

CHAPTER 34-45 Preservation of Federally Insured or Assisted Housing

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§ 34-45-1 Short title. -

This chapter shall be known and may be cited as "The Affordable Housing Preservation Act of 1988".

§ 34-45-2 Legislative findings. -

(a) The general assembly recognizes, finds and declares that:

(1) There exists a serious shortage of decent, safe, and sanitary rental units that are available at rents affordable to low and moderate income families in Rhode Island. Many families are denied access to decent housing because they are unable to meet the higher cost of rent. Rising housing costs in Rhode Island force low and moderate income families to live in unsafe, substandard units; commit such an unreasonably high percentage of their income for rent that they deprive themselves of the other necessities of life; or, worse, find themselves without housing. The inadequacy in the supply of decent, safe and sanitary affordable rental housing endangers the public health and jeopardizes the public safety, general welfare, and good of the entire state.

(2) Approximately sixty-seven hundred (6,700) units of housing in sixty-five (65) developments in Rhode Island which are presently affordable to low and moderate income families are in danger of becoming unaffordable due to expiring use restrictions on the property. Low income housing units insured or assisted under §§ 221(d)(3) and 236 of the National Housing Act, 12 U.S.C. § 1701 et seq., could be lost as a result of the termination of low income affordability restrictions; low income housing units produced with assistance under § 8 of the United States Housing Act of 1937, 42 U.S.C. § 1437f(c), could be lost as a result of the expiration of the rental assistance contracts; and rural low income housing financed under § 515 of the Housing Act of 1949, 12 U.S.C. § 1701 et seq., are threatened with loss as a result of the prepayment of mortgages by owners. The loss of this privately owned and federally assisted housing, which would occur in a period of sharply rising rents on unassisted housing and extremely low production of additional low rent housing, would inflict unacceptable harm on current tenants and would precipitate a grave crisis in the supply of low income housing that was neither anticipated nor intended when contracts for these units were entered into.

(b) There is, therefore, a compelling need to preserve the affordability of these rental housing units to low and moderate income persons and families in Rhode Island in order to prevent the displacement of these persons and families and to assure an adequate supply of affordable housing for these persons and families in Rhode Island.

§ 34-45-3 Legislative purpose. -

It is the purpose of this chapter to provide a mechanism which will, to the fullest extent possible: (1) preserve the availability and affordability to low and moderate income persons and families of currently available federally insured and assisted housing in the state, and (2) avoid the involuntary displacement of tenants currently residing in federally insured and assisted housing.

§ 34-45-4 Definitions. -

Terms used in this chapter shall be defined as follows, unless another meaning is expressed or clearly apparent from the language or context:

(1) "Appurtenant land" means only the land and related facilities which are currently dedicated to the federally insured or assisted rental units, and does not include land which may be dedicated to nonfederally insured or assisted units under common ownership, whether or not the land is currently dedicated to federally insured or assisted rental units.

(2) "Corporation" means the Rhode Island housing and mortgage finance corporation, a corporation, instrumentality and agency of the state established pursuant to the Rhode Island housing and mortgage finance corporation act, chapter 55 of title 42.

(3) "Department" means the department of administration.

(4) "Development" means any structure or group of structures situated in the state which is federally insured or assisted; provided, however that the term "development" does not include any structure or group of structures which are not federally insured or assisted, although such structures may be commonly owned with units that receive such federal assistance or sent to such units; and provided further than this chapter shall not apply to a development whose owner gave notice to the United States department of housing and urban development pursuant to § 262 of the Housing and Community Development Act of 1987, 42 U.S.C. § 1437f(c), of termination of the housing assistance payment contracts for the development prior to June 10, 1988.

(5) "Federally insured or assisted" means any:

(i) Low income housing units insured or assisted under §§ 221(d)(3) and 236 of the National Housing Act, 12 U.S.C. § 1701 et seq.,

(ii) Low income housing units produced with assistance under 42 U.S.C. § 1437f, and

(iii) Rural low income housing financed under § 515 of the Housing Act of 1949, 12 U.S.C. § 1701 et seq.

