

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act to amend the Code of Virginia by adding in Title 36 a chapter numbered 13, consisting of sections numbered 36-176 through 36-181, relating to preservation of affordable housing; definitions; civil penalty.

[H 1398]

Approved

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Title 36 a chapter numbered 13, consisting of sections numbered 36-176 through 36-181, as follows:

CHAPTER 13.

PRESERVATION OF AFFORDABLE HOUSING.

§ 36-176. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Affiliate" means the same as that term is defined in § 13.1-725.

"Affordability restriction" means a limit on the amount of rent that an owner may charge at publicly supported housing as set forth in a contract.

"Bona fide offer to purchase" means a signed purchase agreement made in good faith.

"Contract" means a written agreement entered into by an owner under which property becomes publicly supported housing that is subject to an affordability restriction. "Contract" includes a deed restriction, loan agreement, operating agreement, or any other written agreement that results in an affordability restriction being placed on the property.

"Day" means calendar day unless clearly specified as business day.

"Locality" means the same as that term is defined in § 15.2-102.

"Owner" means a person, firm, partnership, corporation, trust, organization, limited liability company or other entity, or its successors or assigns, that holds title to publicly supported housing.

"Publicly supported housing" means any building, structure, or combination of related buildings and structures operated as a single entity that a landlord provides for a consideration consisting of (i) 10 or more rental dwelling units; (ii) with an affordability restriction in a contract requiring that such rent be affordable for persons and families of low or moderate income; and (iii) that receives benefits from the following programs, grants, or credits: (a) § 8 of the United States Housing Act of 1937, 42 U.S.C. § 1437(f), as it applies to new construction, substantial rehabilitation, moderate rehabilitation, property disposition, and loan management set-aside programs or any other program providing project-based rental assistance; (b) the federal Low-Income Housing Tax Credit Program, 26 U.S.C. § 42; (c) § 101 of the Housing and Urban Development Act of 1965, 12 U.S.C. § 1701s, as it applies to programs for rent supplement assistance; (d) § 202 of the Housing Act of 1959, 12 U.S.C. § 1701q; (e) the Below Market Interest Rate program codified at § 221(d)(3) of the National Housing Act, 12 U.S.C. § 1715 l(d)(3) and (5); (f) § 236 of the National Housing Act, 12 U.S.C. § 1715z-1; (g) §§ 515 and 538 of the Housing Act of 1949, 42 U.S.C. § 1485; (h) tax-exempt private activity mortgage revenue bonds as codified in § 142(d) of the Internal Revenue Code or its predecessors; (i) the Community Development Block Grant Program, 42 U.S.C. § 5301 et seq.; (j) the HOME Investment Partnership Program, 24 C.F.R. § 92; (k) the National Housing Trust Fund, 24 C.F.R. § 93; (l) the Virginia Housing Trust Fund; and (m) the Virginia Housing Opportunity Tax Credit.

"Qualified designee" means any organization or association, including a nonprofit organization, for-profit organization, public housing authority, or tenant association that enters into an agreement with the locality enabling such organization or association to evaluate or exercise the locality's right of first refusal to purchase publicly supported housing.

"Sale" or "sell" means an act by which an owner conveys, transfers, or disposes of publicly supported housing by deed or otherwise, through a single transaction or a series of transactions, within a two-year period, provided that a transfer of ownership interest alone shall not constitute a sale. "Sale" or "sell" does not mean the disposition of publicly supported housing by an owner (i) to an affiliate of such owner, (ii) to a person or entity that owns a portion of the publicly supported housing at the time of sale or listing, (iii) to a member of the owner's family by blood or marriage, (iv) that occurs in the event of the owner's death or divorce, (v) to a purchaser of the publicly supported housing in a foreclosure sale, (vi) to a purchaser of the publicly supported housing by a deed in lieu of foreclosure provided that the contract restrictions are subordinate to the purchaser's interest eligible for foreclosure, or (vii) to a government entity that exercises the power of eminent domain to acquire the publicly

57 supported housing or negotiates a purchase in lieu of eminent domain.

