

# Municipal Affordable Housing Trust

## Operations Manual

*How to effectively operate  
your local trust*

Prepared by:

The Massachusetts Housing Partnership

November 2015

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**Disclaimer:** *As it pertains to compliance with the Community Preservation Act (CPA) for trusts, any recommendations in this manual are based on what we at MHP believe to have been the intent when the trust language was incorporated into the CPA statute. We understand that there is a difference in interpretation and as a result have worked with Citizens Housing and Planning Association (CHAPA), Attorney Kathleen O'Donnell, and the Community Preservation Coalition to draft an amendment to the trust statute clarifying that the CPA requirements do in fact follow the CPA funding to the trust. We expect this amendment to the trust statute to come before the Legislature after they reconvene in January 2016.*

*In the meantime, as with all trust decisions, we advise communities to seek legal advice from their local municipal or special counsel regarding trust operations.*

This publication is organized in six sections:

- I. Getting started
- II. Legal considerations
- III. Sources of revenue
- IV. Eligible initiatives
- V. Undertaking initiatives
- VI. Funding projects
- VII. Profiles

While it is the intention of this publication to promote a clear understanding of best practices and legal issues, it is not meant to be prescriptive or provide specific legal advice.

## Credits

This publication is the result of the work of many people, including:

### **MHP's Community Assistance team**

#### **Susan Connelly**

Director of Community Assistance

#### **Rita Farrell**

Senior Advisor

#### **Laura Shufelt**

Community Assistance Manager

#### **Carsten Snow**

Program Coordinator

### **Principal Author**

#### **Jennifer Goldson**

Consultant, JM Goldson community preservation + planning

### **Coordinating Editor**

#### **Calandra Clark**

Policy and Communications Coordinator, MHP

### **Outside Reviewer**

#### **Stuart Saginor**

Executive Director, Community Preservation Coalition

# Table of contents

<b>Introduction: Responding to a need</b>	<b>1</b>
<b>I. Getting started</b>	<b>3</b>
Step 1: Submit housing trust bylaw . . . . .	3
Step 2: Establish Board of Trustees . . . . .	4
Step 3: Record Declaration of Trust . . . . .	5
Step 4: Set-up the trust fund account . . . . .	6
Step 5: Ensure transparency . . . . .	6
Step 6: Identify priorities . . . . .	8
Step 7: Set a budget . . . . .	10
Step 8: Determine operating approach . . . . .	12
<b>II. Legal considerations</b>	<b>13</b>
<b>III. Sources of revenue</b>	<b>19</b>
Community Preservation Act . . . . .	19
Inclusionary zoning . . . . .	20
Special bylaws . . . . .	21
Federal HOME Program . . . . .	22
Voluntary developer payments . . . . .	22
Municipal/tax title property . . . . .	22
Private donations . . . . .	23
Cell tower payments . . . . .	23
Resale of affordable units . . . . .	24
Lottery/resale agent services . . . . .	24
Other municipal funds . . . . .	25
<b>IV. Eligible initiatives</b>	<b>26</b>
Purpose . . . . .	26
Board powers & responsibilities . . . . .	27
Low/moderate income . . . . .	27
SHI . . . . .	28
CPA compliance . . . . .	29
Creation & preservation . . . . .	32
Administrative support . . . . .	36
Professional planning support . . . . .	36
<b>V. Undertaking initiatives</b>	<b>37</b>
Soliciting proposals . . . . .	37
Initiating projects & programs . . . . .	39
<b>VI. Funding projects</b>	<b>43</b>
Board vote . . . . .	43
Award letter . . . . .	43
Issuing payments . . . . .	45
Tracking expenditures & conditions . . . . .	45

# Table of contents (continued)

## VII. Profiles

Ipswich . . . . .	47
Groton . . . . .	48
Newburyport . . . . .	49
Sudbury . . . . .	50
Truro . . . . .	51
Westford . . . . .	52
Yarmouth . . . . .	53

## Appendix A

Municipal Affordable Housing Trust Fund Law (MGL c.44 §55C) . . . . .	54
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## Appendix B

Inspector General Procurement Charts . . . . .	57
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## Introduction

# Responding to a need

### *Operations manual aimed at helping communities run effective municipal housing trusts*

Roughly 100 Massachusetts communities have established Municipal Affordable Housing Trusts (MAHT).<sup>1</sup> The interest in housing trusts is largely due to the availability of local funding sources, especially Community Preservation Act (CPA) funds, and local recognition of the importance of addressing affordable housing needs. Recognizing this need, the state legislature passed the Municipal Affordable Housing Trust Fund Law (MGL c.44 §.55C) in 2005, which simplified the process of establishing a local housing trust fund. The 2005 statute enabled municipalities to adopt local housing trust funds by majority vote of the local legislative body.<sup>2</sup>

This publication is a companion to MHP’s Municipal Affordable Housing Trust guidebook (released in 2009 and updated in 2013) and is intended to help municipal officials delve into the details of how to operate new or established housing trusts. Through various training sessions and other technical assistance for housing trust communities, MHP’s Community Assistance team identified a need to provide more information to help officials operate housing trusts most effectively.

Housing trust communities wanted more information on sources of revenue, how to more effectively use trust funds, and how to troubleshoot management and communication issues. Some communities needed more capital for the trust fund while others had plenty of capital but needed help identifying how to put it to use. The Community Assistance team also saw the need for more thorough understanding of legal considerations especially issues involving CPA funds, MA

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<sup>1</sup> This figure is based on preliminary results of a survey done by MHP in 2015.

<sup>2</sup> In Massachusetts, the term “local legislative body” refers to a municipality’s city council, board of aldermen, or town meeting, depending on the form of government.

Open Meeting Law, Procurement laws, the Anti-Aid Amendment and Conflict of Interest Law.

This publication provides factual information, tips for best practices, sample documents, and highlights successful trust-funded initiatives. Woven throughout the publication is a central message:

**The most effective housing trusts are operated with transparency, strong communication, clear and strategic priorities, and professional capacity.**

# Getting started

*Basic steps to help ensure that a trust will operate effectively*

When a community adopts a Municipal Affordable Housing Trust (housing trust) there are multiple required and recommended steps to make the housing trust official, functional, and effective. This section describes the basics of getting started, including how to establish an effective Board of Trustees (board), identify funding priorities, and establishing a framework to operate effectively.

This section describes the following steps to get started:

**Step 1: Submit housing trust bylaw or ordinance to Attorney General<sup>3</sup>**

**Step 2: Establish the Board of Trustees**

**Step 3: Record a Declaration of Trust**

**Step 4: Set-up the trust fund account**

**Step 5: Ensure transparency**

**Step 6: Identify priorities**

**Step 7: Set a budget**

**Step 8: Determine operating approach**

For more information on gaining support for and establishing a Municipal Affordable Housing Trust in your community, check out MHP's 2013 Updated Guidebook: [www.mhp.net/uploads/resources/municipal\\_affordable\\_housing\\_trust\\_guidebook.pdf](http://www.mhp.net/uploads/resources/municipal_affordable_housing_trust_guidebook.pdf).

## Step 1: Submit housing trust bylaw to Attorney General<sup>4</sup>

Once a vote is taken to adopt the trust, the municipal clerk must certify the housing trust bylaw and submit it to the Attorney General of Massachusetts (AG) within 30 days of adjournment of the local legislative body. The AG is statutorily required to approve bylaws for consistency with state law within 90 days from the clerk's request for approval.

**More information from the office of the Attorney General:**  
[www.mass.gov/ago/government-resources/municipal-law](http://www.mass.gov/ago/government-resources/municipal-law).

<sup>3,4</sup> Bylaw in a town, ordinance in a city—this manual will use “bylaw” to refer to both.



## Step 2: Establish Board of Trustees

After the AG approves the housing trust bylaw, the municipality may appoint the Board of Trustees (board). The municipality's chief executive officer (e.g. board of selectmen, mayor, or town manager) is required by statute to appoint the members of the board per the requirements adopted through the local bylaws. The board has fiduciary responsibility for overseeing the use and management of the housing trust.

The board must include a minimum of five board members (trustees) with voting power including the chief executive officer. Where the municipality's chief executive officer is a multi-member board, such as in the case of a board of selectmen, it must designate a minimum of one member to serve as a trustee. In the case of municipalities with a mayor or city manager (Plan D or Plan E municipality), the city/town council or board of selectmen shall confirm the appointments. The town manager or municipal administrator can be appointed to serve as trustee with or without the power to vote.

The trustees can serve terms of up to two years. Municipalities will often stagger the initial terms to avoid abrupt transitions of membership. These terms will be set out in the housing trust bylaw.

Once appointed, one of the first official duties that the board will undertake is to elect officers including chair, clerk, and treasurer. Some boards also elect a vice chair.

### **Best Practices Tip: Membership composition is important**

One key to establishing a strong and effective board is to include broad representation from both the public and private sectors, such as appointing representatives from other local boards or commissions, community representation, and residents with professional expertise.

Membership requirements for board composition beyond the minimum statutory requirements can be included in the housing trust bylaw. For example, the City of Somerville's housing trust includes additional membership requirements and considerations (see sidebar).

Many communities have found it helpful to include members of the Community Preservation Committee (CPC)

### **Excerpt from the City of Somerville Housing Trust Ordinance**

#### **Sec. 7-92. Affordable Housing Trustees**

There shall be nine trustees on the board of the trust. Three of the trustees shall serve ex officio (with full voting rights); and the remaining six shall be appointed by the mayor, subject to approval by the board of aldermen. The ex officio trustees shall include the mayor or designee, the president of the board of aldermen or designee, and the executive director of the housing authority or designee.

The remaining trustees shall be selected and appointed by the mayor subject to the board of aldermen approval as follows: two residents, two representatives of city nonprofit organizations, and one professional in the field of housing or real estate and one professional in the field of banking or finance. The mayor shall ensure, to the extent feasible, that the composition of the board reflects the geographic and ethnic mix that exists in the city.

NOTE: The City of Somerville's Housing Trust was not created under. MGL c.44 §.55C, but this does not affect the relevance of their bylaw to other trusts when it comes to board member designation.

and the housing partnership (or affordable housing committee) on the board. Doing so can help increase communications with local bodies, which is important for furthering transparency and collaboration.

The initial care given to create a strong board with balanced membership is also required when replacing members so that the board remains strong and effective throughout membership transitions.

**Best Practices Tip: Go beyond the minimum requirements to orient new trustees**

Trustees should be knowledgeable in key areas to effectively and responsibly perform their duties. To equip the trustees with the information they need, new trustees should be provided with a comprehensive orientation packet that includes the following information, as relevant:

- MA Open Meeting Law
- MA Procurement laws
- MA Conflict of Interest Law
- MA Anti-Aid Amendment
- Information on Fair Housing laws
  - MAPC Fair Housing Toolkit: [www.mapc.org/DisparateImpactHousingToolkit](http://www.mapc.org/DisparateImpactHousingToolkit)
  - HUD’s Final Rule on the Implementation of the Fair Housing Act’s Discriminatory Effects Standard: <http://portal.hud.gov/hudportal/documents/huddoc?id=discriminatoryeffectrule.pdf>
  - MA Analysis of Impediments to Fair Housing Choice: [www.mass.gov/hed/docs/dhcd/hd/fair/2013analysis.pdf](http://www.mass.gov/hed/docs/dhcd/hd/fair/2013analysis.pdf)
- Local housing trust bylaw
- Local Affordable Housing Plan or related housing element of a Master Plan
- Local Community Preservation Plan and application
- Information on local affordable housing initiatives.

See Section II for additional information on legal considerations including the MA Open Meeting Law, Procurement Laws, the Anti-Aid Amendment, and the Conflict of Interest Law.

**Potential public official representation**

- Affordable Housing Committee
- Board of Selectmen/Mayor/Town Administrator (required by statute)
- Community Preservation Committee
- Housing Authority Commission
- Housing Partnership
- Planning Board

**Potential community representation**

- Affordable housing recipient
- Architect
- Banker
- Business leader
- Community religious leader
- Housing advocate
- Housing developer
- Planner
- Real estate broker
- Real estate attorney

### Step 3: Record Declaration of Trust

A Declaration of Trust (declaration) establishes the board’s authority, rules, and regulations. A recorded declaration provides notice of the establishment of the

housing trust and the board's powers and authority to hold and convey title to real estate. A declaration is required when a housing trust acquires any interest in real property, by deed, restriction or mortgage.

Note that a declaration will not be accepted by the Land Court Registry District unless the declaration is filed with the deed to a specific piece of property. However, the Registry of Deeds will accept a declaration as a stand-alone document, which is why many boards record the declaration at the Registry of Deeds shortly after board appointment. The city solicitor/town counsel or an attorney engaged by the board may draft the declaration. If prepared by outside counsel, the city solicitor/town counsel should review the declaration prior to registering it.

## **Step 4: Set-up the trust fund account**

The board must work with municipal officials, particularly the municipal treasurer, to set up the trust fund account. While some boards have considered setting up a separate account through a bank, it is more common to set up an account as a municipal account through the municipal treasurer. However, unlike other municipal funds, all moneys in the trust fund at the end of the year, whether or not committed by the board, remain trust property. It will also be important to track funds by revenue source (e.g., CPA funds, Inclusionary Zoning payments, etc.) as further described in Section IV.

## **Step 5: Ensure transparency**

Transparency and visibility through strong public communications can greatly enhance the effectiveness of the board. The primary ways to ensure transparency and visibility are through regular reporting, publicizing milestones, and maintaining an up-to-date online presence.

### **Report regularly**

Reporting to municipal entities is critical to maintaining general public understanding of trust goals and initiatives. Boards will typically report annually to the local legislative body and may be included in the community's annual report. If housing trust revenue includes CPA funds, the board would also report regularly to the community preservation committee—this is commonly done on an annual basis during the CPC's application review process. In addition, boards may benefit from making regular presentations to the Chief Executive Officer (e.g., board of selectmen).

If the municipality also has an affordable housing committee or housing partnership, it can be helpful to hold joint meetings or present updates at regularly scheduled meetings of these entities to facilitate coordination.

## Publicize milestones

The board can increase visibility by hosting events that celebrate project milestones, issuing press releases, flyers, and town Facebook and web announcements. Events and milestones to mark can include application round deadlines, project awards, and groundbreaking/ribbon cutting events. For example, the Town of Westport publishes a semi-annual housing trust newsletter and mails hardcopies to a growing distribution list. The newsletter reports on trust-funded initiatives and serves to educate the community while increasing transparency for prospective applicants and the community at large.

## Maintain an online presence

### Webpage

As a municipal entity, the board should establish a webpage as part of the municipal website. Minimally, the webpage would describe the background and purpose of the housing trust, include a list of trustees, and contact information. The webpage can be most helpful when it also includes information about the housing trust's priorities, funded initiatives, as well as agendas, minutes, and meeting schedules. The webpage can be used as a public filing cabinet for all public documents related to the housing trust, including the Declaration of Trust, trust bylaws, applications for funding, and the like.