(6) "Owner" means an individual, corporation, association, partnership, joint venture, or business entity which holds title to a development.

(7) "Rental unit" or "unit" means that part of a development which is rented or offered for rent for residential occupancy and includes an apartment, efficiency apartment, room, suite of rooms, and any appurtenant land to the rental unit.

(8) "Tenant" means a tenant, subtenant, lessee, sublessee, or other person entitled to possession, occupancy, or receiving the benefits of, a federally insured or assisted rental unit within a development.

(9) "Tenant association" means an association or other organization that represents at least a majority of the tenants in federally insured or assisted rental units in a development, excluding those tenants which have not resided in the development for at least ninety (90) days and those tenants who have been an employee of the owner during the preceding one hundred twenty (120) days.

(10) "Use restrictions" means any federal, state, or local statute, regulation, ordinance, or contract which as a condition of receipt of any housing assistance, including a rental subsidy, mortgage subsidy or mortgage insurance, to a development:

(i) Establishes maximum limitations on tenant income as a condition of eligibility for occupancy of the units within a development; or

(ii) Imposes any restrictions on the maximum rents that could be charged for any of the units within a development; or

(iii) Requires that rents for any of the units within a development be reviewed by any governmental body or agency before the rents be implemented.

§ 34-45-5 Notice of termination of section 8 contract. -

(a) Not less than two (2) years prior to terminating any contract under which rental assistance payments are received under § 8 of the United States Housing Act of 1937, 42 U.S.C. § 1437f, an owner shall provide written notice to the corporation, specifying the reasons for the termination with sufficient detail to enable the corporation to evaluate whether the termination is lawful and whether there are additional actions that can be taken by the corporation to avoid the termination. The corporation shall review the owner's notice, and shall consider whether there are additional actions that can be taken by the corporation to avoid the termination.

(b) Within thirty (30) days of the owner's notice the corporation shall issue a written finding of the legality of the termination and the reasons for the termination, including the actions considered or taken to avoid the termination.

(c) For purposes of this section, "termination" means the expiration of the § 8 assistance contract or an owner's refusal to renew the § 8 assistance contract.

(d) Within twenty-four (24) hours of providing the corporation with the notice required by this section, the owner shall:

(1) Send a copy of the notice, by registered or certified mail, return receipt requested, to the tenant association of the development, and

(2) Post a copy of the notice in a conspicuous place in common areas of the development.

§ 34-45-6 Notice of discontinuance. -

(a) Not less than two (2) years prior to:

(1) Selling, leasing, or disposing of prepaying obligations secured by a federally insured or assisted development in a manner which would result in either:

(i) A discontinuance of the use of the development as a federally insured or assisted housing development, or

(ii) Cause the termination or expiration of any use restrictions which apply to the development; or

(2) Recording a declaration of condominium, pursuant to chapter 36.1 of this title,

With respect to all or any portion of a federally insured or assisted development, the owner shall provide written notice of such sale, lease, disposition, or prepayments to:

(i) Each tenant of the development,

(ii) The tenant association of the development,

(iii) The corporation,

(iv) The department,

(v) The housing authority of the city or town in which the development is located, and

(vi) The city or town council of the city or town in which the development is located.

(b) A copy of any notice required by this section shall be filed in the land evidence records of the city or town in which the development is located.

(c) No sale, lease, or disposition of or prepayment of any obligations secured by a federally insured or assisted development in a manner which would result in either:

(1) A discontinuance of the use of the development as a federally insured or assisted housing development; or

(2) Cause the termination or expiration of any use restrictions which apply to the development,

Shall be valid unless the notices required by this section shall have first been provided and filed as required hereunder.

(d) The declaration of a condominium of a federally insured or assisted development which is otherwise valid will not be invalid under this section if consummated within two (2) years of notice if the owner records an agreement to maintain existing use restrictions with regard to those units which are federally insured or assisted for the duration of the two (2) year notice period in the appropriate office of land records and provide the corporation with a copy of that agreement.

