

**COMMUNITY HOUSING LAND TRUSTS:
AN IMPORTANT TOOL FOR RHODE ISLAND'S
AFFORDABLE HOUSING INITIATIVE**

REPORT OF THE HOUSING & CONSERVATION TRUST STUDY COMMISSION

EXECUTIVE SUMMARY

Rhode Island's 2004 Housing Act marked an important step forward in State efforts to ensure the provision of healthy and affordable housing for all Rhode Islanders. Among other provisions, it mandated pro-active municipal housing plans, development of a statewide strategic housing plan, and close monitoring of implementation. However, as state and municipal officials, citizens and housing interests begin to implement the 2004 Housing Act's mandates, proposed Federal budget changes threaten additional deep cuts in the Federal housing funds that have been the main source of support for affordable housing creation in Rhode Island. This means that in order to be realistic, our strategic plans for housing creation will need to emphasize expanded state, municipal and private support.

The 2004 Housing Act established the Housing & Conservation Trust Study Commission and directed the Commission to study two mechanisms -- the Rhode Island Housing & Conservation Trust Fund and the community land trust model -- that may be useful approaches in Rhode Island's overall effort to expand public and private support for housing creation.

- The Housing & Conservation Trust Fund, an entity that is established in Rhode Island law but has never been funded, offers a potential vehicle for assembling and distributing additional financial support for both housing and conservation. At the same time, it offers the opportunity to promote coordinated planning and implementation for housing and conservation initiatives to ensure that those initiatives are as complementary and mutually supportive as possible. The need to ensure a coordinated approach is particularly critical in Rhode Island, where our limited land supply must be carefully marshaled to ensure that public priorities for both housing and conservation can be accommodated.
- The community land trust model, which is used around the country and is already receiving increased attention and use in Rhode Island, provides a way to ensure that the public and private funds invested in the creation of affordable housing units result in permanently affordable units.

The Act required the Commission to report its findings and recommendations to the Governor, the Speaker of the House, and the Senate President. For the purpose of clarity, the Commission decided to submit two separate reports -- one on community land trusts and one on the Housing & Conservation Trust Fund.

Community Housing Land Trust Report Highlights

The General Assembly mandated the Commission to:

- Study the potential contribution of community housing land trust mechanisms to the development of low and moderate income housing;
- evaluate appropriate organization structures for such community housing land trusts;
- evaluate appropriate financing mechanisms for such community housing land trusts.

In order to avoid any confusion, the report uses the term "community housing land trust" to refer to a land trust established to promote affordable housing and uses the term "conservation land trusts" to refer to land trusts established for land conservation purposes.

In its report the Commission provides an overview of the community housing land trust mechanism and identifies three ways that the community housing land trust model can benefit Rhode Island's affordable housing initiatives:

- maintaining permanent affordability
- supporting inclusionary zoning;
- increasing community and lender comfort with, and acceptance of, affordable housing.

The Commission concludes that in order to make the most efficient use of limited resources amongst municipalities and community development corporations, community housing land trust service gaps should be addressed by supporting the recently established Community Housing Land Trust of Rhode Island. State policies and funding should encourage and support the Community Housing Land Trust of Rhode Island. If there is strong local interest in establishing an entity to perform community housing land trust functions in one area of the state, then the Commission recommends regional collaboration to make the most efficient use of resources.

- The Commission makes two legislative recommendations: It recommends that the State of Rhode Island provide \$100,000 in annual support for the Community Housing Land Trust of Rhode Island.
- It recommends amendments in Rhode Island real estate law to allow and preserve legal provisions to ensure long-term affordability of housing, including units in condominium projects and provides suggested language for the revisions.

The Commission concludes its report by emphasizing that expansion of community housing land trust capacity in Rhode Island is a small but important piece of Rhode Island's overall approach to meeting the state's affordable housing needs. It will help significantly to protect our public investment by ensuring permanent affordability and by creating a more supportive climate for affordable housing, but it will not actually create the additional units needed. To do this, Rhode Island must increase its commitment of state funds. The Commission's recommendation for \$100,000 in annual state operating support for the Community Housing Land Trust of Rhode Island represents only one small part of the overall need for increased state funding for affordable housing that the Commission has identified. The Commission will address the need for additional funding and ways to address that need in its report on the Housing & Conservation Trust Fund, to be submitted by May 15, 2005.

COMMUNITY HOUSING LAND TRUSTS: AN IMPORTANT TOOL FOR RHODE ISLAND'S AFFORDABLE HOUSING INITIATIVE

Introduction

Rhode Island's 2004 Housing Act marked an important step forward in State efforts to ensure the provision of healthy and affordable housing for all Rhode Islanders. Among other provisions, it mandated pro-active municipal housing plans, development of a statewide strategic housing plan, and close monitoring of implementation. However, as state and municipal officials, citizens and housing interests begin to implement the 2004 Housing Act's mandates, proposed Federal budget changes threaten additional deep cuts in the Federal housing funds that have been the main source of support for affordable housing creation in Rhode Island. This means that in order to be realistic, our strategic plans for housing creation will need to emphasize expanded state, municipal and private support.

- The 2004 Housing Act established the Housing & Conservation Trust Study Commission and directed the Commission to study two mechanisms -- the Rhode Island Housing & Conservation Trust Fund and the community land trust model -- that may be useful approaches in the overall effort to expand public and private support for housing creation. The Housing & Conservation Trust Fund, an entity that is established in Rhode Island law but has never been funded, offers a potential vehicle for accumulating and distributing additional financial support for both housing and conservation. At the same time, it offers the opportunity to promote coordinated planning and implementation for housing and conservation initiatives to ensure that those initiatives are as complementary and mutually supportive as possible. The need to ensure a coordinated approach is particularly critical in Rhode Island, where our limited land supply must be carefully marshaled to ensure that public priorities for both housing and conservation can be accommodated.
- The community land trust model, which is used around the country and is already receiving increased attention and use in Rhode Island, provides a way to ensure that the public and private funds invested in the creation of affordable housing units result in permanently affordable units.

The Act required the Commission to report its findings and recommendations to the Governor, the Speaker of the House, and the Senate President. For the purpose of clarity, the Commission has decided to submit two separate reports -- one on community land trusts and one on the Housing & Conservation Trust Fund.

The following report addresses the community land trust mechanism. As mandated by the General Assembly, the report

- Studies the potential contribution of community housing land trust mechanisms to the development of low and moderate income housing;
- evaluates appropriate organization structures for such community housing land trusts;
- evaluates appropriate financing mechanisms for such community housing land trusts.

NOTE: In order to avoid any confusion the report refers to a land trust established to promote affordable housing as a "community housing land trust" and refers to land trusts established for land conservation purposes as "conservation land trusts."

Section I: The Use of Community Housing Land Trust Mechanisms Around the Country to Facilitate Creation of Low and Moderate Income Housing and Help Maintain Long-Term Affordability

Sound public policy suggests that when public resources are invested to serve the common good, the community benefits created should be protected for as long as possible and, ideally, permanently. When public resources are invested in land to achieve some community benefit, a land trust is sometimes established to give permanence to the public benefit .