The webpage can also include links to other housing resources, such as how the Town of Easton's housing trust's page ([www.easton.ma.us/easton\\_residents/financial\\_assistance/housing\\_resources.php](http://www.easton.ma.us/easton_residents/financial_assistance/housing_resources.php)) provides resources for renters, homeowners, seniors, as well as households facing foreclosure, people with disabilities, and households seeking other assistance with housing costs. In Easton, the board utilized trust funds to hire a housing coordinator whose duties include creating a website ([www.easton.ma.us/boards\\_and\\_committees/affordable\\_housing\\_trust/index.php](http://www.easton.ma.us/boards_and_committees/affordable_housing_trust/index.php)) and brochure regarding other housing funds and assistance that could benefit low/moderate-income residents.

In addition, websites can include an email subscription option where residents can voluntarily sign up for email alerts when the webpage is updated.



**Best Practices Tip: Keep the webpage up-to-date by designating the responsibility and making it part of the calendar of annual events**

Municipal webpages often become out of date. The board chair or housing trust staff may be able to secure municipal permission to have direct access to the webpage to ensure the site is updated regularly with agendas, minutes, and other documents. Alternatively, the board may create a private website that is linked to the official municipal website to enable direct access to keep the site updated.

**Social media**

Some communities effectively utilize established social media to keep the public informed by using Facebook, Twitter, and weblogs. The board can also use social media to communicate with the public regarding the board’s meeting schedule, trust fund allocations, application process and deadlines, events, announcements, and links to media coverage. The board can collaborate with other municipal entities such as the housing partnership/affordable housing committee, planning department, housing authority, or community preservation committee to utilize established social media.

For example, the Town of Bridgewater’s Community Preservation Committee uses Facebook regularly as one of multiple ways to keep the public informed including announcements of meetings, links to local news coverage, and event invitations. The Town of Dennis also uses social media effectively. The Dennis Planning Department regularly updates a Wordpress blog as well as a Facebook page to inform citizens on planning activities in the town.

<b>Examples of Municipal Facebook Pages &amp; Blogs</b>
Bridgewater CPC Facebook page: <a href="https://www.facebook.com/BridgewaterCPC/">https://www.facebook.com/BridgewaterCPC/</a>
Dennis Planning Department Weblog: <a href="http://www.dennismapanningdept.wordpress.com">www.dennismapanningdept.wordpress.com</a>
Dennis Planning Department Facebook page: <a href="http://www.facebook.com/DennisPlanningDept">www.facebook.com/DennisPlanningDept</a>

## Step 6: Identify priorities

The housing trust statute allows trusts “to provide for the creation and preservation of affordable housing in municipalities for the benefit of low- and moderate-income households.” Within this purpose many different types of initiatives could be funded that serve local and regional housing needs.

It will be important for the board to understand the community’s housing needs, environmental considerations, and regulatory constraints to identify priority housing initiatives. Some housing trusts have identified priorities through strategic planning, resulting in a housing trust action plan or strategic visioning plan, while other communities have accomplished prioritization more informally or incrementally. Examples of such plans include the housing trusts in Easton, Medway ([www.townofmedway.org/Pages/MedwayMA\\_Bcomm/PlanEcon/trust.pdf](http://www.townofmedway.org/Pages/MedwayMA_Bcomm/PlanEcon/trust.pdf)), Somerville, and Westport.

## Determining needs & priorities

Your community may have a current affordable housing plan, housing production plan, or housing element of a master plan that documents the local and regional housing needs and recommends housing initiatives for the community to undertake. If there are no such current documents, the board should identify housing needs and priority initiatives. To accomplish this, the board could commission a housing plan or undertake the analysis internally.

A helpful tool to understand housing needs is the “Welcome Home Massachusetts” toolbox, a joint initiative by the Massachusetts Housing Partnership and Citizens’ Housing and Planning Association. A link to the toolbox can be found on MHP’s website.

### **Best Practices Tip: Engage with the community to identify priorities**

To guide the board in the identification of priority initiatives for the housing trust funds, the board will benefit from engaging community members and other public and private stakeholders. This type of engagement can be accomplished through meetings, interactive workshops, and/or surveys. Engagement is most effective with an educational component to describe the local and regional affordable housing needs and development constraints in addition to generating and prioritizing ideas for housing trust initiatives.

Through the outreach process, the housing trust can directly engage other housing advocates and community partners by attending their meetings or conducting interviews. Critical local stakeholders can include the housing partnership/affordable housing committee, housing authority, planning board, community preservation committee, board of selectmen/mayor, town administrator, school committee, finance committee, other municipal officials, regional non-profit agencies, your regional planning agency, real-estate agent/brokers, and housing developers.

Holding community meetings or workshops can also be useful for discussing ideas and priorities with town officials, stakeholders, and other community members. For example, in the process of developing an action plan, Easton, Medway, and Westport held workshops to get ideas for trust-funded housing projects and programs and to prioritize options. This was instrumental in assisting the board with its next step—budgeting.

Through such strategic planning, boards can establish benchmarks for allocating trust funds for different activities, target populations, or housing types. For example, after a planning process in 2008, Somerville’s board adopted income



criteria for the allocation of trust funds where at least 20 percent of the funds serve households below 50 percent of area median income (AMI), 20 percent serve incomes between 51 percent and 80 percent AMI, and at least 10 percent serve incomes between 81 and 110 percent AMI. Furthermore, the board set benchmarks to allocate funds by program activity with 70-80 percent of annual budget for development project loans, 10-15 percent for individual household loans, and 10-15 percent for grants.

## Step 7: Set a budget

Although this manual portrays steps in neat categories, setting priorities and a budget is often a fluid process. Initial priorities will often be greater than a reasonable budget would accommodate, which necessitates further prioritization.

When budgeting for the priority initiatives, it will be important to develop an estimate of potential funding. Knowing the likely funding sources and approximate level of funding will be helpful at this stage. For example, if seeking CPA funds, identifying the balance of the CPA housing reserve would be important information for setting a proposed housing trust budget. It is important to note that the CPA housing reserve is the minimum amount of funds available for affordable housing initiatives and that some communities allocate a greater share of CPA funds to housing trusts while others allocate less to the housing trust and fund other housing initiatives separately.

Housing trust budgets typically depict multiple years, with the caveat that future budgets are likely to change. The budget indicates estimated revenue as well as expenditures by initiative. The trust's budget should accomplish two things: track the money it uses in a clear, concise way and convey work the trust is supporting. A sample budget on the following page uses notes and tracks money by source to help track use restrictions that often come with different sources.

**Best Practices Tip: It is often critical to project success that housing trust funds are the first dollars committed**

While creating a housing trust budget it will be important to recognize that the trust funds are often one of multiple funding sources for any given project, particularly development projects, and will likely be helpful as the first dollars committed to a project to demonstrate local support and enable stronger leveraging of other public and private funds necessary for project feasibility.

Mainville Municipal Affordable Housing Trust

**Financial summary\*** updated: May 2015

Description

Sources	FY 2013	FY 2014	FY 2015 projected	
<b>Carry forward – CPA</b>	\$ 75,000	\$ 63,000	\$288,000	
<b>Carry forward – other</b>	2,654	37,149	20,574	
<b>CPA</b>				
Town meeting vote 4/12/12 – Hillside project	1,343,000			
Town meeting vote 4/14/13 – general housing support		250,000		
Planned town meeting ask (Wilson School & general)			300,000	
<b>Fee revenue</b>				
Hillside Lottery		43,500		
<b>Other revenue (interest, etc.)</b>				
Interest	7,090	3,074	4,230	
Inclusionary Zoning payment** (9/1/13)	\$30,059			
<b>Sub-total</b>	<b>\$1,457,803</b>	<b>\$396,723</b>	<b>\$612,804</b>	
Uses	FY 2013	FY 2014	FY 2015 projected	Outcomes
<b>CPA</b>				
Support Hillside Street rental housing	\$1,343,000			38 family units affordable from 60 to 100% AMI
Housing Production Plan (ABC Associates)	12,000			
Site analysis & feasibility for Wilson School (1-2-3 Co.)		\$ 25,000		
Wilson School affordable rental housing			\$500,000	support the school conversion to rental housing
<b>Fee revenue</b>				
Hillside Lottery expenses (including staff time)		18,000		
<b>Other revenue</b>				
Development consultant for Wilson School (XYZ Co.)		8,000	12,000	
<b>Sub-total</b>	<b>1,355,000</b>	<b>51,000</b>	<b>512,000</b>	
<b>NET</b>	<b>\$ 102,803</b>	<b>\$345,723</b>	<b>\$100,804</b>	
<b>Sub-totals by sources</b>				
CPA	\$ 63,000	\$288,000	\$ 88,000	
Fee revenue		25,500		
Other	37,149	(4,926)	(7,770)	

Notes: \*Previous year budgets can be found on our web page at [www.townofmainville.com/trust](http://www.townofmainville.com/trust)

\*\*money must be used to support housing at or below 80%AMI (payment from Main St. condo project)



## Step 8: Determine operating approach

The board of trustees will operate in one of three ways: 1) as a funding entity that solicits project ideas to consider for funding, 2) an active initiator of projects and programs, or 3) a hybrid of both. Most boards operate with a hybrid approach—both soliciting and initiating projects.

A board that acts as a funding entity would solicit proposals either by announcing a funding round and providing an application form or by issuing a Request for Proposals (RFP). Whereas a board that is an active initiator of projects may, for example, initiate a housing assistance program or affordable housing development on trust-acquired property.

Westford and Yarmouth are examples of trusts that have acted as funding entities. In Westford, the trust adopted formal application review and funding procedures as well as an application packet that includes uniform submission requirements, funding priorities, and selection criteria. The board's objective was to clearly articulate funding priorities and establish a fair and thorough method to solicit and select projects to fund. See link ([www.mhp.net/uploads/resources/westford\\_trust\\_application.pdf](http://www.mhp.net/uploads/resources/westford_trust_application.pdf)) for Westford's application packet.

Examples where the board directly initiates projects include the trusts in Carlisle, Bourne, and Sudbury. These boards acquired property for affordable housing development and, in some cases, funded predevelopment activities before issuing a RFP for a developer.

Boards have also initiated housing programs, such as Yarmouth's Buy Down Program, which creates affordable units through the acquisition and rehabilitation of market rate units (see profile in Section VII.).

# Legal considerations

## *What to be familiar with when operating a trust*

At minimum, board members should be familiar with laws and contracts with which they must comply.

### **Bylaw and grant agreement**

Guidance from the MA Department of Revenue (DOR) strongly recommends that trusts planning to use CPA funds should include language in the trust bylaw that gives the trust the power to execute a grant agreement with the municipality or Community Preservation Committee (CPC) thereby expanding the trust's powers to include all CPA eligible activities.

The grant agreement should spell out the funding amount, the use of the funds (at the least, CPA-eligible activities), and state that the trust will use the CPA funds in accordance with eligible activities in the CPA statute. The Community Preservation Coalition's website is an excellent resource for more information. A sample grant agreement can be found on their website: [www.communitypreservation.org/news/7136](http://www.communitypreservation.org/news/7136).

### **Anti-Aid Amendment**

The Anti-Aid Amendment to the Massachusetts Constitution (Mass. Const. Amend. Article 46, § 2, as amended by Article 103) generally prohibits the granting of public funds to private organizations except when the funds are used for a designated public purpose and the benefits accrue to the public. In order to comply with the law, all trust funded projects or programs should include some type of affordability restriction recorded through a deed restriction, mortgage, or contract that is commensurate with the assistance provided. For example, if a trust provides \$10,000 for down payment assistance to a first-time homebuyer, the trust could reasonably place a deed restriction on the property of five to seven years with a requirement that a portion of those funds be repaid if the property is sold before the term of the restriction.

## Open Meeting Law

Commonly known as the “Open Meeting Law,” M.G.L. c.30A §§.18-25 requires that meetings of public bodies be held in public. Within two weeks of appointment, all members of public bodies must complete a Certificate of Receipt of Open Meeting Law Materials, acknowledging the statutory requirements.

All meetings of a public body, with certain exceptions, must be open to the public, properly noticed, and recorded. The Open Meeting Law provides for particular circumstances under which a meeting may be held in executive session including consideration of purchasing, leasing, or value of real property if an open session may have a detrimental effect on the negotiating position.

**Note that a public meeting includes a deliberation involving a quorum of the public body. Thus, it is important to avoid communicating by email or phone, for example, with a quorum of the board on substantive matters. Even an expression of opinion on matters within the body’s jurisdiction to a quorum of the public body is a deliberation even if no other public body member responds.**

**For more information including “The Open Meeting Law Guide:” [www.mass.gov/ago/openmeeting](http://www.mass.gov/ago/openmeeting).**

## Procurement laws

The state Procurement laws are multiple state statutes that deal with various aspects of municipal procurement including building and public works construction, design and other services, supplies, and real property. In addition, prevailing wage laws apply for construction projects undertaken by public entities in the state as well as some limited services provided to them.

Paragraph (j) of the Municipal Affordable Housing Trust statute, states the following:

*The trust is a board of the city or town for purposes of chapter 30B and section 15A of chapter 40; but agreements and conveyances between the trust and agencies, boards, commissions, authorities, departments and public instrumentalities of the city or town shall be exempt from said chapter 30B.*

Note that Section 15A of chapter 40, referred to in the excerpt above, specifies that to transfer municipally-owned land from custody of one municipal board to another (including the Board of Trustees), the legislative body of the municipality must approve the transfer with a two-thirds vote. In municipalities that have accepted the provisions of Section 15A, a land transfer for the purpose of constructing low- and moderate-income housing requires only a majority vote of the legislative body.

The key procurement areas that apply to housing trust activities consist of the following:

- Capital construction or improvement projects;
- Acquisition, disposition, or lease of real property;
- Contracting for professional services.

**Construction or capital improvement projects:** From time to time, the board may undertake construction or capital improvement activities. For example, if the board acquires an existing building to resell as affordable housing and undertakes rehabilitation of the building, then the board would be subject to the public construction and bidding requirements of M.G.L. c.149 §44A-M and c.30 §39M including prevailing wage requirements.

**Note that prevailing wage may apply even in the case of a discounted or donated service.**

**Real property disposition, lease, or acquisition:** In exercising its power to acquire, lease, or dispose of real property, the board must comply with the provisions of M.G.L. c.30B §16 (more detail on M.G.L. c. 30B below). Section 16 includes various requirements pertaining to the acquisition, leasing, and disposition of real property including public notice, solicitation of proposals, property value determination, and disclosures.

The CPA statute, M.G.L. c.44B §5, exempts acquisition of real property or an interest therein from the 30B Procurement Law. Based on consultation with the Inspector General's Office, we have determined that this exception to the M.G.L. c.30B §16 extends to trusts that are using CPA funds alone to acquire real property. However, we strongly recommend that trusts consult municipal counsel for a final determination as to the applicability of M.G.L. c.30B or any other state statutes.

Above all, M.G.L. c.30B requires a fair and competitive process, and all of the board's actions, including the content of solicitations and notices and its conduct in selecting proposals/residents will be judged by that standard.

In addition, CPA-funded projects carried out by municipalities are exempt from the requirements of M.G.L. c.40 §14, which would otherwise prohibit cities from acquiring land for a price more than 25 percent above its "average assessed valuation during the previous three years." Trusts are bound by the requirement in M.G.L. c.44B §5(f) that the acquisition price of real property cannot exceed the value of the property as determined through procedures customarily accepted as valid by the appraising profession.

CPA eligibility is described further in Section III under "CPA and Housing Trusts."

