

REPORT OF THE

City of Los Angeles

Notice Ordinance Working Group

RECOMMENDATIONS + STRATEGIES

RESPECTFULLY SUBMITTED

Los Angeles City Council
Mayor James K. Hahn

FEBRUARY 2004

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Introduction

In April 2003, the Los Angeles City Council directed the Los Angeles Housing Department (LAHD) to convene a working group to consider and recommend the components of a new, citywide Notice Ordinance for affordable housing developments at risk of losing their affordability and converting to market rate. LAHD data demonstrate that Los Angeles is home to over 60,000 affordable rental units assisted under a variety of federal, state, and local programs, including Section 8, HUD-subsidized mortgages, tax-exempt bonds, low-income housing tax credits, state financing, local funding provided through the Community Redevelopment Agency, LAHD, the County of Los Angeles, and the Los Angeles Homeless Services Authority, density bonuses, and other land use benefits. In July and August 2003, the Notice Ordinance Working Group was formed and conducted a series of four meetings to outline the framework for the Ordinance. The Working Group is pleased to submit the recommendations herein for City Council's consideration. The Working Group's membership represents a broad range of stakeholders and includes property owners, tenant advocates, legal aid attorneys, for-profit and nonprofit developers, the California Housing Partnership Corporation, Mayoral staff, Council District staff, City Attorney staff, and staff from numerous other agencies and departments, including the City Administrative Officer, LAHD, LA Homeless Services Authority, the Housing Authority, and the Community Redevelopment Agency (*please see Appendix A, Notice Ordinance Working Group Participants*).

The Working Group considered both the broad policy goals of the Notice Ordinance and the details of its implementation. The members examined California's current notice laws as well as other municipal notice ordinances, including those enacted by the Cities of San Francisco, Portland, and Denver. In the end, the members reached consensus on the Ordinance's purpose and the majority of its proposed

components. Where the group was not able to resolve divergent opinions, this report presents both sides of the debate for the Council's consideration.

Before exploring specific recommendations, it is first important to note that several broad areas of consensus emerged from the Working Group's discussions:

1. *The concept of a Notice Ordinance enjoys strong support among the various stakeholders.*
2. *Los Angeles's Notice Ordinance should mirror the State of California's notice law where possible and appropriate.* The Working Group reached consensus that the state notice provisions provide a good framework for the City's own efforts and that they should be emulated and augmented as appropriate to address local conditions. *(Please see Appendix C for a summary of the California notice provisions.)*
3. *The Notice Ordinance should not create substantial, additional burdens for owners of at-risk developments.* Property owners must already comply with the state requirements, and so by mirroring the state law when possible, the local ordinance can achieve the intended policy goals without creating additional layers of requirements.
4. *When the Notice Ordinance is adopted, a program of targeted outreach and education will be necessary to inform owners and tenants of at-risk buildings about the new requirements.*
5. *The City must develop separate approaches for existing projects and for new, locally funded developments.* For existing

developments, the City must grapple with how to achieve its policy aims within the framework of existing regulatory agreements and loan documents. For new projects, the City must work to ensure that the provisions of the Notice Ordinance are systematically incorporated into those documents from the outset.

6. *The City must further research and resolve the legality of restricting existing projects under the Notice Ordinance.*

California law primarily addresses those projects whose owners must take an action to exit federal programs, either by prepaying a subsidized mortgage or opting out of a Section 8 contract. However, only 25,000 of the units that would be affected by the Notice Ordinance fit this description. The remainder have affordability covenants enforced by the City, County, and/or State that expire on a specified date without any action required on the owners' part. At this point owners are free (in most cases) to convert to market. Even the federally assisted units will soon face this situation as the oldest developments reach maturity on their subsidized mortgages.

7. *A coordinated and systematic approach to compliance monitoring is necessary to ensure the success of the Ordinance.*

This report outlines both the purpose and the proposed components of the Notice Ordinance. It also includes the Working Group's recommendations for an outreach and education program once the Ordinance is adopted.

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Purpose

The purpose of the City of Los Angeles Notice Ordinance is to alert affected parties to the impending loss of affordable housing units with sufficient time to formulate a strategy to minimize the impact on both tenants and the City. These affected parties include tenants, the Mayor, Councilmembers, the City Attorney, LAHD, the Housing Authority, and tenant advocates. Further, the Ordinance should seek to foster acquisitions by preservation-oriented buyers by identifying properties that intend to convert and affording these buyers an opportunity to attempt to purchase and preserve the units.

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Ordinance Components

This section examines the components of the proposed Ordinance and includes the following topics:

- Properties Affected
- Notice Time Frames
- Notice Recipients
- Notice Form and Content
- Interface with Rent Stabilization Ordinance (RSO)
- Relocation
- Section 8
- Rent Increases
- Opportunity to Submit Purchase Offer (preservation acquisitions)
- Exemptions
- Remedies

Properties Affected

The Notice Ordinance should target two types of properties:

- Residential rental developments of five or more units that are controlled by an agreement with a government entity to restrict occupancy or rents;¹ and
- Properties regulated by the Rent Stabilization Ordinance whose units will be lost through demolition or conversion to non-rental uses.

The Working Group elected to broadly define affected properties. This reflects the Group's intent that all the City's affordable housing developments should be required to give notice in the event of a conversion to market, regardless of the source of the original restrictions. This definition would, then, include projects financed with HUD-subsidized mortgages, Section 8², state, and local funds. Further, it would include projects whose land use approvals contain affordability covenants.

Notice Time Frames

The timing of notices required by state law is appropriate and should be mirrored by the City's Notice Ordinance. In recommending the state standard, the Working Group acknowledges that the City should seek to avoid unduly burdening property owners with multiple, conflicting sets of requirements.

¹ In the case of "scattered site" developments that involve numerous properties with common financing and use restrictions, the five-unit threshold will apply to the entire development rather than to individual sites within the larger development.

