

To: Janet Byrd
From: Allison Handler, Executive Director, Portland Community Land Trust
Date: November 17, 2006

Re: Proposal concerning affordability covenants and deed restrictions

Many affordable housing providers in Oregon use a deed restriction or similar affordability covenant to ensure long-term affordability on certain owner-occupied homes. The tool is fairly familiar to lenders and homebuyers alike. However, legal research by attorneys at the Community Development Law Center has determined that there is no comprehensive enabling statute for such affordability covenants in Oregon law, though there are references to such covenants. CDLC attorneys suggest that this means the affordability covenants currently in place might not hold water should they be challenged in court. They might be upheld, certainly, but it would be less risky if the ORS included specific enabling law for affordability covenants. It would certainly benefit all members of the Housing Alliance who have deed restrictions and other similar covenants in place to preserve affordability on their homeownership projects.

Such a statute is particularly important for those organizations in the state, including Oregon's seven community land trusts, which create permanently affordable housing. The statute would assure such affordable housing developers that courts will honor their mission of creating a stock of permanently affordable housing. Such a statute might also help these organizations gain acceptance for their mission and their restrictions. And such a statute might bring uniformity so that lenders, creditors, and other third parties know how to treat these restrictions. There is certainly precedent for such a statute, both in Oregon where there are similar statutes as well as outside Oregon in states with affordable housing covenant/servitude enabling statutes. And at the same time, there is no known identifiable opposition. If anything, there is widespread appreciation for how unaffordable housing has become in Oregon. And there seems to be an increase generally in the public perception of government's role in assuring a supply of affordable housing.

Portland Community Land Trust, a new member of the Housing Alliance, proposes to add this item to the Housing Alliance's 2007 legislative agenda. We have a window of opportunity to rectify a problem of which many affordable housing providers haven't been aware, but which is a critical issue to resolve for those who currently employ these forms of contractual restriction.

Thank you for your consideration.