**Contracting professional services:** Contracting professional services includes hiring housing consultants, planners, appraisers, landscape architects, engineers, etc. There may be situations where the board will want to contract for professional services. For example:

- For the preparation of an action plan, budget, and/or application packet;
- For predevelopment activities (e.g., soil testing, appraisals, preliminary design, surveys);
- To assist with disposition or acquisition of property.

There are two key areas of the law regarding procurement of professional services. The first, M.G.L. c.7 §.28A.5-380, known as the Designer Selection Law, applies when procuring design services for public building projects. The second, M.G.L. c.30B, applies to other professional services and establishes three monetary thresholds that trigger different selection and procurement procedures, with the most latitude established for contract amounts under \$10,000. For contracts between \$10,000 and \$35,000, three quotes must be solicited. For contracts at and over \$35,000, sealed bids or proposals through a request for proposal process are required.

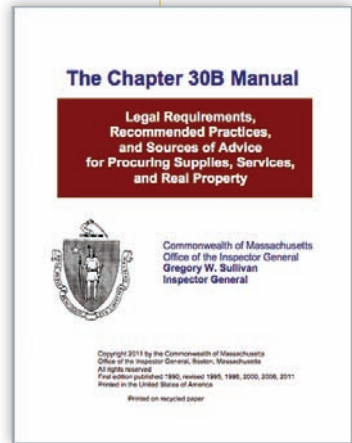
The Inspector General provides guidance on the Procurement laws and makes available a Chapter 30B Attorney of the Day at (617) 722-8838. The Inspector General has published “The Chapter 30B Manual” and the “Designing and Constructing Public Facilities” manual as well as other helpful publications available on its website: [www.mass.gov/ig](http://www.mass.gov/ig).

**See Appendix B for the Inspector General’s procurement charts covering building and public works construction, construction material procurements, design services, and procurement of supplies and services.**

## Conflict of Interest Law

M.G.L. Chapter 268A, also known as the Conflict of Interest Law, covers all municipal employees, whether elected or appointed, full or part-time, paid or unpaid. The law provides a general code of ethics for all public employees and prohibits using or attempting to use an official position to secure an unwarranted privilege or from giving the impression that you can be improperly influenced in the performance of your official duties.

The law prohibits trust members from disclosing confidential information obtained on the job and from accepting outside employment that will impair independence of judgment in the exercise of official duties.



Under M.G.L. c. 268A §27, every municipal employee must receive a summary of the law's requirements at the commencement of employment and must acknowledge receipt of that summary in writing within thirty days thereafter. In addition, under M.G.L. c. 268A §28, every municipal employee must complete the State Ethics Commission online training program within 30 days after becoming a municipal employee and every two years thereafter.

Your municipality should be collecting your certificate of completion. The online training takes approximately 45 minutes and can be found at: [www.muniprog.eth.state.ma.us](http://www.muniprog.eth.state.ma.us).

**Best practices tip: Identify who will certify that online training is completed; make it a part of your calendar**

**More information on the Conflict of Interest Law: [www.mass.gov/ethics](http://www.mass.gov/ethics).**

## Fair housing laws

The Fair Housing Act<sup>5</sup>, prohibits discrimination for housing-related transactions on the basis of race, color, national origin, religion, sex, disability, and familial status including children under the age of 18, pregnant women, and people securing custody of children. In addition to the federally-protected classes, Massachusetts, under M.G.L. c. 151B, includes marital status, age, sexual orientation, gender identity, military status (veteran or member of the armed forces), receipt of public assistance and/or housing subsidy, genetic information, and ancestry. Multiple other laws relate to Fair Housing including federal laws such as Section 504 of the Rehabilitation Act of 1972, Title II of the American with Disabilities Act and Massachusetts state law (MGL c.151B).

It is important for board members to understand that even when a practice or policy isn't intended to discriminate or limit housing opportunities for protected classes, it may still have a discriminatory effect. Municipalities are obligated to evaluate their rules, regulations, policies, and actions to not only ensure against discriminatory effects but to also affirmatively further fair housing. In February 2013, the US Department of Housing and Urban Development (HUD) issued the "Final Rule on the Implementation of the Fair Housing Act Discriminatory Effects Standard."

More information of Fair Housing laws and considerations:

1. HUD—Fair Housing Laws and Presidential Executive Orders: [www.hud.gov](http://www.hud.gov) and go to "Program Offices" then "Fair Housing/Equal Opportunity."
2. Metropolitan Area Planning Council's Disparate Impact Housing Toolkit: [www.mapc.org/DisparateImpactHousingToolkit](http://www.mapc.org/DisparateImpactHousingToolkit).

<sup>5</sup> Title VIII of the Civil Rights Act of 1968, as amended.

3. MA Department of Housing and Community Development Fair Housing and Civil Rights Information: [www.mass.gov/dhcd](http://www.mass.gov/dhcd) and go to “Community” and then “Community Planning.”

## Public employees/municipal agency

For certain purposes, the housing trust is an extension of the municipality and is subject to the same laws and regulations. It is important that trustees are treated as public employees for the purposes of M.G.L. c. 258, which provides statutory protection for public employees including the trustees against liability for acts taken within the scope of their employment. M.G.L. c. 258 makes the housing trust itself responsible for the actions of its employees (including the trustees and any other trust employees), but limits liability in most instances.

To ensure efficiency and compliance, board members should have a binder of resources which at minimum includes the following:

- MAHTF law (MGL C. 44 §55C)
- Housing trust bylaw(certified and AG-approved)
- €  Declaration of Trust (recorded)
- Massachusetts Open Meeting Law
- Massachusetts procurement laws
- Massachusetts Conflict of Interest Law
- Information and resources on Fair Housing
- Local and/or regional affordable housing needs, analyses, plans, etc.
- Housing trust action plan and budget

# Sources of revenue

## *Range of options to fund a local trust*

There is a range of potential funding sources that can provide revenue to housing trusts. Many trusts rely on CPA funds, while others have multiple sources of funds. If funding sources are limited, the board might consider advocating for municipal action to secure one or more reliable sources of funding.

A description of a variety of potential revenue sources to capitalize the housing trust follows, including:

- **Community Preservation Act (CPA)**
- **Inclusionary zoning**
- **Special bylaws**
- **Federal HOME program**
- **Voluntary developer payments**
- **Municipal/tax title property**
- **Private donations**
- **Cell tower payments**
- **Resale of affordable units**
- **Lottery/resale agent services**
- **Other municipal funds**

## **Community Preservation Act (CPA)**

The most prevalent source of funds for housing trusts is the CPA . M.G.L. c.44B §.6, which requires that at least 10 percent of total annual CPA revenue, including revenue raised from the local surcharge and the state Community Preservation Trust Fund distribution, be spent or reserved for affordable housing.<sup>6</sup> CPA communities without annual debt service payments on other projects may elect to spend up to 75 percent of total annual CPA revenue on affordable housing,

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<sup>6</sup> For purposes of consistency, this publication uses the term “affordable housing” whereas the CPA statute uses the term “community housing.”



or even up to 80 percent if the community does not allocate any funding to a CPA administrative account. Section 5(f) of the CPA statute expressly permits municipalities to appropriate CPA funds to an affordable housing trust fund, and a number of housing trusts rely on annual CPA appropriations.

**Best practices tip: It is highly recommended that trusts receiving CPA funds from the municipality execute a grant agreement between the trust and municipality or CPC as described in Section II's "Bylaw and grant agreement" section of this manual.**

The board is typically required to submit a budget, taking into account the level of funds set aside in the CPA affordable housing reserve and/or annual 10 percent affordable housing requirement.

A CPA appropriation requires a CPC recommendation and majority vote of the local legislative body (e.g., town meeting, town/city council, or board of aldermen). Therefore, strong communication with the Community Preservation Committee and the local legislative body is critical.

For example, Westport's Board of Trustees and its consulting housing coordinator work together to effectively inform and advocate for CPA funds in three primary ways: basing CPA requests on the Trust's Action Plan, submitting thorough annual CPA applications, and giving specific and complete presentations ([www.mhp.net/uploads/resources/westport\\_presentation\\_to\\_cpc.pdf](http://www.mhp.net/uploads/resources/westport_presentation_to_cpc.pdf)) to the CPC.

## Inclusionary zoning

Some communities have adopted inclusionary zoning (IZ) bylaws that require the creation of affordable units be included in new residential developments. IZ bylaws can also allow alternatives to creating units including cash in-lieu payments and/or land donations. Some IZ bylaws specifically designate the housing trust to receive any cash payments or land donations, thus providing a source of revenue and/or assets for the trust.

IZ bylaws utilize a formula to calculate the amount of cash payment per unit of affordable housing otherwise required by the bylaw. The formulas vary by

### 07.0 Fees-in-Lieu-of Affordable Housing Unit Provision:

1. As an alternative to the requirements of Section 05.0 or Section 06.0, an applicant may contribute to an established local housing trust fund to be used for the development of affordable housing in lieu of constructing and offering affordable units within the locus of the proposed development or at an off-site locus.

(a) Calculation of fee-in-lieu-of units. The applicant for development subject to this bylaw may pay fees-in-lieu of the construction of affordable units. For the purposes of this bylaw/ordinance the fee-in-lieu of the construction or provision of affordable units will be determined as a per-unit cost as calculated from regional construction and sales reports. The SPGA will make the final determination of acceptable value.

community. Formulas can be tied to the affordable purchase price of a unit, the difference between the community's median sales price and affordable purchase price, or calculating per unit cost from regional construction and sales reports. The state's model IZ bylaw ([www.mass.gov/envir/smart\\_growth\\_toolkit/bylaws/IZ-Bylaw.pdf](http://www.mass.gov/envir/smart_growth_toolkit/bylaws/IZ-Bylaw.pdf)) recommends using the latter method.

An IZ bylaw can also provide an option for an in-lieu land donation made to the housing trust. The Town of Westport adopted an IZ Bylaw that provides cash payment and land donation as alternatives to unit development, both of which would be designated for the housing trust. Westport's calculation for cash payment is based on the difference between the median single-family home sales price in Westport for the most recent calendar year and the price affordable to a qualified purchaser, based on applicable guidelines of the state Department of Housing and Community Development (DHCD). Another example of a community with IZ bylaw provisions for cash payments to the housing trust is Danvers. The town's Multi-Family Affordability Provision, section 30.2.16 on page 88 of the town's Zoning bylaws, can be found at [www.danvers.gov/office.com/vertical/sites/%7BCFC0250F-19AB-46E7-B599-146187CB1799%7D/uploads/Zoning\\_Bylaws.pdf](http://www.danvers.gov/office.com/vertical/sites/%7BCFC0250F-19AB-46E7-B599-146187CB1799%7D/uploads/Zoning_Bylaws.pdf).

See figure (below) for the Westport IZ Bylaw's land donation provisions ([www.westport-ma.com/by-laws-and-regulations](http://www.westport-ma.com/by-laws-and-regulations)).

**Donations of Land:** An applicant may offer, and the Board of Trustees of the Westport Affordable Housing Trust Fund (Trustees) with the approval of the SPGA, may accept donations of land in fee simple, on or off-site, that the SPGA and Trustees determine are suitable for the construction of an equivalent number of affordable housing units. The SPGA may require the applicant to submit an appraisal or other data relevant to the determination of suitability for an equivalent number of affordable housing units. If the SPGA issues a Special Permit to authorize donations of land in lieu of units and the Board of Trustees of the Westport Affordable Housing Trust Fund votes to accept said donations, the donation shall be made to the Westport Affordable Housing Trust Fund prior to the issuance of any building permits for the development or prior to the sale of any lots, if applicable.

## Special bylaws

In addition to inclusionary zoning bylaws discussed above, other types of special bylaws can also provide public benefits in the form of cash payments to a housing trust for affordable housing purposes. For example, the City of Newburyport adopted a bylaw (known as "Section 6C") that allows issuance of a special permit to develop more than one building on a lot with the provision of a public benefit. One of the qualifying public benefits under the bylaw is the creation of affordable housing, which, in practice, is achieved through cash contributions to the housing trust.

Another example is the City of Somerville's Linkage Ordinance, which requires that large-scale commercial developments mitigate their negative impact on potential supply of affordable housing by contributing a fee to the housing trust.

## Federal HOME Program

HOME Investment Partnerships Program is the largest federal block grant to state and local governments designed exclusively to create affordable housing for low-income households.<sup>7</sup> Some local jurisdictions qualify for individual allocation and communities that do not qualify for an individual allocation may join with one or more neighboring localities in a consortium or may apply for program funds made available through DHCD.

Some communities, including Andover, Belmont, Georgetown, and Ipswich, have designated the board to control the municipality's award of HOME funds. The Ipswich Housing Trust, for example, has awarded HOME funds to contribute to a housing rehabilitation loan program.

## Voluntary developer payments

Municipalities that have received voluntary developer payments for community benefits, including for affordable housing, can direct these funds to the municipal affordable housing trust. The City of Salem and towns of Westford, Andover, and Norfolk are examples of communities that have secured developer payments for the housing trust. For example, developers in the town of Norfolk provide \$10,000 to the housing trust upon the sale of each market rate unit in a mixed-income development that the town approved through a comprehensive permit. Note that given the legal complexities in such negotiated payments, it is important to work closely with the municipal counsel.

## Municipal/tax title property

Municipalities will occasionally dispose of surplus municipal property or properties foreclosed for non-payment of taxes. These properties can sometimes provide revenue from the proceeds of the sale or as potential developable land that can be transferred to the trust to facilitate development of affordable housing.

### Property sale

In Massachusetts, a municipal chief executive officer (e.g., Board of Selectmen, Mayor, or Town Manager) has the authority to direct proceeds from the auction of tax-foreclosed properties to specific purposes including for affordable housing as an allocation to the housing trust. For example, the Town of Provincetown

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<sup>7</sup> (U.S. Department of Housing and Urban Development 2013)

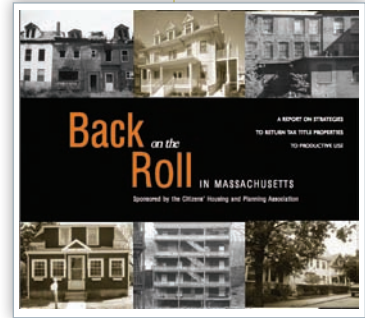
allocated revenue generated from the sale of a tax-foreclosed property to the housing trust as a way to support local affordable housing initiatives. The Trust received roughly \$147,000 in proceeds from the sale after the mortgage, condo fees, and other expenses were paid off.

## Title Transfer

Surplus municipal property and property acquired in tax foreclosure can be sold under M.G.L. c.30B through a Request for Proposals (RFP) for a specified purpose including affordable housing. For tax-foreclosed properties, which are typically auctioned per M.G.L. c. 60, the tax title custodian transfers the custody of the property to another municipal entity, such as the housing trust, to enable disposition through c.30B (check with municipal counsel for local process to transfer custody).

As described in “Back on the Roll in Massachusetts” ([www.chapa.org/sites/default/files/f\\_122952789640BUpdateDec2008\\_6.pdf](http://www.chapa.org/sites/default/files/f_122952789640BUpdateDec2008_6.pdf)) a 2008 publication by the Citizens’ Housing and Planning Association (CHAPA):

“While one of the Treasurer’s objectives is to maximize the dollar amount raised in sales of property in tax possession, a community stabilization perspective dictates a less narrow view of the definition of ‘return’ to the community. The disposition process is critically important to the stabilization of the community that is digging out from tax delinquencies.”



