

# Sample Warrant Article Language for a Gift of Land or Purchase with CPA Funds

## Background

If it is the donor's intent to ensure that the land is used only for certain purposes, the following language results in a binding contract or charitable trust which cannot be impaired by vote, sale or otherwise. The only two ways the gift can be "changed" or disposed of are:

(1) if it is no longer possible to be used for the purpose intended, such as a tiny 3 room house with no land and no where to park given for a town library or

(2) eminent domain, which the courts have suggested cannot even then defeat the purposes of the gift. In the instance where a gift can no longer be used for the purposes of the gift, any proposal for disposition or change goes to the Attorney General's Public Charities Division, and then the parties go to Court to get an order allowing the change, with input and advice of the AG's office (and presumably members of the public).

## Grant Language

That being said, here is the language, with the REQUIRED terms underlined> (leave them out, and the purpose becomes "merely advisory" and not binding on the grantee).

To \_\_\_\_\_ to be used for \_\_\_\_\_ purposes forever. (or "in perpetuity")

Placing the language in the grant itself prevents town meeting, the Conservation Commission, or even the Legislature, from changing the terms of, or disposing of, the gift.

(If the grantor is not seeking a tax deduction which requires the gift be permanent, the grantor could include a reversionary clause that if the land ceased to be used for the stated purposes, it will revert to the grantor.)

## Warrant Article Language

If it is already too late for the language to be put in the deed (or to have a confirmatory deed given and accepted, confirming that the land is to be used for conservation purposes forever), I would suggest the warrant article contain words of dedication and acceptance:

" Voted that the aforesaid gift of land being accepted is dedicated exclusively to conservation purposes forever pursuant to article 97 of the Amendments to the Massachusetts Constitution."

Similar language in a vote and in a report of a grantee was found to confirm the intent of the perpetualness of the purpose of the gift.

## Examples

For example, when the City of Lynn wanted to sell off a parcel to a developer:

"Each of the two deeds by which the city of Lynn acquired title states in the habendum clause, "to the . . . [c]ity of Lynn to its own use and behoof forever for park purposes."...Similar conveyances of land for parks, where the grantors specified the land be used "forever" or "in perpetuity," without other limitation, have been found to establish a public charitable trust. [citations omitted]. ... In their 1892 annual report, the commissioners stated the land was to be "secured for public enjoyment forever."..... It has long been held that the contract obligations arising from a charitable trust such as exists in the present case cannot be impaired legislatively...Adams v. Plunkett, 274 Mass. 453, 462-464 (1931) (A conveyance conditional upon perpetual use of the property as a hospital imported a contract obligation. "[T]he sanctity of [such a contract] [i]s under the protection of art. 1, Section 10, of the Constitution of the United States . . . "). The special legislation authorizing the city to sell and convey could therefore neither impair the trust obligation, nor ratify the purported conveyance. HENRY A. COHEN & others<sup>1</sup> vs. CITY OF LYNN & another<sup>2</sup> (and a companion case), 33 Mass. App. Ct. 271 (1992). (emphasis added).

Language in a deed that it was "conveyed to said . . . [town] to be kept and used as a Public Park in perpetuity for the public good". The Court ruled the town "obtained and held title to the land under circumstances which made the land subject to a public charitable trust requiring that the land be used only for the purposes of a public park without any power in the Legislature to authorize or require the town to divert the trust property to other uses or purposes, as held by this court in the following decisions: Adams v. Plunkett, 274 Mass. 453, 462-463 (1931); City Bank Farmers Trust Co. v. Carpenter, 319 Mass. 78, 79-80 (1946); Nickols v. Commissioners of Middlesex County, 341 Mass. 13, 18-20 (1960); Salem v. Attorney Gen. 344 Mass. 626, 630-631 (1962); and Mahoney v. Attorney Gen. 346 Mass. 709, 714-715 (1964).<sup>4</sup> " BERNARD J. DUNPHY & others vs. COMMONWEALTH & others, 368 Mass. 376 (1975).

### **Caution**

A note of caution about using this language: Many land trusts and governmental entities are reluctant to use this language, because it does severely limit what can be done with the gift.

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