Land trusts can be used to achieve several different community benefits. Most Rhode Islanders hearing the term "land trust" probably think of the land trusts established to acquire, hold, and manage land for the purpose of conserving open space and natural areas. Currently there are 25 private, non-profit land trusts and 18 municipal land trusts serving land conservation purposes in Rhode Island.

Another purpose that land trusts can be used for is to acquire, hold, and manage land for the purpose of developing affordable housing and maintaining housing affordability. The Institute for Community Economics (ICE), a national community development organization in Springfield, Massachusetts, developed the model for community housing land trusts in the early 1970s. By 1992, the model had proved so successful that its major features were incorporated into federal law.

Key Features of the Community Housing Land Trust Model

The community housing land trust model developed by the ICE has four key organizational features and six key programmatic features, which are also included in the Federal definition:¹

Organizational Features

1. **Non-profit, tax exempt status.** A community housing land trust is an independent, not-for-profit corporation that is legally chartered in the state in which it is located. Since most community housing land trusts carry out charitable activities such as providing housing for low-income people, they are eligible to receive 501 (c)(3) status from the IRS.
2. **Community base.** The community housing land trust operates within the physical boundaries of a targeted locality and is accountable to the people who live within that locality.
3. **Residential control.** Generally, two-thirds of the community housing land trust's board of directors are nominated by, elected by and composed of people who live within the targeted community.
4. **Tripartite governance.** In a "classic" community housing land trust, the board of directors is divided equally into thirds. One third represents the interest of people who live in buildings on community housing land trust property and hold ground leases; one third represents the interests of residents from the targeted community; and one third is made up of public

¹ The discussion of the 10 key elements is paraphrased from a handout from Burlington Associates in Community Development, LLC, entitled "Key Features of the 'Classic' Community Land Trust."

officials, local funders, nonprofit housing providers or social service agencies, and other individuals who speak for the public interest.

Programmatic Features

5. Dual ownership. A community housing land trust acquires a parcel of land with the intention of retaining ownership of the land forever. If a building is already located on the land, or if the community housing land trust later constructs a building, the building is sold off to an individual homeowner, a cooperative housing corporation, a non-profit developer or some other nonprofit, governmental or for-profit entity. Thus one entity owns the building while another entity -- the community land trust -- retains ownership of the land.
6. Leased land. While retaining ownership of the land, the community housing land trust conveys exclusive use of the land to the owner of the building through a long-term ground lease. The ground lease is a two-party contract between the community housing land trust, which owns the land, and the building owner. It protects the building owner's rights to security, privacy, legacy and equity, and it also enables the community housing land trust to enforce the appropriate use, structural integrity and continued affordability of the building.

Generally, ground leases provide that the building owner will be responsible for the property taxes on both the building and the land.

7. Perpetual affordability. The ground lease includes a formula for determining a resale price that will give the building owner a fair return on investment while preserving the future affordability of the building. It also provides that when the building is resold, the next purchaser must also meet low/moderate income guidelines. In addition, the community housing land trust retains an option to repurchase the building located on its land if the owner should choose to sell.
8. Perpetual responsibility. Since the community housing land trust owns both the land and the right to repurchase a building located on the land, it maintains its interest in both the building and the building owners. The ground lease requires owner occupancy and responsible use of the premises and gives the community housing land trust the right to step in and force repairs if a property owner allows the building to become a hazard. If the property owner defaults on his mortgage or property taxes, then the ground lease gives the community land trust the right to step in and cure the default.
9. On-going land acquisition. A community land trust is committed to an active land acquisition and housing development program.
10. Flexible development. The community housing land trust is a flexible community development tool that can accommodate a variety of land uses, income groups, and building types. Across the country, community housing land trust lands contain many kinds of housing: single-family homes, duplexes, condos, co-ops, multi-unit apartment buildings, buildings containing single occupancy units, and mobile home parks. They can also contain facilities for neighborhood businesses, non-profit organizations and social service agencies, as well as sites for community gardens and vest-pocket parks.

Currently in North America there are almost 120 community housing land trusts in 30 states (including Rhode Island and all other New England states), the District of Columbia and five Canadian provinces. The overall number of land trusts in North America nearly tripled between 1987 and 2004.

Staffing

Most community housing land trusts carry out at least three types of activities:

- Land ownership and leasing (including land acquisition, ground lease monitoring and management)
- Development and sale of buildings (including pre-development feasibility, site preparation, infrastructure development, construction and/or rehabilitation)
- Counseling and other services to homebuyers

Given this range of activities, community housing land trusts require staff with a range of skills including legal and financial expertise, development and construction expertise, and counseling expertise.

Funding

Community housing land trusts require funding for land acquisition, development and operational costs.

Around the country, community housing land trusts look to a variety of resources to support land acquisition, including:

- State monies from bonds, legislative appropriations, and/or dedicated funding streams
- Municipal bonds and appropriations, housing trust funds and transfer of surplus municipal properties
- Capitalization from private bank loans
- Private grants and property donations

Community housing land trusts that also develop housing look to a number of resources to fund development. These can include

- Federal housing programs
- Federal Home Loan Bank
- Fannie Mae and Freddie Mac
- Capitalization from private bank loans
- Private grants
- State funding
- Municipal funding

On-going support for operational costs comes from:

- Ground lease fees. (Most community housing land trusts charge modest monthly lease fees, generally about \$25/month.)
- Service fees
- State and municipal support
- Grants and donations.

Section II: The Potential Contribution of the Community Housing Land Trust Mechanism to the Development of Low/Moderate Income Housing in Rhode Island

Based on its study of community housing land trusts around the country and the several community housing land trusts that currently exist in Rhode Island, the Commission has determined that there are several significant contributions that the community housing land trust mechanism can make to the development, acceptability and long-term affordability of low and moderate income housing in Rhode Island.

1. The ground lease mechanism used by community housing land trusts is a strong tool for ensuring long-term affordability

When public resources, whether they be public dollars, donations of public land, or regulatory relief, are invested to help subsidize the costs of creating affordable housing, every effort should be made to ensure that the affordability of the housing continues as a permanent feature.

There are two approaches that are most often used to ensure long-term affordability -- the ground lease mechanism used by community housing land trusts and deed restrictions. Both mechanisms are described below. The Commission believes that the ground lease mechanism provides the more effective means of ensuring long-term affordability.

Ground leases. Under the ground lease approach used by community housing land trusts, the homeowner owns the building only. The community housing land trust owns the land and gives the homeowner a long-term ground lease. Limitations concerning the resale price of the property and other conditions are written into the ground lease. The limitations can be enforced more easily because the land owner has a continuing ownership interest in the property and an ongoing relationship with the homeowner, who is generally paying a monthly ground lease fee. As the example in Appendix C illustrates, when the house is resold, the land remains the property of the community land trust and therefore the increased value of the land does not contribute to the resale price. Furthermore, the ground lease limits the resale price, enabling the homeowner to realize some equity but keeping the house at a cost affordable to another low/moderate income family.