58 "Tenant association" means any association established by the tenants of publicly supported housing
59 for the purpose of addressing issues related to their living environment that (i) operates democratically
60 and represents all residents in the development; (ii) is completely independent of owners, management,
61 and their representatives; and (iii) has notified the owner and the locality of its existence or
62 establishment and has provided to such owner and the locality the names and addresses of at least two
63 officers or representatives of such association. No owner or other entity shall be required to ascertain
64 the association's compliance with this definition.

65 "Termination" means the cessation, discharge, or removal of an affordability restriction affecting
66 publicly supported housing in the absence of another equivalent affordability restriction, as defined by
67 the locality, including (i) expiration, in whole or in part, of an affordability restriction under a
68 government program regardless of the owner's intention to renew the restriction; (ii) nonrenewal or
69 termination, in whole or in part, of a government program contract that required the expiring
70 affordability restriction; or (iii) payment in full or prepayment of a government program mortgage loan
71 that required the expiring affordability restriction.

72 "Third-party buyer" means a party that is not the locality or qualified designee that makes a bona
73 fide offer to purchase publicly supported housing. "Third-party buyer" does not mean (i) an affiliate of
74 the owner, (ii) a person or entity that owns a portion of the publicly supported housing at the time of
75 sale or listing, (iii) a member of the owner's family by blood or marriage, (iv) a purchaser in a
76 foreclosure sale, (v) a purchaser by a deed in lieu of foreclosure, or (vi) a government entity that
77 exercises the power of eminent domain to acquire the publicly supported housing or negotiates a
78 purchase in lieu of eminent domain.

79 **§ 36-177. Notice requirements for termination of affordability restriction.**

80 A. Any locality may adopt an ordinance to require the owner of publicly supported housing to
81 provide written notice to (i) the locality; (ii) all tenants residing in the property at the time of such
82 notice; (iii) the tenant association, if any; and (iv) any other entity deemed necessary by the locality no
83 less than 24 months before the termination of an affordability restriction affecting publicly supported
84 housing, as determined by the locality.

85 1. The written termination notice shall specify in plain language whether the owner (i) intends to
86 allow the termination of affordability restrictions to continue, (ii) intends to convert the publicly
87 supported housing to nonresidential use, (iii) is involved in negotiations to renew or enter into a new
88 equivalent affordability restriction, or (iv) intends to sell the publicly supported housing to a third-party
89 buyer, including information about whether such third-party buyer intends to comply with an equivalent
90 affordability restriction.

91 2. The written termination notice may include the address of the publicly supported housing, the
92 name and address of the owner, the termination date of each affordability restriction, an explanation
93 and any expiration date of any provisions that may allow the tenant to retain the tenancy after the
94 affordability restrictions are terminated, and information about tenant resources.

95 3. If more than one termination will occur, the owner may send one written notice so long as the
96 terminations are scheduled to occur within one year of each other, the notice is given at least two years
97 prior to the earliest termination, and the notice otherwise complies with this section.

98 B. A locality may require that the owner of publicly supported housing provide another written
99 notice to the entities identified in subsection A no less than 12 months before the termination of the
100 affordability restriction affecting the publicly supported housing to confirm the owner's intent regarding
101 the termination.

102 C. Notice required by this section shall be delivered in a format prescribed by the locality. The
103 owner shall retain sufficient proof of delivery, as determined by the locality. Any notice required by this
104 section to tenants shall be provided in accordance with §§ 55.1-1200 and 55.1-1202.

105 D. An owner of publicly supported housing that, on the effective date of the ordinance adopted
106 pursuant to this section, has less than 24 months remaining prior to the date when the affordability
107 restriction affecting the publicly supported housing will terminate, shall not be required to give the
108 24-month notice required by subsection A, but shall provide such notice within 90 days after the
109 effective date of such ordinance.

