

CLOSING ATTORNEY INSTRUCTIONS

For Projects in Which Affordability Restrictions Survive Foreclosure (Fannie Mae Approved Form of Affordable Housing Restriction)

These Closing Attorney Instructions identify the required documentation and summarize the responsibilities of the closing attorney in transactions where properties are or will be subject to the Affordable Housing Restriction that has been accepted by Fannie Mae (the “Restriction”). Such transactions include (i) loans to developers, (ii) sales and resales to eligible homebuyers, (iii) property transfers in connection with foreclosure, and (iv) refinancings. As described below, each type of transaction will require certain of the documents listed below. Templates of these documents are available on MassHousing’s website, at www.masshousing.com:

- (1) Affordable Housing Restriction
- (2) Notice of Affordable Housing Restriction
- (3) Homebuyer Disclosure Statement
- (4) Regulatory Agreement
- (5) Amendment to Regulatory Agreement
- (6) Compliance Certificate
- (7) Closing Attorney Certification

All Closings

In all closings in which a Restriction is required, either as a closing document or as an exhibit to a Regulatory Agreement, the closing attorney is responsible for filling in the blanks on the Restriction with information relating to the specific transaction (e.g., the property address, names and addresses of parties, dates of and recording information for referenced documents, etc.). **Aside from filling in this project-specific information, no change may be made to the terms and provisions of the Restriction. The mortgagee may lose the benefits of Fannie Mae approval if any other terms and provisions of the Restriction have been modified from the approved form.**

The attorney is also responsible for completing all other documents from the list above that are required for the particular transaction, as described below (other than the Compliance Certificate, which, if applicable, is prepared by the Monitoring Agent identified in the Restriction). As a closing requirement, the closing attorney must deliver the Closing Attorney Certification certifying to the Monitoring Agent that the terms and provisions of the final Restriction have not been modified from the corresponding template Restriction.

The closing attorney is required to comply with standard due diligence and closing requirements in each transaction, and must also comply with the requirements of any direction letter regarding transactions with a Fannie-Mae approved Restriction issued by the title company that is writing any title policy for the closing.

I. Loan to a Developer

A. Required Restriction Documents. For closings on MassHousing loans made to a developer, the Regulatory Agreement must be completed and signed by the developer and MassHousing, with a copy of the Restriction attached as an exhibit.

B. Recording Requirements. For loan closings to developers, the following documents are to be recorded and/or registered in the Registry at closing, in the order set forth below:

1. Deed to the developer (*unless previously recorded*)
2. Comprehensive Permit or other special permit/variance (together with any assignment instrument, if the permit was granted to a party other than the developer) (*if applicable; unless previously recorded*)
3. Regulatory Agreement, with Restriction attached as an exhibit
4. Mortgage
5. Additional security instrument(s) and/or intercreditor agreement(s) (*if applicable*)

Any clerk's certificate(s), other authority instrument(s) and/or municipal lien certificate(s) may also be added to this recording list. If the project has a senior construction and/or permanent loan, the senior lender's mortgage may be recorded prior to the Regulatory Agreement with MassHousing's consent; all other mortgages must be recorded after the Regulatory Agreement.

II. Sale to Homebuyer or Transfer in Connection with Foreclosure: Property Subject to Existing Regulatory Agreement and/or Restriction in the Approved Form(s)

A. Required Restriction Documents. For closings on property sales or other transfers in which the property being conveyed or transferred is already subject to an existing Regulatory Agreement and/or Restriction in the approved form(s) (e.g., upon a sale by the developer to an eligible homebuyer or re-sale by a subsequent owner, or a transfer in connection with a foreclosure proceeding against the developer or a subsequent owner), the grantor and grantee/buyer must sign a Restriction, the grantee/buyer must sign a Homebuyer Disclosure Statement and a Notice of Affordable Housing Restriction, and the Monitoring Agent must sign a Compliance Certificate. If the property is being conveyed to an institutional mortgagee by foreclosure deed or a deed in lieu of foreclosure or to an ineligible homebuyer, all of the above documents are also required.

B. Confirmation of Compliance with Regulatory Agreement, Restriction Requirements. The closing attorney is not responsible for independently verifying that the sale or foreclosure conveyance complies with requirements imposed by the Regulatory Agreement and/or Restriction.

For closings on the initial sale of property that is subject to an existing Regulatory Agreement in the required form, MassHousing is responsible for calculating the maximum initial sales price and approving (or having its designated Monitoring Agent approve) the developer's buyer selection process and marketing plan.

For closings on the subsequent resale of property that is subject to an existing Restriction in the required form (the "Seller Restriction"), the Monitoring Agent identified in the recorded Seller Restriction is responsible for calculating the maximum resale price (or the applicable foreclosure price) and verifying that the conveyance complies with purchaser eligibility and selection requirements and other requirements set forth in the Seller Restriction. The Monitoring Agent is required to sign and deliver a Compliance Certificate for the closing, confirming that the conveyance complies with those requirements.

The closing attorney is responsible for obtaining (or coordinating with the Monitoring Agent to obtain) a signed Homebuyer Disclosure Statement from the buyer.

C. Recording Requirements. For these closings, the following documents are to be recorded and/or registered in the Registry at closing, in the order set forth below:

1. Deed with attached Restriction
2. Notice of Affordable Housing Restriction
3. Compliance Certificate
4. Mortgage (*if applicable*)
5. Additional security instrument(s) (*if applicable*)

Any clerk's certificate(s), other authority instrument(s) and/or municipal lien certificate(s) may also be added to this list, subject to the prohibition on intervening documents between the deed and the Restriction.

