

2510114D

HOUSE BILL NO. 1973

Offered January 13, 2025

Prefiled January 7, 2025

A BILL 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.

Patrons—Bennett-Parker, Simonds, Anthony, Askew, Callsen, Carr, Cohen, Convirs-Fowler, Cousins, Feggans, Gardner, Glass, Hayes, Helmer, Herring, Hope, Krizek, LeVere Bolling, Lopez, Maldonado, Martinez, McClure, McQuinn, Mundon King, Price, Reaser, Seibold, Shin, Sickles, Sullivan, Tran and Watts

Referred to Committee on General Laws

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

56 *divorce, (v) to a purchaser of the publicly supported housing in a foreclosure sale, (vi) to a purchaser of the*
57 *publicly supported housing by a deed in lieu of foreclosure provided that the contract restrictions are*
58 *subordinate to the purchaser's interest eligible for foreclosure, or (vii) to a government entity that exercises*
59 *the power of eminent domain to acquire the publicly supported housing or negotiates a purchase in lieu of*
60 *eminent domain.*

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

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

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

81 **§ 36-177. Notice requirements for termination of affordability restriction.**

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

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

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

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

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

102 *C. Notice required by this section shall be delivered in a format prescribed by the locality. The owner*
103 *shall retain sufficient proof of delivery, as determined by the locality. Any notice required by this section to*
104 *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 pursuant*
106 *to this section, has less than 24 months remaining prior to the date when the affordability restriction affecting*
107 *the publicly supported housing will terminate, shall not be required to give the 24-month notice required by*
108 *subsection A, but shall provide such notice within 90 days after the effective date of such ordinance.*

109 *E. Any locality may adopt an ordinance to require that an owner subject to the notice requirements of this*
110 *section submit to the locality, no more than 30 days after the notice requirement date, sufficient verification,*
111 *as defined by the locality, that the owner has complied with the provisions of this section. If the locality did*
112 *not receive or plans to contest the validity of such verification, the locality shall notify the owner, by certified*
113 *mail, return receipt requested, within 60 days of receipt of such verification or after such verification should*
114 *have been received. If the locality verifies compliance or finds no contest to the validity of the owner's*
115 *verification, a certificate of compliance shall be recorded in the land records of the locality within 60 days of*
116 *the locality's receipt of the verification from the owner. The certificate of compliance shall (i) contain a legal*

117 description of the property, (ii) identify the owner as the grantor, and (iii) be acknowledged by the owner and
 118 the locality in the manner required for acknowledgement of a deed.

119 F. Any locality may impose by ordinance a fine, penalty, tax, fee, charge, or assessment upon the publicly
 120 supported housing owner for failure to comply with the notice provisions of this section, except that no
 121 locality shall impose a fine, penalty, tax, fee, charge, or assessment upon the owner if a certificate of
 122 compliance for that owner was recorded in the land records of the locality or the owner was not notified of
 123 noncompliance according to the provisions of this section.

124 **§ 36-178. Qualified designee.**

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

129 B. If a locality chooses to appoint such qualified designee, the locality shall establish a process for
 130 selecting such qualified designee. A qualified designee may include tenant associations, nonprofit
 131 organizations, public housing authorities, or for-profit organizations. A qualified designee shall enter into a
 132 written agreement with the locality that requires such qualified designee to agree to preserve the affordability
 133 of the publicly supported housing for at least 15 years and assume all rights and responsibilities attributable
 134 to the locality as a prospective purchaser of the publicly supported housing.

135 **§ 36-179. Opportunity to offer to purchase.**

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

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

141 1. The documents provided by the owner to the locality or qualified designee under this section shall be
 142 confidential and exempt from the provisions of the Virginia Freedom of Information Act (§ 2.2-3700 et seq.)
 143 unless the property owner consents in writing or upon order by a court. Notwithstanding the provisions of
 144 this subdivision, disclosure may be made to potential funding sources, regulatory agencies, or agents or
 145 consultants of the locality or qualified designee in connection with a transaction between the owner and the
 146 locality or qualified designee, subject to any appropriate confidentiality agreements.