§ 34-45-7 Opportunity to purchase. -

No owner shall:

(1) Sell, lease, or otherwise dispose of, or prepay any obligation secured by, a federally insured or assisted development in a manner which would result in either:

(i) A discontinuance of the use of the development as a federally insured or assisted housing development or a development that was federally insured or assisted within the preceding two year period, or

(ii) Cause the termination of any use restrictions which apply to the development, or

(2) Record a declaration of condominium, pursuant to chapter 36.1 of this title, with respect to all or any portion of a federally insured or assisted development, unless he or she shall have first provided each of the persons and entities listed below an opportunity to purchase the development at a price and upon terms which represent a bona fide offer to sell, in compliance with the provisions of § 34-45-8. The persons and entities to whom such an opportunity to purchase shall be provided are:

(i) The tenant association of the development,

(ii) The corporation,

(iii) The housing authority of the city or town in which the development is located, and

(iv) The municipal government of the city or town in which the development is located.

§ 34-45-8 Offer to sell - Rights of first refusal. -

(a) At or before the time an owner of an existing federally insured or assisted development or an owner of a development that was federally insured or assisted within the preceding two (2) years (1) offers to sell, lease, or otherwise dispose of a development to any person or entity other than those persons or entities listed in § 34-45-7, or prepays any obligation secured by a development, in a manner which would result in either (i) a discontinuance of the use of the development as a federally insured or assisted housing development, or (ii) cause the termination of any use restrictions which apply to the development, or (2)

records a declaration of condominium, pursuant to chapter 36.1 of this title, with respect to all or any portion of a federally insured or assisted development, he or she shall first provide to each person and entity listed in § 34-45-7 a written copy of a bona fide offer to sell, by registered or certified mail, return receipt requested, and post a copy of the offer of sale in a conspicuous place in common areas of the development.

(b) An offer of sale made pursuant to subsection (a) must contain, at a minimum:

(1) The essential terms of the sale, which shall include, but which need not be limited to:

(i) The sale price,

(ii) The terms of seller financing, if any, including the amount, the interest rate, and the amortization rate thereof;

(iii) The terms of assumable financing, if any, including the amount, the interest rate, and the amortization rate thereof; and

(iv) Proposed improvements to the property to be made by the owner in connection with the sale, or other economic concessions by the owner in connection with the sale, if any.

(2) A statement that each of the persons listed in § 34-45-7 has the right to purchase the development under this chapter, in the order and according to the priorities established by subsection (c);

(3) A summary of tenants' rights and sources of technical assistance as contained in a form prescribed by the department. If no such form has been prescribed by the department, the owner will be deemed in compliance with this paragraph if the statement refers to this chapter;

(4) A statement that the owner will make available to each of the persons listed in § 34-45-7 a floor plan of the development and an itemized list of monthly operating expenses, utility consumption rates, and capital expenditures within each of the two (2) preceding calendar years, within seven (7) days after receiving a request therefor; and

(5) A statement that the owner will make available to each of the persons listed in § 34-45-7 the most recent rent roll, a list of tenants, a list of vacant units, and a statement of the vacancy rate at the development for each of the two (2) preceding calendar years, within seven (7) days after receiving a request therefor.

(c) If a person or entity other than the persons and entities listed in § 34-45-7 offers to purchase, lease, or otherwise acquire a federally insured or assisted development in a manner which would result in either (1) a discontinuance of the use of the development as a federally insured or assisted housing development, or (2) cause the termination of any use restrictions which apply to the development, the owner of the development shall, before accepting the third-party offer, provide to each person and entity listed in § 34-45-7, by registered mail, return receipt requested, (i) written notice of the pendency and essential terms of the offer, and (ii) a bona fide offer to sell the development to those persons and entities listed in § 34-45-7 upon the same terms and conditions of the third-party offer. An offer of sale made pursuant to this subsection must contain, at a minimum, all of the information required of an offer of sale made under subsection (a). The right of first refusal created under this subsection shall not be deemed to allow any of the persons or entities listed in § 34-45-7 to vary the terms of any third-party offer made to an owner or to make a counter offer to the owner.

