it.

Is there anything else I should know?

Low- and moderate-income housing is built primarily to improve and sustain the supply of good quality housing available persons of moderate means. It is very unlikely to provide the kind of return on investment that a non-deed-restricted property would give the buyer. Additionally, the buyer must live in the property and use it as their primary residence. The ability to place a second mortgage on these homes is limited. The owner must receive the approval of the Monitoring Agent before using a deed-restricted property to secure any loan. They must also check with the Monitoring Agent before refinancing the property, even if it is at a lower rate. Well before selling the property, the owner must inform the Monitoring Agent. It is the Monitoring Agent's responsibility to establish the maximum selling price for the home and to help the owner determine if potential purchasers meet income guidelines.

Affordability Restrictions

State law requires that low- and moderate-income units “remain affordable through a land lease and/or deed restriction for ninety-nine (99) years or such other period that is either agreed to by the applicant and town or prescribed by the federal, state or municipal subsidy program but that is not less than thirty (30) years from the initial occupancy.” As such, a municipal government subsidy ordinance should specify its preferences with regard to both the mechanism for long-term affordability and the term of affordability. Either method is recorded in the town records.

A land lease is managed through a community housing land trust, which takes ownership of the land, and leases it back to the resident who purchases only the improvements on the property. Typically, a land lease runs for ninety-nine (99) years, and not only ensures nearly perpetual affordability, but also, due to the separation of the land and improvements, assures that in the event of foreclosure the property will remain affordable. The Community Housing Land Trust of Rhode Island is a newly incorporated non-profit organization in the state that is ready to take on a statewide role in managing such properties. Please see the list of Approved Monitoring Agents in this package if your municipality is interested in this mechanism for maintaining municipally subsidized low- to-moderate income housing units.

Another means of restriction affordability is through a deed restriction, which is an additional document signed at closing that details the term of affordability, income level and other details, like right of first refusal and identified monitoring agent.