² *It is the Working Group's recommendation that the Notice Ordinance apply only to project-based assistance.* Thus, a development whose tenants have individual Section 8 vouchers provided through the Housing Authority but that lacks any other affordability restrictions would not be covered by the Ordinance.

Under current state law, owners must give notice **twelve months** prior to taking any action to terminate affordability restrictions. This first notice is a non-binding statement of intent and does not commit an owner to a particular course of action. A second notice is required **six months** before termination that conclusively notifies the affected parties of an owner's course of action. Further, from this point until the termination, owners must notify the affected parties within **thirty days** of any change in the information provided in previous notices. Consistent with the goal of applying the Notice Ordinance to all of Los Angeles' affordable rental units, the Ordinance should be clear that notices are required whenever affordability restrictions are being lifted, whether through actions by an owner or by expiration of covenants.

Notice Recipients

Owners should be required to send the twelve-month, six-month, and any subsequent notices to all tenants of the affected project and to Affected Public Entities as defined under California law. These include the California Department of Housing and Community Development, the Mayor, and the Housing Authority. To ensure that all local stakeholders are notified, it is further recommended that the Ordinance require notices to be sent to LAHD's General Manager to the attention of the Preservation Coordinator. LAHD staff would then assume responsibility for distributing notices to the appropriate parties, including the Mayor, Councilmember, City Attorney, CRA (if applicable), local HUD office, tenant advocates, the applicable legal aid organization, and others. LAHD's dissemination of notices to stakeholders would in no way supplant owners' obligation under state law and the Ordinance to send notices directly to tenants and Affected Public Entities.

Notice Form & Content

The Working Group recommends that the Ordinance require owners to use standardized notice forms. This will help ensure that content is consistent and understandable and that information is complete. The California Department of Housing and Community Development has developed forms that owners of properties affected by the state notice law must currently use (*see Appendix B*). It is recommended these be adopted for use with properties assisted by project-based Section 8 and/or HUD-subsidized mortgages. For all other properties (state/locally financed, density bonus, and RSO conversions) it is recommended that LAHD develop standard twelve and six-month notices. As with the current state law, owners would be required to provide two notices at the six-month point: one to tenants and another, more detailed version to Affected Public Entities and LAHD. The required detail would include information about projects that would allow public agencies to formulate appropriate responses to conversions and protect tenants to the greatest extent possible. The information contained in the notice would include current and post-conversion rents, a rent roll, and tenant income information. See the form notice in *Appendix B* for a complete list of required information.

The Working Group debated the issue of notice language at length and determined that outreach to each tenant of an affected building in their appropriate language would be impractical. But recognizing the need for non-English outreach in many at-risk buildings, the Group recommends that LAHD develop a multi-lingual addendum to both the state and LAHD notice forms. The addendum would provide referrals for assistance with the notice content to the appropriate legal aid agency in each of the languages commonly spoken in the City of Los Angeles.

**Interface
With RSO**

In light of recent challenges to the applicability of the Rent Stabilization Ordinance (RSO) upon termination of federal assistance, it is recommended that the Notice Ordinance include an affirmative statement of the RSO's applicability to those pre-1978 developments covered by the Notice Ordinance. Additionally, as outlined above the Ordinance should cover properties regulated by the RSO whose units will be lost through demolition or conversion to non-rental uses.

Relocation

It is possible that tenants will be involuntary displaced when at-risk properties convert to market (this will be the case with all tenants in the case of conversions or demolitions under the RSO). The Working Group therefore recommends that owners be required to provide relocation assistance to tenants displaced by any conversion event. The relocation payments should mirror those of the RSO. *This provision would only apply to properties whose affordability restrictions take effect after adoption of the Notice Ordinance.*

Section 8

The Ordinance should require owners of properties that convert to market to accept Section 8 or any successor form of rental assistance made available to existing tenants following conversion as long as the assistance provides a reasonable rent to the owner that is equivalent to other non-subsidized rents in the building (including units restricted by the RSO). Further, the Ordinance should prohibit owners from taking any actions that would terminate project-based rental subsidies prior to expiration of the initial twelve-month notice period.

**Rent
Increases**

Tenants of federally assisted projects that convert to market may receive tenant-based rental assistance. But for tenants of state and locally assisted developments, no such aid is currently available. To

lessen the impact on tenants of these projects, the Working Group recommends that the Ordinance include a provision for graduated rent increases for tenants who do not receive rental assistance. *This provision would only apply to properties with affordability restrictions that take effect after adoption of the Notice Ordinance.*

**Opportunity
To Submit
Purchase
Offer**

The Notice Ordinance seeks to foster acquisitions of at-risk projects by developers who will maintain and extend their affordability. Thus, the Ordinance should echo California’s purchase offer provisions. These require owners to send qualified preservation buyers (on a list Qualified Entities maintained by the state) a “Notice of Opportunity to Submit a Purchase Offer” at the same time they give the twelve-month notice. This Notice of Opportunity does not obligate owners to sell. If a sale is contemplated, however, owners are prohibited from selling to non-preservation buyers within the first six months following the Notice of Opportunity. Should they accept offers from non-preservation buyers in the second six-month period, preservation buyers who made offers during the first six months have a right of first refusal to match the offer.

The Working Group feels this existing requirement is comprehensive but lacks a mechanism to allow City agencies to foster preservation transactions. Therefore, it is recommended that the Ordinance require owners to send a Notice of Opportunity to Submit Purchase Offer to LAHD’s General Manager, attention Preservation Coordinator. Receiving this information will allow staff to contact potential preservation buyers and help broker preservation transactions. A typical scenario would involve the following steps:

- 1) Concurrently with 12-month notice, LAHD Preservation Coordinator receives Notice of Opportunity to Submit Purchase Offer.
- 2) Preservation Coordinator alerts stakeholders of opportunity.
- 3) Interested preservation buyers request property information from owner per state law.
- 4) Interested preservation buyers submit purchase offers.
- 5) Within first six months of notice, owner can sell only to qualified preservation buyers.
- 6) In subsequent six months, preservation buyers who made offers during first six months have the right to match any purchase offer that will not result in continued affordability.