It must be noted that under Rhode Island law, the ground lease mechanism can be difficult to apply in mixed income condominium projects where a land trust does not own the land on which the condominium is built. This is an important issue because it is anticipated that a number of the affordable units that will be created in the future will be in mixed income condominium projects on land not owned by a land trust. However, following the solution developed by community housing land trusts in other states such as Vermont and Colorado, a community housing land trust in Rhode Island can use other approaches to ensure long-term affordability such as affordability liens, restrictive covenants in condominium declarations and restrictive covenants in condominium by-laws, as well as deed restrictions. In the Commission's recommendations section, we will recommend changes in Rhode Island real estate law to ensure that no restrictions can be put in place to prevent community housing land trust use of those approaches.

The Commission identified two concerns that might be raised concerning ground leases. First, a lender who is not familiar with the community land trust ground lease mechanism may be somewhat reluctant to provide financing for houses with ground leases. However, the experience of other community housing land trusts indicates that lender reluctance can be greatly

reduced or eliminated if the community land trust makes a point of educating lenders about the ground lease mechanism.

Second, it is conceivable that in the wrong hands a ground lease can be abused. For example, a property owner might allow an individual to build a home on the property and give the homeowner a 25-year ground lease. When the 25 years were up, if the land had increased greatly in value, the property owner might refuse to renew the lease, preferring to sell the land outright to a buyer willing to pay more than the homeowner could afford. However, the Commission noted that community housing land trusts are non-profit organizations that hold the land specifically for the purpose of ensuring long-term affordability. In addition, community housing land trust leases generally run for 99 years and provide for renewal.

Deed Restrictions. Up to this point, in Rhode Island, long-term affordability for projects receiving Federal or state subsidies has generally been ensured through a 30-year deed restriction. When property is sold, the seller transfers the property to the buyer through a deed, which is recorded in the municipal land evidence records. A deed restriction is a limitation on the buyer's use and later resale of the property that is embedded in the deed itself. These deed restrictions can be used with any of the forms of ownership and can be used to establish a variety of limitations. For example, a nonprofit housing organization can transfer a property by deed to a low-income purchaser and include in the deed a limitation on the price for which the property may be resold.

There are at least three problems with using deed restrictions. The first and most important is that in most states they are only effective for a limited period of time. The second problem is the difficulty of ensuring their enforcement unless some nonprofit or public entity assumes the responsibility for monitoring and enforcement. A third problem is that if a property owner defaults on his or her loan and the lender has to foreclose on the property, then the deed restrictions may no longer hold.

2. Community housing land trusts can help to support implementation of inclusionary zoning.

Many Rhode Island municipalities are including mandatory or voluntary inclusionary zoning as a strategy in their affordable housing plans. Briefly summarized, inclusionary zoning requires or encourages developers to include a certain percentage of affordable units in subdivisions, condominium developments and other housing projects. Usually a developer receives a density bonus in return for creating a percentage of affordable units. There are several ways that the community housing land trust model can contribute to the successful implementation of inclusionary zoning.

Example 1: A developer might decide that he/she wanted to build the affordable units and wanted to use a ground lease to ensure long-term affordability. But the developer might not want to have the responsibility of marketing the affordable units, qualifying prospective buyers, and managing and monitoring ground leases. In that case, the developer could sell the finished affordable units to a community housing land trust. The land trust would then market and resell the buildings to qualified buyers while retaining ownership of the land. This is sometimes known as a turnkey transaction.

Example 2: Another developer might decide that he/she did not want to build the affordable units. He could turn over the lots on which the affordable units were to be built to a community

housing land trust, which would then take responsibility for building the housing and selling the units, retaining ownership of the land.

3. The ground lease, which is generally a key element of the community housing land trust mechanism, contains features that may increase community and lender comfort with, and acceptance of, affordable housing.

- The ground lease mechanism protects the public/private investment in land in perpetuity.
- Through the ground lease the community housing land trust maintains an on-going relationship with the homeowner and ensures that the property is being used to fulfill the affordable housing purpose for which it was intended. The community housing land trust ensures, for example, that the homeowner continues to reside in the property and does not lease it to another party.
- Since ground lease restrictions often include property maintenance requirements, the community is reassured that the property will be maintained.
- Some community housing land trusts have included ground lease addenda that reflect specific community priorities. For example, the Cape Cod Community Land Trust uses a ground lease that contains specific provisions concerning environmental protection.
- The community housing land trust frequently provides services for the homeowners, including pre-purchase financial counseling and post-purchase assistance with financial problems that arise. Thus there is less likelihood that the lender will have to foreclose on a property.

Section III: Recommendations Concerning Appropriate Organizational structures for Community Housing Land Trusts in Rhode Island

Current local and regional community housing land trust operations in Rhode Island

Several Rhode Island non-profit entities currently carry out community housing land trust functions. These organizations began as community development corporations, established to build low and moderate income housing. They later took on community housing land trust functions in order to ensure long-term affordability by retaining land ownership and giving ground leases.

The most active of these is the Church Community Housing Corporation, a Newport County-based community development corporation (CDC) which first began holding land in trust in 1993. Church Community currently holds and monitors approximately 100 properties. Seven other CDCs -- the Woonsocket Neighborhood Development Corporation, the Olneyville Housing Corporation, The Elmwood Foundation, Habitat for Humanity of South County, Community Housing Corporation for Washington County, the Mount Hope Neighborhood Land Trust, the East Bay Development Corporation, and Good News Housing -- hold approximately 189 properties. In addition, three other CDCs -- Westbay CAP, SWAP, Inc., and Pawtucket Citizens' Development Corporation -- anticipate placing property in trust.

The concept of a Statewide Community Housing Land Trust to fill the gaps in coverage

The Housing Network of Rhode Island is a non-profit organization that represents 24 non-profit community development corporations, including all of the CDCs that currently provide community housing land trust services. In 2004, the Housing Network of Rhode Island's Board and staff began discussions focused on

- the benefits of expanding community housing land trust activities in Rhode Island,
- the lack of capacity amongst some community development corporations to take on community housing land trust functions
- the need to avoid unnecessary duplication of effort and resources.

As a result of those discussions, the Board and staff decided to explore the idea of establishing a statewide community housing land trust. With a grant from the Annie E. Casey Foundation and an award of HUD funded technical assistance, the Housing Network worked with the Institute for Community Economics through its consultants Burlington Associates in Community Development to determine how such a statewide entity could be established.

Out of this work came the Housing Network's decision to sponsor the creation of the Community Housing Land Trust of Rhode Island, organized as a nonprofit 501 (c)(3) corporation.

Incorporation papers have been filed with the State of Rhode Island, and the organization has applied to the IRS for non-profit status. The statewide organization will be structured as a "federated" model in which local community housing land trusts and community-based CDCs administering community land trust programs will belong to the statewide organization. The purposes of the Community Housing Land Trust of Rhode Island include :

- Promoting the standardization of community housing land trust documents and procedures such as ground leases, ensuring the provision of a consistent, high-quality, marketable, mortgage-able "product" throughout the state and thereby increasing lender confidence;
- Ensuring that permanently affordable community housing land trust housing is available in all of Rhode Island's communities;
- Promoting and supporting the development of regional community housing land trusts and the expansion of resale-restricted, owner-occupied housing on leased land.

