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REVOLVING FUNDS: IN THE VANGUARD OF THE PRESERVATION MOVEMENT

J. MYRICK HOWARD*

Revolving funds are organizations used to buy historic properties, place restrictive covenants on those properties, and later resell them with the preservation restrictions. Revolving funds are increasingly recognized as useful and valuable tools for historic preservation. By using the same money again and again as properties are bought and sold, a revolving fund can secure the preservation of many more properties than can a preservation organization that buys and retains ownership of properties.

Many local revolving funds were spawned by the frustrations experienced by preservation societies that own and maintain properties as museums. Although museums can play a significant role in focusing a community's attention on historic preservation and providing models for emulation, they are expensive to own and maintain. Preservation societies sometimes find they cannot take action to avert the destruction of other local landmarks because of the financial burden of buildings that they already own.

Operating a revolving fund may require as much money as operating a museum. Buying a distressed property to turn it into a museum or resell it may well be expensive. A revolving fund gets its money back when the property is sold, and the purchaser assumes the costs of maintaining the property. If the revolving fund is close to the break-even point in its transactions, it can be an inexpensive way of preserving properties of community interest.

A. *Setting up a Revolving Fund*

How a revolving fund is initially structured is important in determining how it works once it begins operation. The most important question the founders should consider is why set up a revolving fund? Revolving funds may have different purposes and they may function differently. A revolving fund may be needed to restore deteriorating downtown buildings or to find buyers to restore houses in a particular

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neighborhood or to take distressed properties off the market. If the real estate market for older buildings is strong, the purpose of the revolving fund may be simply to place restrictive covenants into the deeds of properties as they become available for purchase, thus insuring that the market strength does not lead to their destruction. A revolving fund may be needed for any or all of these reasons, or it may not be needed at all. Since the question of why a revolving fund is needed will have to be addressed when the Internal Revenue Service (hereafter referred to as IRS) reviews an application for tax-exempt status and when potential donors are solicited for financial support, it is best to establish the priorities at the beginning.

1. Incorporation

Like any corporation, for-profit or non-profit, a revolving fund must be incorporated according to the laws of the state in which it operates.¹ In North Carolina the organization must file its Articles of Incorporation (or charter) with the Secretary of State.² This document identifies in broad terms the purpose of the corporation, its initial board of directors, and the treatment and disposal of its assets.³

Preparing and filing Articles of Incorporation are not difficult; the incorporators can now model their articles on the charters of other preservation societies and revolving funds in the state. Since there are several legal documents that must be drafted during the incorporation stages, it may be wise to seek the services of an attorney.

One issue that must be resolved at this early stage is whether the revolving funds should be a part of an already existing historical or preservation society or whether it should be a separate entity. If the revolving fund is established within the existing society, the society's charter may need to be amended to reflect the new activity. The tax-exempt status of a society will usually enable that society to solicit funds for the revolving fund if the society's purposes as submitted to the IRS are broad enough to encompass the operation of a revolving fund.

The effectiveness of a revolving fund may depend on its ability to make decisions quickly, and often a large board of directors is unwieldy. Having a separate organization with a smaller board of directors may be advantageous to the revolving fund's operation, but the

1. See Goodman, *Legal Considerations in Establishing a Historic Preservation Organization*, in INFORMATION: A PRESERVATION SOURCEBOOK (The Preservation Press 1977). The *Information* series, undertaken by the National Trust for Historic Preservation and developed by the Office of Preservation, may be ordered from the Preservation Shop, 1600 H Street N.W., Washington, D.C. 20006.

2. See N.C. GEN. STAT. § 55.4 (1975).

3. *Id.*

same result could be reached by rewriting the bylaws of the existing society to charge a committee with full responsibility for the operation of the revolving fund. If there is any reason to believe that the establishment of a revolving fund may jeopardize the tax-exempt status of the existing society, a separate corporation should be created.

2. Gaining Tax-Exempt Status

In order for a revolving fund to obtain maximum financial support, the corporation that operates it must seek IRS recognition as a tax-exempt organization.⁴ Recognition as a § 501(c)(3)⁵ charitable organization not only means that the organization does not have to pay income taxes, but it also means that contributions to the organization are tax-deductible. It may be difficult for a revolving fund to raise sufficient capital unless it is accorded § 501(c)(3) status.

Obtaining the necessary tax-exemption determination requires an application containing information about the purpose and organization of the revolving fund. Again, great care should be taken in making the application because a denial (or later revocation) of a favorable ruling by the IRS can kill a revolving fund.

The Historic Preservation Fund of North Carolina, Inc. [hereinafter referred to as the Fund], one of the first statewide revolving funds and one of the few corporations in the country set up to act exclusively as a revolving fund, finally received its § 501(c)(3) status after appealing an initial negative ruling by the IRS.⁶ In negotiating its appeal to the ruling, the North Carolina organization proposed several conditions for its operation that may be instructive to new revolving funds. Several of those conditions relate to the type of properties that may be bought and sold. The North Carolina revolving fund confines its acquisitions to properties listed in or eligible for the National Register of Historic Places⁷ or a state⁸ or local register of historic places. A property not

4. See I.R.C. § 501(c)(3). See also Halvorson, *Qualifying as a Section 501(c)(3) Organization*, Preservation News, May 1976, at 12, col. 1.