Exemptions

The Working Group acknowledges there are certain situations in which it would be inappropriate to apply the provisions of the Notice Ordinance. Therefore, it is recommended that the Ordinance allow for the following exemptions:

- **Sales &/or refinancings where affordability is maintained**
California's notice law exempts properties that prepay a subsidized mortgage but remain affordable under new regulatory instruments. The Ordinance should include provisions substantially similar to the State's, which allow owners of at-risk properties to sell and/or refinance without observing the notice periods under certain conditions. *(Please see Appendix D for a summary of the exemption provisions under California law.)*

- **Single family projects**

The Ordinance should not apply to assisted properties with fewer than five units, which is the industry standard threshold for multi-family properties.

Remedies

The Working Group considered a broad range of remedies in cases of non-compliance with the Ordinance.

- **Fines**

Following considerable debate, the group was unable to reach agreement on the concept of monetary penalties for noncompliance. Some parties considered fines to be a punitive approach that would discourage owners from working with the City and could penalize those whose noncompliance stems only from a lack of education about the Ordinance. Others contended that fines are a necessary tool to ensure the enforceability of the Ordinance. Despite the disagreement over the concept of fines, members agreed that were fines to be enacted, they should only apply in the case of flagrant violations. Consensus was not achieved on the definition of “flagrant” or the amount and mechanism for levying such fines. It is recommended that the Ordinance direct any fines collected into the Los Angeles Housing Trust Fund.

- **Injunctive Relief**

As with California law, the Notice Ordinance should grant injunctive relief to affected parties in cases of non-compliance. Further, the Working Group recommends that the Ordinance grant legal standing to housing advocates to allow them to bring suit against non-compliant owners. This is a useful tool in the case of buildings where tenants are too intimidated to file a

complaint against an owner. The City Attorney must conduct additional research into this issue.

- **Freeze on Rent Increases**

The Working Group recommends owners be prohibited from enacting rent increases as long as a project remains out of compliance with the Ordinance.

- **Attorneys' Fees**

The Working Group debated but was unable to reach consensus on the matter of attorneys' fees in the event of enforcement actions. The City should consider whether to include a provision regarding responsibility for attorneys' fees in the Ordinance.

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Outreach & Education

In the course of its deliberations, the Working Group concluded that outreach and education to both tenants and owners of at-risk properties would be crucial to the success of the Notice Ordinance. To further this goal, LAHD has developed a comprehensive Outreach and Education program. The program will inform owners of the provisions of the Ordinance and will provide information, resources and tools to residents of affordable housing that ensures they are kept informed about their housing environment, including existing affordability, RSO protections and changes in affordability. These efforts will be conducted both by the LAHD (Preservation Coordinator, other staff) and/or by a contract consultant selected through a competitive process, and will strive to accommodate multiple language needs of residents.

Outreach Methods

- Attend tenant association and stakeholder meetings.
- Attend meetings of affordable housing working and industry groups, including the Los Angeles Subsidized Housing Group, Inter-Agency Preservation Working Group, AHMA, AAGLA, other cities and interest groups.
- Distribute FAQ sheet and At-Risk Housing Resource Guide via hard copy and a preservation website (LAHD website) by outreach, training and other opportunities.
- On-site visits for at-risk properties, potential preservation transactions or as requested.
- Provide training sessions to tenants regarding the City's Preservation Program, Notice Ordinance requirements, RSO, and Federal and State requirements for prepayments and opt outs.
- Provide outreach to property owners regarding City's Preservation Program, opportunities to sell, funding resources, etc.

Education Resources

- Develop affordable housing FAQ sheet for tenants, including prepayments, opt outs, restructuring, RSO, general housing resources, links and information.
- Develop At-Risk Housing Resource Guide, including information about affordable housing, tenant rights, housing advocates, RSO, at-risk housing, housing resources and other programs.
- Develop a comprehensive preservation website to include an affordable housing resource guide, preservation sections that detail the City's Preservation Program, tools to preserve housing (funding sources, interested stakeholder groups, financing structures, etc.),

citywide affordable housing information, and all of the resources developed by the program.

- Contract with tenant outreach group to provide education, community contact and assist LAHD with development and outreach.

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5 Conclusion

The City of Los Angeles Notice Ordinance will be an important tool in the City's ongoing efforts to preserve the affordability of units at risk of conversion to market. The Ordinance's proposed components demonstrate substantial consensus by the members of the Working Group on both its purpose and implementation, and represent a workable blueprint for moving forward. The Ordinance's structure will make City staff the focal point for the receipt and dissemination of information on at-risk properties and will foster a coordinated, focused response on the part of both public and private stakeholders.

Appendix A

Notice Ordinance Working Group Participants

Notice Ordinance Working Group

Participants

Facilitators

Steven Brady
City of Los Angeles Housing
Department
(213) 808-8646
sbrady@lahd.lacity.org

Nataki Finch Richards
Office of the Mayor
(213) 978-1628
nrichards@mayor.lacity.org

Paul Beesemyer
California Housing Partnership
(213) 892-8775 x1
paul@chpc.net

Bea Hsu
Councilmember Eric Garcetti
Council District 13
(213) 473-7013
bhsu@council.lacity.org

Participants

Sally Richman
City of Los Angeles Housing
Department
(213) 808-8653
srichman@lahd.lacity.org

Fabiola Vilchez
Councilmember Martin Ludlow
Council District 10
(213) 485-3323
fvilchez@council.lacity.org

Rita L. Robinson
Interim General Manager
City of Los Angeles Housing
Department
(213) 808-8663
rrobinson@lahd.lacity.org

Leslie Pollner
Councilmember Wendy Greuel
Council District 2
(213) 485-3391
lpollner@council.lacity.org

