



The Commonwealth of Massachusetts
William Francis Galvin, Secretary of the Commonwealth
Massachusetts Historical Commission

**Frequently Asked Questions Regarding
Preservation Restrictions in Massachusetts**

1. ***What is a preservation restriction?*** A preservation restriction is a legally binding agreement (typically, an easement) to assure the long-term protection of a historically significant property. The preservation restriction, which the property owner grants to another party (either a governmental entity or a qualified charitable corporation or trust – the “grantee”), prohibits or conditions specified physical changes or uses of the historic property by current and future owners. Massachusetts General Laws Chapter 184, sections 31-33, establishes a legal statewide framework for their conveyance, recording and enforcement for the public benefit. Under Chapter 184, the Massachusetts Historical Commission must approve all preservation restrictions, and for those held by a charitable corporation or trust, the municipality in which the property is located must also approve the restriction.
2. ***In what ways are preservation restrictions used?*** Property owners may convey a preservation restriction on their property at any time to assure the long-term protection of its significant historic qualities. The owner of a historically significant property may require a preservation restriction as a condition of sale. Local, state and federal preservation programs usually require a preservation restriction in return for restoration or rehabilitation funds granted to a historic property. Municipalities may require a restriction to afford protection to a significant property as a condition for granting a permit or variance.
3. ***What properties are eligible for preservation restrictions?*** Under M.G.L Chapter 184, preservation restrictions are limited to historic structures or sites significant for their architecture, archaeology or associations in history. These may include properties listed in the State or National Register of Historic Places and those that the Massachusetts Historical Commission has found to meet the criteria for listing in the National Register. Historically significant buildings, structures, landscape features and archaeological sites and their settings may be protected through a preservation restriction.
4. ***Who may grant a preservation restriction?*** Only the owner of a qualified property or the owner’s authorized agent may grant a preservation restriction. The owner or owner’s agent must sign the preservation restriction agreement.
5. ***Who may accept a preservation restriction?*** Only a governmental body or a qualified charitable corporation or trust whose purposes include the preservation of historically significant properties, and which has the power to acquire an interest in land may accept a preservation restriction.

6. ***How is a preservation restriction conveyed?*** A preservation restriction may be conveyed in the form of a restriction, easement, covenant or condition in a deed, but it may also be conveyed in a will or other instrument. It may be conveyed as a donation or sold for value. If freely donated, a restriction on a qualified property may constitute a charitable deduction for federal income tax purposes.
7. ***What conditions should a preservation restriction contain?*** A preservation restriction can forbid or limit any or all (a) alterations in exterior or interior features of a historic structure, (b) changes in the appearance or condition of a site, (c) historically inappropriate uses, (d) archaeological field investigation without permit by the State Archaeologist, (e) other acts or uses detrimental to appropriate preservation of the structure or site. Current and future owners must also agree to maintain the property so as to preserve those characteristics that contribute its architectural, archaeological and historical integrity and significance. A property may require additional restrictions or allowances based on the purposes of the restriction and the particular circumstances and requirements of the owner and the grantee.
8. ***Is there a particular set of preservation standards that preservation restrictions should reference?*** Yes. Preservation restrictions must reference “The Secretary of the Interior’s Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring and Reconstructing Historic Buildings” (36 CFR 67 and 68), as these may be amended from time to time.
9. ***Must the preservation restriction be recorded?*** Yes. A preservation restriction must be recorded with the appropriate Registry of Deeds to be generally binding on future owners of the property.
10. ***How long does a preservation restriction remain in effect?*** A preservation restriction can be conveyed in perpetuity or for a term of years.
11. ***How is the preservation restriction on a property administered?*** The terms of the preservation restriction specify when and how the property owner must seek prior written approval from the grantee for proposed activities that are limited or conditioned by the restriction. The grantee inspects the property periodically to assure that the terms of the restriction are being observed. The grantee is also empowered to seek legal enforcement means, should the terms of the restriction be violated. Grantees may condition their acceptance of a preservation restriction on the payment of a fee or donation toward an endowment dedicated to cover the costs of administration, monitoring and enforcement.
12. ***Can a preservation restriction be terminated? If so how?*** The grantee of a preservation restriction under Chapter 184 may release it in whole or in part for such consideration, if any, as the holder may determine, but only after a public hearing and with the approval of the Massachusetts Historical Commission, with the determination that such a release is in the public interest and meets all the requirements of Chapter 184.

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