(d) The rights of first refusal created under this section are created and conferred in the following order and in accordance with the following priorities: (1) the tenant association of the development, first priority; (2) the corporation, second priority; (3) the housing authority of the city or town in which the development is located, third priority; and (4) the municipal government of the city or town in which the development is located, fourth priority.

(e) No right of first refusal shall apply to a government taking by eminent domain or negotiated purchase; a forced sale pursuant to a foreclosure; a transfer by gift, devise, or operation of law; or a sale to a person who would be included within the table of descent and distribution if there were to be a death intestate of an owner.

§ 34-45-9 Waiver of rights. -

(a) Any party to whom notice is required to be given may waive their rights at any time pursuant to a written waiver signed by a duly authorized representative, which waiver shall terminate all of their rights under this chapter.

(b) For the purposes of the chapter, termination or expiration of a use restriction or a Section 8 (42 U.S.C. § 1437f) assistance contract does not include a termination or expiration which is immediately succeeded, without lapse, by an agreement or contract which embodies terms no less favorable to the tenants residing in the federally insured or assisted rental units than the prior agreement or contract.

§ 34-45-10 Rule making. -

(a) The department shall issue such rules and regulations as may be necessary or appropriate to effectuate the purposes of this chapter. The rules and regulations shall include but need not be limited to:

(1) Specific procedural safeguards to assure that every person and entity upon whom a right of first refusal is conferred by this chapter, in accordance with the order and priorities established by § 34-45-8(c), is afforded a fair and reasonable opportunity to exercise their right; and

(2) Provisions as may be necessary or appropriate to assure that a person upon whom a right of first refusal is conferred by this chapter shall be permitted:

(i) Not less than sixty (60) days from receipt of any bona fide offer made pursuant to § 34-45-8 within which to accept the offer, and

(ii) Not less than one hundred twenty (120) days from his or her acceptance of the offer within which to secure financing as may be necessary therefor.

(b) Within sixty (60) days after June 10, 1988, the department shall publish a form containing a summary of rights and obligations pursuant to this chapter, and sources of technical assistance, which shall include, but not be limited to, information regarding counseling, subsidy programs, relocation services, housing purchase and rehabilitation financing, formation of tenant organizations, purchase of developments and conversion of developments to cooperative ownership.

§ 34-45-11 Rights of tenants. -

(a) As used in this section the following words shall have the following meanings:

(1) "Assistance required action" means any prepayment of a mortgage obligation secured by a development or an owner's failure to renew a § 8 assistance contract to the full extent of owner's renewal rights thereunder.

(2) "Assisted household" means an individual or individuals who occupy a rental unit in a development and whose gross annual income does not exceed upper income limits imposed by any federal, state, or local government program providing financial assistance to a development.

(3) "Assisted units" means all the dwelling units in a federally insured or assisted development subject to regulatory requirements with respect to:

(i) The rents chargeable by the owner; or

(ii) The maximum annual income of the tenant occupying the unit, which may depend upon the income of the tenant where a given percentage of the total number of units are required to be occupied by income qualifying tenants.

(4) "Designated household" means any of the following households:

(i) An assisted household which includes a senior citizen or a person with a disability, provided that the senior citizen or the person with a disability has been a member of the household for a period of at least twelve (12) months preceding the giving of the notice of intent required by this section; or

(ii) An assisted household which includes any child under the age of ten (10) years.

(5) "Person with a disability" means a person within the definition of handicapped person in 42 U.S.C. § 1437a(b)(3).

(6) "Owner" or "property owner" means the person or combination of persons who hold legal title to a development.