Sarah Dusseault
Office of the Mayor
(213) 978-0602
sdusseault@mayor.lacity.org

David Roberts
Councilmember Bernard C. Parks
Council District 8
(213) 485-3331
droberts@council.lacity.org

Elise Swanson
Councilmember Janice Hahn
Council District 15
(213) 485-3347
eswanson@council.lacity.org

Sharon Lowe
Councilmember Ed Reyes
Council District 1
(213) 485-3451
slowe@council.lacity.org

Krista Kline
Councilmember Antonio Villaraigosa
Council District 14
(213) 485-3335
kkline@council.lacity.org

Jennifer Gregg
Office of Los Angeles City Attorney
Economic Development Division
(213) 485-4192
jgregg@atty.lacity.org

Paul Smith
Chief Legislative Analyst Office
(213) 473-5751
psmith@cla.lacity.org

Larry Gross
Coalition for Economic Survival
(323) 656-4410
contactces@earthlink.net

Franklin Campos
Coalition for Economic Survival
(323) 656-4410
frank.campos@sbcglobal.net

A. Christian Abasto
Legal Aid Foundation Los Angeles
(213) 640-3826
cabasto@lafla.org

Jim Grow
National Housing Law Project
(510) 251-9400 x104
jgrow@nhlp.org

Carole Glodney
G&K Management Co., Inc.
(310) 280-5081
carole@gkind.com

Tim English
Alpha Property Management
(323) 231-4174 x168
tenglish@alphaproperty.com

Christopher White
SK Management
(323) 930-2300
cwhite9848@aol.com

Cynthia Fusco
Affordable Housing Management
Association
(714) 979-9131
cfusco@cgfassoc.com

Emilio Rodriguez
City Administrative Officer
(213) 847-1528
erodriguez@cao.lacity.org

Joseph Cruz
City Administrative Officer
(213) 485-2868
jcruz@cao.lacity.org

Robin Conerly
LA Homeless Services Authority
(213) 683-3333
rconerly@lahsa.org

Jose Quiñonez
LA Homeless Service Authority
(213) 683-3345
jquinonez@lahsa.org

Steve Renahan
Housing Authority of the City of Los Angeles
(213) 252-2570
stever@domain2.hacla.org

Philip DeLao
Housing Authority of the City of Los Angeles
phillipd@domain2.hacla.org

Eusebio (E.J.) Martinez
Housing Authority of the City of Los Angeles
(213) 252-2707
emartinez@domain2.hacla.org

Dan Bernier
L.A. Community Design Center
(213) 629-2702
dbernier@lacdc.com

Gary Squier
Squier Properties
(310) 581-9043
garysquier@linkline.com

Chancela Al-Mansour
Neighborhood Legal Services of LA County
(818) 834-7526
calmansour@nls-la.org

Lisa Snyder
Southern California Association of Non-Profit Housing
(213) 480-1249 x223
lsnyder@scanph.org

Margarita H de Escontrias
Los Angeles Community Redevelopment Agency
(213) 977-1724
mdeescontrias@cra.lacity.org

Appendix B

State of California Notice Forms

Twelve-Month Notice

State of California

**SAMPLE TWELVE -MONTH NOTICE TO TENANTS OF OWNER'S
INTENT TO PREPAY OR TERMINATE
Pursuant to Government Code 65863.10**

(use owner's business letterhead)

Date

Tenant Name

Tenant Address

RE: IMPORTANT INFORMATION ABOUT YOUR ASSISTED RENTAL
HOUSING

The owner of _____ (*insert name of development*) is providing you with this twelve-month notice as required by State law (Government Code Section 65863.10) of their intention to (**owner to insert one of the following three options**)

Option 1: end participation in the _____ (*insert the applicable mortgage financing program (Section 221(d)(3), Section 236, Section 202/811, Section 515, Section 42)* federal mortgage program (Prepayment) AND terminate the contract for project-based Section 8 rental assistance (Opt-out), when it expires.

OR

Option 2: end participation in the _____ (*insert the applicable mortgage financing program (Section 221(d)(3), Section 236, Section 202/811, Section 515, Section 42)* mortgage program (Prepayment).

OR

Option 3: terminate the contract for project-based Section 8 rental assistance (Opt-Out) when it expires.

The owner intends to prepay the mortgage on _____, and/or terminate (Opt-Out) the Section 8 contract on _____ (**insert dates twelve months from date of this letter**). However, the owner may choose not to take these actions.

If the owner takes these actions, this removes the low-income rent restrictions on your unit and the amount of rent you pay could change. The owner will notify you six months before taking any action.

You should not immediately move or agree to move. ***IF YOU MOVE YOU WILL BE INELIGIBLE TO RECEIVE A SECTION 8 ENHANCED VOUCHER THAT WILL HELP YOU PAY THE NEW RENT!*** Changes to your rent will not occur before _____(*insert a date twelve months from the date of this letter*).

If the owner terminates the rental restrictions, you may be eligible for a Section 8 Enhanced Voucher. The Section 8 Enhanced Voucher replaces the government assistance that now keeps your rent low. Only tenants who are living at the property on the date the government assistance is ended – date of **PREPAYMENT** and/or **OPT- OUT** – are eligible to receive a Section 8 Enhanced Voucher.

The local housing authority will contact you to determine whether you are eligible to receive a Section 8 Enhanced Voucher and will issue the Enhanced Voucher. Most tenants will qualify for this voucher. If your household receives a Section 8 Enhanced Voucher, your share of the total rent will be either the amount you currently pay for rent or 30 percent of your adjusted monthly income, whichever is more. The voucher will cover the rest of the rent up to the amount allowed by the housing authority and HUD. If your new rent is higher than the housing authority and HUD permits, you will have to move.

Your options and the names of organizations that can advise and assist you are included in the attached information, titled “Tenant Advisory and Options” and “Tenant Resources.” The organizations listed in the “Tenant Resources” have also received this notice. You should consider all of your options before you take any action.

State law requires that you receive another notice, similar to this one, six months from now with information about how much your rent would change and when.

