

Chapter 5

AFFORDABLE HOUSING TRUST

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[HISTORY: Adopted by the Town Meeting of the Town of Upton May 2012 as Title 2, Ch. 23, of the General Bylaws. Amendments noted where applicable.]

§ 5-1. Trust created.

There shall be an Upton Affordable Housing Trust, the purpose of which shall be to provide for the preservation and creation of affordable housing in the Town of Upton for the benefit of low- and moderate-income households. The Trust shall be governed by Trustees in accordance with MGL c. 44, § 55C, and the authority granted by Town Meeting, as revised from time to time.

§ 5-2. Name.

The Trust shall be called the "Upton Affordable Housing Trust," herein referred to as the "Trust."¹

§ 5-3. Board of Trustees.

- A. There shall be a Board of Trustees (the "Board") consisting of five Trustees, who shall be appointed by the Select Board. At least one of the Trustees shall be a member of the Select Board. Only persons who are residents of the Town of Upton shall be eligible to hold the office of Trustee. **[Amended May 2013 ATM; 11-7-2023STM by Art. 16]**
- B. Trustees shall serve for a term of two years, except that three of the initial appointments shall be for a term of one year. The Select Board may reappoint Trustees for succeeding terms, and there is no limit on the number of terms that a Trustee can serve. **[Amended 11-7-2023STM by Art. 16]**
- C. Any Trustee may resign by written instrument signed and acknowledged by such Trustee and duly filed with the Town Clerk. If a Trustee shall die, resign, or for any other reason cease to fulfill the duties of Trustee hereunder before his/her term of office expires, a successor shall be appointed by the Select Board to fill the remainder of the term of such vacancy, provided that said appointment and acceptance, in writing, by the newly appointed Trustee are filed with the Town Clerk. **[Amended**

1. Editor's Note: Original Title 2, Ch. 23, Section B, Purpose, of the General Bylaws, which immediately followed this section, was repealed 5-8-2021 ATM by Art. 17.

11-7-2023STM by Art. 16]

- D. Upon the appointment of any Trustee and the filing of such appointment with the Town Clerk, the title to the Trust estate shall thereupon and without the necessity of any conveyance be vested in such succeeding Trustee jointly with the remaining Trustees. Reference to the Trustee shall mean the Trustee or Trustees for the time being hereunder.
- E. Trustees may be removed at any time for cause by a majority vote of the Select Board following a properly noticed public hearing. Cause shall include, but not be limited to, violation of any local, state, or federal law; inactivity in business of the Board; incapacity to perform the duties of a Trustee; acts of the Trustee that, in the opinion of Select Board, are negligent or detrimental to the Town of Upton or the Trust. **[Amended 11-7-2023STM by Art. 16]**

§ 5-4. Meetings. [Amended 5-8-2021 ATM by Art. 17]

The Trust shall meet at least quarterly at such time and at such place as the Trustees shall determine. Notice of all meetings of the Trust shall be given in accordance with the provisions of the Open Meeting Law, MGL c. 30A, §§ 18 to 25. A quorum at any meeting shall be a majority of the Trustees qualified and present in person. Minutes of all meetings shall be kept with the Town Clerk in accordance with the provisions of the Open Meeting Law, MGL c. 30A, §§ 18 to 25.

§ 5-5. Powers of Trustees.

The powers of the Trustees shall be the following, except that any purchase, sale, lease, exchange, transfer or conveyance of any interest in real property is subject to a two-thirds vote of the Trustees; the Trustees may incur debt, borrow money, grant mortgages and pledge Trust assets only in an amount not to exceed 80% of the total value of the Trust's assets; and any debt incurred by the Trust shall not constitute a pledge of the full faith and credit of the Town of Upton and all documents related to any debt shall contain a statement that the holder of any such debt shall have no recourse against the Town of Upton, with an acknowledgement of said statement by the holder:

- A. To accept and receive property, whether real or personal, by gift, grant, contribution, devise, or transfer from any person, firm, corporation or other public or private entity, including without limitation grants of funds or other property tendered to the Trust in connection with any bylaw, general or special law, including the Community Preservation Act,² or any other source;
- B. To purchase and retain real or personal property, including without restriction investments that yield a high rate of income or no income;
- C. 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 undertakings relative to Trust property as the Trust deems advisable notwithstanding the length of any such lease or contract;
- D. 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;
- E. To employ advisors and agents, such as accountants, appraisers and lawyers, as the Board deems

2. Editor's Note: See MGL c. 44B, § 1 et seq.

necessary;

- F. 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;
- G. To apportion receipts and charges between income 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;
- H. 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;
- I. 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;
- J. 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;
- K. To carry property for accounting purposes other than acquisition date values;
- L. To make distributions or divisions of principal in kind;
- M. To compromise, 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 state statutes, to continue to hold the same for such period of time as the Board may deem appropriate;
- N. To manage or improve real property and to abandon any property which the Board determines not to be worth retaining;
- O. To hold all or part of the Trust property uninvested for such purposes and for such time as the Board may deem appropriate;
- P. To extend the time for payment of any obligation to the Trust; and
- Q. To adopt rules and regulations governing the conduct of the Board, consistent with the General Laws.