5. I.R.C. § 501(c)(3).

6. See *IRS okays three funds*, Preservation News, Jan. 1978, at 1, col. 3. See also letter from Jeanne S. Gessay, Internal Revenue Service, to Historic Preservation Fund of North Carolina, Inc. (Nov. 7, 1977).

7. See National Historic Preservation Act of 1966, Pub. L. No. 89-655, 80 Stat. 915 (codified at 16 U.S.C. § 470a(a)(1) (1976)).

8. ARK. STAT. ANN. §§ 8-910 to -911 (Supp. 1979); CAL. PUB. RES. CODE §§ 5020.4, 5021 (West Supp. 1979); COLO. REV. STAT. §§ 24-80.1-101 to -108 (Supp. 1978); CONN. GEN. STAT. ANN. § 10-321(b)(2) (West 1977); GUAM GOV'T CODE § 13985.2(2) (Supp. 1974); HAWAII REV. STAT. § 6E-3(4) (1976); ILL. ANN. STAT. ch. 127, § 133d6 (Smith-Hurd Supp. 1979); IND. CODE ANN. §§ 14-3-3.3-6(b), -10 (Burns Supp. 1976); IOWA CODE ANN. §§ 303.5(9), .8(3) (West Supp. 1979); KAN. STAT. §§ 75-2720(b), (d), -2721(b) (1977); KY. REV. STAT. § 171.381(4)(d) (Supp. 1978); MD. ANN. CODE art. 41, § 181KA (1957); MINN. STAT. ANN. § 138.53 (West 1979); ch. 180, § 1, 1979 NEV. STATS. 272; N.J. STAT. ANN. §§ 13:1113-15.128-.132 (West 1979); N.M. STAT.

meeting these criteria may be acquired if the Fund's Board of Directors determines that the property is of substantial architectural or historic significance comparable to that of properties eligible for the National Register.

Another important condition relates to the restrictions placed on properties sold by the Fund. Property sales by the Fund include restrictive covenants that limit demolition, alteration, or new construction without the Fund's written approval; that require public access to the property for no less than four days a year if the property cannot be viewed and appreciated from a public right-of-way; and that give the Fund a right of first refusal when the property is sold.

Other conditions relate to the composition of the Board of Directors and the operation of the corporation. The Fund's Board of Directors contains three ex-officio members: the President of the Historic Preservation Society of North Carolina, the Director of the State Division of Archives and History, and the Chairman of the North Carolina Historical Commission. In its negotiations with the IRS, the Fund also stated its intention to publish a printed folder about the properties that it has revolved and to release news stories as properties are acquired, sold, and made available for public use.

The incorporators of a revolving fund should carefully consider details of the operation of the fund, including the composition of the board of directors, the particular restrictive covenants, and the types of properties to be revolved. The IRS, in reviewing the application of the North Carolina revolving fund for tax-exempt status, sought ways to distinguish the Fund's activities from those of a general real estate operation that is interested in historic preservation. The IRS also looked for the requisite public benefit that would make the organization an educational or charitable activity. Before submitting a proposal to the IRS, the incorporators themselves must address the question of why the revolving fund should be classified as a charitable organization so that they can make their case more articulate and persuasive.

B. *Money Matters*

Establishing a revolving fund requires money. How much money is

ANN. § 18-6-5(b) (1978); N.Y. PARKS & REC. LAW §§ 11.09(3), 19.03(3) (McKinney Pamph. 1979); N.D. CENT. CODE §§ 55-10-03 to -06 (1972 & Supp. 1979); R.I. GEN. LAWS § 42-45-5(b) (1977); S.D. CODIFIED LAWS § 1-19A-5 (1974); TENN. CODE ANN. §§ 4-11-201 to -208 (1979); TEX. REV. CIV. STAT. art. 6145, § 12 (Vernon Supp. 1978); UTAH CODE ANN. § 63-18-32 (1953); VT. STAT. ANN. tit. 22, § 723(a)(3) (Supp. 1979), § 742(a)(1), (b)(1) (1978); V.I. CODE ANN. tit. 29, § 282 (1976); VA. CODE § 10-138(b) (1978); WASH. REV. CODE ANN. §§ 43.51A.080(1), .120(2) (Supp. 1978); W. VA. CODE § 8-26A-3(2) (1976); WIS. STAT. ANN. § 44.22(2)(h), 4(b), (6)(b) (West 1979).

required will depend on what the goals of the revolving fund are and how it is to operate.