The owner is also required to make an opportunity to offer to purchase the project available to qualified entities including: tenant organizations, nonprofit and for-profit organizations, and public agencies. This exclusive opportunity remains in effect for 180 days. After that time, a qualified entity, that has made an offer to purchase that was not accepted by the owner, has a right of first refusal (counteroffer) for an additional 180 days, if the owner received an offer from a non-qualifying entity. The owner is required to send information about the project and its operations within 15 days of a request to any qualified purchaser.

If you have any questions about this notice, the owner or agent can be contacted at _____ **(insert owner/agent contact names, addresses, telephone and fax numbers).**

Sincerely,

(insert name of owner or agent)

Enclosures: Tenant Options
Tenant Resources

cc: Affected Public Agencies
California Department of Housing and Community Development,
Division of Housing Policy Development, Attention:
PRESERVATION

Six-Month Notice to Tenants

State of California

**SAMPLE SIX-MONTH NOTICE TO TENANTS OF OWNER'S
INTENT TO PREPAY OR TERMINATE
Pursuant To Government Code 65863.10**

(use owner's business letterhead)

Date

Tenant Name

Tenant Address

RE: IMPORTANT INFORMATION ABOUT YOUR ASSISTED RENTAL
HOUSING

The owner of _____ *(insert name of development)* is providing you with a six-month notice as required by State law (Government Code Section 65863.10) of their intention to *(owner to insert one of the following three options)*:

Option 1: end participation in the _____ *(insert the applicable mortgage financing program (Section 221(d)(3), Section 236, Section 202/811, Section 515, Section 42) mortgage program (Prepayment) AND terminate the contract for project-based Section 8 rental assistance (Opt-out), when it expires.*

OR

Option 2: end participation in the _____ *(insert the applicable mortgage financing program (Section 221(d)(3), Section 236, Section 202/811, Section 515, Section 42) mortgage program (Prepayment).*

OR

Option 3: terminate the contract for project-based Section 8 rental assistance (Opt-out) when it expires.

The owner intends to prepay the mortgage on _____, and/or terminate the Section 8 contract on _____ *(insert dates six months from date of this letter).*

This means that the amount of rent you pay could change. The current monthly rent for your _____ *(enter number)* bedroom apartment is \$ _____ *(insert current rent)*. As of _____ *(insert date of rent increase)*, the new rent is expected to be \$ _____ *(insert projected rent)*. The owner will notify you again of any change in the rent at least 60 days before the new rent becomes effective.

Six-Month Notice to Affected Public Entities

State of California

SAMPLE LETTER TO AFFECTED PUBLIC AGENCIES
Pursuant to Government Code Section 65863.10

(use owner's business letterhead)

Date

Affected Public Agency Name
Affected Public Agency Address

Dear City Mayor **OR** County Board of Supervisors Chairperson (*insert name*);

RE: (*insert project name, street and mailing addresses*)

The owner of the above mentioned privately owned multifamily rental project intends to prepay a government-assisted mortgage on _____ **OR** terminate Section 8 *project*-based rental subsidies on _____ **OR** prepay the mortgage **AND** terminate Section 8 on _____ (*insert applicable prepay/opt-out dates*).

This six-month **Notice To Affected Public Agencies** is sent to the jurisdiction where the project is located. The purpose of the notice is to assist localities in their efforts to preserve or replace at-risk projects and protect tenants. This notice provides localities with the following detailed information about the project and the tenants:

- Number of affected tenants _____ (*insert total number tenants*)
- Number of assisted units _____ (*insert total number of assisted units*)
- Number of bedrooms in assisted units (*include as **Attachment A***)
- Type of federal assistance provided by program type _____ (*insert the type of federal assistance, i.e. Section 236, Section 221(d)(3), HUD Section 8, IRS Section 42, Section 8 New Construction*)
- Number of units not assisted _____ (*insert number of non-assisted units*)
- The age and income of all affected tenants (*include as **Attachment B***)
- A narrative description of the owner's plans, including: (*include as **Attachment C***)

The timetable for governmental action (i.e. renewal of Section 8, sale to a qualified public agency, etc.);

The reason for termination or prepayment (i.e. convert to market rate, sale to a non-qualified entity, etc.); and

A listing of any other contacts being made with governmental agencies or others (i.e. negotiations with HUD for mortgage restructuring or the Mark-To-Market Program, State Tax Credit Allocation Committee ((TCAC), HCD's Multifamily Program).

- Copies of required federal notices to tenants at least 150 days and not more than 270 days before mortgage prepayment and at least twelve months prior to Section 8 opt-out (*include as **Attachment D***).

Please contact the owners or agent directly (*insert names, business addresses, phone and fax numbers, and/or email addresses*) for additional information or clarification:

Sincerely,

Owner or his/her agent of government assisted multifamily rental housing project

Name (*print or type*) _____

Address (*print or type*) _____

ATTACHMENT A: Number of bedrooms in assisted units

ATTACHMENT B: Age and income of all affected tenants

ATTACHMENT C: Owner's plans

ATTACHMENT D: Copies of federal notices

cc: Local Housing Authority Director
California Department of Housing and Community Development, Division
of Housing Policy Development, Attention: PRESERVATION
Department of Housing and Urban Development (HUD) Field Office

**Tenant Advisory Attachments to Twelve and
Six-Month Notices**
State of California

**TENANT ADVISORY AND OPTIONS
ATTACHMENT TO NOTICE OF INTENT
Pursuant to Government Code Section 65863.10**

Why did I receive the attached Twelve Month or Six Month Notice of Intent?

The development where you live is privately owned, but government assisted. This means that the owner has maintained lower rents either in exchange for a government benefit, such as a low-interest rate loan on the building or through a Section 8 contract that paid part of the rent on the unit. Some properties receive government assistance from both a low-interest loan and a Section 8 contract at the same time. The notices you receive mean that the owner will be eligible to end the government assistance that kept rents low and charge higher rents on the dates specified in the notice.

