



Community Preservation Act (CPA) Cape Cod Commission Round Table Fact Sheet

Preservation Restrictions

[October 31, 2006]

What is a Preservation Restriction?

A Preservation Restriction (PR) is a voluntary legal agreement that protects a significant historic, archaeological, or cultural resource. It provides assurance that an historic or cultural property's intrinsic values will be preserved through subsequent ownership by restricting on the demolition or alteration of its significant historic features. A Preservation Restriction is filed at the Registry of Deeds and runs with the land. It usually focuses on exterior architectural features, but can also address significant interior spaces. Though a Preservation Restriction does not necessarily require public access, it may include provisions for annual open houses or similar public events if deemed appropriate.

The heart of a Preservation Restriction is in the Grantor's Covenants, where the owner of the property agrees to maintain the building exterior in good repair consistent with the Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings (further described below). The Grantor's Covenants spell out prohibited activities such as demolition of the building, and describe the review process required if any exterior alterations are considered on the property. Another important part of the Preservation Restriction is the Baseline Documentation which illustrates the property's historic significance and existing conditions through architectural drawings, photographs, historical records, and reports.

Are Preservation Restrictions required by CPA?

The Community Preservation Act specifically calls for perpetual Preservation Restrictions, established under Chapter 184 of Mass General Laws, whenever CPA funds are used to purchase a real property interest. Therefore, when purchasing or buying an interest in an historic property, a Preservation Restriction is required. The Act is not specific as to whether a Preservation Restriction is required when CPA money is expended on an historic preservation project. Many towns have chosen to require a Preservation Restriction when any amounts of CPA funds are awarded for rehabilitation or restoration of an historic property. This protects the town's investment should the property change hands or become subject to additional development pressures. Cape Cod Commission staff recommend that a Preservation Restriction be required

whenever CPA funds are used to rehabilitate or restore historic properties, regardless of the property ownership.

In some cases, other means of protecting the public interest can be considered. The city of Newton has signed a Memorandum of Understanding with the CPA committee requiring Newton Historical Commission review and approval of any changes proposed to a town property that has received CPA funding. Other communities are considering a threshold amount of CPA funding above which a Preservation Restriction would be required, while projects receiving less money would require a shorter term restriction.

Who can hold a Preservation Restriction?

A Preservation Restriction may be held by any governmental body or charitable corporation or trust capable of acquiring interests in land and whose purposes include historic preservation. Local Historical Commissions are empowered to hold preservation restrictions under the state's Historic District Act (M.G.L. Chapter 40C), but they cannot hold a preservation restriction on a town-owned property. Non-Profit historical organizations such as town Historical Societies, the Trustees of Reservations, and Historic New England may also hold preservation restrictions.

Is there a model Preservation Restriction?

Cape Cod Commission staff suggests using the Preservation Restriction on the Nantucket Atheneum (or the Massachusetts Historical Commission long form template) as a working model, copying its general format and legal language, and making changes to tailor the restriction to the particular property in question. All CPA committees are urged to use the same Preservation Restriction as a model to maintain consistency among restrictions on the Cape, and to facilitate their monitoring and administration in the future. The Nantucket Atheneum Preservation Restriction is [available here](#), or from the Cape Cod Commission. As an alternative, the Massachusetts Historical Commission's long form is available in its Guidebook on Preservation Restrictions, available by calling Michael Steinitz at 617-727-8470.

How should we draft a Preservation Restriction?

The owners of the subject property, the intended holders of the Preservation Restriction, and the town council should be involved in drafting a preservation restriction. Some towns have chosen to arrange an initial meeting between these parties to discuss the content of the restriction, and then have asked the owners' attorneys to draft the preservation restriction, using the model cited above as a template. The Local Historical Commission or Historical Society are also often involved because of their access to historical information necessary to establish the Baseline

Documentation required in a Preservation Restriction. Note that CPA committees can allocate CPA administrative funds or grant monies for drafting a Preservation Restriction.

The Massachusetts Historical Commission (MHC) must approve a Preservation Restriction for it to be consistent with M.G.L. Chapter 184. If the restriction will be held by a charitable corporation or trust, the town must also approve the Preservation Restriction. A draft Preservation Restriction should be submitted to Michael Steinitz at MHC to determine if it adequately protects the features that make the historic property significant. Once MHC approves the content of the Preservation Restriction, it can be signed/executed by the owners and the Selectmen or Town Council, then resubmitted to MHC for their signature. Finally the Preservation Restriction should be recorded at the Registry of Deeds.

How should we monitor a Preservation Restriction to ensure its effectiveness?

To protect both the property owner and the restriction-holder, it is important that there be a clear set of procedures and policies to guide the administration and monitoring of a Preservation Restriction. The key to avoiding problems and court costs is catching problems before changes are made to the property. To that end, the following steps are recommended:

1. Designate a Preservation Restriction administrator. The organization holding the restriction should designate an administrator (perhaps the Secretary or President of the organization, or an employee) who is the primary contact person if a property owner has questions about the restriction. Communication is essential if there is a transfer of ownership, so administrators may want to initiate contact with new property owners. Ideally, administrators should be knowledgeable about historic architectural and building technology in order to insure that they can identify unapproved work or areas of concern for repair. Cape Cod Commission staff may also be contacted to assist with these issues.
2. Arrange annual on-site meetings. The administrator should be responsible for arranging annual on-site meetings with the property owner to assess the current condition of the property, to discuss the terms of the restriction, and to answer any questions the owner may have.
3. Maintain annual status reports on the property. The administrator should follow up annual on-site meetings with a written status report on the property, citing the owner's compliance with the restrictions and the general condition of the property.
4. Alert town departments and agencies. Work with town permitting departments and assessors to put a red flag on properties with a Preservation Restriction, and ask the town to notify the restriction holder (Local Historical Commission or other entity) any time a development permit is sought for one of these properties.

What are the Secretary's Standards for Rehabilitation of Historic Properties?

The Secretary's Standards for Rehabilitation are federal standards that define appropriate treatment of historic properties. The standards were developed by the Secretary of the Interior to guide work on properties listed on or eligible for listing on the National Register of Historic

Places. The CPA requires rehabilitation work on historic properties to comply with the Secretary's Standards for Rehabilitation.

The primary goal of the Secretary's Standards for Rehabilitation is preservation of the historic materials and features that make a property significant. The 10 standards focus on things such as repair rather than replacement of historic features, and designing additions without removing significant historic features. To help people interpret the standards and to provide more detailed recommendations for treatment of specific building elements, the Secretary also publishes Guidelines for Rehabilitating Historic Buildings.

Both the Standards and the Guidelines can be viewed at the National Park Service website:

<http://www.cr.nps.gov/hps/tps/standards/rehabilitation.htm>