110 E. Any locality may adopt an ordinance to require that an owner subject to the notice requirements
111 of this section submit to the locality, no more than 30 days after the notice requirement date, sufficient
112 verification, as defined by the locality, that the owner has complied with the provisions of this section. If
113 the locality plans to contest the validity of such verification, the locality shall notify the owner, by
114 certified mail, return receipt requested, within 60 days of receipt of such verification. If the locality finds
115 no contest to the validity of the verification, a certificate of compliance shall be recorded in the land
116 records of the locality within 60 days of the locality's receipt of the verification from the owner. The
117 certificate of compliance shall (i) contain a legal description of the property, (ii) identify the owner as

the grantor, and (iii) be acknowledged by the owner and the locality in the manner required for acknowledgement of a deed.

F. Any locality may impose by ordinance a fine, penalty, tax, fee, charge, or assessment upon the publicly supported housing owner for failure to comply with the notice provisions of this section, except that no locality shall impose a fine, penalty, tax, fee, charge, or assessment upon the publicly supported housing property owner once a certificate of compliance is recorded in the land records of the locality.

§ 36-178. Qualified designee.

A. After the publicly supported housing owner delivers notice as required by § 36-177, or after the date that such notice would be required from such owner, the locality may appoint a qualified designee to act as a purchaser of the publicly supported housing. The appointment of such qualified designee shall be effective when the appointing locality delivers notice of such appointment to the publicly supported housing owner.

B. If a locality chooses to appoint such qualified designee, the locality shall establish a process for selecting such qualified designee. A qualified designee may include tenant associations, nonprofit organizations, public housing authorities, or for-profit organizations. A qualified designee shall enter into a written agreement with the locality that requires such qualified designee to agree to preserve the affordability of the publicly supported housing and assume all rights and responsibilities attributable to the locality as a prospective purchaser of the publicly supported housing.

§ 36-179. Opportunity to offer to purchase.

A. The locality or qualified designee may deliver, by certified mail return receipt requested, an offer to the owner to purchase the publicly supported housing. An owner is under no obligation to accept such offer.

B. At any time after delivery of notice as required by § 36-177 or after the date that such notice would be required from such owner, the locality or qualified designee may request that, within 30 days of such request, the owner make available all relevant documents as determined by the locality.

1. The documents provided by the owner to the locality or qualified designee under this section shall be confidential and exempt from the provisions of the Virginia Freedom of Information Act (§ 2.2-4300 et seq.) unless the property owner consents in writing or upon order by a court. Notwithstanding the provisions of this subdivision, disclosure may be made to potential funding sources, regulatory agencies, or agents or consultants of the locality or qualified designee in connection with a transaction between the owner and the locality or qualified designee, subject to any appropriate confidentiality agreements.

2. The locality or qualified designee shall not require that the owner provide information that the owner is prohibited from disclosing pursuant to relevant federal or state laws and regulations or any requirements dictated by a program that has granted or grants assistance to the publicly supported housing.

3. The locality or qualified designee shall not require that the owner provide personally identifiable tenant information.

§ 36-180. Right of first refusal.

A. After the publicly supported housing owner delivers notice as required by § 36-177, or after the date that such notice would be required from each owner, and no later than two months before the termination of affordability restrictions, the locality or qualified designee may record in the land records of the locality in which the property is located and deliver to the owner a notice of right of first refusal in a form prepared by the locality. Such form shall include:

1. The legal description of the publicly supported housing;

2. An acknowledgement by the locality that the instrument holds the right of first refusal to purchase the publicly supported housing under this chapter, that the acknowledging party may assign such right of first refusal to a qualified designee, and that such right may be reassigned;

3. A statement that any bona fide offer to purchase the publicly supported housing shall acknowledge that the property is subject to the right of first refusal under this chapter;

4. A statement that the right of first refusal expires 24 months after the termination of affordability restrictions; and

5. A declaration that a copy of the recorded notice of right of first refusal was promptly delivered to the owner by the locality or qualified designee by electronic delivery, in-person delivery, or registered or certified mail with proof of such delivery attached.

The form shall be executed and acknowledged by the locality or qualified designee in a manner provided for the acknowledgement of deeds.

B. A locality may require that, within five business days after the owner has accepted a bona fide offer to purchase from a third party for the publicly supported housing that is subject to a recorded notice of right of first refusal, an owner send notice, in a format prescribed by the locality, to the locality and qualified designee if applicable. Such notice shall contain a copy of the third-party offer or the terms and conditions of the offer and shall be subject to the same confidentiality provisions in

§ 36-179.