When the owner ends government assistance provided through a low-interest loan, this is called a **“PREPAYMENT”**. When the owner decides to end government assistance provided through a Section 8 rental assistance contract, this is called an **“OPT-OUT”**. State law requires the owner to give you a first notice at twelve months; and another, second notice at six months before they make any change that could affect you.

What does this mean to me?

It means that your rent may go up. However, if you received a Twelve Month Notice of Intent, nothing will happen for at least 12 months. If you received a Six Month Notice of Intent, nothing will happen for at least six months.

Should I plan to move?

You should not immediately move or agree to move. ***IF YOU MOVE YOU WILL BE INELIGIBLE TO RECEIVE A SPECIAL SECTION 8 ENHANCED VOUCHER THAT WILL HELP YOU PAY THE NEW RENT!*** First, you should consider all of your options. You should also know the owner's decision may change.

What are the owner's options?

Owners have several options to consider prior to ending participation in assisted rental housing programs. These options include restructuring their federally assisted mortgage, renewing Section 8 subsidy contracts, and/or preserving the project by restructuring, refinancing, or selling to a new owner that agrees to continue to maintain lower rents. All of these options continue government assistance.

However, owners may end participation in the government assistance programs on the dates specified in the notices and convert the development to market rate housing. The owner can keep the property or sell it to a new owner. Either way, rent restrictions will be discontinued. The rent will increase, but you may be eligible for a **Section 8 Enhanced Voucher** that can help you pay the new rent.

What is an Enhanced Voucher?

The Section 8 Enhanced Voucher replaces the government assistance that now keeps your rent low. Only tenants who are living at the property on the date the government assistance is ended – date of **PREPAYMENT** and/or **OPT- OUT** – are eligible to receive a Section 8 Enhanced Voucher!

The local housing authority will contact you to determine whether you are eligible to receive a Section 8 Enhanced Voucher and will issue the Enhanced Voucher. Most tenants will qualify for this voucher. If your household receives a Section 8 Enhanced Voucher, your share of the total rent will be either the amount you currently pay for rent or 30 percent of your adjusted monthly income, whichever is more. The voucher will cover the rest of the rent up to the amount allowed by the housing authority and HUD. If your new rent is higher than the housing authority or HUD permits, you will have to move or pay the difference yourself.

What are my options?

As a tenant, you have two primary options to consider. You can 1) remain in the development or 2) move.

Option 1: You Remain in the Development

If the property owner ends government assistance by either a PREPAYMENT and/or OPT-OUT they are required by federal law to accept a **Section 8 Enhanced Voucher** for the first year after the conversion to market rents. The owner must continue to accept Section 8 Enhanced Vouchers from tenants in good standing and allow tenants to remain in the building. Enhanced vouchers are renewed yearly.

Option 2: You Move

If you decide to move out of your development, the Enhanced Voucher can be used to pay rent at other rental properties, but the Voucher becomes a regular Section 8 Voucher. This means other owners do not have to accept the Section 8 Voucher and rent to you. Also the regular Section 8 Voucher will only cover rent up to a set limit - called a **Payment Standard** – established by the local

housing authority. If the rent at an apartment you would like to move into is higher than the Payment Standard, you may not be able to use your Section 8 Voucher. Also the property must be inspected by the housing authority to make sure it is in livable condition.

The local housing authority will advise you on how to use your **Section 8 Enhanced Voucher** to move to another property. You must first be issued your **Section 8 Enhanced Voucher** *before* you can use it to move. Consult with the local housing authority *before* you try to use your Voucher to move.

If you no longer qualify to receive Section 8 rental assistance (based on your income and household size or the lack of availability of rental units in your area you will have to pay market rate rents.

If I choose to move right away, do I give up any options for future rental assistance?

Yes. If you move before the dates specified in the notices when government assistance will be ended – the date of **PREPAYMENT** and/or **OPT- OUT** you lose any rights to the Section 8 Enhanced Voucher. Although you may still be eligible for other forms of rental assistance, these may be difficult to obtain. It is important to remain in your development, and informed about the status of your subsidy by attending any meetings of tenants held by the owner, HUD, or tenant advocacy organizations.

What other notices is the owner required to provide?

To Others: In addition to the Twelve- and Six-Month Notices of Intent to tenants, the owner is required to provide qualified entities (organizations that have the capability to continue long-term rent restrictions) with a Notice of Opportunity to Submit an Offer (and Counter Offer) to Purchase the development. This notice must be provided to Qualified Entities (including tenant organizations) 12 months prior to the prepayment or termination date. At the same time, a copy of this notice must be posted in a common area of your development.

The owner is also required to send a six-month Notice to Public Agencies, including the City and/or County where your development is located. This notice describes the project in greater detail to the local government to assist them in preservation efforts.

To Tenants: The owner and/or their agent must re-notify each tenant household of any proposed changes in the date of prepayment or termination, rent to be charged, or any other changes which may affect tenants within seven business days. This notification is to be sent to the tenant through first class mail (postage prepaid).

Where can I go for additional information?

Contact the owner/agent or manager of your development, the housing or planning department of the city or county where you live, the local housing authority, legal resources such as Legal Aid, and your nearest HUD office. Information for these resources can be found on the attached "Tenant Resources" page.

What other options are available to me?

If the owner does not comply with all of the requirements of California law regarding the conversion of your development from assisted to market rate rents, you have the option of taking legal action. The local legal services agency identified on the "Tenant Resources" attachment should be able to assist you.

TENANT RESOURCES
ATTACHMENT TO NOTICE OF INTENT
Pursuant to Government Code Section 65863.10

Owners are required to inform tenants of the resources available to them as an attachment to the Notices of Intent to prepay a government-assisted mortgage or terminate rent subsidies or restrictions. Tenants should contact the agencies/organizations listed below if they have additional questions or need assistance.

Affected Public Agency

City or County where government-assisted development is located

Name: _____

Address: _____

Telephone Number: _____

Local HUD Offices

Local offices of the Department of Housing and Urban Development (HUD) and City or County offices can confirm the status of your government-assisted development and provide additional technical assistance.