The extent to which different entities and areas of the state take advantage of the various services provided by the Community Housing Land Trust of Rhode Island will vary. In those areas of the state where a local community-based non-profit exists that is able and willing to provide community housing land trust services, the local non-profit would own and lease the land underlying community housing land trust housing and participate in the state-wide community housing land trust as a "member" or "affiliate." The local nonprofit might also choose to receive centralized services from the statewide community housing land trust. For instance, it might contract with the statewide community housing land trust to take over the monitoring of ground leases. In those areas of the state where there is no local non-profit able and willing to provide community housing land trust services, the statewide community housing land trust could fill that gap by owning and leasing land and providing other community housing land trust services, either directly or under contract with non-profit or for-profit partners. In addition, the statewide entity, acting on behalf of all community housing land trusts in the state, can take on the responsibility of educating lenders about community housing land trusts and thereby increasing lender comfort with the model. The following matrix provided by The Housing Network of Rhode Island suggests the possible allocation of responsibility between the statewide community housing land trust and its local partners.

	If a local partner is available, able, and willing, would the state-wide CLT perform this function?	If a local partner is unavailable, unable, or unwilling, would the state-wide CLT perform this function?
Land assembly	Unlikely	Yes
Recipient of donated land & buildings	Unlikely	Yes
Development of housing	Unlikely	Perhaps, through an RFP
Ownership of land & Lessor to homeowner	Unlikely	Yes
Market CLT homes	Unlikely	Yes
Educate CLT buyers	Unlikely	Yes
Pre-purchase counseling	Unlikely	Yes
Monitor ground lease compliance	Possible, via contract for services	Yes
Service leaseholders	Possible, via contract for services	Yes
Collect lease fees	Possible, via contract for services	Yes
Manage Resales	Possible, via contract for services	Yes
Standardize documents	Yes	Yes
Standardize policies, procedures, practice	Yes	Yes
Standardize financing	Yes	Yes
Standardize or “approve” re-sale formulas	Yes	Yes
Educate lenders, appraisers, realtors, assessors, attorneys	Yes	Yes
Educate public officials	Yes	Yes
Advocate public policies and public funding promote CLT housing	Yes	Yes
Backstop stability of CLTs & CLT housing	Yes	Yes

The Commission believes the recent incorporation of the Community Housing Land Trust of Rhode Island offers an opportunity to realize economies of scale. It would be inefficient for a large number of entities to undertake community housing land trust functions, and such an approach would be unsustainable given limited existing and future funding resources. The Commission therefore believes that state policies and funding programs should encourage and support the statewide community housing land trust. If there is strong local interest in establishing an entity to perform community housing land trust functions in one area of the state, then the Commission recommends regional collaboration to make the most efficient use of resources.

Comments on direct municipal involvement in community housing land trusts Several communities have raised the question of whether a municipality could take responsibility for carrying out community housing land trust functions, either by creating a new municipal community housing land trust or by having the public housing authority carry out community housing land trust functions or by asking an existing municipal conservation land trust to also take on community housing land trust functions. While municipal support has been critical to the success of a number of community housing land trusts, we have not been able to find any examples around the country of community housing land trusts established within municipal government. There are probably several reasons for this. First, under the model used around the country, the community housing land trust is a non-profit entity with an elected board, whereas municipal entities have appointed boards. Second, the staffing required would create a burden

for the municipality, and having a separate community housing land trust for each municipality would be an inefficient use of resources.

The Commission recommends that municipalities work cooperatively with local or regional non-profit organizations that are already carrying out community housing land trust functions or that want to do so in the future. If no such entity exists in a given municipality or region, then the Commission believes that the statewide community housing land trust is the entity that can most efficiently fill the gap. If there is strong local interest in establishing an entity to perform community housing land trust functions in one area of the state, then the Commission recommends regional collaboration to make the most efficient use of resources.

There are other particular reasons why it would be inadvisable to have existing municipal conservation land trusts undertake community housing land trust functions. First, and most importantly, municipal conservation land trusts in Rhode Island have charters that define their land conservation purposes. Second, when either a conservation land trust or a community housing land trust enters into discussions with a potential donor about a donation of land or funds, the donor needs to believe and trust that his donation will be used for the purposes intended. If one organization were doing both affordable housing and land protection, this trust and confidence of donors and potential donors could be eroded. Third, land conservation functions and affordable housing functions call for somewhat different sets of Board skills.

NOTE: While the Commission does not recommend that a single land trust attempt to conduct both affordable housing and significant land conservation activities, it does want to emphasize that the two types of land trusts may very well find opportunities to partner on projects. For example, if a conservation land trust acquired a piece of land that had a home on it, it might decide to carve off a house lot containing the home and sell or give that lot to the local community housing land trust. The community housing land trust could then retain ownership of the house lot, resell the house as an affordable unit, and give a ground lease to the homeowner. In the same way, a community housing land trust might acquire a piece of property that included some portion of land more appropriate for conservation than development. If the community housing land trust did not want to be responsible for stewardship of the conservation area, it might donate the conservation area to a local conservation land trust. A conservation land trust and a community housing land trust could pool resources to come up with the funds needed to purchase a property that contained some land appropriate for housing and some land appropriate for conservation. Finally, conservation land trust interests and community housing land trust interests might join in offering board development programs, promoting a common municipal registry of all property interests (ground leases, conservation easements) held in Rhode Island by land trusts, or other mutually beneficial activities.

Section IV. Funding Needed to Ensure that Rhode Island has sufficient Community Housing Land Trust Capacity and Recommendations Concerning Potential Funding Resources

Since the Commission believes that the statewide Community Housing Land Trust of Rhode Island is the most efficient means to address community housing land trust capacity gaps around the state, and since the Rhode Island CDCs that are carrying out community housing land trust functions support the formation of the statewide entity, the Commission decided to focus its attention on the funding that will be needed by the statewide Community Housing Land Trust.

The Housing Network of Rhode Island estimates that it will require approximately \$140,000 in one-time start-up costs in 2005 and approximately \$215,000 in annual operating beginning in 2005. In *Options & Issues in Creating a Community Land Trust*, a report prepared with support from the MacArthur Foundation, the Institute for Community Economics comments:

Experience has shown that it takes about three years for a new CLT to establish itself solidly within a community. The most successful start-ups, in recent years, have been those with at least three years of operational funding firmly in hand before they are launched . . . ²

Community housing land trusts around the country look to several sources for operational funding:³

Development Fees, Rental Income & Lease Fees: Most community housing land trusts receive nearly half of their annual operating support from these three sources., and the average amount received is close to \$60,000. Since the Community Housing Land Trust of Rhode Island does not plan to undertake project development activities it cannot look to development fees as a funding source. The Housing Network estimates that rental income and lease fees in the early years will be approximately \$34,000 annually.

Federal CDBG funds: CDBG funds are a possible funding source. However, requests for CDBG funding in Rhode Island already far outstrips fund availability, and President Bush is currently recommending a major cut for CDBG funding in the Federal budget.

Private Institutions (businesses, banks, foundations, religious organizations, United Way): This will undoubtedly be a source that the Community Housing Land Trust of Rhode Island will tap. However, as with Federal funds, in Rhode Island requests to private institutions far exceed funding available and non-profit housing programs already depend on those sources for support. There is a danger that if a large amount of private funding were provided for the Community Housing Land Trust of Rhode Island, it might be at the expense of some other housing activity that currently receives funding. It should also be noted that banks cannot receive CRA credit for operational support provided to community housing land trust activities because CRA credit is only given for lending activity.

