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HOUSE BILL NO. 1973
AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the House Committee on General Laws
on _____)
(Patron Prior to Substitute—Delegate Bennett-Parker)

A BILL to amend the Code of Virginia by adding in Title 36 a chapter numbered 13, consisting of sections numbered 36-176 through 36-180, relating to preservation of affordable housing; definitions; civil penalty.

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 36-180, 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.

"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)

31 *the federal Low-Income Housing Tax Credit Program, 26 U.S.C. § 42; (c) § 101 of the Housing and Urban*
32 *Development Act of 1965, 12 U.S.C. § 1701s, as it applies to programs for rent supplement assistance; (d) §*
33 *202 of the Housing Act of 1959, 12 U.S.C. § 1701q; (e) the Below Market Interest Rate program codified at §*
34 *221(d)(3) of the National Housing Act, 12 U.S.C. § 1715 l(d)(3) and (5); (f) § 236 of the National Housing*
35 *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*
36 *private activity mortgage revenue bonds as codified in § 142(d) of the Internal Revenue Code or its*
37 *predecessors; (i) the Community Development Block Grant Program, 42 U.S.C. § 5301 et seq.; (j) the HOME*
38 *Investment Partnership Program, 24 C.F.R. § 92; (k) the National Housing Trust Fund, 24 C.F.R. § 93; (l)*
39 *the Virginia Housing Trust Fund; and (m) the Virginia housing opportunity tax credit.*

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

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

55 *"Tenant association" means any association established by the tenants of publicly supported housing for*
56 *the purpose of addressing issues related to their living environment that (i) operates democratically and*
57 *represents all residents in the development; (ii) is completely independent of owners, management, and their*
58 *representatives; and (iii) has notified the owner and the locality of its existence or establishment and has*
59 *provided to such owner and the locality the names and addresses of at least two officers or representatives of*

60 *such association. No owner or other entity shall be required to ascertain the association's compliance with*
61 *this definition.*

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

69 *"Third-party buyer" means a party that is not the locality or qualified designee that makes a bona fide*
70 *offer to purchase publicly supported housing.*

71 **§ 36-177. Notice requirements for termination of affordability restriction.**

72 *A. Any locality may adopt an ordinance to require the owner of publicly supported housing to provide*
73 *written notice to (i) the locality; (ii) all tenants residing in the property at the time of such notice; and (iii) the*
74 *tenant association, if any, 24 months before the termination of an affordability restriction affecting publicly*
75 *supported housing.*

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

81 *2. The written termination notice may include the address of the publicly supported housing, the name and*
82 *address of the owner, the termination date of each affordability restriction, and an explanation and any*
83 *expiration date of any provisions that may allow the tenant to retain the tenancy after the affordability*
84 *restrictions are terminated.*

85 *3. If more than one termination will occur, the owner may send one written notice so long as the*
86 *terminations are scheduled to occur within one year of each other and the notice is given 24 months prior to*
87 *the earliest termination.*

88 *B. Notice required by this section shall be delivered in a format prescribed by the locality. The owner*

89 shall retain sufficient proof of delivery, as determined by the locality. Any notice required by this section to
90 tenants shall be provided in accordance with §§ 55.1-1200 and 55.1-1202.

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

95 D. Any ordinance adopted pursuant to this section may require that an owner subject to such notice
96 requirements submit to the locality, no more than 30 days after the notice requirement date, sufficient
97 verification that the owner has complied with the provisions of this section. If the locality did not receive or
98 plans to contest the validity of such verification, the locality shall notify the owner, by certified mail, return
99 receipt requested, within 60 days of receipt of such verification or after such verification should have been
100 received. If the locality does not contest the owner's compliance within the 60-day period, a certificate of
101 compliance shall be recorded in the land records of the locality. The certificate of compliance shall (i) c
102 ontain a legal description of the property, (ii) identify the owner as the grantor, and (iii) be acknowledged by
103 the owner and the locality in the manner required for acknowledgement of a deed.

104 E. Any locality may establish by ordinance a uniform schedule of fines or penalties, not to exceed \$5,000
105 per violation, upon a publicly supported housing owner for failure to comply with the notice provisions of
106 this section, except that no locality shall impose a fine or penalty upon the owner if a certificate of
107 compliance for that owner was recorded in the land records of the locality or the owner was not notified of
108 noncompliance according to the provisions of this section.

109 **§ 36-178. Qualified designee.**

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

113 B. If a locality chooses to appoint a qualified designee, the locality shall establish a process for selecting
114 such qualified designee. A qualified designee shall enter into a written agreement with the locality that
115 requires such qualified designee to agree to preserve the affordability of the publicly supported housing for
116 at least 15 years and assume all rights and responsibilities attributable to the locality as a prospective
117 purchaser of the publicly supported housing.

118 § 36-179. *Right of first refusal.*

119 A. *After the publicly supported housing owner delivers notice as required by § 36-177, or after the date*
120 *that such notice would be required from each owner, the locality or qualified designee may record in the land*
121 *records of the locality in which the property is located and deliver to the owner a notice of right of first*
122 *refusal in a form prepared by the locality. Such form shall include:*

123 1. *The legal description of the publicly supported housing;*

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

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

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

132 5. *A statement that the right of first refusal expires 24 months after the termination of affordability*
133 *restrictions; and*

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

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

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

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

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

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

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

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

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

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

162 C. *A locality may require that an owner of publicly supported housing subject to the notice of right of first*
163 *refusal in subsection A submit to the locality sufficient verification, as defined by the locality, no more than*
164 *60 days after sending notice of the acceptance of an offer to purchase from a third party, that the owner has*
165 *complied with the provisions of this section. The locality has no more than 60 days from receipt of such*
166 *verification or when such verification should have been received, to notify the owner, by certified mail, return*
167 *receipt requested, if the locality did not receive the verification or if the locality intends to contest the validity*
168 *of the verification, at which point the locality may grant the owner another opportunity to comply with the*
169 *provisions of this section. If the locality finds no contest to the owner's compliance within the 60-day period,*
170 *a certificate of compliance in accordance with the provisions of this section shall be recorded in the land*
171 *records of the locality. The certificate of compliance under this section shall contain a legal description of*
172 *the property, the identity of the owner as the grantor, and an acknowledgment by the owner and the locality*
173 *in the manner required for acknowledgement of a deed.*

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

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

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

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

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

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

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

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

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

203 **§ 36-180. Annual report.**

204 *Any locality with a population greater than 3,500 that has adopted an ordinance with the authority*

205 *granted in this chapter shall notify the Department of Housing and Community Development in the annual*
206 *report required by § 36-139.9.*