Name: _____

Address: _____

Telephone Number: _____

Local Public Housing Authority

The local housing authority provides information on Section 8 *Enhanced Vouchers* and the *Tenant Based Rental Assistance Program*. Contact the housing authority to apply for rental assistance and to confirm continued Section 8 eligibility, based on your family size and household income.

Name: _____

Address: _____

Telephone Number: _____

Area Legal Services Organization

Questions about tenant rights and owner responsibilities under the State Preservation Notice requirements should be directed to area legal service organizations.

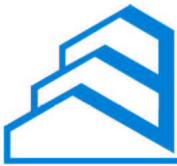
Name: _____

Address: _____

Telephone Number: _____

Appendix C

State of California Notice Provisions (*summary*)



CALIFORNIA
HOUSING
PARTNERSHIP
CORPORATION

California Notice Provisions for At Risk Properties

by

California Housing Partnership Corporation

369 Pine Street, Suite 300
San Francisco, CA 94104
Ph: 415/433-6804
Fax: 415/433-6805

800 South Figueroa Street, Suite 760
Los Angeles, CA 90017
Ph: 213/892-8775
Fax 213/892-8776

450 B Street, Suite 1010
San Diego, CA 92101
Ph: 619/531/1995
Fax: 619/239-3207

OVERVIEW

Purpose of Provisions

- To provide tenants and public agencies with notice that an owner is intending to take an action that results in terminating rent restrictions
- To provide prospective preservation buyers with an opportunity to make an offer to purchase and to match other offers

Changes from Previous Law

- Notice Provisions
 - Extends existing law from 9 months notice to 12 months notice (conforms to Federal law on Section 8 contract terminations)
 - Requires 2nd notice at 6 months with more specific information
 - Expands definition to include decision to terminate rental restrictions, including Sec. 42 (tax credit units)
- Option to Make Offer to Purchase Provisions
 - Allows qualified entities who agree to continue restrictions to exclusively make offers for 180 days from date of notice
 - Includes for-profits as qualified entities if meet certain conditions
 - Owners do not have to accept offers
 - Gives qualified entities opportunity to match other offers for next 180 days

Who is Covered?

- All Section 8 projects including:
 - New construction/Substantial rehab
 - Mod Rehab
 - Property Disposition
 - LMSA
 - Any other project-based assistance
- Section 221(d)(3) BMIR (below market mortgage insurance)
- Section 236 (below market mortgage insurance)
- Section 202 (elderly and disabled)
- Rent Supplement
- Section 515 (Farmer's Home)
- Section 42 (tax credits)

NOTICE REQUIREMENTS – Section 65863.10 of Govt. Code

Overview

- 2 notices required: at 12 months and 6 months
- Notice must be given prior to:
 - Termination of subsidy contract
 - Termination of rental restrictions
 - Prepayment of assisted mortgage

First Notice

- When?
 - Must be sent 12 months prior to termination or prepayment
- To Whom?
 - Each household in project
 - Affected Public Entities:
 - Mayor or Chair of Board of Supervisors
 - Public Housing Authority
 - HCD
- Contents:
 - Statement that intend to discontinue subsidy contract restrictions or prepay assisted mortgage
 - Anticipated date of termination/prepayment and identity of federal program
 - Statement that proposed action will have effect of removing restrictions
 - Statement that property may remain rent restricted if owner chooses
 - Statement that governmental assistance (vouchers) may be provided
 - Statement that a 2nd notice will be sent (in approximately 6 months), including any rent changes
 - Statement of notice of opportunity to submit an offer to purchase (Federally required notice for Sec. 8 terminations will suffice for all requirements except for opportunity to submit offer to purchase.)

Second Notice

- When?
 - Must be sent 6 months prior to termination or prepayment and identity of federal program
- To Whom?
 - Each household in project and Affected Public Entities
- Contents:
 - Anticipated date of termination or prepayment
 - Current rent and anticipated new rent
 - Statement that notice is being sent to public entities
 - Statement that property may remain restricted if owner chooses
 - Statement of owner's intent, if any, to participate in replacement subsidy program
 - Name/phone number of locality, PHA, HCD and legal services organization to contact regarding tenants' rights/options and owner's responsibilities
- Additional info to public entities:
 - No. of affected tenants
 - No. of units assisted
 - Type of assistance
 - No. of bedrooms in assisted units
 - No. of units not assisted
 - Age and income of all affected tenants
 - Description of owner's plans, including:
 - Timetable
 - Governmental action required
 - Reason for termination
 - Other contacts being made with governmental agencies or others
 - Copy of federally required notice

Change in Information

- Any time there is a significant change from information in 2nd Notice, owner must re-notify affected tenants and the public entities within 7 business days.

- Significant change includes a change in the date of termination/prepayment or rent to be charged.

No New Information

- Notices do not require the owner to obtain or acquire information not in existing tenant or project records.
- Owner is not liable for inaccuracies.

Other Provisions

- Notices must be sent by first-class mail postage prepaid
- Forms to be approved by HCD (and will be posted on their website)

Remedy for Violations

- Injunctive relief available to
 - Any affected public entity (locality, PHA, HCD)
 - Any tenant residing in project at time notice is provided

Impact of New Notice Provisions

- Better conforms to Federal law
 - Sec. 8: First notice can satisfy fiscal requirements
 - Prepayments: federal notice can be sent with 2nd state notice
- 2 notices give tenants and public agencies more current information
 - Owners often don't know plans at 12 months
 - Owners sometimes file notices to protect options
- Gives public agencies more information regarding who is going to be affected and when
- 2nd notice provides tenants with actual proposed rents so they can assess impact and decide to remain or move

OPTION TO MAKE OFFER TO PURCHASE – Sect. 65863.11 of Govt. Code

Overview

- Owner cannot terminate subsidy contract or prepay mortgage without opportunity to make offer to purchase
- Owner cannot sell if it means discontinuance of use restrictions without giving opportunity to make offer to purchase to qualified entities