1. Establishing Financial Needs

Funds are necessary to support both operating expenses and capital expenses. If it is possible for a local preservation organization to administer a revolving fund using only volunteer labor, as many do, it can recoup most of its operating expenses by adding these expenses to the sale price of properties. Of course, operation on a volunteer basis requires a strong commitment from local citizens. The organization must find volunteers who are willing to take phone calls, answer letters, prepare information about the properties, and show them to prospective buyers. Although these tasks may be split between several persons, dependability and a maximum coordination of volunteer activity are essential. As in any sale of real property, closing costs will be incurred, and these frequently will be the biggest expenditure to be "passed along" to the buyer.

If the organization uses paid staff for the operation of a revolving fund, the operating expenses will be much higher, especially when the organization is working on a statewide or regional basis. Operating expenses will include telephone, postage, stationery, advertising, and other relatively minor expenses, as well as the major overhead of operating an office. Even with a high level of activity, the organization cannot realistically expect to recoup all of its operating costs when properties are sold. As a result, each property that is revolved must be subsidized from some source other than the new buyer.

The capital expenditures (the actual purchase costs for properties to be revolved) required to operate a revolving fund are more substantial, but they may be easier to obtain because benefactors are generally more willing to contribute funds for capital expenses than for operating expenses. If a revolving fund takes an option on a property as opposed to purchasing it in fee simple before a buyer is found, the need for capital funds is minimal, assuming that no restoration or rehabilitation is necessary. The revolving fund can rely on the financial resources of the buyer when the option is executed, if the purchase and resale take place on the same day.

Alternatively, if the revolving fund does not have sufficient capital to buy a property outright, members of its board of directors and other supporters may be willing to co-sign a bank note so that the revolving fund might obtain a short-term loan. Financing would be necessary only for the interim between the purchase by the revolving fund and the sale to the buyer. This period may be as short as a few hours. It is where the directors of the revolving fund have determined to hold or

rehabilitate properties that the fund will require a larger pool of capital. Before the revolving fund takes any actions, its board should assess how much money it will require and where that money might be obtained. It should also consider whether to segregate operating expenses from capital expenses. That decision is principally a bookkeeping matter.

2. Raising Funds

Once a revolving fund has obtained its § 501(c)(3) tax-exempt status, the fund can approach private individuals, corporations,⁹ foundations,¹⁰ and public agencies¹¹ for money without tax liability. The sources of funding will vary according to the goals of the revolving fund and the types of properties that it acquires.¹²

Where a local revolving fund is concerned, it may be easier to raise initial capital if the organization has a project that is highly visible and locally significant. Fund-raising efforts can focus on raising the money to purchase the property. Contributors should be informed that the property will be sold subsequently to avoid surprise when the sale takes place. In raising money from corporations and foundations, directors of the revolving fund should address themselves to the benefits a corporation or foundation will receive from a contribution. For example, if a corporation wishes to receive publicity for its gift, the revolving fund might work conscientiously to maximize the public relations impact of the gift. In soliciting funds from private sources, the revolving fund should be reasonable in its requests and should follow any written solicitation with a personal contact. Donations are unlikely unless donors are persuaded of responsible management and sound use of funds.

It is also possible to obtain funding from governmental sources. Community Development funds are frequently available in urban areas when a revolving fund is rehabilitating housing for low and moderate income persons or working in a blighted commercial area. The

9. See *Corporations Grants Received*, 14 N.C. Preservationist 1 (Feb./Mar. 1979). The Preservation Fund of North Carolina received \$50,000.00 from R.J. Reynolds Industries.

10. See Sherwood, *Trust revolving funds: a 7-year success story*, Preservation News, May 1978, at 5, col. 2. The National Preservation Revolving Fund at the National Trust for Historic Preservation received \$750,000.00 from several Mellon family foundations. See also Biddle, *Private Funds for Historic Preservation*, INFORMATION: A PRESERVATION SOURCEBOOK (The Preservation Press 1979). See ordering information in note 1 *supra*.

11. See *Recycling Dollars*, Preservation News, May 1976, at 4, col. 1. (Seattle used \$600,000.00 of the HUD Community Development Act block grant); *Santa-Cruz Local Fund*, Preservation News, May 1976, at 7, col. 1. (Santa Cruz appropriated \$45,000.00 from the HUD Community Development Act block grant fund and \$5,000.00 from Santa Cruz County); Shirk, *Public Funds for Historic Preservation*, INFORMATION: A PRESERVATION SOURCEBOOK (The Preservation Press 1977).

12. For a useful discussion of fund-raising, see A. ZIEGLER, L. ADLER, & W. KIDNEY, *REVOLVING FUNDS FOR HISTORIC PRESERVATION: A MANUAL OF PRACTICE* 21 (1st ed. 1975).

Department of Housing and Urban Development administers the Community Development program,¹³ but the use of community development funds is determined by the local governing body.¹⁴

Funds may also be available from the Heritage Conservation and Recreation Service (hereinafter referred to as HCRS) of the Department of the Interior when the revolving fund is working with a property listed in the National Register of Historic Places or with a property within a National Register historic district.¹⁵ HCRS funds are matching grants which may be applied toward the acquisition of properties or for restoration work.¹⁶ These federal funds are administered by state historic preservation offices.