(7) "Relocation expenses" means costs incurred to:

(i) Hire contractors, labor, vehicles, or equipment to transport personal property;

(ii) Pack and unpack personal property;

(iii) Disconnect and reconnect utilities such as water, telephone, gas, electricity, and related services; and

(iv) Disconnect and install personal property;

(8) "Senior citizen" means a person who is at least sixty-two (62) years old on the date that the notice of intent is given.

(9) "Tenant protection assistance" means the payments to, and extension of leases for, the occupant or former occupant of any assisted unit in connection with an assistance required action as required under this section.

(b) This section does not apply if, prior to any assistance required action, the owner or purchaser records a covenant running with the land on which the development is located, in a form satisfactory to the corporation, which continues for the development the existing low and moderate income rental restrictions of the federal housing program:

(1) For the duration of the term remaining as of the date of prepayment of any mortgage secured by a development; and

(2) For the duration of the remaining term as of the date of termination, including all stated and unexercised renewal terms of any rental assistance agreement described in § 34-45-5.

(c) Not less than ninety (90) days before the effective date of any assistance required action, the owner of a development shall give a written notice of intent in accordance with the provisions of this section.

(2) The notice of intent to be sent to each assisted household shall contain a brief summary of the assistance required action, and shall include:

(i) A summary statement of the assisted household's rights and obligations under this section;

(ii) Notice that the corporation may have additional information regarding the anticipated assistance required action; and

(iii) The name, address, and phone number of the owner's agent to whom the assisted household may apply for tenant protection assistance under this section.

(d) The owner shall provide the tenant protection assistance by:

(1) Paying to each assisted household, an amount equal to the sum of:

(i) The lesser of five hundred dollars (\$500) or an amount equal to any security deposit tenant is required to make and first month's rent and any part of the last month's rent tenant is required to pay in advance for the tenant's new residence no later than the date on which the assisted household vacates the unit; and

(ii) Reimbursement to the assisted household for relocation expenses up to four hundred fifty dollars (\$450) which are actually and reasonably incurred; and

(2) Offering to each assisted household which is current in its rent payment and has not violated any other material term of its lease, a lease extension for a period of at least one year from the date of the assistance required action.

(e) The portion of rent for the extended lease under subdivision (d)(2) that the tenant is obligated to pay from tenant's own income may not exceed thirty percent (30%) of the tenant's income, and may only be increased on the anniversary of the commencement date of the assisted householder's then current lease.

(2) Any such increase may not exceed the lesser of:

(i) the amount of increase permitted by applicable federal, state, or local law; and

(ii) an amount determined by multiplying the amount required to be contributed by the assisted household for rent for the preceding year by the percentage increase for the applicable U.S. consumer price index, as selected by the corporation, for the most recent twelve (12) month period.

(3) Except as permitted or required by the corporation, all other terms, conditions, and procedures governing the extended lease shall be the same as the lease in effect on the day preceding the giving of the notice of intent.

(f) An owner may not take an assistance required action affecting any unit in an assisted project occupied by a designated household without offering to the assisted household which is the tenant of the unit a lease extension for a period of at least two (2) years from the date of the assistance required action, if the designated household:

(1) Is current in its rent payment and has not violated any other material term of its lease;

(2) Has provided the owner, within thirty (30) days after the giving of the notice of intent, with a written notice:

(i) Stating that the designated household is applying for an extended lease under this section; and

(ii) Setting forth facts, as applicable, showing that:

(A) A member of the household is either a person with a disability or a senior citizen who has been a member of the household for at least twelve (12) months preceding the giving of the notice of intent; or

(B) A member of the household is a child under the age of ten (10) years; and

(3) Has executed an extended lease and returned it to the owner within thirty (30) days after the giving of the notice of intent.

(g) The owner shall deliver to each assisted household entitled to receive the notice of intent, simultaneously with the notice of intent:

(1) An application on which may be included all of the information required by subdivision (f)(2);

(2) A lease containing the terms required by this section and clearly indicating that the lease will be effective only if the assisted household executes and returns the lease not later than thirty (30) days after the giving of the notice of intent; and

(3) A notice setting forth the rights and obligations of the assisted household under this section.