Notice of Option to Purchase

- Must be given to all qualified entities on HCD list or who contact owner directly
- At least 12 months prior to sale or termination of restrictions (can be concurrent with Sec. 65833.10 notice)
- Sent by registered or certified mail and posted in project

Option to Purchase Available to Qualified Purchasers

- Tenant association of the development
- Local nonprofits and public agencies
- Regional or national nonprofits and public agencies
- Profit motivated organizations and individuals

Qualified Purchasers Must

- Be capable of managing the facility
- Agree to maintain affordability for at least 30 years or remaining term of assistance
 - Preserve occupancy profile
 - Rents at Sec. 42 levels (60% AMI) deemed in compliance
 - Rents and use restrictions must be recorded in a regulatory agreement
- Must agree to renew subsidies if available - and if sufficient to maintain economic feasibility
- Can remove one or more units to maintain economic feasibility

Exemption

- If owner has accepted an offer to purchase prior to Jan.1, 2001
- Must notify HCD and provide copy of offer

Initial Notice – Contents

- Statement that owner will provide within 15 days to requesting qualified entity:
 - Terms of assumable financing and/or subsidy contract
 - Proposed improvements to be made, if any
 - Monthly operating expenses
 - Capital improvements made within previous 2 years
 - Project reserves
 - 2 most recent financial and physical inspection reports
 - Most recent rent roll and subsidy payments
 - Vacancy rate for past 2 years
- Statement that qualified entities have right to purchase
- Statement that all requirements under Section 65863.10 have been satisfied unless this notice is more than 12 months prior to termination

Process for Offers

- Submittal of offers
 - Qualified entities can make offer to purchase after receiving notice
 - Offer must identify type of entity and certify that it is qualified under definition
- For first 180 days, owner can accept offer only from qualified entities
- For next 180 days, owner can accept offer from anyone BUT must give qualified entities that have submitted offers opportunity to match accepted offer

Right of Refusal – 2nd180-day Period

- If owner accepts offer from non-qualified entity, must notify qualified entities that have made bona fide offers by registered or certified mail
- Qualified entities who have made offers have 30 days from date of notice to meet accepted offer under same terms and conditions (“right of refusal”)
- Exception if non-qualified buyers agrees to restrict as a qualified entity and owner notifies HCD as to how
- Exemptions
 - Eminent domain or publicly-negotiated purchase
 - Foreclosure

- Gift
- Inheritance
- Financial emergency (owner must certify)

Sale to Non-qualified Entity

- Owner must certify that all provisions of this section have been met
- Certification must be recorded

Responsibilities of HCD

- Maintain form summarizing rights and obligations of this section
- Maintain list of qualified entities
- Send list of qualified entities to owners when receive 12- month notice of termination or prepay
 - If fail, owner only has to send Opportunity to Purchase notice on request and post in project

Remedy for Violations

- Enforcement in law or in equity by any qualified entity

Other Provisions

- Not preemptive of federal requirements
- Owner can rely on statement of qualified entity that it is one
 - If not and owner has no knowledge, no claim against owner

Sunset

- Both sections sunset on January 1, 2011 unless extended

Impact of New Offer to Purchase Provisions

- Provides clearer process and timetable
 - Same treatment for tenant association, nonprofit and for-profit qualified entities
- Provides purchasers with sufficient information to make offer
- Covers sales prior to 12 months before termination/prepay

Appendix D

State of California Notice Exemptions (*summary*)

2001 REVISIONS TO CALIFORNIA NOTICE LAW

On July 31, 2001, the Governor signed into law SB 429 (Soto) which made changes to the state's notice provisions for federally assisted housing at risk of conversion to market. Passed as an urgency measure, the bill took effect immediately.

The legislation provides an exemption from the notice requirements and the opportunity to purchase provisions of Government Code Sec. 65863.10 and 65863.11 for projects that are being preserved. To qualify for the exemption, projects that prepay an assisted mortgage must meet certain conditions, which must be memorialized in a recorded regulatory agreement. These conditions effectively preserve projects' affordability and provide for tenant rights consistent with those available prior to prepayment. The new provisions do not apply to projects that are opting out of their Section 8 contracts.

The specific conditions of the exemption are as follows:

- No tenant can be involuntarily displaced on a permanent basis.
- Owners must accept all renewals of project-based Section 8, if it is available and at a level sufficient to maintain the project's fiscal viability.
- The owner must accept all enhanced Section 8 vouchers, if tenants should receive them, and all other Section 8 vouchers for vacancies.
- The owner may not terminate a tenancy at the end of a lease term unless there is a breach of the lease.
- The owner must consider all factors relevant to an applicant's ability to pay rent.
- For units with project-based Section 8 assistance, rents must be set at 30% of 60% of area median income if the Section 8 is unavailable (e.g. if Congress fails to continue appropriations). Effectively, this means that "underwriting rents" are limited to 60% of AMI.
- For units that are unassisted or do not have project-based Section 8 assistance, rents must be set at 30% of 50% of area median income. If the project has a Section 241(f) loan, rents must be set at the regulated rents under that loan.

All of these conditions must be contained in a regulatory agreement with a governmental agency and recorded against the property. No specific agency is identified in the law.

Most preservation transactions employ tax-exempt bonds and/or low-income housing tax credits as part of their refinancing. These terms are consistent with the requirements of the California Debt Limit Allocation Committee (CDLAC) and the Tax Credit Allocation Committee (TCAC) for obtaining a bond and/or credit allocation.

The intent of this law is to further encourage owners to sell to buyers who will preserve the nearly 50,000 units at risk in California. Selling to a preservation buyer exempts the owner from the notice provisions and offer to purchase requirements of state law, thereby allowing for a more timely transaction. These provisions also make it easier for preservation purchasers to meet the state closing timelines for tax-exempt bonds and tax-credits.