Local and state governments may also provide funds for a revolving fund, if the fund has sufficient political influence. Governmental funds, however, whether federal, state, or local, usually come with strings attached. They may require an annual audit of the revolving fund, complicated applications, expensive appraisals, and certification of work. The amount of public funding available will determine whether a fund chooses to accept the benefits and the burdens of governmental money.

After the revolving fund has received substantial commitments from well-respected sources, raising funds becomes easier. For example, once one bank provides a sizeable sum to the fund, then other banks in the area are more likely to provide assistance. If a donor provides a challenge grant (that is, the donor's money will be given only in the event that the fund raises a specified amount from other sources), raising funds is further facilitated because contributors will recognize that their gifts can be used to leverage even more money.

Contributions to a revolving fund may be made in the form of gifts of property. Many families own properties that they wish to see preserved, but the families themselves do not want to restore them. A gift of the property to the revolving fund provides family members with the knowledge that the property will be restored and protected, and they receive public recognition for their interest in preservation. A gift of property also counts as a charitable contribution for income tax purposes.¹⁷ Corporations may also wish to give surplus or obsolete properties to the fund for tax and publicity reasons.¹⁸ Gifts of cash, securities,

13. See Housing and Community Development Act of 1974, Pub. L. No. 93-383, 88 Stat. 633 (codified at 42 U.S.C. §§ 5301-17 (1976)).

14. *Id.* § 5303(a)(1). For a discussion of the use of block grants for preservation purposes see, e.g., *Michigan Offers Case Studies of Block Grant Use*, Preservation News, May 1975, at 10, col. 1.

15. National Historic Preservation Act of 1966, Pub. L. No. 89-655, 80 Stat. 915 (codified at 16 U.S.C. § 470a(a)(1) (1976)).

16. *Id.* § 470a(a)(2).

17. See I.R.C. § 170.

18. *Id.*

or real property through wills are also viable sources of funds, although such gifts are not likely until the revolving fund has been established and operating for some time. After the fund has begun operation, it might print brochures about gifts of property and gifts made at death in order to encourage benefactors to consider making such donations.

C. *Dealing with Properties*

Buying and selling historic properties is the *raison d'être* of a revolving fund. In working with properties, the fund needs to operate in a professional and business-like manner at all times. Treating buyers and sellers honestly and seriously is essential because properties are major investments.

1. Selecting and Buying Properties

One of the first matters of business for a revolving fund's board of directors is to establish criteria for selecting properties to revolve. The fund must justify to the community and to the IRS why it is working with any property that it seeks to buy and sell. Before committing itself to the purchase, the organization must be thoroughly knowledgeable about every aspect of the property.

Selecting properties to revolve is one of the most difficult tasks for a revolving fund. Frequently, there are many properties to choose from, and frequently those properties that are in the greatest need of restoration are the least economically feasible properties. A revolving fund should never lose sight of its possibly being the only hope for some buildings. If a property is in poor condition, few realtors will be willing to spend the necessary time to find a buyer who is willing to restore it. If the market were taking care of deteriorating properties, then there would be no need for the revolving fund.

Although feasibility may be a criterion for selecting properties to revolve, a revolving fund will sometimes find it necessary to act first and then determine a feasible use later. In many cases, waiting to establish the feasibility of the property may result in its not being available at a later date.

Other criteria that the Historic Preservation Fund of North Carolina considers are the significance of the property, whether it is endangered, its surroundings, and the feasibility of restoration. Each category includes enumerated factors to determine whether the Fund should involve itself with a property. Frequently the decision of whether or not to work with a property is based on instinct—a subjective decision. A Checklist of Pertinent Criteria, which the Fund uses as a guide in its decisions, is included as Appendix A.

Once it is established that a particular property is one that a revol-

ing fund wishes to purchase, the next step is making a contact with the owner of or agent for the property. The fund may wish to obtain permission to have the property inspected by the fund's staff, architect, appraiser, engineer, or realtor. In talking to the owner, representatives of the fund can ascertain the owner's expectations for and feelings about the property. If the owner wishes to tear down the building immediately, it will be necessary for the revolving fund to make a quick cash offer for fair market value or to pay handsomely for an option. However, if the owner's sympathies incline toward the building's preservation, the fund may be able to obtain an inexpensive option or to purchase at less-than-appraised value. In dealing with a property owner, the fund's negotiator should recognize that owners of income-producing property are frequently willing to provide private financing for a buyer in order to avoid large capital gains for the tax year of the sale.¹⁹ Frequently private financing can be obtained at less than the market interest rate, a feature that will be appealing for buyers.

Settling on price can be difficult. Unless the revolving fund has directors and staff people who are extremely knowledgeable about local market trends, it is best to hire a competent professional appraiser to determine a property's worth. Selecting an appraiser who works well with the revolving fund may take time. Some appraisers are not sympathetic to the preservation of historic structures and do not recognize intangible values that are added to a property because of its historical or architectural significance.²⁰ Once the fund finds a good appraiser, it can work with him or her on future transactions.