1. The locality or qualified designee shall have 30 days from the date such notice is mailed to exercise a right of first refusal by delivering a matching offer to purchase the property in a format prescribed by the locality. The matching offer shall contain a commitment from the locality or qualified designee to preserve the property as affordable for at least 15 years on terms determined by the locality. The owner shall accept the first matching offer such owner receives from a locality or qualified designee under this section.

2. A locality or qualified designee's offer is a matching offer if it has the same terms and conditions as the third party's offer to purchase, except that such locality or qualified designee may consider a purchase offer as a matching offer, notwithstanding a conflicting term, that includes:

a. An earnest money deposit that is no less than the least of the third-party offer or four percent of the sales price;

b. That the earnest money deposit is refundable until the earlier of 90 days or the date of closing in the event of a good faith failure of the locality or qualified designee to obtain financing;

c. Any other term that the property owner has agreed to waive; and

d. A commitment to maintain the affordability of the property as required by this section.

C. A locality may require that an owner that sells publicly supported housing subject to the notice of right of first refusal in subsection A to a third-party buyer, the locality, or qualified designee submit to the locality sufficient verification, as defined by the locality and within a certain timeframe as determined by the locality, that the owner has complied with the provisions of this section. The locality has no more than 60 days from receipt of such verification to notify the owner, by certified mail, return receipt requested, whether the locality intends to contest the validity of the verification. If the locality finds no contest to the validity of the verification, a certificate of compliance shall be recorded in the land records of the locality within 60 days from the date the locality received such verification. The certificate of compliance under this section shall contain a legal description of the property, the identity of the owner as the grantor, and an acknowledgment by the owner and the locality in the manner required for acknowledgment of a deed.

D. The provisions of subsection B shall not apply if:

1. The third-party buyer agrees to equivalent affordability restrictions, as defined by the locality, on the publicly supported housing to ensure that such property remains publicly supported housing for at least 15 more years;

2. The proposed property transfer does not constitute a sale;

3. More than 24 months have elapsed since the termination of the affordability restrictions for the publicly supported housing; or

4. The owner accepted a third party's offer to purchase the publicly supported housing before a reasonable time after the effective date of the ordinance adopted to implement the provisions of this chapter, as determined by the locality.

E. The provisions of this section are secondary to the terms of the right of first refusal established by a locality through the contribution of local funds to the acquisition, development, or revitalization of publicly supported housing or within the agreements for assistance from locally managed funds or programs.

F. The provisions of this section are secondary to the terms of the right of first refusal by a qualified nonprofit organization at the close of the compliance period for low-income housing tax credits, as authorized by 26 U.S.C. § 42(i)(7) and according to regulations promulgated by the Virginia Housing Development Authority.

G. The locality or qualified designee may bring a civil action against an owner of publicly supported housing where the locality or qualified designee has recorded a notice of right of first refusal if the owner has violated the provisions of this section. The court may award punitive damages and provide injunctive relief. The court may award reasonable attorney fees and costs at trial and on appeal to a prevailing plaintiff in an action under this section.

§ 36-181. Annual report.

By December 31 of each year, any locality that has exercised the authority granted in this chapter shall submit a report about such activities during the prior fiscal year to the Department of Housing and Community Development. Such report shall include:

1. The number and description of properties at risk of termination in the locality or the number of properties for which an owner provided a notice of termination.

2. The number of publicly supported housing properties and affordable units for which the locality maintained or extended affordability restrictions through the authority granted in this chapter.

3. A list of the qualified designees appointed by the locality and copies of the agreements between such qualified designees and the locality.

4. The number of offers to purchase executed by the locality or qualified designee, the number of

240 *such offers that were accepted by the owner, and a summary of the terms for such sales agreements.*
241 *5. The number of times the locality or qualified designee exercised the right of first refusal to*
242 *purchase a property and a summary of the terms for such sales agreements.*
243 *6. A description of the method used by the locality to determine when and for which properties to*
244 *execute the right of first refusal or make an offer to purchase.*

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