State government support: Some community housing land trusts receive operational support from state government. For example the State of Vermont's Housing & Conservation Trust Fund provides \$204,000 in annual capacity grants to the six community housing land trusts in Vermont. (Nine non-profit affordable housing developers that do not have community land trusts receive an additional \$301,000 in capacity grants, bringing the total in Vermont state capacity grants to affordable housing non-profits to \$505,000.)

The Commission believes that the statewide Community Housing Land Trust is the most cost-efficient way of expanding community housing land trust capacity. by ensuring that the housing remains permanently affordable. In order to take advantage of this tool, we recommend to both the Governor and the General Assembly that this activity merits state support, particularly in the early years, in the amount of \$100,000 annually, and that state funding is a logical outgrowth of the state's housing policy.

² Institute for Community Economics, *Options & Issues in Creating a Community Land Trust*, p. 33.

³ Institute for Community Economics, *Options & Issues in Creating a Community Land Trust*, pp. 31-32..

V. Conclusions and Recommendations for Legislative Action

Conclusion: Rhode Island, through the 2004 Housing Act, has clearly made the production of additional affordable housing units a state priority and has required that municipalities draw up affordable housing plans to accommodate 10% subsidized units. The implementation of those plans will require increased investment of public resources -- through public funds, density bonuses, contributions of public land, or other approaches -- and the community housing land trust model is an effective tool for protecting those public investments in affordable housing.

At the current time significant portions of the state do not have access to community housing land trust services. Rhode Island needs to expand community housing land trust capacity to guarantee that community housing land trust services will be available to any community that wants to use the land trust mechanism as one of its affordable housing strategies.

To make the most efficient use of limited resources amongst municipalities and community development corporations, the Commission concludes that service gaps should be addressed chiefly by supporting the Housing Network's creation of the Community Housing Land Trust of Rhode Island. If there is strong local interest in establishing an entity to perform community housing land trust functions in one area of the state, then the Commission recommends regional collaboration to make the most efficient use of resources.

Recommended Action: While the Community Housing Land Trust of Rhode Island, as a non-profit corporation, does not require any legislative action for its establishment, the Commission does recommend that the state should encourage and support the Community Housing Land Trust of Rhode Island through state policies and funding support.

Conclusion: The Community Housing Land Trust will need operational support, particularly in its early years, to augment income from ground lease revenues, service fees, and grants from foundations and corporations. The Commission believes that limited state investment would help to leverage private support and could have major positive impacts on the creation of new affordable housing units.

Recommended Action: The Commission recommends that the State of Rhode Island provide \$100,000 in annual support for the Community Housing Land Trust of Rhode Island.

Conclusion: Under Rhode Island law, the ground lease mechanism can be difficult to apply in mixed income condominium projects where a land trust does not own the land on which the condominium is built. This is an important issue because it is anticipated that a number of the affordable units that will be created in the future will be in mixed income condominium projects on land not owned by a land trust. However, following the solutions developed by community housing land trusts in other states such as Vermont and Colorado, a community housing land trust in Rhode Island can use other approaches such as affordability liens, restrictive covenants in condominium declarations and restrictive covenants in condominium by-laws, as well as deed restrictions to ensure long-term affordability.

Recommended Action: The Commission recommends that the Rhode Island real estate laws be revised to allow and preserve legal provisions to ensure long-term affordability of housing,

including units in condominium projects. Suggested language for those revisions is included in Appendix D. This is an action that would require no state expenditure but could play an important role in ensuring that the community housing land trust model can be used for as many different types of projects as possible.

In closing, the Commission wants to emphasize that expansion of community housing land trust capacity in Rhode Island is a small but important piece of Rhode Island's overall approach to meeting the state's affordable housing needs. It will help significantly to protect our public investment by ensuring permanent affordability and by creating a more supportive climate for affordable housing, but it will not actually create the additional units needed. To do this, Rhode Island must increase its commitment of state funds. The Commission's recommendation for \$100,000 in annual state operating support for the Community Housing Land Trust of Rhode Island represents only one small part of the overall need for increased state funding for affordable housing that the Commission has identified. The Commission will address the need for additional funding and ways to address that need in its report on the Housing & Conservation Trust Fund, to be submitted by May 15, 2005.

APPENDIX A: COMMISSION MEMBERS

Agency	Designated Representative
Church Community Housing Corporation	Stephen Ostiguy
Grow Smart Rhode Island	Scott Wolf
Housing Network of Rhode Island	Joseph Garlick
RI Association of Realtors	Monica Staaf
RI Association of Executive Directors for Housing	Michael McLoughlin
RI Builders Association	Tom McNulty
RI Chapter of American Planning Association	Katia Balassiano
RI Land Trust Council	Rupert Friday
RI Housing & Mortgage Finance Corporation	Erin Reedy
RI Housing Resources Commission	Ray Neirinckx
RI League of Cities and Towns	Daniel Beardsley
The Nature Conservancy	Kathleen Wainwright

The Department of Environmental Management, while not a designated member of the Commission, was asked by the Commission to participate as a non-voting member and designated Lisa Primiano as its representative.

Sheila Brush of Grow Smart Rhode Island is serving as the principal staff for the Commission.

APPENDIX B: INFORMATION SOURCES FOR COMMUNITY LAND TRUST REPORT

The full Commission heard and based its findings and recommendations in part on presentations from:

- Mary O'Hara, Burlington Associates in Community Development, LLC, serving as a consultant for the Institute for Community Economics
- Stephen Ostiguy, Executive Director of the Church Community Housing Corporation and Paul Martellino, consulting attorney for the Church Community Housing Corporation
- Elizabeth Debs of The Housing Network of Rhode Island.

In addition, the Commission reviewed and based its findings and recommendations in part on

- Institute for Community Economics, *Community Land Trust Legal Manual: A Handbook for Community Land Trusts and Their Attorneys*. Springfield, Massachusetts, 2002.
- Institute for Community Economics, *Options & Issues in Creating a Community Land Trust*. Springfield, Massachusetts, 2001.
- *Permanently Affordable Homeownership: Does the Community Land Trust Deliver on Its Promises? A Performance Evaluation of the CLT Model Using Resale Data from the Burlington Community Land Trust*, May, 2003

APPENDIX C

Church Community Housing Corporation Land Trust Resale Scenario (based on actual recent resale)

In March 1994, the original buyer (homeowner) purchased the house for \$70,000. Church Community Housing Corporation (CCHC) retained ownership of the land, which was then valued at \$50,000.

The buyer was a one person household with an income of \$22,500 which met the income qualification of being at or below 80% of the then area median income. To purchase the home the buyer took out a first and second mortgage (from a local bank) as well as a down payment assistance 0% deferred payment loan from the City of Newport.