§ 5-6. Funds paid to Trust.

- A. Notwithstanding any general or special law to the contrary, all monies paid to the Trust in accordance with any Town of Upton zoning bylaw, exaction fee, or private contribution shall be paid directly into the Trust and need not be appropriated or accepted and approved into the Trust.
- B. Funds appropriated by the Town of Upton Town Meeting for payment into the Trust become Trust property and these funds need not be further appropriated to be expended except as set forth in § 5-5 herein. All monies remaining in the Trust at the end of any fiscal year, whether or not expended by the Trust, remain Trust property. The Trust shall comply with any conditions stipulated in any Upton Town Meeting vote appropriating monies to the Trust.

§ 5-7. Acts of Trustees. [Amended 5-8-2021 ATM by Art. 17; 11-7-2023STM by Art. 16]

A majority of Trustees may exercise any or all of the powers of the Trustees hereunder, unless otherwise provided, and may execute on behalf of the Trustees any and all instruments with the same effect as though executed by all the Trustees. No Trustee shall be required to give bond. No license of court shall be required to confirm the validity of any transaction entered into by the Trustees with respect to the Trust Estate. Any expenditure or donation by the Trust to any one party to create an affordable single-family dwelling unit shall not exceed \$50,000 or a cumulative amount exceeding \$200,000 during one calendar year; said vote shall require a super majority vote (2/3) of the total number of Trustees and the Select Board, seven eligible voters. Any borrowing by the Trust shall require the prior approval of the Upton Town Meeting.

§ 5-8. Liability.

Neither the Trustees nor any agent or office of the Trust shall have the authority to bind the Town of Upton, except in the manner specifically authorized herein. The Trust is a public employer and the Trustees are public employees for the purposes of Massachusetts General Laws Chapter 258. The Trust shall be deemed to be a municipal agency and the Trustees special municipal employees for the purposes of General Laws Chapter 268A.

§ 5-9. Taxes.

The Trust is exempt from General Laws 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 subdivision thereto.

§ 5-10. Custodian of funds.

The Town of Upton Treasurer/Collector shall be the custodian of the funds of the Trust. The books and records of the Trust shall be audited annually by an independent auditor in accordance with accepted accounting practices for municipalities. Cost associated with the independent audit shall be borne by the Trust.

§ 5-11. Governmental body.

The Trust is a governmental body for purposes of the Open Meeting Law, MGL c. 30A, §§ 18 to 25.

§ 5-12. Town board.

The Trust is a board of the Town for purposes of MGL c. 30B and c. 40, § 15A, but agreements and conveyances between the Trust and agencies, boards, commissions, authorities, departments and public instrumentalities of the Town shall be exempt from said Chapter 30B.

§ 5-13. Duration of Trust. [Amended 11-7-2023STM by Art. 16]

This Trust shall be of indefinite duration until terminated by a vote of the Upton Town Meeting. Upon termination of the Trust, subject to the payment of or making provisions for the payment of all obligations and liabilities of the Trust and the Trustees, the net assets of the Trust shall be transferred to the Town of Upton and held by the Select Board for affordable housing purposes. In making any such distribution, the Trustees may, subject to the approval of the Select Board, sell all or any portion of the Trust property and distribute the net proceeds thereof to the Town of Upton. The powers of the Trustees shall continue until

the affairs of the Trust are concluded. Once the Upton Town Meeting has voted to terminate the Trust, the Select Board shall have the power to approve all financial transactions made on behalf of the Trust.

§ 5-14. Registry of Deeds. [Amended 11-7-2023STM by Art. 16]

The Select Board may authorize the Trustees to execute, deliver and record with the Registry of Deeds any documents required for any conveyance authorized hereunder.

§ 5-15. Titles.

The titles to the various sections herein are for convenience only and are not to be considered part of said sections nor shall they affect the meaning or the language of any such section.

§ 5-16. Compensation of Trustees.

Trustees shall not receive a salary, stipend, bonus or other means of compensation for their service as a Trustee, nor shall they be eligible for any benefits from the Town of Upton. Trustees may be compensated for reasonable out-of-pocket expenses for travel and other Trust-related expenses. All such out-of-pocket expenses shall be fully documented with receipts for expenses prior to payment by the Trust.

§ 5-17. Amendments.

The provisions of this Trust can only be amended by a vote of the Upton Town Meeting.

§ 5-18. Annual report. [Amended 11-7-2023STM by Art. 16]

The Trustees shall prepare an annual report describing the activities of the Trust on a calendar-year basis. The annual report shall be submitted to the Select Board. The annual report shall list all financial transactions conducted by the Trust, including all revenues and costs, provide a balance sheet of liabilities and assets of the Trust, list an inventory of all affordable housing units created, sold, and/or managed by the Trust, and any other pertinent information related to the business of the Trust.