The Homebuyer Disclosure Statement is not recorded; however, the closing attorney is required to include the signed Disclosure Statement with the other closing documents in the closing binder/files delivered to the Monitoring Agent.

III. Refinancing: Property Subject to Existing Regulatory Agreement and/or Restriction in the Approved Form(s)

A. Required Restriction Documents. For refinancings on properties that are already subject to a Regulatory Agreement in the approved form, the closing attorney is required to verify that a Restriction granted by the current owner/borrower, a Notice of Affordable Housing Restriction for that Restriction and a Compliance Certificate for the sale to the current owner/borrower were all duly recorded at the time of the conveyance to the current owner/borrower.

If a Restriction was not previously recorded, the closing attorney is responsible for preparing the Restriction for the owner/borrower to sign. If the current owner/borrower is signing a Restriction, the closing attorney must also have the owner/borrower sign a Homebuyer Disclosure Statement. Since the Restriction will be recorded as a separate document rather than as a rider to the deed, no Notice of Affordable Housing Restriction will be necessary.

If a Compliance Certificate was not previously recorded, the closing attorney is responsible for obtaining a Compliance Certificate from the Monitoring Agent identified in the Restriction and/or Regulatory Agreement. If the closing attorney is not able to obtain a Compliance Certificate from the Monitoring Agent, the closing attorney must obtain MassHousing's written consent to proceed.

B. Recording Requirements. For the closing on such a refinancing transaction, the following documents are to be recorded and/or registered in the Registry at closing, in the order set forth below:

1. Discharge of prior mortgage and any other security instrument(s)
2. Restriction (*if not previously recorded*)
3. Compliance Certificate (*if not previously recorded*)
4. Mortgage
5. Additional security instrument(s) (*if applicable*)

Any clerk's certificate(s), other authority instrument(s) and/or municipal lien certificate(s) may also be added to this recording list.

If a Homebuyer Disclosure Statement is being signed at the closing, it is not recorded; however, the closing attorney is required to include the signed Disclosure Statement with the other closing documents in the closing binder/files delivered to the Monitoring Agent.

IV. Sale, Acquisition Loan or Refinancing: Property Subject to Existing Regulatory Agreement and/or Restriction Instrument in a Different Form

A. **Required Restriction Documents.** For closings on conveyancing or refinancing transactions in which the property is subject to an existing regulatory agreement that provides for recording a restriction instrument that is not the Restriction, MassHousing and the developer and any other party to the existing regulatory agreement must sign an Amendment to Regulatory Agreement which will provide that a Restriction in the required form will be recorded upon the sale of the property.

For closings on conveyancing or refinancing transactions in which the property is subject to an existing restriction instrument that is not the Restriction, the owner and any other party to the existing restriction or otherwise entitled to exercise rights thereunder must execute an instrument terminating the existing restriction and the owner (and, if applicable, the grantor) must sign a Restriction. The owner must also sign a Homebuyer Disclosure Statement and, if the Restriction is being recorded with the deed, a Notice of Affordable Housing Restriction. If applicable, the Monitoring Agent must sign a Compliance Certificate.

If any party who is required to sign a termination instrument, an Amendment to Regulatory Agreement or a Restriction refuses to do so, the closing attorney must obtain MassHousing's written consent to proceed.

B. **Recording Requirements.** The following documents are to be recorded and/or registered in the Registry at closing, in the order set forth below:

1. Discharge of prior mortgage and any other security instrument(s) *(if applicable)*
2. Deed *(if applicable)*
3. Termination of existing regulatory agreement and/or restriction instrument *(if applicable)*
4. Amendment to Regulatory Agreement, with Restriction attached as an exhibit **or** Regulatory Agreement *(if existing regulatory agreement is being replaced)*
5. Restriction
6. Notice of Affordable Housing Restriction *(*required if the Restriction is being recorded with the deed; not required when the Restriction is being recorded as a separate document)*
7. Compliance Certificate *(if applicable)*
8. Mortgage
9. Additional security instrument(s) *(if applicable)*

Any clerk's certificate(s), other authority instrument(s) and/or municipal lien certificate(s) may also be added to this recording list.

If a Homebuyer Disclosure Statement is being signed at the closing, it is not recorded; however, the closing attorney is required to include the signed Disclosure Statement with the other closing documents in the closing binder/files delivered to MassHousing.

V. Homebuyer Acquisition Loan or Refinancing: Property Not Previously Subject to Any Regulatory Agreement or Restriction

A. Required Restriction Documents. For closings on acquisition loans or refinancings in which the property is not subject to any prior regulatory agreement or restriction instrument, the homeowner/borrower must sign a Restriction and a Homebuyer Disclosure Statement. In closings on acquisition loans where the Restriction is being recorded with the deed, the homeowner/buyer must also sign a Notice of Affordable Housing Restriction.

B. Recording Requirements. The following documents are to be recorded and/or registered in the Registry at closing, in the order set forth below:

1. Deed (*if acquisition loan*) with attached Restriction
2. Notice of Affordable Housing Restriction (**required if the Restriction is being recorded with the deed; not required when the Restriction is being recorded as a separate document*)
3. Mortgage
4. Additional security instrument(s) (*if applicable*)

Any clerk's certificate(s), other authority instrument(s) and/or municipal lien certificate(s) may also be added to this recording list, subject to the prohibition on intervening documents between the deed and the Restriction if an acquisition loan.

The Homebuyer Disclosure Statement is not recorded; however, the closing attorney is required to include the signed Disclosure Statement with the other closing documents in the closing binder/files delivered to MassHousing.