In 2004 the homeowner notified CCHC of intent to sell the property. A letter was sent to the homeowner outlining the resale procedures and referencing the applicable sections of the ground lease agreement. Under the lease agreement the homeowner:

- Must get an appraisal done on the property which breaks out the cost of the improvements and the land
- Can sell the improvements only (meaning house, garage, etc. but not the land)
- Set the sales price at the lower of the two following criteria:
 - The appraised value of the improvements only, or
 - an amount such that the monthly housing cost would not exceed 30% of 75% of median monthly income for the buying family
- Must sell to a qualified family (one that meets HUD income guidelines)

Per the ground lease regulations the follow calculations were made based on the current interest rates and HUD income limits.

Family Size	1	2	3	4
Max Family Income	\$37,700	\$43,050	\$48,450	\$53,850
Max Monthly Housing Costs	\$883	\$1,009	\$1,136	\$1,262
Estimated Taxes	152	152	152	152
Estimated Insurance	42	42	42	42
Estimated Mortgage Insurance	42	49	58	65
Lease Fee	25	25	25	25
Est. P&I Payments	622	738	859	975
Max Potential Sales Price (not to exceed appraised value)	\$114,000	\$134,000	\$155,000	\$175,000

The homeowner received an appraisal (from a mutually agreed upon appraiser) setting the value of the improvements only (ie, the house) at \$166,000. The land under the house was appraised at \$90,000. This meant that the appraised value of the whole property was \$256,000, beyond the means of a low/moderate income household. However, since the CCHC retained ownership of the land, the house could be put on the market for \$166,000. The homeowner set the sales price at that amount and put the home on the market. After negotiations, the homeowner agreed to sell

the house to a family of three making \$37,161 (under the 80% of median income requirement) and entered into a sales agreement for a price of \$153,000.

The homeowner gathered all documentation required of the new buyer and submitted to CCHC according to the ground lease requirements. With this information, CCHC verified that the new buyer was income qualified and that the sales price was at or below the appraised value and that it was within the affordability guidelines as outlined above. CCHC approved the sale of the property from the homeowner to the new buyer.

At the closing CCHC, through closing documents, did the following:

- Released the homeowner from their ground lease
- Consented to the sale of the improvements from the current owner to the new buyer
- Consented to a new ground lease with the new buyer
- Consented to the new mortgage(s) for the new buyer
- Executed a new ground lease with the new buyer

With the new buyer purchasing the property for \$153,000 and after paying off the existing mortgages, down payment assistance loan, and paying settlement charges, cash back to the original homeowner at closing was \$82,534. In this case the homeowner chose to hire a real estate agent and paid a \$9,180 fee. Typically, land trust homeowners sell directly to graduates of CCHC homebuyer training class and can realize a cost savings of up to 6% of the sales price by not using a real estate agent.

APPENDIX D: LEGISLATIVE RECOMMENDATIONS

1. Amend Chapter 34-4, Estates in Real Property, to read:

.....

§ 34-4-19 Limitation of possibilities of reverter and rights of entry. – If a possibility of reverter or right of entry for condition broken in land is reserved in a deed executed after May 11, 1953, or in a will of a testator who dies after May 11, 1953, and the possibility of reverter does not become a possessory interest or the right of entry is not exercised within twenty (20) years from the date of the execution of the deed or the death of the testator, then the possibility of reverter or right of entry shall become void, except a Housing Restriction as set forth in § 34–39.1-3.

§ 34-4-20 Possibilities of reverter and rights of entry exempt from limitation. – Section 34-4-19 shall not apply to a possibility of reverter or right of entry for condition broken in:

- (1) Lease for a term of years;
- (2) Grant, gift or devise to the state and Providence Plantations;
- (3) Grant, gift or devise for public, charitable, or religious purposes;
- (4) Deed to a railroad or public utility corporation.
- (5) Housing Restriction as set forth in § 34–39.1-3.

§ 34-4-21 Limitation of restrictive covenants. – If a covenant or restriction concerning the use of land, other than Housing Restriction as set forth in § 34–39.1-3 and Conservation Restrictions and Preservation Restrictions as set forth in §§ 34-39-1, 34-39-2, 34-39-3, 34-39-4, and 34-39-5, is created by any instrument taking effect after May 11, 1953, the covenant or restriction, if unlimited in time in the instrument, shall cease to be valid and operative thirty (30) years after the execution of the instrument creating it.

§ 34-4-22 Expiration of recorded options affecting real estate. – When a recorded instrument, other than Housing Restriction as set forth in § 34–39.1-3 and Conservation Restrictions and Preservation Restrictions as set forth in §§ 34-39-1, 34-39-2, 34-39-3, 34-39-4, and 34-39-5, has created, or shall create, an option to purchase or lease real estate, which, according to its terms, or by operation of law, has expired, and one year has elapsed since the time of expiration, and no conveyance, contract, lease, or other instrument has been recorded showing that the option has been exercised or extended, then the instrument creating the option shall cease to be notice to any person or to put any person on inquiry, with respect to the existence, exercise, or extension of the option or of any contract, conveyance, lease, or other writing which may have been executed pursuant to the option. The one year period provided for in this section shall not be extended by any disability, absence from the state, acknowledgment, or new promise not of record, payment after maturity, or for any other cause.

§ 34-4-23 Expiration of recorded instruments affecting real estate. – Any recorded contract or other instrument, other than Housing Restriction as set forth in § 34–39.1-3 and Conservation Restrictions and Preservation Restrictions as set forth in §§ 34-39-1, 34-39-2, 34-39-3, 34-39-4, and 34-39-5, which has created or shall create a right or obligation (other than an option) to purchase or sell real estate shall cease to be notice to any person or to put any person on inquiry with respect thereto unless, within ninety (90) days after the date therein provided for the delivery of the deed, or if no date is therein provided, then within ninety (90) days after the date therein provided for the payment of the final payment or instalment of the purchase price, or if no delivery date or payment date is therein provided, then within ninety (90) days after the date of the recording of the contract or other instrument, an action or proceeding shall have been commenced to enforce the contract or other instrument and a notice of the pendency of the action, containing a reference to the contract or other instrument and the book and page of the recording thereof and a description of the real estate sufficient to identify it, shall have been duly recorded. The ninety (90) day period provided for in this section shall not be extended by any disability, absence from the state, acknowledgement, or new promise not of record, payment after maturity, or for any other cause with the exception that the ninety (90) day period may be extended by agreement of all the parties to the contract or other instrument at the time of the execution of the contract or other instrument.

§ 34-4-24 Limitation of proceedings based upon right of entry for condition broken or possibility of reverter. – (a) No proceeding based upon any right of entry for condition broken or possibility of reverter to which a fee simple or fee simple determinable in land is subject, created before May 11, 1953, shall be maintained in any court after December 31, 1987, unless on or before December 31, 1987:

(i) The condition has been broken or the reverter has occurred, and a person or persons having the right of entry or reverter shall have taken possession of the land, or;

(ii) A person or persons having the right of entry, or who would have it if the condition were broken, or would be entitled to a right of entry if a reverter occurred or one of them if there be more than one, shall by himself or herself, or by his or her attorney, agent, guardian, conservator, or parent have filed in the town or city clerk's office or recorder of deeds office for the town or city in which the land is situated, a statement in writing, duly sworn to, describing the land, the nature of the right, the deed or other instrument creating it, and where it may be found, and naming the person or persons appearing of record to own the fee subject to the right or possibility.