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

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

152 **§ 36-180. Right of first refusal.**

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

158 1. The legal description of the publicly supported housing;

159 2. An acknowledgement that the locality holds the right of first refusal to purchase the publicly supported
 160 housing or that such right has been assigned to a certain qualified designee and may be reassigned through a
 161 subsequent notice if the owner has not yet accepted a bona fide offer to purchase from a third party;

162 3. A list of each exemption to the right of first refusal provided in subsection D, including the determined
 163 length of extended affordability required of the third-party buyer for an exemption and a statement that the
 164 locality may choose to negotiate an alternative length of time with the buyer;

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

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

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

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

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

178 *terms and conditions of the offer and shall be subject to the same confidentiality provisions in § 36-179.*

179 *1. Once such notice is received or the identity of the third-party purchaser is made known to the locality,*
 180 *the locality cannot assign the right of first refusal to a qualified designee or reassign the right of first refusal*
 181 *to another qualified designee.*

182 *2. The locality or qualified designee named on the notice of right of first refusal recorded for the property*
 183 *shall have 30 days from the date such notice is received to exercise a right of first refusal by delivering a*
 184 *matching offer to purchase the property in a format prescribed by the locality. The matching offer shall*
 185 *contain a commitment from the locality or qualified designee to preserve the property as affordable for at*
 186 *least 15 years. The owner shall accept the first matching offer such owner receives from the locality or*
 187 *qualified designee under this section.*

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

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

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

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

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

197 *C. A locality may require that an owner of publicly supported housing subject to the notice of right of first*
 198 *refusal in subsection A submit to the locality sufficient verification, as defined by the locality, no more than*
 199 *45 days after sending notice of the acceptance of an offer to purchase from a third party, that the owner has*
 200 *complied with the provisions of this section. The locality has no more than 60 days from receipt of such*
 201 *verification or when such verification should have been received, to notify the owner, by certified mail, return*
 202 *receipt requested, if the locality did not receive the verification or if the locality intends to contest the validity*
 203 *of the verification, at which point the locality may grant the owner another opportunity to comply with the*
 204 *provisions of this section. If the locality finds no contest to the validity of the verification, a certificate of*
 205 *compliance in accordance with the provisions of this section shall be recorded in the land records of the*
 206 *locality within 60 days from the date the locality received such verification. The certificate of compliance*
 207 *under this section shall contain a legal description of the property, the identity of the owner as the grantor,*
 208 *and an acknowledgment by the owner and the locality in the manner required for acknowledgement of a*
 209 *deed.*

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

211 *1. The publicly supported housing is not subject to a previously recorded notice of right of first refusal;*

212 *2. The third-party buyer agrees in good faith to extend the property's affordability for a certain length of*
 213 *time, as determined by the locality and specified in the notice of right of first refusal filed for the property,*
 214 *and includes such agreement in writing in the offer to purchase the property. The locality may not require*
 215 *more than 30 years of extended affordability to qualify for this exemption unless otherwise required by an*
 216 *alternative contract, program, or financial agreement. The locality may provide an opportunity for the buyer*
 217 *and the locality to negotiate a length of extended affordability alternative to that which was specified in the*
 218 *notice of right of first refusal;*

219 *3. The proposed property transfer does not constitute a sale;*

220 *4. More than 24 months have elapsed since the termination of the affordability restrictions for the publicly*
 221 *supported housing; or*

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

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

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

232 *G. The locality or qualified designee may bring a civil action against an owner of publicly supported*
 233 *housing for which the locality or qualified designee has recorded a notice of right of first refusal if the owner*
 234 *has violated the provisions of this section, except when a certificate of compliance in accordance with the*
 235 *provisions of this section for that owner was recorded in the land records or the owner was not notified of*
 236 *noncompliance pursuant to the provisions of this section. The court may award punitive damages and*
 237 *provide injunctive relief. The court may award reasonable attorney fees and costs at trial and on appeal to a*
 238 *prevailing plaintiff in an action under this section.*

239 **§ 36-181. Annual report.**

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

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

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

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

249 *4. The number of offers to purchase executed by the locality or qualified designee, the number of such*
250 *offers that were accepted by the owner, and a summary of the terms for such sales agreements.*

251 *5. The number of times the locality or qualified designee exercised the right of first refusal to purchase a*
252 *property and a summary of the terms for such sales agreements.*

253 *6. A description of the method used by the locality to determine when and for which properties to execute*
254 *the right of first refusal or make an offer to purchase.*

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