(h) Within forty-five (45) days after the giving of the notice of intent, the owner shall notify each assisted household whether it meets the applicable criteria for an extended lease under subdivision (d)(2) and such notice shall include the approximate ending date of the extended lease and each designated household which submits to the owner the documentation required by subdivisions (f)(2) and (3) shall be entitled to notification by the owner as to the following:

(1) Whether the household meets the applicable criteria of subsection (f), and, if not, an explanation of which criteria have not been met; and

(2) Whether the extended lease has been effective under subsection (f).

(i) The extended lease of a designated household shall provide for a term commencing on the date of the assistance required action and terminating not less than two (2) years from that date.

(2) The initial rate of rent for the extended lease may not exceed an amount which requires the tenant to contribute more than thirty percent (30%) of the tenant's income.

(3) Annually, on the anniversary of the commencement date of the extended lease of a designated household, the rental fee for the unit may be increased.

(ii) The increase may not exceed an amount determined by multiplying the amount required to be contributed by the household for annual report for the preceding year by the percentage increase for the applicable U.S. consumer price index, as selected by the secretary, for the most recent twelve (12) month period.

(4) Except as this section otherwise permits or requires, the extended lease of a designated household shall contain the same terms and conditions as the lease in effect on the day preceding the giving of the notice of intent.

(j) The extended tenancy provided for in this section shall cease upon the occurrence of any of the following:

(1) Ninety (90) days after the death of the last surviving member of the assisted household who was residing in the unit at the date of the notice of intent, or ninety (90) days after the last member of the assisted household at the date of the notice of intent has moved from the unit;

(2) Eviction for failure to pay rent due in a timely fashion or violation of a material term of the lease; or

(3) Voluntary termination of the lease by the designated household.

(k) No later than the date on which the designated household vacates the unit, the owner shall pay relocation expenses in accordance with this section.

(l) In connection with any assistance required action:

(1) An owner may not terminate or alter the terms and conditions of any leases entered into before the effective date of the assistance required action, or otherwise take any action to interfere with any existing rights of tenants to occupy their units of the assisted project under existing leases or under any applicable federal, state, or local law;

(2) All tenants shall cooperate with the owner in providing information necessary to certify eligibility for housing subsidy payments, including execution of all necessary documents.

(m) Notwithstanding any provision of subsections (e) or (f) to the contrary, in the event that an owner is unable to obtain from the U.S. department of housing and urban development an extension of existing rental subsidies to cover the lease extension, the owner shall only be required to provide for each assisted household, whether or not occupied by a designated household, a lease extension of a period of one year from the date of the assistance required action; provided, however, that an owner may withdraw funds from existing reserve and residual accounts of the development to pay any deficit in the debt service or operating expenses of the development resulting from the tenant's obligation to pay as rent only, a sum not more than thirty percent (30%) of the tenant's income as provided in subsection (e), but only to the extent that the withdrawal is approved by the corporation, approval to be given if adequate funds remain in reserve and residual accounts, for the maintenance and repair of the development in accordance with the standards of the corporation.

(n) The owner shall inform those assisted households which the owner has deemed not to meet the applicable criteria for an extended lease of the reasons the households failed to meet the criteria, and of their right to appeal the decision to the corporation. Any assisted household may appeal the decision of an owner to deny the household an extended lease under subdivision (d)(2) or subsection (f) to the corporation by requesting in writing an informal hearing before the corporation within ten (10) days of the owner's decision. The corporation shall hear and resolve the appeal within ten (10) days of receiving the hearing request, by either affirming the owner's decision or ordering the owner to execute the appropriate extended lease with the assisted household.

§ 34-45-12 Severability. -

If any clause, sentence, paragraph, section or part of this chapter shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder of this chapter, but shall be confined in its operation to the clause, sentence, paragraph, section or part directly involved in the controversy in which the judgment shall have been entered.