(2) This statement shall be received and recorded upon payment of the fee required by law and shall be indexed in the grantor index under the person or persons named.

(b) This section shall apply to all rights described in subsection (a) whether or not the holder of the rights is under any disability or out of the state, and it shall apply notwithstanding any recitals in any recorded deed or other instrument unless a statement is filed as provided in subsection (a).

(c) Nothing in this section shall be construed to extend the period of any other applicable statute of limitations, or to authorize the bringing of any proceeding to enforce any right which has been or may be barred by lapse of time or for any other reason

§ 34-4-25 Invalidity of certain restrictive covenants. – Since many mentally retarded and mentally disabled individuals are able to live in the community with some assistance, it is the public policy of the state of Rhode Island to establish community residences in residential areas. Therefore, any restrictive covenant or other private legal impediment which directly or indirectly prevents or restricts the establishment of licensed community residences as defined in § 40.1-24-1 for eight (8) or fewer mentally retarded or mentally disabled persons shall be void and unenforceable as to those community residences.

§ 34-4-26 Expiration of recorded rights affecting real estate. – (a) Any recorded contract, deed or other instrument entered into which creates a preemptive right, right to repurchase, or a right of first refusal to purchase real estate, other than Housing Restriction as set forth in § 34-39.1-3 and Conservation Restrictions and Preservation Restrictions as set forth in §§ 34-39-1, 34-39-2, 34-39-3, 34-39-4, and 34-39-5, which by its own terms, does not provide for a specific expiration date, shall expire ten (10) years after the date of execution, or ten (10) years after recording, if no date of execution is contained in the instrument. If these rights are created under a lease, then the rights shall expire on the termination or expiration of the lease.

(b) Any rights created prior to the passage of this act may be extended for a period of ten (10) years by refileing a Notice of Intention to extend said rights in the Land Evidence Records prior to July 1, 1991.

2. Amend Chapter 34-36.1, Condominium Law to read:

.....

§ 34-36.1-2.03 Construction and validity of declaration and bylaws. – (a) All provisions of the declaration and bylaws are severable, except a Housing Restriction as set forth in § 34-39.1-3. may not be severed from the declaration and bylaws.

(b) The rule against perpetuities may not be applied to defeat any provision of the declaration, bylaws, rules, or regulations adopted pursuant to § 34-36.1-3.02(a)(1).

(c) In the event of a conflict between the provisions of the declaration and the bylaws, the declaration prevails except to the extent the declaration is inconsistent with this chapter.

(d) Title to a unit and common elements is not rendered unmarketable or otherwise affected by reason of an insubstantial failure of the declaration to comply with this chapter. Whether a substantial failure impairs marketability is not affected by this chapter

.....

§ 34-36.1-2.05 Contents of declaration. – (a) The declaration for a condominium must contain:

(1) The name of the condominium, which must include the word "condominium" or be followed by the words "a condominium," and the association;

- (2) The name of every municipality in which any part of the condominium is situated;
- (3) A legally sufficient description of the real estate included in the condominium;
- (4) A statement of the maximum number of units which the declarant reserves the right to create;
- (5) A description of the boundaries of each unit created by the declaration, including the unit's identifying number;
- (6) A description of any limited common elements, other than those specified in § 34-36.1-2.02(2) and (4), or as provided in § 34-36.1-2.09(b)(10);
- (7) A description of any real estate (except real estate subject to development rights) which may be allocated subsequently as limited common elements, other than limited common elements specified in § 34-36.1-2.02(2) and (4), together with a statement that they may be so allocated;
- (8) A description of any development rights and other special declarant rights (§ 34-36.1-1.03(26)) reserved by the declarant, together with a legally sufficient description of the real estate to which each of those rights applies, and a time limit within which each of those rights must be exercised;
- (9) If any development right may be exercised with respect to different parcels of real estate at different times, a statement to that effect together with:
 - (i) Either a statement fixing the boundaries of those portions and regulating the order in which those portions may be subjected to the exercise of each development right, or a statement that no assurances are made in those regards, and
 - (ii) A statement as to whether, if any development right is exercised in any portion of the real estate subject to that development right, that development right must be exercised in all or in any other portion of the remainder of that real estate;
- (10) Any other conditions or limitations under which the rights described in subdivision (8) may be exercised or will lapse;
- (11) An allocation to each unit of the allocated interests in the manner described in § 34-36.1-2.07;
- (12) Any restrictions on use, occupancy, and alienation of the units, including any Housing Restriction as set forth in § 34-39.1-3. . . ;
- (13) The recording data for recorded easements and licenses appurtenant to or included in the condominium or to which any portion of the condominium is or may become subject by virtue of a reservation in the declaration; and
- (14) All matters required by §§ 34-36.1-2.06, 34-36.1-2.07, 34-36.1-2.08, 34-36.1-2.09, 34-

36.1-2.15, 34-36.1-2.16, and 34-36.1-3.03(d).

(b) The declaration may contain any other matters the declarant deems appropriate.

§ 34-36.1-2.06 Leasehold condominiums. – (a) Any lease the expiration or termination of which may terminate the condominium or reduce its size, or a memorandum thereof, shall be recorded. Every lessor of those leases must sign the declaration, and the declaration shall state:

(1) The recording data for the lease (or a statement of where the complete lease may be inspected);

(2) The date on which the lease is scheduled to expire;

(3) A legally sufficient description of the real estate subject to the lease;

(4) Any right of the unit owners to redeem the reversion and the manner whereby those rights may be exercised, or a statement that they do not have those rights;

(5) Any right of the unit owners to remove any improvements within a reasonable time after the expiration or termination of the lease, or a statement that they do not have those rights; and

(6) Any rights of the unit owners to renew the lease and the conditions of any renewal, or a statement that they do not have those rights.

(7) Any Housing Restriction as set forth in § 34–39.1-3. and the details thereof.

(b) After the declaration for a leasehold condominium is recorded, neither the lessor nor his or her successor in interest may terminate the leasehold interest of a unit owner who makes timely payment of his or her share of the rent and otherwise complies with all covenants which, if violated, would entitle the lessor to terminate the lease. A unit owner's leasehold interest is not affected by failure of any other person to pay rent or fulfill any other covenant.

(c) Acquisition of the leasehold interest of any unit owner by the owner of the reversion or remainder does not merge the leasehold and fee simple interests unless the leasehold interests of all unit owners subject to that reversion or remainder are acquired.

(d) If the expiration or termination of a lease decreases the number of units in a condominium, the allocated interests shall be reallocated in accordance with § 34-36-7(a) as though those units had been taken by eminent domain. Reallocations shall be confirmed by an amendment to the declaration prepared, executed, and recorded by the association.

§ 34-36.1-2.07 Allocation of common element interest, votes, and common expense liabilities. – (a) The declaration shall allocate a fraction or percentage of undivided interests in the common elements and in the common expenses of the association, and a portion of the votes in the association, to each unit including land only units and state the formulas used to establish those allocations. Those allocations may not discriminate in favor of units owned by the declarant, but may discriminate in favor of units subject to a Housing Restriction as set forth in § 34–39.1-3. . Except as set forth in § 34-36.1-1.03(7), no minimum percentage interest in the common

elements is otherwise required.