As discussed previously, a revolving fund should consider purchasing only an option on a property whenever this is possible. The fund will then buy the property only after a purchaser is found. Working on an option basis, the revolving fund can deal with more properties than it could if it bought properties outright, as options require less capital. Also, it is not necessary for the fund's workers to spend time dealing with such matters as casualty insurance, utility bills, and property taxes. Those matters remain the concern of the owner of the property, and the fund can focus on finding sympathetic buyers.

2. Finding Buyers

Finding buyers for historic properties is a task that requires imagination. Placing classified ads in periodicals, speaking to civic clubs, mailing out flyers, and talking to realtors and accountants are only the beginning. The revolving fund should develop a sales strategy for each

19. See I.R.C. §§ 1201-1223; *but see* I.R.C. § 1250.

20. Reynolds & Reynolds, *Factors Affecting Valuation of Historic Property*, INFORMATION: A PRESERVATION SOURCEBOOK (The Preservation Press 1976).

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property, and yet be flexible enough to change strategies if the need arises. Strategies will vary from property to property, depending on their condition and expected use. If the buyer is expected to rehabilitate the property, it is helpful to obtain rehabilitation estimates from a reputable contractor, architect, or restoration specialist. These estimates will assist prospective buyers in their decision to purchase.

The fund should consider printing a packet of materials including information about the community, zoning, and property taxes; about the property's history, architecture, and condition; and about the revolving fund and its restrictive covenants. Having such a packet available makes it easy to respond to inquiries about a property and provides prospective buyers with the information they need.

Having a competent and enthusiastic person or persons to show a property to interested buyers is critical. Frequently, the person showing the property will make a bigger impression than the property itself. That person must be neat, friendly, and articulate about the property. Regional or statewide revolving funds will find it necessary to have local contact people who can show as well as keep watch on the property because distances will sometimes make it impossible for revolving fund personnel to do the work by themselves.

The board of directors of a revolving fund should develop a policy for dealing with realtors. Local realtors can be very helpful in finding buyers, but they expect (and deserve) a commission for their services. The revolving fund may choose to list each property with a sympathetic realtor so that properties are listed in the Multiple Listing Service used by many realtors. An agreement with the listing realtor might, for example, provide a commission if the realtor brings the sale and a smaller reimbursement for out-of-pocket expenses if the buyer comes directly to the revolving fund from the fund's own advertising.

Alternatively, the board may wish to set a finder's fee that is available to any realtor who brings in the ultimate buyer. This alternative has the advantage of being less expensive, but it does not result in the multiple listing of the property and does not give an individual realtor a special interest in selling the property. If a finder's fee is provided, any sign placed on the property by the revolving fund should indicate that brokers are protected.

Realtors working with the revolving fund should be aware that a buyer must accept the fund's restrictive covenants and must demonstrate the financial ability to carry through on the project. If the revolving fund can establish a good working relationship with local realtors, its work will be facilitated. The fund can spend more time arranging options on purchases of distressed properties and less time on showing them.

3. Closing a Sale

The most important consideration for a revolving fund when it sells a property is the restrictions that are placed into the buyer's deed. For the most part, the transaction is similar to other property sales, and the revolving fund's attorney prepares for the closing in a routine manner.

Drafting the restrictions for the first property will be difficult. The fund must strike a balance between allowing the buyer enough flexibility to use the property for the desired purpose and restricting its use sufficiently so that its historical and architectural integrity cannot be compromised. The fund must bear in mind that the covenants will affect future owners as well as the present buyer; therefore, it should consider both the long-term effect of the covenants on the property and its usefulness. After a set of covenants has been drafted for one property, they may be tailored to fit the circumstances of other properties.

If the buyer is responsible for rehabilitating the property, the fund may wish to execute a restoration agreement separate from the covenants. Presumably the present buyer will begin restoration shortly after the purchase. The guidelines for restoration will be more detailed than the long-term covenants, and they apply only to the present buyer if he or she completes the restoration. Rather than cluttering the deed with extensive restoration guidelines, the fund may incorporate a restoration agreement, in the form of a contract, into the deed by reference.

Covenants and a restoration agreement used for a property bought and resold by the Historic Preservation Fund of North Carolina are included as Appendix B. They should be considered as illustrative only because each revolving fund will need to tailor its own documents to the fund's philosophy and to the needs of each property. The fund's attorney should review the laws of its state to determine whether preservation restrictions will be upheld if challenged. Even though federal income and estate tax provisions allow charitable contributions for easements in gross granted in perpetuity for conservation purposes,²¹ some states do not recognize easements in gross as running with the land.²² In such states, preservation restrictions would generally be unenforceable after a property has been sold by the person who bought it from the revolving fund.