## Private donations

Under the housing trust statute, a housing trust has the authority to accept private donations as trust revenue. To solicit or encourage such private donations, the board could broadcast the trust’s ability to accept donations in press releases, at public events, on the application packet, and on their website.

## Cell tower payments

A municipality can designate revenue from the lease of municipal land for cell towers for a special purpose including for affordable housing and allocate the proceeds to the housing trust. For example, the Town of Harwich uses the proceeds from a lease of town property for a cell tower to fund the housing trust. This arrangement generates approximately \$50,000 per year.

## Resale of affordable units

In older deed riders for affordable units, particularly under the Local Initiative Program (LIP) and Homeownership Opportunity Program (HOP), if a qualified buyer is unable to be secured and the unit is sold at market rate, the housing trust was often designated to receive the difference between the affordable and market rate price.

The City of Newburyport secured revenue for the housing trust in this way under a deed rider for a project created with funding through the New England Fund that predated the state's universal deed rider. The state's universal deed rider has greater assurances for permanence of affordability, and therefore would not provide revenue in this way. Other communities have also generated revenue from the sale of affordable units with older deed riders including Andover and Hudson.

Similarly, a trust can step in to purchase an affordable unit under the municipality's option to purchase when no eligible buyer is found upon resale. If the unit is not marketable or does not meet local housing needs, the trust may have the ability to sell the unit as market rate and retain the sale proceeds, depending on the requirements of the deed rider.

## Lottery/resale agent services

A lottery/resale agent is often required to market new affordable units for the selection of qualified residents. Such services can also be required when existing affordable ownership units are undergoing resale. The trust can perform the services of a lottery/resale agent and create revenue through payments from developers for these services.

For the trust to earn revenue in this way, the board would hire qualified staff to perform these duties on behalf of the board. Sudbury's housing trust is very active in this regard and has generated a steady stream of revenue for its trust through its staff performing lottery/resale agent services.

Lottery/resale agents must be qualified. In accordance with DHCD's Affirmative Fair Housing Marketing Plan Guidelines, the individual with primary responsibility for the resident selection process must have successfully carried out similar Affordable Fair Housing Marketing Plan responsibilities for a minimum of five projects in Massachusetts. Other training and experience may also be acceptable; please check with the subsidizing agency.

## Other municipal funds

The municipality may appropriate other municipal funds to the housing trust, although this is often challenging given other demands on municipal funds.

However, there may be circumstances that enable the municipality to appropriate funds, such as free cash, to the housing trust. For example, the Town of Truro at a special town meeting in January 2014 appropriated \$28,000 from free cash to the housing trust.

# Eligible initiatives

*Familiarize members with trust's opportunities and constraints*

## Purpose

The housing trust statute (M.G.L. c.44 §.55C) establishes the formal purpose of trusts, which is:

*. . . to provide for the creation and preservation of affordable housing in municipalities for the benefit of low and moderate income households.*

It should be noted that the Trust statute does not include “support” of affordable housing as a purpose, which the CPA statute does. Therefore support activities are not eligible under the Trust statute and can only be undertaken if a trust has expanded the powers of the trust in its bylaw to include CPA-eligible activities when using CPA funds.

The statute also includes specific board of trustee powers and responsibilities, which are described further below, but does not include definitions for some key terms within the purpose statement including “creation,” “preservation,” and “low-and moderate-income.” Ultimately, interpretation of activities that are eligible for trust funds is the responsibility of the board, on behalf of the municipality.

It is important to note that the housing trust statute gives a municipality the authority to expand or limit the powers that a housing trust would otherwise have, consistent with Section 55C.<sup>8</sup> **As noted previously, one of the powers that trusts should include in a bylaw or ordinance is the power to enter into a grant agreement with a CPC or municipality to perform CPA eligible activities.** MHP and others are drafting an amendment to the trust statute that would add “support” to the purposes of a trust and add the power to execute grant agreements to the powers of a trust.

<sup>8</sup> The statute states: “. . . a city or town may, by ordinance or by-law, omit or modify any of these powers and may grant the board additional powers consistent with this section.”

# Board powers & responsibilities

The board has a fiduciary obligation to oversee the use and management of the housing trust funds and has broad powers to accomplish this. The board is vested with a range of powers and responsibilities, per the statute and is considered a municipal agency and a public employer.

## Powers

The statute gives a board 16 primary powers and permits the powers to be limited or expanded. The key powers listed in the statute are briefly summarized here<sup>9</sup>:

- Accept and receive real property, personal property, or money, by gift, grant, or contribution including money, grants, and CPA funds;
- Purchase and retain real or personal property, including investments;
- Sell, lease, convey, etc. any personal, mixed, or real property at public auction or by private contract;
- Execute deeds, assignments, transfers, etc., related to any transaction of the trustees for the accomplishment of the purposes of the trust;
- Employ advisors and agents, such as accountants, appraisers, and lawyers;
- Borrow money and to mortgage and pledge trust assets as collateral;
- Manage or improve real property;
- Abandon any property the trustees deem appropriate.

## Expenditure of trust funds

Trust revenue from any source, including municipal appropriations, becomes trust property and the board needs no further authorization from the local legislative body to expend these funds for the purpose of creating and preserving affordable housing unless required through the housing trust bylaws.

## Low/moderate income

The board will need a clear understanding of local and regional housing needs to target trust funds to projects and programs that will best support those needs, including households of various income levels. While the housing trust statute does not provide a definition of “low-and moderate-income,” trusts are advised to use their judgement and consult other definitions commonly used in state and federal programs. A trust should consult with municipal counsel if they chose to use a definition that limits eligibility to a higher percent of median income than is used in state affordable housing programs.

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<sup>9</sup> For a full description of the Board of Trustee’s powers, refer to the statute (M.G.L. c.44 §.55C (c) (1)-(16)).



At the federal level, for purposes of the Office of Community Development and Planning (CDP), which is responsible for overseeing the Community Development Block Grant (CDBG) program, the U.S. Department of Housing and Urban Development (HUD) uses the term “low and moderate income” to mean income at or below 80% of the area median income (AMI), with adjustments for household size. At the state level, Massachusetts programs tend to apply a higher limit for “moderate income.” Thus, the Community Preservation Act allows CPA funds to be used to assist housing for households with incomes at or below 100% AMI, while the Massachusetts Affordable Housing Trust Fund can be used to benefit households with incomes at or below 110% of AMI. Therefore, boards are able to allocate trust funds to create or preserve housing that is affordable for a variety of household income levels.

## Subsidized Housing Inventory (SHI)

### Affordable under M.G.L. c.40B

M.G.L. c. 40B, the Massachusetts “Anti-Snob Zoning Act,” permits developers of housing in which at least 20 percent or 25 percent of the units are set aside for “income eligible households” to obtain a “comprehensive permit,” granting waivers from local zoning and other regulatory requirements. Unless the community achieves a minimum threshold of affordable housing units, a denial of a comprehensive permit by local authorities may be overturned by the state Housing Appeals Committee if the Committee determines that the development would be “consistent with local needs.” DHCD maintains a Subsidized Housing Inventory (SHI) to measure a community’s stock of low- or moderate-income housing for purposes of M.G.L. c. 40B.

The Massachusetts Comprehensive Permit Regulations (760 C.M.R. 56) define an “income eligible household” as a household whose income does not exceed 80 percent of AMI. Units created or preserved through trust funds that are affordable to households with incomes at or below 80 percent AMI could be eligible for inclusion on the SHI. To be counted as affordable housing on the SHI, units must meet the following criteria:

1. Units must be created through an eligible subsidy program, including LIP ([www.mass.gov/hed/community/40b-plan/local-initiative-program-lip.html](http://www.mass.gov/hed/community/40b-plan/local-initiative-program-lip.html)).
2. Units must be affordable to households with incomes at or below 80 percent AMI (as determined and updated annually by HUD) and households are subject to asset limitations.

### State’s Subsidized Housing Inventory

While housing developed under Chapter 40B is eligible for inclusion on the inventory, many other types of housing also qualify to count toward a community’s affordable housing stock, such as units created under the Local Action Unit program (including Inclusionary Zoning units or other local initiatives).

For more information see “40B Planning” under the “Community” link at [www.mass.gov/dhcd](http://www.mass.gov/dhcd).

3. Units must be restricted by a use restriction that runs with the land and is not less than 15 years for rehabilitated housing units and 30 years for newly created units. The state has developed a universal deed rider ([www.mass.gov/hed/docs/dhcd/hd/lip/lipdeedrider.pdf](http://www.mass.gov/hed/docs/dhcd/hd/lip/lipdeedrider.pdf)) that covers the required terms for a use restriction and is recommended for ownership units.
4. Units must be subject to an Affirmative Fair Marketing and Resident Selection Plan that meets DHCD's requirements. Such a Plan will require broad and inclusive regional marketing of the units as well as fair resident selection that is primarily accomplished by accepting applications, verifying income and assets, and holding a lottery to select a resident for an available unit or to establish an ordered waiting list.

Affirmative Marketing Guidelines can be found on DHCD's website at:

[www.mass.gov/hed/docs/dhcd/hd/fair/afhmp.pdf](http://www.mass.gov/hed/docs/dhcd/hd/fair/afhmp.pdf).

The Metropolitan Area Planning Council's (MAPC) **Fair Housing Toolkit** is an online resource for all things related to Fair Housing regulations and practices. The section on Affirmative Fair Marketing in the Toolkit can be found here: [www.mapc.org/AffirmativeMarketingHousingToolkit](http://www.mapc.org/AffirmativeMarketingHousingToolkit).

## Affordable under CPA

When CPA funds are allocated to a housing trust, the board must ensure the use of funds complies with CPA requirements. The CPA statute, M.G.L. c. 44B, allows for use of funds for housing that is affordable to households up to 100 percent AMI. The CPA statute defines "low-income housing" as housing for households with less than 80 percent of HUD AMI and "moderate-income housing" as housing for households with less than 100 percent of HUD AMI. The interpretation of the CPA language regarding the calculation of 80% of AMI is not the same as HUD's published income limits, as shown in the comparison chart at right.

Discussions are underway with Massachusetts' Department of Revenue (DOR) to try to resolve the discrepancy between their 80 percent of median income calculations and HUD's 80 percent of AMI calculations. This difference will not affect the trust in a project using only CPA under a grant agreement. However, if other non-CPA funds that use HUD's calculation are incorporated in the project, the lower of the income limits should be used.

In addition, the CPA statute allows for funding of "low- or moderate-income senior housing" as housing for persons of at least 60 years of age who qualify for low or moderate-income housing.

## CPA compliance

The most common funding source for housing trusts in Massachusetts is CPA funds; therefore it is critical to understand the eligible uses and limitations of CPA

funds since the requirements of the CPA funds follow the funds. The following provides some key eligibility and management issues to keep in mind.

## Eligible CPA activities

Section 5(b)(2) of the CPA statute states the following with regard to eligible affordable housing activities:

The community preservation committee shall make recommendations to the legislative body for the . . . **acquisition, creation, preservation** and **support** of community housing . . . and for **rehabilitation** or **restoration** of . . . community housing that is acquired or created as provided in this section; Provided, however, that funds expended pursuant to this chapter shall not be used for maintenance. [Emphasis added.]

The key housing activities that are eligible for CPA funds are acquisition, creation, preservation, support, rehabilitation, and restoration. However, the purposes of the trust are only to create and preserve affordable housing unless the trust bylaw has expanded the powers of the trust to execute a grant agreement that includes all CPA-eligible activities. The DOR and the Community Preservation Coalition websites, [www.mass.gov/dor](http://www.mass.gov/dor) and [www.communitypreservation.org](http://www.communitypreservation.org) respectively, provide guidance and information on the eligible uses of CPA.

## Mixed-use/mixed-income projects

CPA funds for mixed-income and mixed-use projects must be allocated in proportion to the overall qualifying units. For example, in a mixed-income project, if 50 percent of the units were affordable to households with income less than 100 percent AMI and the remainder were market rate units, then only 50 percent of total land acquisition and/or construction costs would be eligible for CPA funding. Likewise, if a project is mixed-use, for example office or retail use and affordable housing, only costs associated with the affordable housing would be eligible for CPA funds. **It's important to remember that if 100 percent of a project's land acquisition costs are paid with CPA funds, the land may only be used to construct affordable housing units.**

Similar proportionality requirements would apply to the use of HOME or CDBG funds. CDBG funds may only be used to serve households with incomes below 80 percent AMI, while HOME funds must serve households with incomes below 65 percent AMI, with 20 percent of the HOME-funded units serving households with incomes below 50 percent AMI.

## Accounting

Eligibility requirements for CPA funds differ from other sources of housing trust revenue. Therefore, if the trust has multiple sources of revenue, it is critical to account for use of trust funds by revenue source to ensure appropriate use of funds. The board's votes and commitment letters should identify the revenue source(s) to be awarded to each trust-funded initiative.

In addition, to properly track trust fund expenditures by revenue source, the municipality may need to establish a separate accounting mechanism. For example, the Town of Westford designed a relational database using QuickBooks accounting software to track the use of its housing trust funds. The Land Use Management Department staff worked with the Town Treasurer to create the database, which it has also found useful to track other funds including performance bonds and escrow accounts. To track the housing trust funds, department staff is responsible for creating a new record for each trust-funded initiative that identifies the source of funds. The database enables staff to track expenditures by project and to easily create regular reports for the board and other town officials.

## State reporting requirements

Section 13 of the CPA statute requires all Community Preservation Committees to keep detailed records of CPA expenditures, which include housing trust expenditures. The requirements include keeping records of any real property interests acquired, disposed of or improved with CPA funds by the municipality, including the names and addresses of the grantors or grantees and the nature of the consideration. In many cases, CPCs do not have current information from boards regarding use of CPA funds that have been appropriated to housing trusts and need the boards' assistance to properly track expenditures.

By September 15 of each year, the CPC is required to submit annual reports to the state through the CP-3 online reporting application. The board should provide the CPC with complete information on all CPA-funded housing trust expenditures each year prior to this deadline.

## More information & technical assistance

More information about the CPA and eligible activities can be found at the following resources:

- Community Preservation Coalition ([www.communitypreservation.org](http://www.communitypreservation.org))
- Department of Revenue (<http://www.mass.gov/dor/local-officials/municipal-databank-and-local-aid-unit/data-bank-reports/cpa/>)
- The Massachusetts Housing Partnership's "CPA and Affordable Housing"

## Creation & preservation

As described above, the statutory purpose for housing trusts is the creation and preservation of affordable housing. This section explores the terms “creation” and “preservation” as related to the use of housing trust funds in more detail.

### Creation

Activities to create, or produce, affordable housing include new housing construction, re-use of non-residential buildings for affordable housing, and conversion of market rate units to affordable units through affordability restrictions.

### New construction & rehabilitation

Sometimes CPA funds can be combined; for example, boards have awarded affordable housing and historic preservation funds for the same project. Such projects can be for-profit or non-profit private developments, public developments (such as by a housing authority), or public/private partnerships. Housing trust funds can subsidize increased affordability for private 40B developments, housing development on surplus municipal property or tax-foreclosed properties, or other public or private housing developments. Some examples of communities that have allocated trust funds for housing development costs include Belmont, Eastham, Easton, and Groton.