(b) If units may be added to or withdrawn from the condominium, the declaration must state the formulas to be used to reallocate the allocated interests among all units included in the condominium after the addition or withdrawal.

(c) The declaration may provide: (i) That different allocations of votes shall be made to the units on particular matters specified in the declaration; (ii) For cumulative voting only for the purpose of electing members of the executive board; and (iii) For the class voting on specified issues affecting the class if necessary to protect valid interests of the class. A declarant may not utilize cumulative or class voting for the purpose of evading any limitation imposed on declarants by this chapter, nor may units constitute a class because they are owned by a declarant.

(d) Except for minor variations due to rounding, the sum of the undivided interests in the common elements and common expense liabilities allocated at any time to all the units must each equal one if stated as fractions or one hundred percent (100%) if stated as percentages. In the event of discrepancy between an allocated interest and the results derived from application of the pertinent formula, the allocated interest prevails.

(e) The common elements are not subject to partition, and any purported conveyance, encumbrance, judicial sale, or other voluntary or involuntary transfer of an undivided interest in the common elements made without the unit to which that interest is allocated, is void.

(f) Subject to the provisions of the declaration and other provisions of law, and except as provided in § 34-36.1-2.12 which provides for the relocation of boundaries between adjoining units, the owners of any two (2) or more units may apply for a reallocation of their respective allocated interests to the executive board; but their application shall not attempt to alter common element interests except as they relate to the proposed reallocation of unit interests. Unless the executive board determines within thirty (30) days, that the reallocations are unreasonable, the association shall prepare an amendment that identifies the units involved, states the reallocations, is executed by those unit owners, contains words of conveyance between them, and upon recordation, is indexed in the name of the grantor and the grantee.

§ 34-36.1-2.17 Amendment of declaration. – (a) Except in cases of amendments that may be executed by a declarant under § 34-36.1-2.09(f) or 34-36.1-2.10; the association under § 34-36.1-1.07, 34-36.1-2.06(d), 34-36.1-2.07(f), 34-36.1-2.08(c), 34-36.1-2.12(a), or 34-36.1-2.13; or certain unit owners under § 34-36.1-2.07(f), 34-36.1-2.08(b), 34-36.1-2.12, 34-36.1-2.13(b), or 34-36.1-2.18(b), and except as limited by subsection (d) of this section, the declaration, including the plats and plans, may be amended only by vote or agreement of unit owners of units to which at least sixty-seven percent (67%) of the votes in the association are allocated, or any larger majority the declaration specifies. The declaration may specify a smaller number only if all the units are restricted exclusively to nonresidential use.

(b) No action to challenge the validity of an amendment adopted by the association pursuant to this section may be brought more than one year after the amendment is recorded.

(c) Every amendment to the declaration must be recorded in every municipality in which any portion of the condominium is located, and is effective only upon recordation. An amendment

shall be indexed in the grantee's index in the name of the condominium and the association and in the grantor's index in the name of the parties executing the amendment.

(d) Except to the extent expressly permitted or required by other provisions of this chapter, no amendment may create or increase special declarant rights, increase the number of units, change the boundaries of any unit, the allocated interests of a unit, or the uses to which any unit is restricted, in the absence of unanimous consent of the unit owners.

(e) Amendments to the declaration required by this chapter to be recorded by the association shall be prepared, executed, recorded, and certified on behalf of the association by any officer of the association designated for that purpose or, in the absence of designation, by the president of the association.

(f) A Declaration and bylaws may require that amendments to any sections dealing with Housing Restrictions as set forth in § 34–39.1-3 may also require notice to and/or consent of the restriction holder before such amendments shall take effect.

3. Amend Chapter 34-39.1 The Holders of Low and Moderate Income Housing Restrictions Act to read:

§ 34-39.1-1 Short title. – This act shall be known and may be cited as "The Holders of Low and Moderate Income Housing Restrictions Act".

§ 34-39.1-2 Legislative purpose. – The general assembly recognizes and declares that there exists in the state of Rhode Island a serious shortage of decent, safe and sanitary housing units available and affordable to persons and families of low and moderate income. The inadequacy in the supply of decent, safe, and sanitary affordable housing endangers the public health and jeopardizes the public safety, general welfare, and good of the entire state. To obtain the benefits of restrictions which seek to preserve and maintain affordable housing, the general assembly does hereby grant special status to the restrictions so a restriction holder may enforce the restrictions without uncertainty as to the legal effect and enforceability of the restrictions.

§ 34-39.1-3 Definitions. – For purposes of this chapter:

(1) "Housing restriction" means any obligation or requirement to maintain real estate affordable for rental to or purchase by low and moderate income citizens of the state or any limitation on the future use or transfer of the real estate, whether stated in the form of a charge, encumbrance, financing instrument, easement, covenant, or condition in any deed, agreement, or other instrument executed by or on behalf of the owner of the real estate.

(2) "Restriction holder" means any nonprofit corporation, partnership, association, cooperative, or trust established for the primary purpose of owning, operating, leasing, preserving, or maintaining housing affordable to persons and families of low and moderate income, and entities that provide financing, land, or other benefits related to the development and preservation of affordable housing including, but not limited to, state agencies, municipalities, foundations, Rhode Island housing and mortgage finance corporation, and public housing authorities.

§ 34-39.1-4 Housing restrictions enforceable. –

(a) No housing restriction, whether presently existing or hereafter created, that is held by a restriction holder shall be unenforceable against an owner or assignee of any real estate subject to the housing restriction because of lack of privity of estate or contract, or lack of benefit to particular land, or on account of any other common law doctrine of property law which might cause the termination of the housing restriction.

(b) This section shall not be construed to imply that restriction, charge, encumbrance, easement, covenant, or condition which is not covered hereunder shall, on account of any provisions hereof, be unenforceable.

(c) A housing restriction as defined in § 34-39.1-3(a) shall not be subject to the thirty (30) year limitation on restricted covenants provided for in § 34-4-21.

(d) A housing restriction as defined in § 34-39.1-3(a) shall not be subject to any of the limitations on possibilities of reverter and rights of entry or expiration or invalidity of restrictive covenants provided for in §§ 34-4-19, 34-4-20, 34-4-22, 34-4-23 or 34-4-26.

§ 34-39.1-5 Interests in real estate. – Housing restrictions are interests in real estate and may be assigned by the party that holds the housing restriction to any other restriction holder. A document creating a restriction shall be deemed a conveyance of real estate for purposes of chapters 11 and 13 of this title. A restriction may be enforced by an action at law or by injunction or other proceedings in equity.

§ 34-39.1-6 Invalidity of certain restrictive covenants. – Since decent safe and sanitary housing units available and affordable to persons and families of low and moderate income must by their nature be situated in residential areas, including exclusively residential areas and also mixed use areas, any restrictive covenant or other private legal impediment which directly or indirectly prevents or restricts the establishment of housing subject to a housing restriction as defined in this chapter, excluding Conservation Restrictions and Preservation Restrictions as defined in § 34-39-2, shall be void and unenforceable.