In North Carolina, the 1979 General Assembly enacted the Historic Preservation and Conservation Agreements Act²³ which removes com-

21. See I.R.C. § 170(f)(3)(B)(iii).

22. See RESTATEMENT OF PROPERTY § 489 (1944); Beckwith, *Developments in the Law of Historic Preservation and A Reflection on Liberty*, 12 WAKE FOREST L. REV. 93, 131-32 (1976).

23. N.C. GEN. STAT. §§ 121-34 to -42 (Supp. 1979). For a discussion of the new North Carolina statute, see Morgan, *Reaffirmation of Local Initiative: North Carolina's 1979 Historic Preservation Legislation*, 11 N.C. CENT. L.J. 243 (1980).

mon law impediments to the enforceability of preservation covenants and easements. This legislation, sponsored by the Select Committee for Preservation Law Revisions established by Attorney General Rufus Edmisten,²⁴ ensures that revolving funds can have a long-term impact on the preservation of historic structures and landscapes in North Carolina.

Persons working with a revolving fund should realize that a preservation project is not consummated when a buyer is found. If the revolving fund does not adequately protect its investment of time and money in a property by providing for its long-term well-being, the fund is attending only to a small part of its task. It should take a farsighted, professional, and even analytical approach to long-term protection through covenants.

4. Enforcing the Restrictions

The revolving fund personnel should recognize that the fund must always be prepared to enforce its covenants. Being prepared means more than just being willing to call on the fund's attorney. The fund should regularly check on its properties and keep written reports and photographs of all inspections. Periodic visits and letters to owners of properties bought through the fund remind the owners that the restrictions are to be taken seriously. This written and photographic record can also be used if legal action is ever necessary to enforce preservation restrictions.

The fund should also enforce all of its restrictions, rather than enforcing some while leaving others unenforced. If the fund has left some covenants unenforced, a court may refuse to enforce other covenants. If the fund fails to enforce its preservation restrictions, it has failed in a significant feature of its purpose. The enforcement of covenants is not a high-visibility activity for the fund, but it can help to prevent a preservation disaster that would ruin the organization's credibility in the community.

D. Summary

Revolving funds provide local, regional, and statewide organizations with an opportunity to generate private investment in historic properties. They serve as leveraging tools because the total investment in properties will far exceed the costs of operation. Revolving funds can help shape the future well-being of a community. Historic resources can be given many years of protection through restrictive covenants, and neighborhoods and downtowns can be revitalized through private

24. See Morgan, *supra* note 23, at n.4.

investment. Revolving funds can also provide preservation organizations with a new sense of purpose and professionalism. Communities will recognize preservationists as doers rather than talkers. With time, money and persistence, the revolving fund can truly be in the vanguard of the preservation movement.

APPENDIX A

CHECKLIST OF
PERTINENT CRITERIA*_____

Property_____

County*SIGNIFICANCE*

1. Historical importance _____
2. Architectural integrity _____
3. Uniqueness (One of a kind? Others like it?) _____
4. Diversity, considering the following: _____
 - a. geographical distribution _____
 - b. variety of periods _____
 - c. commercial or residential _____
 - d. urban or rural _____
 - e. socio-economic (black or white, palatial or modest) _____
5. Educational value _____

ENDANGEREDNESS

6. Degree of care and protection _____
 - a. The building is threatened by neglect _____
 - b. The building is threatened by demolition _____
7. Short of intervention by the Historic Preservation Fund, there are no other practical solutions _____

SURROUNDINGS

8. The project is in an area of particular concern _____
9. The project will have an impact on its surroundings (Will it spark the revitalization of an area or the formation (or stimulation) of a preservation group?) _____
10. The site occupies a key position in a neighborhood or district _____

FEASIBILITY

11. The property is available for acquisition by the Historic Preservation Fund _____

* A suggested method of evaluation would be to indicate the degree to which each criterion exerts a *positive* influence in the selection of this property, using a scale of 0 to 5.

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- 12. The property can be adapted for some appropriate, viable use _____
- 13. Existing and anticipated surroundings are compatible with the proposed use _____
- 14. Local officials are cooperative _____
- 15. Accessibility of the property (distance from population centers, condition of access roads) _____
- 16. The chances of resale are good (Are there potential buyers? Can they finance not only the purchase but also the restoration and maintenance costs?) _____
- 17. The Fund can recapture all or most of its investment. _____

Evaluator _____

APPENDIX B
(Restrictive Covenants)

1. The Grantor covenants that he is seized of the premises in fee and has the right to convey the same in fee simple; that the same are free from encumbrances; and that it will warrant and defend the said title to the same against the claims of all persons whatsoever, except easements, rights-of-way, and restrictive covenants of record.

2. That the Grantees, pursuant to the terms and conditions of a Restoration Agreement entered into by the parties and signed by the President or Executive Director of the Grantor, shall (i) cause to be restored the Cheek-Twitty House which stands on the premises and (ii) cause the said premises to be landscaped in keeping with said building. If the said building shall not be substantially restored according to the terms hereof within the sixty (60) months following the date hereof, then the Grantor shall have an option to repurchase the premises for the initial purchase price paid by the Grantees to the Grantor, plus the amount spent by the Grantees toward the restoration of said building, said option to expire six (6) years from the date hereof or upon completion of said restoration, whichever first occurs. Provided, however, that if there are any outstanding deeds of trust or other encumbrances against the property, any right to repurchase shall be subject to said deeds of trust or encumbrances, and they shall either be satisfied or assumed as part of the repurchase price.