Housing trust funds are also often used to support predevelopment activity to determine feasibility of development and land yield and/or to support development costs. Some communities that have used housing trust funds for predevelopment activities include Barnstable, Boxborough, Hanover, Salem, and Weston.

With regard to a mixed-income or mixed-use project, as discussed in the CPA section, the trust funds would need to be allocated only to the portion of the project that creates affordable units. The board in Groton, for example, invested \$400,000 in a development in the town center with three affordable units and 15 market rate units, an investment of \$133,333 per affordable unit.

Boards can also allocate housing trust funds for rehabilitation to create affordable units, such as the conversion of surplus libraries, fire stations, schools, or other buildings. Sometimes these projects can also include historic preservation components and utilize historic preservation CPA funds.

#### Pre-development activities

Preliminary project funding is often important for pre-development activities to determine project feasibility and site yield. These types of activities can include appraisals, environmental studies, feasibility analysis, legal costs, brownfield assessments, permit fees, site planning, and support costs related to issuing RFPs.

## Conversion of market rate housing & assistance programs

Boards have used trust funds to convert market rate units to affordable units in a variety of ways including through acquisition of existing single-family houses and condominiums as well as housing assistance programs.

**Remember that this type of work is subject to Ch. 30B. Check with your legal counsel for more information.**

**Purchase/rehab initiatives:** Some boards have purchased housing units, rehabilitated the properties if necessary to bring to code or improve marketability, and sold them or rented them subject to affordability restrictions. The affordability restrictions will typically include some combination of restrictions to the sale/rent price and purchaser/tenant income.

The Southborough Board of Trustees undertook this type of project by purchasing a modest single-family house with housing trust funds, working with a regional technical high school to rehabilitate the house, and selling it to a low/moderate-income household subject to an affordability restriction as an ownership unit.

The Eastham Board of Trustees purchased six single-family houses for use as affordable rental properties for households with incomes up to 80 percent AMI (some units are restricted to 60 percent AMI). The board retains ownership of the properties and contracts with a non-profit organization (Community Development Partnership) to manage the rental properties and perform resident selection including creation and execution of an Affirmative Fair Housing Marketing Plan, holding lotteries, and verifying income. The organization is paid for services with 50 percent of the net rent on a monthly basis.

The Wenham Board of Trustees was also successful using housing trust funds to purchase a single-family home that, with some rehabilitation, the board sold to a low/moderate-income household with a permanent affordability restriction. This type of initiative can convert an existing market rate home to one that is included on the SHI as an affordable Local Action Unit under the LIP program.

**Housing assistance programs:** Many boards have allocated housing trust funds to create homebuyer programs that convert market rate units to affordable units by enabling low- to moderate-income households to purchase homes subject to affordability restrictions that are recorded through a deed or mortgage. The restrictions limit the resale price and the income of future purchasers. The most typical type of homebuyer program provides a subsidy to first-time homebuyers with low/moderate-incomes to purchase a home within a specified price range.

Many communities using CPA, housing trust, or other local funds, rather than state or federal subsidies, have created homebuyer programs through the LIP program. DHCD can provide sample documents including program guidelines,

applications, and marketing plans. Such a program must be marketed per an Affirmative Fair Housing Marketing Plan that is approved by DHCD. All applicants must be verified for income and asset levels and then a lottery is typically held to create a ready-buyer list. Households on the ready-buyers list can be authorized to search for a home within the terms of the program guidelines.

Some boards have allocated trust funds for down payment assistance to income-eligible homebuyers or funded rental subsidy programs to assist low/moderate-income rental households.

Don't forget: In order to comply with the Anti-Aid Amendment and to insure that trust activities are "creating or preserving" affordable housing, trust-funded projects or programs should include an affordability restriction recorded through a deed restriction, mortgage or contract.

## Preservation

Preservation of affordable units refers to initiatives to perpetuate existing affordable units in light of affordability restrictions that would otherwise expire, preventing the loss of affordable units. Preservation typically involves refinancing or purchasing properties whose restrictions will expire in the near future. Both rental units and homeownership units can have expiring affordability restrictions.

Another activity often described as a preservation program is to provide financial assistance to low/moderate-income homeowners to enable them to physically preserve the condition of their units. Several boards have funded housing rehabilitation programs geared toward income-eligible households: Easton, Sudbury and Ipswich have offered such a program. **Please note that CPA funds cannot be used for rehabilitation unless the property was acquired using CPA funds and programs must include restrictions to assure compliance with the state's Anti-Aid amendment (see Section II-Legal considerations).** Boards contemplating this kind of program should consult with counsel regarding the eligibility of the program under the trust's bylaw.

**Remember that this type of work is subject to Ch. 30B. Check with your legal counsel for more information.**

## Rental units—preservation of affordability

Properties that receive public funding, such as long-term project-based Section 8 assistance, federal or state Low-Income Housing Tax Credits, Section 202 funding (for elderly housing), State Housing Assistance for Rental Production (SHARP), and the like, are required to commit to income and rent restrictions for an extended period. In most cases, however, those restrictions are time-limited, and there is a high volume of properties in the Commonwealth whose existing use restrictions have expired or will expire in coming years.

There are often sizable costs to preserve rental projects, particularly in the case of large developments with substantial deferred maintenance or other capital needs, and the state has adopted a variety of initiatives, implemented by DHCD, to help preserve these valuable resources. Because of the costs involved, housing trust funds alone are not likely to be able to preserve these types of properties absent a commitment of significant additional state and federal resources. However, communities facing the loss of affordable rental units have used housing trust funds to bridge the gap between the cost of purchasing, refinancing and/or rehabilitating expiring use rental properties and the aggregate amount of other available sources. Trusts can identify properties in their communities using the Community Economic Development Assistance Corporation's (CEDAC) website ([www.cedac.org/preservation.html](http://www.cedac.org/preservation.html)).

### **Homeownership unit preservation**

Housing trust funds can help preserve long-term affordability of homeownership units, which, like rental housing, can be subject to expiring restrictions. Even properties with existing restrictions may be sold to market rate buyers if the restrictions do not survive foreclosure, or if an eligible buyer is not located within the specified schedule. Under the state's universal deed rider (see sidebar), long-term affordability restrictions would remain in place even after sale to a purchaser who is not income-eligible, albeit with the deed rider still in place restricting resale by that purchaser. Under older forms of restriction, the first sale to a non-income-eligible buyer may terminate the restriction.

**Acquisition & rehabilitation:** In situations where an eligible buyer is unable to be located within the specified schedule, the board can step in to purchase the unit at risk. This strategy allows for additional time to ultimately resell to an eligible buyer and the opportunity to make improvements to bring the unit up to code or to increase its marketability. **Again, please note that CPA funds cannot be used to rehabilitate units.**

The housing trust funds can be used to fund acquisition and rehabilitation costs in order to preserve the unit. In addition, the board may determine that the resale price will need to be further reduced, below the maximum permitted under the deed rider, and may elect to subsidize that lower price to enhance marketability to a low-income buyer.

**Monitoring & reserves:** A key aspect of preservation of affordable homebuyer units is monitoring. If the community is actively monitoring the affordable units and maintaining a regularly updated waiting list of eligible buyers, then it will be poised to effectively foster resales. The board can engage staff or consultant services to perform this monitoring function.



In addition, the board can set aside (or reserve) housing trust funds in anticipation of stepping in when and if units are at risk during resale due to lack of eligible buyers or rehabilitation needs.

For example, in accordance with its Action Plan, the Medway Affordable Housing Trust budgeted reserve funds for acquisition or to buy-down the price of up to two units over five years to preserve the affordable housing restrictions. The reserve can act as a revolving fund in that all or some of the revenue can be returned to the reserve upon resale of the units, in the case of an acquisition. In other words, proceeds from the sale of such units are allocated to the trust and may be used for further acquisitions.

## Administrative support

The board can allocate trust funds to hire staff and contract with consultants to perform trust duties. Multiple boards have allocated trust funds to support staff time in this way, including Easton, Holliston, Ipswich, Medway, Somerville, Stow, Sudbury, Westford, and Westport.

## Professional planning support

In addition, some boards have hired planning consultants to complete housing production plans, housing needs studies, or housing trust action plans. Housing production plans and housing needs studies provide a thorough analysis of local and regional housing needs and can help boards focus and prioritize housing trust initiatives to address the most pressing housing needs. Action plans can help the board determine funding priorities and a supporting budget.

Communities that have allocated housing trust funds to prepare housing plans include Belmont, Boxborough, Dennis, Marion, Newburyport, Provincetown, Stow, and Truro.

### Finding an eligible buyer under the state's Universal Deed Rider

The state's Universal Deed Rider requires that an eligible purchaser be located within 90 days of notification to the monitoring agent and municipality of the owner's plans to sell plus 60 additional days if the original eligible purchaser cannot complete the purchase.

In lieu of sale to an eligible purchaser, the monitoring agent or municipality (including the Municipal Housing Trust) has the right to purchase the property at the affordable price.

**Best Practices Tip: Remember to contact your regional planning agency (RPA) to see if they have done any housing needs analysis for your area. A list of Mass. RPAs can be found at: <http://www.apa-ma.org/resources/massachusetts-regional-planning-agencies>.**

# Undertaking initiatives

*Boards can solicit proposals or initiate activities*

## Soliciting proposals

Implementing a deliberate and public process to solicit proposals can generate project proposals to help meet the community's housing needs. The board could be more or less specific in the type of proposals it solicits. For example, if there is a great need for affordable rental housing in the community, the board could specifically solicit proposals to create affordable rental housing. Alternatively, the board could simply ask for proposals for the broad purpose to create affordable housing. The following example of Westford's process illustrates the level of detail that may be required.

### Westford's application

Westford's board, after many years of accepting proposals with no formal submission requirements, developed an application form and procedure. Prior to adopting the application, the board found that it often did not receive all the information needed to properly understand a project proposal and it could take multiple requests to receive the proper information, which ate up staff and board time. The board was seeking a more efficient way to review funding requests.

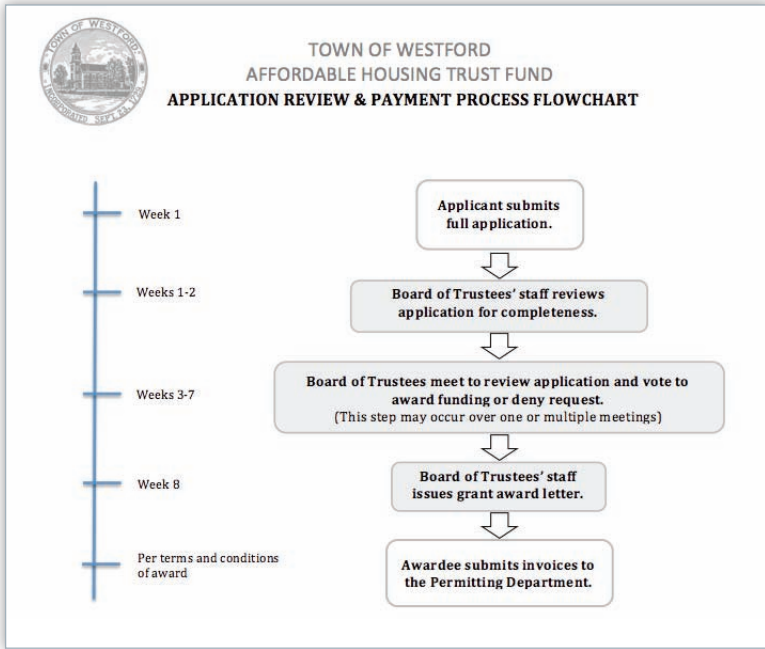
The Westford application allows for a voluntary pre-application in the form of a one-page summary of the project. This voluntary step allows the board to give the applicant feedback on eligibility and the funding priorities before completing the lengthier full application. The full application requires the following information:

- Basic information about the sponsor, project, and budget;
- Project summary narrative;
- Sources and uses of funds;
- Target population;
- Type of housing (ownership, rental, and building type);

- Unit composition (# of bedrooms and income limits);
- Attachments including project budgets, team qualifications, community need, community support, evidence of site control and/or property value, site plans, permitting requirements, proposed timeline, and Fair Housing documentation.

### When to solicit proposals

Boards can solicit projects on a rolling basis throughout the year or hold one or more funding rounds during the year. Some boards may prefer to hold funding rounds with scheduled deadlines for application submission to enable the board to compare project proposals. Other boards may prefer the flexibility of accepting applications on a rolling basis, which can allow streamlined approval process. Boards that implement funding rounds can also accept time-sensitive projects off-cycle on an as-needed basis. Boards should be aware of the timing of state funding resources. See below for an example of the Town of Westford’s application review and payment process ([www.mhp.net/uploads/resources/westford\\_trust\\_application\\_flowchart.pdf](http://www.mhp.net/uploads/resources/westford_trust_application_flowchart.pdf)).



## Evaluating proposals

### Funding priorities

It is helpful to applicants if the board clearly states its funding priorities. Board priorities should be based upon established community housing needs and goals as identified through planning documents such as the local housing plan, master plan, and regional or statewide plans related to development and preservation.

### Selection criteria

It is also helpful to establish selection criteria to assist the board in its review of proposals and to provide transparency to applicants regarding how projects will be weighted and selected for funding. The selection criteria can help to structure and focus the board's deliberations when reviewing applications and to allow objective comparison of multiple proposals. See below for details on Westford's selection criteria ([www.mhp.net/uploads/resources/westford\\_trust\\_application\\_selection\\_criteria.pdf](http://www.mhp.net/uploads/resources/westford_trust_application_selection_criteria.pdf)).



#### TOWN OF WESTFORD AFFORDABLE HOUSING TRUST FUND SELECTION CRITERIA

The Board of Trustees will use the following selection criteria to evaluate applications and as a structure to focus its deliberations.

Selection Criteria	
1	The application is thorough and complete and includes all applicable attachments.
2	The project/program proposal is consistent with the Board of Trustees' Funding Priorities
3	The project meets demonstrated community needs.
4	The applicant has demonstrated project support by other Town boards/commission, pertinent organization, and Westford citizens, as appropriate.
5	The funding request is reasonable as a portion of the overall project costs and on a per-unit basis.
6	The applicant has demonstrated substantial leveraging of the requested Trust Funds with other public and/or private funding sources.
7	The development pro forma demonstrates that the project is feasible (not applicable if Trust Funds are requested for predevelopment to determine feasibility).
8	The term of affordability is as long as possible, with higher score given to perpetual affordability terms.
9	The applicant is qualified to undertake project and has demonstrated success in similar capacity with comparable projects.
10	The applicant has demonstrated appropriate site control.
11	For acquisition projects, the applicant has demonstrated that acquisition price does not exceed property value.
12	The applicant has demonstrated appropriate affirmative fair marketing and resident selection procedures planned and has handled any fair housing complaints properly.

## Initiating projects & programs

The other method for boards to undertake initiatives is to actively initiate projects or programs. The board would originate project or program ideas and take steps through direct actions as well as allocation of housing trust funds to help the ideas take shape. Types of trust initiatives could include acquisition/preservation of units, establishing a housing assistance program, or development projects, in certain cases. Specific housing trust funded activities can include studying the feasibility of a site or program idea, performing predevelopment activities,

acquiring property, and hiring staff or consultants to launch and implement programs.

## Generating ideas

It can be helpful to first generate ideas and prioritize possible initiatives. The board can draw on existing plans to generate ideas for initiatives including a current housing plan, master plan, community preservation plan, and/or regional housing or master plans. The board can prioritize ideas based on which would best serve local needs, feasibility, professional capacity required, and opportunity. The board may find that holding community meetings or workshops could also assist with prioritization of ideas for housing initiatives.

## Limitations of board's role & responsibilities

The board's role to initiate and foster projects and programs has limitations. For the most part, boards will be most effective by initially sparking an initiative. Carrying through an initiative to completion will almost always require handing off responsibilities to another entity (municipal staff, non-profit, developer, etc.). The role and responsibilities of the board will vary depending on the nature of the initiative, as described further below for development projects, programs, and monitoring/resales.

### Development projects

To initiate a development project, boards can undertake a variety of initiatives. For example, housing trust funds can be used to identify buildable property, determine feasibility, and acquire property for new development.

**Land acquisition:** Boards can acquire property by outright purchase, at auction or by transference of tax-foreclosed properties, transference of other surplus municipal property, or donation. The trust must comply with the provisions of MGL Ch. 30B when acquiring property with the exception of property being acquired with only CPA funds; in that instance the 30B exemption in the CPA statute applies (see Section II-“Real property disposition, lease, or acquisition.” The board can offer trust property to a qualified developer for a price below fair market value through a RFP process in compliance with M.G.L. c.30B if the primary purpose of the disposition is for affordable housing and the use of the property is restricted. By subsidizing the cost of land acquisition in this way, the board can give a substantial boost to development's feasibility. Boards that have acquired property and used their disposition powers to foster affordable housing development include Bourne, Boxborough, Chatham, Dennis, Scituate, and Sudbury.

**Predevelopment activities:** Boards can help minimize a developer's risks by gathering as much information about the site and community before issuing a request for proposals from developers. The board must procure third party services for pre-development due diligence activities, in accordance with M.G.L. Ch. 30B. This may include activities that help clarify site feasibility such as; soil analysis, site survey, environmental studies (usually a Phase 1 Environmental Site Assessment), wetlands delineation, title work, and housing needs assessment for the community and area. For example, the Barnstable Housing Trust awarded the Barnstable Housing Authority pre-development money for site assessment activities for an authority owned site, which led to the development of 12 affordable rental units.

Boards should be aware, however, that if they expend money on architectural work during the pre-development process, they are subject to the state's designer selection law, M.G.L. Ch. 7. With both architectural and site planning work, boards run the risk that those plans will not prove economically feasible or marketable, and may trigger conformance with public construction laws. In some instances, communities have expended considerable sums on planning costs, only to have difficulty in finding a developer willing to carry out their development plan.

**Best Practice Tip: MHP encourages communities to articulate broader design guidelines, versus being prescriptive and paying for actual architectural plans.**

### **Private affordable housing developments**

Boards could also allocate housing trust funds to buy greater affordability or additional affordable units in proposed private development projects. In other words, the board could provide funds to increase the share of affordable units in a mixed-income development beyond the minimum 20 percent or 25 percent required through LIP. Or, the housing trust funds could deepen affordability by reducing the housing costs for one or multiple units to be affordable to households with lower income levels than originally proposed.

### **Affordable housing programs**

The board can perform a critical role getting programs off the ground. Initially, boards will often research similar programs in other communities to identify successful models and best practices. Boards, either through the trustees or staff/consultants, can also create the program structure, documents, and Affirmative Fair Housing Marketing Plan. In addition, boards can allocate housing trust funds to market programs, perform income verification, select qualified applicants, and for other program implementation needs. If a program is not to be implemented in-house (through municipal/housing trust staff), the board can issue an RFP to select a consultant or organization to implement the program.

### **Monitoring & resales**

Housing trust funds can also be allocated to monitor existing affordable homeownership units and to assist with resale of the units by finding eligible buyers and/or by stepping in to acquire units in jeopardy due to lack of eligible buyers. The board of trustees, through its qualified staff or consultant, can perform this function.

# Funding projects

*Setting up procedures for awarding funds, tracking payments and expenditures*

## Board vote

The board vote to award housing trust funds should include the amount of funding awarded, a description of the project, any conditions of funding including income limits, and the funding source (e.g. CPA, HOME, CDBG, Inclusionary Zoning, etc.).

As described in Section IV, the board will need to track sources of funds because each funding source has different eligibility and annual reporting requirements. Board votes should be in written form in the board minutes and should describe all critical aspects of the vote.

## Award letter

After a board votes to approve a housing trust expenditure, it is best practice to notify the awardee in writing about the terms of the approval, to clarify what the permitted use of the funds are, what restrictions or conditions may accompany them and to describe how the funds will be distributed. This can be done through an award letter that includes the structure of the funds (i.e., loan or grant) and other terms, as described below.

Sample award letter from the Town of Westport: [www.mhp.net/uploads/resources/westport\\_sample\\_award\\_letter.pdf](http://www.mhp.net/uploads/resources/westport_sample_award_letter.pdf).

An award letter is appropriate and advised for both private award recipients, such as a developer or organization, as well as municipal award recipients, such as the planning department or other municipal entity. The more clarity the board can provide with respect to its expectations for the use of funds, the less likely it will be that misunderstandings arise. It is much more difficult to undo an improper use of the funds than it is to ensure clear understandings from the beginning.

### A note on the importance of tracking requirements of revenue sources

It is important to note that various state and federal programs impose substantive requirements, which may include the obligation to pay prevailing wage rates for construction or to seek environmental clearance from the federal or state government before funding. A board utilizing state or federal sources to fund its activities should be sure to develop familiarity with the specific requirements accompanying the use of such source(s).



## The trust fund award must be given through a contract with affordability restrictions

Housing trust funds can be awarded as a repayable loan, a deferred forgivable loan, or as payment for a contract with affordability restrictions (i.e. a contract with a landlord when providing rental assistance). Outright grants to individuals are not allowable as per the Anti-Aid amendment. Trust funds can be loaned for development projects for short-term financing for acquisition or development soft costs or longer term gap financing, which can help leverage state, federal, and private money. Trust funds can also be used for programs that provide loans to individuals. These programs can be geared to help with down payment or closing costs for ownership or rental assistance. In homeowner loans, a variety of structures can be used, including forgiveness over time tied to the length of time the original borrower remains in the home, or a “shared equity” arrangement in which the trust will share in the “upside” from rising property values.

Loans can also be structured to require repayment only to the extent of available cash flow and proceeds on sale or refinancing, such as was done for a development project in Groton ([www.mhp.net/uploads/resources/groton\\_preferred\\_membership\\_unit\\_investor\\_agreement.pdf](http://www.mhp.net/uploads/resources/groton_preferred_membership_unit_investor_agreement.pdf)).

The Westford Board of Trustees worked with the Massachusetts Housing Partnership for approval to issue loans as part of MassDocs (<https://www.massdocs.com>). MassDocs helps to make affordable housing development more efficient by providing a common set of loan documents for projects using a variety of state and local funds and can be a good source for boards that are interested in issuing loans. The City of Somerville uses MassDocs for housing trust loans for development projects.



## Terms of funding award

The award letter should clearly describe the terms of the funding award and may include the following considerations:

1. Any conditions of funding such as commitments of other funds or zoning relief.
2. Expected project/program start and completion dates.
3. The formula for phased payments (or other funding structure as explained above).
4. The level and type of affordability including number of affordable units, target populations, and the affordability levels (e.g., at or below 60 percent AMI or 80 percent AMI).
5. If the units are expected to count on the Subsidized Housing Inventory (SHI), under what program and who should be responsible for the state’s approval process.

6. The term of any deed restrictions (e.g., 30 year or perpetual).
7. The procedure for requesting payments (described more below).
8. Any requirements for submitting project status reports to the board.
9. Repayment requirements if project does not proceed as proposed.

## Issuing payments

Payments from the housing trust fund are issued through the municipality's customary procedures for issuing payments from other municipal accounts. Typically, invoices may be submitted after the award letter is issued and signed by the awardee. The board should work with municipal officials to determine to which municipal office to direct awardees to submit payment requests.

### **Best Practices Tip: Require trustee approval of payments.**

It is a good practice to require that a member of the board, such as the treasurer or chair, or a member of the board's staff, sign-off on invoices prior to processing payments. This practice provides a reasonable layer of oversight to ensure payments are for approved expenditures and to monitor the use of funds. The board, which has a greater familiarity with the project, will be more likely than the municipal accountant or treasurer to identify any issues.

## Tracking expenditures & conditions

The board will benefit from detailed tracking of all housing trust expenditures to ensure transparency and provide for easy reporting. The board, through its treasurer, should work closely with the municipal accountant (or comptroller) to issue regular revenue and expenditure reports that clearly account for sources of revenue, particularly the use of CPA revenue. For housing trusts with CPA allocations, the board of trustees will need to issue a report to the Community Preservation Committee on an annual basis (prior to September 15) documenting all expenditures of CPA funds, as described in more detail in Section III.

The board should also create a tracking system for conditions of approved grants, including time constraints, triggers for repayments, and other funding or permitting approvals needed to leverage trust funding. The tracking system should note the source of funding and any corresponding conditions for use. The board should designate someone to be responsible for the tracking and reporting of the trust's activities. Tracking reports should be part of the regular board package and changes should be reviewed regularly.

**The more time and effort spent to create an operating structure for the trust that reflects relative laws and regulations, the more productive and successful the trust will be in the long run. Consistent training and information sharing with the board is imperative to long-term success. And it cannot be stressed enough that the most effective housing trusts are operated with transparency, strong communication, clear and strategic priorities, and professional capacity.**

# Profiles

*The following are examples from communities around the state that reflect the range of activities possible for trusts.*

## Ipswich

### General facts

2010 population: 13,175	Total revenue since inception: \$647,094
Median home sales price (2014): \$370,000	Total expenditures since inception: \$395,191
Year established housing trust: 2004	Staff: Housing Coordinator (part-time)
# Members on Board of Trustees: 5	Revenue to pay for staff: Housing trust fund
Composition of members: (1) Select Board member, (1) Planning Director, (2) Housing partnership, (1) Resident	Trust revenue source(s): Inclusionary Zoning payments

### Highlighted initiative: Home Rehab Loan Program

Initiative type: Housing Rehabilitation Program	Total program cost (Year 1): \$104,000
Housing trust allocation (Year 1): \$20,000	Loan amount: \$10,000 – \$30,000 per property

### Project description

The Town of Ipswich initiated the Home Rehab Loan Program in 2012 to provide assistance to low-income homeowners. Qualifying uses include improvements to bring buildings in compliance with health, safety and building codes, and emergencies such as leaking roofs or failing heating systems. Program can also fund window replacements, insulation, plumbing and electrical upgrades, and accessibility improvements.

Program received strong interest in first year, with six households assisted. In addition to \$20,000 from the housing trust, the town utilized its \$64,000 allocation of HOME funds and \$20,000 from Coburn Charitable Society, a local charity that supports low-income seniors. Program structured as a loan. Terms vary according to funding source.



## General fact

2010 Population: 10,646

Median home sales price (2014): \$381,000

Year established housing trust: 2006

# Members on Board of Trustees: 9

Composition of members:

(2) Select Board members

(1) Mortgage broker

(1) Banker

(1) Real estate attorney

Total revenue since inception: \$412,000

Total expenditures since inception: \$412,000

Level of staff support: Housing Coordinator (part-time)

Source of revenue for staff support: CPA funds

Trust revenue source(s): CPA funds

CPA allocation to trust: Project-based<sup>10</sup>

## Highlighted initiative: Town Center Development project

Initiative type: Development including rehabilitation

Housing trust allocation: \$400,000

Trust allocation per unit: \$133,333

Total # of units: 18 (3 affordable)

## Project description

The project is being developed by Mount Laurel Development, LLC to create a total of 18 units of homeownership housing, three of which will be affordable to households with incomes at or below 80 percent AMI. The site is within the Town Center Overlay District per M.G.L. c.43D Expedited Local Permitting. The overlay district requires any development over six units to provide at least 15 percent of the units as affordable and permits 10 units per acre.

The project will create three affordable units through the state's Local Action Units program. The project includes rehabilitation of the historic Calvin Boynton House, which is within the town's local historic district, to accommodate a mixture of commercial and residential units. There will be three residential condos on the second floor of the Boynton House, one of which will be affordable and 15 units of newly constructed detached and attached single-family units. Early involvement by the Town of Groton Affordable Housing Trust helped to launch the development and ensure that there would be a variety of affordable unit sizes. The trust contributed \$400,000 to the project and executed an Investor Agreement that entitles the trust to receive 33.3 percent of any project profit.



<sup>10</sup> Although the CPA allocation to the Trust was based on the Town Center project, the funds were not restricted to this project and could be used for alternate projects if needed.

# Newburyport

## General facts

2010 population: 17,416

Median home sales price (2014): \$412,000

Year established housing trust: 2009

# Members on Board of Trustees: 5

Composition of members:

- (1) Mayor
- (1) Housing professional
- (2) Professional planner
- (1) Development professional
- (1) Banker

Total revenue since inception: \$751,428

Total expenditures since inception: \$272,700

Level of staff support: City Planner (part-time)

Source of revenue for staff support: Housing Trust funds support up to 15 hours per week

Trust revenue source(s): CPA funds, resale of affordable unit with older deed rider and “Section 6C Bylaw” payments<sup>11</sup>

CPA allocation to trust: 10 to 15 percent of CPA revenue based on annual housing trust budget request

## Highlighted initiative: YWCA Development & Rehabilitation project

Initiative type: Development and rehabilitation

Total Project Cost: \$2.2M

Housing trust allocation: \$65,000

## Project description

The YWCA Greater Newburyport development project is located at 11 Market Street and consists of 10 affordable rental units in a rehabilitated Second Empire style home, built in 1870, and a rear addition with five affordable rental units. Six of the units are studio apartments, two are one-bedroom apartments and two are two-bedroom apartments. The YWCA in Newburyport was organized in 1883 and has operated a women’s residence since 1890 when the industrial revolution necessitated supportive housing for women.

The rehabilitation and development received 11 sources of funding including CPA funds, HOME funds and housing trust funds. The YWCA, a private non-profit organization, partnered with a private developer to create capacity to secure permits, design and funding.

The project was initiated in 2006 and received major funding commitments through the DHCD’s housing programs in May 2012. Construction began in January 2013 and was completed by September 2013.

Of the 10 units developed, six of the units are designated for households at or below 30 percent of the AMI and four are designated for households at or below 50 percent AMI. Two units are available to disabled households and eight units are for homeless households.



<sup>11</sup> Section 6C Bylaw requires a public benefit, such as a donation of funds for affordable housing, when developing more than one residential structure on a single lot.

# Sudbury

## General facts

2010 population: 17,659

Median home sales price (2014): \$675,000

Year established housing trust: 2006

# Members on Board of Trustees: 9

Composition of members<sup>12</sup>:

- (1) Select Board member
- (1) Planning Board member
- (1) Housing Authority Commissioner
- (2) Community Preservation Committee members
- (1) Community Housing Committee member

Total revenue since inception: \$2,870,000

Total expenditures since inception: \$2,540,000

Level of staff support: Housing Coordinator (part-time), Housing consultants (part-time)

Sources of revenue for staff support: Housing trust and CPA funds

Trust revenue source(s): Housing trust and CPA funds

CPA allocation: Generally 10 percent of CPA revenue, appropriated annually

## Highlighted initiative: Housing Coordinator

Initiative type: External fees for lottery, monitoring and resale services

Housing trust allocation: staff time

## Project description

The trust's housing coordinator performs lottery and resale agent services including marketing units and selecting/qualifying residents for affordable ownership and rental units. The trust has helped over 700 applicants lease or buy over 230 units of deed-restricted housing in Sudbury and nearby communities. This activity generates external revenue for the trust used to fund the trust's Small Grant Program and Housing Coordinator position.

The trust's collaboration with neighboring communities led to establishment of the Regional Housing Services Office (RHSO).<sup>13</sup> The RHSO was created to pool existing affordable housing resources and staff expertise towards housing activities, including monitoring affordable units, maintaining municipal inventory records, developing/administrating local programs, and providing general assistance for affordable housing.

The RHSO functions under an Inter-Municipal Agreement and is funded by base fees from each community, paid to the Lead Community. Base fees are assessed according to the level of support requested for each town, with the option of procuring additional services during the year.

<sup>12</sup> Note: the only required member is a selectperson. Other members are at-large appointees.

<sup>13</sup> The participating communities in the Regional Housing Services Office are Acton, Bedford, Concord, Lexington, Sudbury and Weston.

**General facts**

2010 population: 2,003	Total revenue since inception: \$222,366
Median home sales prices (2014): Single-family: \$630,000 Condominiums: \$265,000 <sup>14</sup>	Total expenditures since inception: \$187,629
Year established housing trust: 2002 <sup>15</sup>	Level of staff support: town staff (no specific staff is designated to the housing trust)
# Members on Board of Trustees: 5	Source of revenue for staff support: town funds
Composition of members: (5) Board of Selectmen	Trust revenue source(s): CPA funds, proceeds from sale of town property and town appropriation (free cash)

**Highlighted initiative: Truro Housing Production Plan**

Initiative type: Housing Production Plan	Housing trust allocation: \$3,000
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**Project description**

The trust commissioned a Housing Production Plan (HPP), which was completed in 2012. The HPP boosts the town’s capacity to promote affordable housing by prioritizing housing initiatives based on extensive documentation of local needs, analysis of local impediments to housing production, community input and identification of existing resources.

The HPP builds on the findings and recommendations of Truro’s Comprehensive Plan by undertaking a more comprehensive analysis of housing needs and strategies. During the planning process, the town convened a forum on affordable housing that included town elected officials, administrative staff, the Truro Housing Authority, the Cape Cod Commission, Highland Affordable Housing, Inc. and many local citizens. The forum was important to refining the plan, stimulating discussion about other possible affordable housing options and generating greater community ownership of the HPP.

The Truro HPP recommends a variety of strategies to reach local affordable housing production goals including adopting an inclusionary zoning bylaw, an amnesty program for accessory apartments, infill bylaw for affordable housing and mixed-use development bylaw. In addition the HPP recommends other strategies to promote affordable housing including consideration of tax incentives, an educational campaign, offering town-owned parcels for development and to adopt the housing trust under MGL 44 s.55C, the state’s housing trust statute to allow faster response to affordable housing opportunities.

<sup>14</sup> Condominiums are not permitted to be occupied year-round resulting in a lower market-price.

<sup>15</sup> Note: The Truro Affordable Housing Trust was established by Special Legislation, prior to enactment of MGL c.44 s.55C.



## General facts

2010 population: 21,951

Median home sales price (2014): \$383,000

Year established housing trust: 2005

# Members on Board of Trustees: 5

Composition of members:

(1) Select Board member

(1) Professional financial planner

(1) Affordable housing funding consultant

(1) Real estate professional

(1) Affordable housing advocate

Total revenue since inception: \$1,726,923

Total expenditures since inception: \$916,733

**Level of staff support:** part-time assistance from Housing Authority Executive Director

**Source of revenue for staff support:** Housing Trust funds through contract with Westford Housing Authority for 25 to 30 percent of Executive Director's time

**Trust revenue source(s):** CPA funds and private donations

**CPA allocation:** Minimum 10 percent housing reserve appropriated to Trust based on annual application to CPC

## Highlighted initiative: Keyes Corner Preservation

Initiative type: Preserve unit affordability

Net allocation: \$27,194

### Project description

Affordable Housing Trust funds have preserved two affordable units at risk of affordability restrictions ending.

In 2009, a unit in the Keyes Corner development was facing foreclosure. The Board of Trustees, with staff assistance from the Housing Authority Executive Director, negotiated a time extension in order to assemble the paper work necessary to acquire the property prior to foreclosure. The two-bedroom family unit required multiple renovations and the trust paid a \$1,300 lien on the property along with carrying costs. The purchase price was roughly \$147,000, which was added to the renovation and other costs. The trust made a gross investment of \$163,094. After resale to a qualified borrower, the trust's net subsidy to preserve this unit was about \$16,000.

In 2012, a second unit was at risk of being lost after a qualified buyer was unable to be found after 90 days. The seller would have been able to sell the unit at market rate had the board of trustees not stepped in to purchase the unit. The board of trustees allocated approximately \$140,000 of trust funds to acquire, renovate and hold the property while working with DHCD to secure the services of a qualified resale agent to market the property and perform resident selection. The net subsidy to preserve this unit was roughly \$11,000.

The board of trustees currently budgets an annual reserve of funds to ensure its ability to preserve affordable units. This budget request is included in the board of trustees' annual application to the CPC.

# Yarmouth

## General facts

2010 population: 23,793

Median home sales price (2014): \$245,000

Year established housing trust: 2007

# Members on Board of Trustees: 5

Composition of members:

- (1) Town Administrator
- (1) Select Board member
- (1) Community Preservation Committee member
- (1) Community housing representative
- (1) At-large member

Total revenue since inception: \$7 million

Total expenditures since inception:  
\$2.9 million

Level of staff support: Administrative Assistant

Source of revenue for staff support:  
Community Development Block Grant funds,  
Town General and Affordable Housing Trust  
funds

Trust revenue source(s): CPA funds

CPA allocation: 10 percent housing funds plus  
Buy Down Program funds

## Highlighted initiative: Yarmouth Buy-Down Program

Initiative type: Homebuyer program

Housing trust allocation: \$500,000 (FY2007)

## Project description

The Yarmouth Buy Down Program was first funded in 2007, the first year of the trust, with \$500,000 of CPA funds. The program creates affordable units through the acquisition of market rate units and resale to first-time homebuyers with household income at or below 80 percent AMI. In 2013, the affordable price for a two-bedroom home offered through the program was \$139,000 and the price for a three-bedroom home was \$149,000.

Initially, the board of trustees purchased properties to offer through the program, rehabilitated them as necessary, and performed all marketing and resident selection. However, in 2011, the board contracted a non-profit organization to administer the program. Through a RFP process, the board contracted Our First Home, Inc., to administer the program, which includes property acquisition, rehabilitation and resale. The program utilizes the regional ready-buyer wait list maintained by Housing Assistance Corporation of Cape Cod.

Between 2007 and 2013, the Buy Down Program has created 13 affordable units and, as of August 2013, has funds available for an additional 14 units. The subsidy provided from trust funds is typically between \$85,000 and \$100,000 per unit. Our First Home also has resources that it allocates to the program. The program ensures long-term affordability of the units through the state's universal deed rider and creates units approved under the state's Local Action Unit program.



# MAHT Fund Law (MGL c.44 §.55C)

[www.malegislature.gov/Laws/GeneralLaws/PartI/TitleVII/Chapter44/Section55C](http://www.malegislature.gov/Laws/GeneralLaws/PartI/TitleVII/Chapter44/Section55C)

Section 55C. (a) Notwithstanding section 53 or any other general or special law to the contrary, a city or town that accepts this section may establish a trust to be known as the Municipal Affordable Housing Trust Fund, in this section called the trust. The purpose of the trust is to provide for the creation and preservation of affordable housing in municipalities for the benefit of low- and moderate-income households. Acceptance shall be by majority vote of the municipal legislative body under section 4 of chapter 4.

(b) There shall be a board of trustees, in this section called the board, which shall include no less than 5 trustees, including the chief executive officer, as defined by section 7 of chapter 4, of the city or town, but where the chief executive officer is a multi-member body, that body shall designate a minimum of 1 of its members to serve on the board. Trustees shall be appointed in a city by the mayor or by the city manager in a Plan D or Plan E municipality, subject in either case, to confirmation by the city council, and in a town by the board of selectmen, shall serve for a term not to exceed 2 years, and are designated as public agents for purposes of the constitution of the commonwealth. Nothing in this subsection shall prevent a board of selectmen from appointing the town manager or town administrator as a member or chair of the board, with or without the power to vote.

(c) The powers of the board, all of which shall be carried on in furtherance of the purposes set forth in this act, shall include the following powers, but a city or town may, by ordinance or bylaw, omit or modify any of these powers and may grant to the board additional powers consistent with this section:—

(1) to accept and receive real property, personal property or money, by gift, grant, contribution, devise or transfer from any person, firm, corporation or other public or private entity, including but not limited to money, grants of funds or other property tendered to the trust in connection with any ordinance or bylaw or any general or special law or any other source, including money from chapter 44B;

(2) to purchase and retain real or personal property, including without restriction investments that yield a high rate of income or no income;

(3) to sell, lease, exchange, transfer or convey any personal, mixed, or real property at public auction or by private contract for such consideration and on such terms as to credit or otherwise, and to make such contracts and enter into such undertaking relative to trust property as the board deems advisable notwithstanding the length of any such lease or contract;

(4) to execute, acknowledge and deliver deeds, assignments, transfers, pledges, leases, covenants, contracts, promissory notes, releases and other instruments sealed or unsealed, necessary, proper or incident to any transaction in which the board engages for the accomplishment of the purposes of the trust;

(5) to employ advisors and agents, such as accountants, appraisers and lawyers as the board deems necessary;

(6) to pay reasonable compensation and expenses to all advisors and agents and to apportion such compensation between income and principal as the board deems advisable;

(7) to apportion receipts and charges between incomes and principal as the board deems advisable, to amortize premiums and establish sinking funds for such purpose, and to create reserves for depreciation depletion or otherwise;

(8) to participate in any reorganization, recapitalization, merger or similar transactions; and to give proxies or powers of attorney with or without power of substitution to vote any securities or certificates of interest; and to consent to any contract, lease, mortgage, purchase or sale of property, by or between any corporation and any other corporation or person;

(9) to deposit any security with any protective reorganization committee, and to delegate to such committee such powers and authority with relation thereto as the board may deem proper and to pay, out of trust property, such portion of expenses and compensation of such committee as the board may deem necessary and appropriate;

(10) to carry property for accounting purposes other than acquisition date values;

(11) to borrow money on such terms and conditions and from such sources as the board deems advisable, to mortgage and pledge trust assets as collateral;

(12) to make distributions or divisions of principal in kind;

(13) to comprise, attribute, defend, enforce, release, settle or otherwise adjust claims in favor or against the trust, including claims for taxes, and to accept

any property, either in total or partial satisfaction of any indebtedness or other obligation, and subject to the provisions of this act, to continue to hold the same for such period of time as the board may deem appropriate;

(14) to manage or improve real property; and to abandon any property which the board determined not to be worth retaining;

(15) to hold all or part of the trust property uninvested for such purposes and for such time as the board may deem appropriate; and

(16) to extend the time for payment of any obligation to the trust.

(d) Notwithstanding any general or special law to the contrary, all moneys paid to the trust in accordance with any zoning ordinance or bylaw, exaction fee, or private contributions shall be paid directly into the trust and need not be appropriated or accepted and approved into the trust. General revenues appropriated into the trust become trust property and to be expended these funds need not be further appropriated. All moneys remaining in the trust at the end of any fiscal year, whether or not expended by the board within 1 year of the date they were appropriated into the trust, remain trust property.

(e) The trust is a public employer and the members of the board are public employees for purposes of chapter 258.

(f) The trust shall be deemed a municipal agency and the trustees special municipal employees, for purposes of chapter 268A.

(g) The trust is exempt from chapters 59 and 62, and from any other provisions concerning payment of taxes based upon or measured by property or income imposed by the commonwealth or any political subdivision thereof.

(h) The books and records of the trust shall be audited annually by an independent auditor in accordance with accepted accounting practices.

(i) The trust is a governmental body for purposes of sections 23A, 23B and 23C of chapter 39.

(j) The trust is a board of the city or town for purposes of chapter 30B and section 15A of chapter 40; but agreements and conveyances between the trust and agencies, boards, commissions, authorities, departments and public instrumentalities of the city or town shall be exempt from said chapter 30B.

# Inspector general procurement charts

## August 2014 Inspector General letter, page 1



GLENN A. CUNHA  
INSPECTOR GENERAL

The Commonwealth of Massachusetts

Office of the Inspector General

John W. McCormack  
State Office Building  
One Ashburton Place  
Room 1311  
Boston, MA 02108  
Tel: (617) 727-9140  
Fax: (617) 723-2334

August 2014

Dear Local Official:

The following charts were created by the Office of the Inspector General for local officials to use as a quick reference guide on public procurement procedures that must be followed pursuant to the Massachusetts General Laws. Your local rules may establish stricter or additional requirements that you must follow. Contact your chief procurement officer (CPO) or legal counsel for advice on your local rules and procurement procedures.

The charts highlight particular compliance requirements depending on the cost or the nature of your procurement. For example, the charts highlight, where applicable, the requirement for a ten-hour course in construction safety and health approved by the United States Occupational Safety and Health Administration (OSHA). Pursuant to M.G.L. c. 30, § 39S, any person submitting a bid for, or signing a contract to work on, a public building or public works project estimated to cost more than \$10,000, must certify under the pains and penalties of perjury that he or she is able to furnish labor in harmony with all other elements of labor employed in the work and that all employees employed on the worksite, or in work subject to the bid, have successfully completed at least ten hours of OSHA approved training. The charts are meant to provide a general overview of the principal public procurement statutes, and are not a substitute for consultation of the statute or the advice of legal counsel.

The charts include:

- M.G.L. c. 149 -- BUILDING CONSTRUCTION CONTRACTS [CORRECTED Aug. 8, 2014]<sup>1</sup>
- M.G.L. c. 30, § 39M -- PUBLIC WORKS (NON-BUILDING) CONSTRUCTION CONTRACTS (WITH LABOR)
- M.G.L. c. 30, § 39M or M.G.L. c. 30B -- CONSTRUCTION MATERIALS PROCUREMENTS (WITHOUT LABOR)
- M.G.L. c. 7C, §§ 44-57 (formerly M.G.L. c. 7, §§ 38A½-O) -- PUBLIC BUILDING PROJECTS DESIGN SERVICES -- Cities, Towns, Regional School Districts, and Horace Mann Charter Schools
- M.G.L. c. 30B PROCUREMENT OF SUPPLIES AND SERVICES [UPDATED July 15, 2014]<sup>2</sup>

Any suggestions for the charts or questions concerning M.G.L. c. 30B may be directed to this Office by calling 617.722.8838. Questions concerning M.G.L. c. 149, M.G.L. c. 30, § 39M, and M.G.L. c. 7C may be directed to the Office of the Attorney General by calling 617.727.2200 or your legal counsel.

<sup>1</sup> The chart has been corrected relative to the advertising requirements for building construction contracts estimated to cost \$10,000 to \$25,000. The corrections are in accordance with M.G.L. c. 149, § 44A(2)(B), as amended by Chapter 188 of the Acts of 2010 and Section 16 of Chapter 409 of the Acts of 2010.

<sup>2</sup> With the passage of the FY 2015 Budget, new Chapter 30B thresholds are in effect as of July 1, 2014. Chapter 30B sections 4, 5, 6, 6A, 7 and 16 were amended. The amendments replaced the \$25,000 thresholds with \$35,000 thresholds in these sections only. No other changes were made.

These charts have been updated as of August 2014. Check the Inspector General's website ([www.mass.gov/ig](http://www.mass.gov/ig)) for updated information.

## August 2014 Inspector General letter, page 2

Procurement Charts  
Cover Letter  
August 2014  
Page 2

Prevailing wage rate sheets may be requested online at <http://www.mass.gov/lwd/labor-standards/prevailing-wage-program/> or by calling the Department of Labor Standards at 617.626.6975.

*Central Register* advertisements may be submitted online at <http://www.sec.state.ma.us/spr/sprcentral/infosubmit.htm> to the Secretary of the Commonwealth. The submission deadline is 4:00 pm on Tuesday.

*Goods and Services Bulletin* advertisements may be submitted online at <http://www.sec.state.ma.us/spr/publicforms/GSSubmissionform.aspx> to the Secretary of the Commonwealth. The submission deadline is 4:00 pm on Wednesday.

Sincerely,



Glenn A. Cunha  
Inspector General

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These charts have been updated as of August 2014. Check the Inspector General's website ([www.mass.gov/ig](http://www.mass.gov/ig)) for updated information.

**M.G.L. c. 149 -- BUILDING CONSTRUCTION CONTRACTS**

Estimated Contract Amount	Under \$10,000 <sup>1</sup>	\$10,000 to \$25,000	Over \$25,000 to \$100,000	Over \$100,000	Over \$1,000,000
<b>Procurement Procedure</b>	Sound business practices	Solicit written responses.	Sealed bids (using M.G.L. c. 30, § 39M procedure).	Sealed bids.	Solicit statements of qualifications prior to soliciting sealed bids.
<b>Advertising Requirements</b>	No.	Advertise in the <i>Central Register</i> and COMMBUYS and post a notice on your jurisdiction's website and in the office at least two weeks before responses are due. <sup>2</sup>	Advertise in the <i>Central Register</i> and a newspaper at least two weeks before bids are due, and post a notice in your jurisdiction's office for at least one week before bids are due. <sup>3</sup> Posting on COMMBUYS or your website is optional.	Advertise in the <i>Central Register</i> and a newspaper at least two weeks before bids are due, and post a notice in your jurisdiction's office for at least one week before bids are due. <sup>3</sup> Posting on COMMBUYS or your website is optional.	Advertise the request for qualifications in the <i>Central Register</i> , a newspaper, and COMMBUYS at least two weeks before responses are due. <sup>4</sup>
<b>DCAMM Certification</b>	No.	No.	No.	Required for general bidders and filed sub-bidders.	Required for general bidders and filed sub-bidders.
<b>OSHA Training</b>	No.	Yes.	Yes.	Yes.	Yes.
<b>City/Town Prequalification</b>	No.	No.	No.	Optional. <sup>5</sup>	Yes.
<b>Filed Sub-bids</b>	No.	No.	No.	Yes (\$20,000 and over).	Yes (\$20,000 and over).
<b>Bid Deposit</b>	No.	No.	5% of the value of the total bid.	5% of the value of the total bid, or sub-bid.	5% of the value of the total bid, or sub-bid.
<b>Payment Bond</b>	No.	No.	50% payment bond.	100% payment bond.	100% payment bond.
<b>Performance Bond</b>	No.	No.	No.	100% performance bond.	100% performance bond.
<b>Prevailing Wage</b>	Yes.	Yes.	Yes.	Yes.	Yes.
<b>Contractor Evaluation</b>	No.	No.	No.	Yes.	Yes.

<sup>1</sup> M.G.L. c. 149, § 44A(2)(A), as amended by Chapter 188 of the Acts of 2010.

<sup>2</sup> M.G.L. c. 149, § 44A(2)(B), as amended by Chapter 188 of the Acts of 2010 and Section 16 of Chapter 409 of the Acts of 2010.

<sup>3</sup> M.G.L. c. 149, § 44J.

<sup>4</sup> The advertising procedures listed pertain only to the request for qualifications. Within 14 days of the completion of the prequalification evaluation process, you are required to post a notice in your jurisdiction and on COMMBUYS listing those general and subcontractors who have been prequalified. A copy of the notice must be sent via first class mail, postage pre-paid to all prequalified general and subcontractors along with an invitation to bid. The invitation to bid must have a deadline of at least two weeks. Although you may only consider bids from those general and subcontractors who have been prequalified, the advertising requirements for building construction contracts over \$100,000 apply.

<sup>5</sup> If you decide to use the optional prequalification process for projects over \$100,000, follow the procedures listed in the "Over \$10,000,000" column.

August 2014 revision

These charts have been updated as of August 2014. Check the Inspector General's website ([www.mass.gov/ig](http://www.mass.gov/ig)) for updated information.



**M.G.L. c. 30, § 39M -- PUBLIC WORKS (NON-BUILDING)  
CONSTRUCTION CONTRACTS (WITH LABOR)**

Estimated Contract Amount	\$10,000 and under	Over \$10,000 to \$25,000		Over \$25,000
		M.G.L. c. 30, § 39M	M.G.L. c. 30B, § 5 Option <sup>1</sup>	M.G.L. c. 30, § 39M
<b>Procurement Procedure</b>	No.	Sealed bids.	Sealed bids.	Sealed bids.
<b>Advertising Required</b>	No.	Advertise once in the <i>Central Register</i> <sup>2</sup> and your local newspaper at least two weeks before bids are due, <b>and</b> post a notice on your jurisdiction's bulletin board for one week before bids are due.	Advertise once in the <i>Central Register</i> <sup>2</sup> and your local newspaper at least two weeks before bids are due, <b>and</b> post a notice on your jurisdiction's bulletin board for one week before bids are due.	Advertise once in the <i>Central Register</i> <sup>2</sup> and your local newspaper at least two weeks before bids are due, <b>and</b> post a notice on your jurisdiction's bulletin board for one week before bids are due.
<b>DCAMM Certification</b>	No.	No.	No.	No.
<b>OSHA Training</b>	No.	Yes.	Yes.	Yes.
<b>City/Town Prequalification</b>	No.	No. <sup>3</sup>	No.	No.
<b>Filed Sub-bids</b>	No.	No.	No.	No.
<b>Bid Deposit</b>	No.	5% of the value of the total bid.	No.	5% of the value of the total bid.
<b>Payment Bond</b>	No.	No.	No.	50% payment bond.
<b>Performance Bond</b>	No.	No.	No.	No.
<b>Prevailing Wage</b>	Yes.	Yes.	Yes.	Yes.

<sup>1</sup> Authorized by M.G.L. c. 30, § 39M(d). Even though the M.G.L. c. 30B, § 5, threshold increased from \$25,000 to \$35,000 on July 1, 2014, M.G.L. c. 30, § 39M(d), applies to "any contract of not more than \$25,000." Therefore, you may only use M.G.L. c. 30B, § 5, for projects that cost \$10,000 but not more than \$25,000.

<sup>2</sup> M.G.L. c. 149, § 44J(a), M.G.L. c. 9, § 20A, and accompanying regulations require all contracts for construction services and all contracts for construction materials costing \$10,000 or more to be advertised in the *Central Register*.

<sup>3</sup> Although M.G.L. c. 30, § 39M, does not mandate a contractor prequalification process, prequalification of bidders by the Massachusetts Department of Transportation is required for contracts of \$50,000 or more where the awarding authority receives State Aid funds under M.G.L. c. 90, § 34, or the work is on a state road, regardless of whether the awarding authority receives State Aid funds under M.G.L. c. 90, § 34.

August 2014 revision

These charts have been updated as of August 2014. Check the Inspector General's website ([www.mass.gov/ig](http://www.mass.gov/ig)) for updated information.

**M.G.L. c. 30, § 39M or M.G.L. c. 30B, § 5  
CONSTRUCTION MATERIALS PROCUREMENTS (WITHOUT  
LABOR)**

Estimated Contract Amount	\$10,000 and under	Over \$10,000	
		M.G.L. c. 30, § 39M	M.G.L. c. 30B, § 5' Option
<b>Procurement Procedure</b>	No.	Sealed bids.	Sealed bids.
<b>Advertising Required</b>	No.	Advertise once in the <i>Central Register</i> <sup>2</sup> and your local newspaper at least two weeks before bids are due, <b>and</b> post a notice on your jurisdiction's bulletin board for one week before bids are due.	Advertise once in the <i>Central Register</i> <sup>2</sup> and your local newspaper at least two weeks before bids are due, <b>and</b> post a notice on your jurisdiction's bulletin board for one week before bids are due.
<b>DCAMM Certification</b>	No.	No.	No.
<b>OSHA Training</b>	No.	No.	No.
<b>City/Town Prequalification</b>	No.	No.	No.
<b>Filed Sub-bids</b>	No.	No.	No.
<b>Bid Deposit</b>	No.	5% of the value of the total bid.	No.
<b>Payment Bond</b>	No.	No.	No.
<b>Performance Bond</b>	No.	No.	No.
<b>Prevailing Wage</b>	No.	No.	No.
<b>Award contract to:</b>	No.	Lowest responsible and eligible bidder.	Lowest responsive and responsible bidder.

<sup>1</sup> Authorized by M.G.L. c. 30, § 39M(d).

<sup>2</sup> M.G.L. c. 149, § 44J(a), M.G.L. c. 9, § 20A, and accompanying regulations require all contracts for construction services and all contracts for construction materials costing \$10,000 or more to be advertised in the *Central Register*.

August 2014 revision

These charts have been updated as of August 2014. Check the Inspector General's website ([www.mass.gov/ig](http://www.mass.gov/ig)) for updated information.

**M.G.L. c. 7C, §§ 44-57, PUBLIC BUILDING PROJECTS DESIGN SERVICES -- Cities, Towns, Regional School Districts, and Horace Mann Charter Schools<sup>1</sup>**

Estimated Construction Cost (ECC)/Estimated Design Fee (EDF)	ECC \$100,000 or less or EDF less than \$10,000	ECC more than \$100,000 and EDF \$10,000 or more (both ECC <u>and</u> EDF thresholds must be met before the designer selection procedure is required.) <sup>2</sup>
<b>Procurement Procedure</b>	No. Recommend soliciting qualifications and prices from at least three designers.	Qualifications-based selection process. Jurisdiction must either set the design fee or set a not-to-exceed fee limit and negotiate the fee with the top-ranked designer within the fee limit.
<b>Advertising Required</b>	No.	Advertise once in the <i>Central Register</i> and your local newspaper at least two weeks before the deadline for filing applications.
<b>Designer Selection Board<sup>1</sup></b>	No.	No – adopt selection procedure in writing. <sup>2,3</sup> Use “DSB Application for Municipalities.”
<b>Designer Evaluation (Submit to DCAMM and Designer Selection Board)</b>	No.	Yes.
<b>Registration</b>	Yes.	Yes.
<b>Insurance</b>	No.	10% of the total cost of the project or \$1 million, whichever is less.
<b>Prevailing Wage</b>	No.	No.

<sup>1</sup>As of December 2008, the Designer Selection Board revised its “Guidelines for City and Town Building Projects” to clarify that both thresholds must be met.

<sup>1</sup> Executive Departments of the Commonwealth and Commonwealth Charter Schools are subject to the jurisdiction of the Designer Selection Board when the design fee is \$10,000 or more and the construction project is estimated to cost \$100,000 or more.

<sup>2</sup> Cities, Towns, School Districts, and Horace Mann Charter Schools are required to adopt their own procedures for selecting designers for building projects. These procedures must conform to the purposes and intent of the designer selection process as outlined in M.G.L. c. 7C, §§ 44-57 and noted herein. See the *Model Designer Selection Procedures for Municipalities and Other Local Public Agencies* developed by this office at <http://www.mass.gov/ig/publications/guides-advisories-other-publications/model-designer-selection-procedures-municipalities-and-other-local-public-agencies-nov-2009.html>.

<sup>3</sup> Housing Authorities must follow the procedures established by the Department of Housing and Community Development for design of state-funded housing. Projects requesting funding from the Massachusetts School Building Authority (MSBA) are subject to MSBA rules.

August 2014 revision

These charts have been updated as of August 2014. Check the Inspector General’s website ([www.mass.gov/ig](http://www.mass.gov/ig)) for updated information.

**M.G.L. c. 30B PROCUREMENT OF SUPPLIES AND SERVICES**

Estimated Contract Amount	Under \$10,000	\$10,000 to \$34,999	\$35,000 and over
<b>Procurement Procedure</b>	Sound business practices. <sup>1</sup>	Solicit three written or oral quotes.	Sealed bids or proposals. (M.G.L. c. 30B, §§ 5 or 6).
<b>Advertising Required</b>	No.	No.	Advertise once in a newspaper of general circulation at least two weeks before bids or proposals are due, <b>and</b> post a notice on your jurisdiction’s bulletin board or website for two weeks before bids or proposals are due. If \$100,000 or more, advertise once in the <i>Goods and Services Bulletin</i> at least two weeks before bids or proposals are due.
<b>Award contract to:</b>	Person offering the best price.	Responsible <sup>2</sup> and responsive <sup>3</sup> person offering the best price.	Under § 5, the responsible and responsive bidder offering the best price. Under § 6, the most advantageous proposal from a responsible and responsive proposer taking into consideration price and non-price proposals.
<b>Written Contract Required<sup>4</sup></b>	No.	Yes.	Yes.
<b>Maximum Contract Term<sup>5</sup></b>	Three years, unless majority vote authorizes longer.		

<sup>1</sup> M.G.L. c. 30B, § 2, defines sound business practices as “ensuring the receipt of favorable prices by periodically soliciting price lists or quotes.”

<sup>2</sup> M.G.L. c. 30B, § 2, defines a responsible bidder or offeror as “a person who has the capability to perform fully the contract requirements, and the integrity and reliability which assures good faith performance.”

<sup>3</sup> M.G.L. c. 30B, § 2, defines a responsive bidder or offeror as “a person who has submitted a bid or proposal which conforms in all respects to the invitation for bids or request for proposals.”

<sup>4</sup> M.G.L. c. 30B, § 17(a), states “All contracts in the amount of \$10,000 or more shall be in writing, and the governmental body shall make no payment for a supply or service rendered prior to the execution of such contract.”

<sup>5</sup> M.G.L. c. 30B, § 12(b), states “Unless authorized by majority vote, a procurement officer shall not award a contract for a term exceeding three years, including any renewal, extension, or option.”

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# Massachusetts Housing Partnership

160 Federal Street, Boston, MA 02110

Tel: 617-330-9955, Fax: 617-330-1919

462 Main Street, Amherst, MA 01002

Tel: 413-253-7379, Fax: 413-253-3002

[www.mhp.net](http://www.mhp.net)