3. That after the Cheek-Twitty House has been restored pursuant to the terms and conditions of the aforementioned Restoration Agreement, no alteration and no physical or structural change and no change in the color or surfacing shall be made to the exterior of the building

located on the premises, and no removal or alteration of original mantels, staircases, wainscoting, doors, or door and window surrounds shall be made without the written approval of the President or Executive Director of the Grantor, nor shall any additional structure or addition to the existing structure be constructed or permitted to be built upon the premises unless the plans and exterior designs for such structure or addition have likewise been approved in writing.

4. That no structure on the premises may be removed or demolished without the prior written approval of the Executive Director or President of the Grantor.

5. That the general public shall have access to the property to view the interior of the restored historic house no less than four (4) days a year at times both desirable to the public and convenient with the owner; likewise, and at other times, researchers, scholars, and groups especially interested in historic preservation shall have access to the property by special appointment. The Grantees will notify the Grantor of the schedule of public visitation, which will appear in all literature published by the Grantor.

6. That the Grantees shall abide by all federal, state, and local laws and ordinances regulating the restoration and use of the property described herein.

7. That in case of any contemplated sale of the property or any portion thereof by the Grantees or any successor in title thereto, first refusal as to any bona fide offer of purchase must be given to the Grantor, its successors or assigns, which shall, if it so decides, notify the then owner of its willingness to buy upon the same terms within forty-five (45) days of receipt of written notice of such bona fide offer. Failure of the Grantor to notify the then owner of its intention to exercise this right to first refusal within such forty-five (45) day period shall free the owner to sell pursuant to the bona fide offer.

8. That no living trees greater than eighteen (18) inches in diameter at a point four (4) feet above the ground shall be removed from the premises without the express written approval of the Grantor unless immediate removal is necessary for the prevention or treatment of disease or for the protection and safety of the Cheek-Twitty House.

9. That unless otherwise provided, the covenants set forth above shall terminate and be of no further force or effect after fifty (50) years from the date of conveyance of the property by the Grantor. In the event of a violation of these covenants, all legal and equitable remedies, including injunctive relief to enforce these covenants, shall be available to the Grantor.

10. That in the event of a violation of covenants contained in Paragraphs 3, 4, 5, and 6 hereof, Grantor then shall further have an

option to repurchase the premises, provided that it shall give the Grantees written notice of the nature of the violation and the Grantees shall not have corrected same within the ninety (90) days next following the giving of said notice. The repurchase of the premises, pursuant to the exercise of the option retained hereby, shall be at a price equal to the then market value of the premises, subject to restrictive covenants, as determined by agreement of the then owner or owners and the Grantor, or, in the absence of such agreement, by a committee of three appraisers, one to be selected by the Grantor, one to be selected by the then owner or owners, and the other to be designated by the two appraisers selected by the Grantor and the owner or owners respectively. Provided, however, that if there are any outstanding deeds of trust or other encumbrances against the property, any right to repurchase shall be subject to said deeds of trust or encumbrances, and they shall either be satisfied or assumed as part of the repurchase price.

11. The Grantees' covenants to carry out the duties specified herein shall be considered as covenants running with the land, which the Grantees, their heirs, successors, and assigns, covenant and agree, in the event the premises are sold or otherwise disposed of, will be inserted in the conveyance or other instrument disposing of the premises.

12. The property and all appurtenances thereunto on the above referenced land shall be continuously administered so that the public shall have access to same to view the exterior of the structure located on the property at least twelve (12) days a year. Notices of the schedule for visitation shall appear in all literature referring to the property published by the owner. Owner may charge a reasonable admission fee that is in line with charges for similar types of property.

13. The owner covenants and agrees to continuously maintain, repair, and administer the premises herein described in accordance with the Secretary of the Interior's Standards for Rehabilitation so as to preserve the historical integrity of features, materials, appearance, workmanship, and environment of the premises. Maintenance and, where applicable, adequate staffing shall be continuously provided.

14. No person in the United States shall, on account of race, color or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination in the restoration and use of the property described herein. The owner covenants and agrees to conform with all requirements of Title VI of the Civil Rights Act of 1964 (P.L. 88-352) issued pursuant to that title in administering said premises.

15. The premises herein described shall not be sold without giving notice to the State of North Carolina. Written notice to the Director, Division of Archives and History, shall be given ninety (90) days in

advance of the sale of the property. Included in the notice shall be the name, address, and telephone number of the prospective purchaser, the proposed terms of the sale and the sale price. In the event of such a sale, the owner agrees to notify the Director, Division of Archives and History, North Carolina Department of Cultural Resources, by registered mail, return receipt requested, of the sale of the property, giving the name and address of the purchaser.

APPENDIX C

STATE OF NORTH CAROLINA)
) RESTORATION AGREEMENT
COUNTY OF WARREN)

THIS AGREEMENT, made and entered into this _____ day of _____, 1980, by and between THE HISTORIC PRESERVATION FUND OF NORTH CAROLINA, INC., a nonprofit corporation organized under the laws of North Carolina, hereinafter referred to as the "Fund," and _____, hereinafter referred to as "Purchasers";

W I T N E S S E T H:

THAT WHEREAS, both the Historic Preservation Fund and the Purchasers desire that the historic Cheek-Twitty House and outbuildings be preserved in as authentic condition as possible and, at the same time, be altered where necessary to provide modern conveniences for its new owners;

A. *General*

(1) The overall mass of the original house shall be retained. Any or all existing additions to the original house may be removed at the Purchasers' discretion, and the Fund hereby agrees that the Purchasers may replace any removed addition with a newly constructed addition. The plans for said new additions shall be expressly approved in writing by the President or Executive Director of the Fund.

(2) The Purchasers shall consult the Fund on the location of the modern kitchen and bathrooms to be installed in the main house.

(3) The Purchasers shall give top priority to the following items in the restoration of the main house and the two historic outbuildings:

- a) Roof repairs

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- b) Foundation and chimney stabilization and repairs,
- c) Window and door repairs, and
- d) Removal of water from cellar.

B. *Chimneys and Foundations*

(1) All chimneys and hearths of the original house shall be retained and repaired in a proper manner. Other chimneys and hearths may be removed at the Purchasers' discretion.

(2) In all cases the mortar used to repoint the chimneys and hearths may be removed at the Purchasers' discretion.

(3) The Purchasers shall consult the Fund about any method for stabilizing the foundation that requires the removal of the existing foundation materials.

C. *Porches*

(1) All existing porches may be removed at the Purchasers' discretion.

(2) The front porch of the main house may be replaced by a Federal-style porch hypothesized from a consideration of original porches found on similar Federal-style houses. If clues about the size and shape of the original porch on the Cheek-Twitty House are found when the existing porch is removed, said clues shall be considered when the new porch is designed.

(3) The Purchasers shall consult the Fund about the design of any porches to replace the existing porches.

D. *Outbuildings*

(1) The Purchasers shall retain, stabilize, and maintain the early smokehouse presently located east of the main house.

(2) The Purchasers in their discretion may remove other outbuildings, unless close inspection by the Purchasers indicates that a structure has significance because of its age, prior use, or construction.

E. *Heating, Air Conditioning, and Insulation*

(1) The Purchasers shall not use any hearth until such hearth has been closely inspected for safety and approved for use or rebuilt.

(2) The Purchasers shall consult the Fund as to the types of heating and/or air conditioning systems to be installed and the locations of said systems and duct chases.

(3) The Purchasers will choose methods of insulation that will adequately protect and preserve the original fabric of the main house.

(4) Under no circumstance shall form-in-place or loose fill insulation be installed in the exterior walls without provision for a vapor barrier on the side of the insulation facing the interior of the house.

F. *Interior*

(1) Any interior alterations made by the Purchasers will, insofar as possible, respect and preserve the original wood trim.

(2) The Purchasers shall gently remove sections of the existing white paint from the baseboard in the main house to ascertain whether woodwork was "marbleized." If wood "marbleizing" is found, the Purchasers may remove the existing white paint to expose the marbleizing and restore and preserve it in the best manner possible, or the Purchasers may paint over the marbleizing in a manner which will do the least permanent damage to the marbleizing.

(3) The Purchasers shall not paint over the natural wood trim in the rooms of the second floor of the main house. The Purchasers agree to use their best efforts to preserve and protect said wood trim.

(4) In order to repair termite damage and to install modern insulation, wiring, and plumbing, as well as heating and air conditioning ducts and outlets, the Purchasers may remove any and all interior plaster in the house. The Purchasers have the option of patching existing plaster, using new plaster to replace the old plaster, or using other approved materials in lieu of plaster.

G. The Fund agrees with the Purchasers that the terms and conditions of this Agreement may be changed with the approval of both the Fund and the Purchasers as new and unforeseen circumstances arise. Changes in the terms and conditions of this Agreement shall be made in writing and signed by both parties.

H. The Purchasers agree to adhere to the spirit of the Secretary of the Interior's Standards for Rehabilitation, a copy of which is attached and which is specifically incorporated herein by reference.

I. This Agreement does not constitute waiver of any rights of the Fund retained by it in its deed to the Purchasers of the said property.

IN TESTIMONY WHEREOF, the parties hereto have executed this Restoration Agreement in duplicate the date first set out above.

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**THE HISTORIC PRESERVATION FUND
OF NORTH CAROLINA, INC.**

By: _____

**Banks C. Talley, Jr.
President**

Witness:

**J. Myrick Howard
Executive Director**

_____ (SEAL)

_____ (SEAL)

Witness:
