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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) the federal Low-Income Housing Tax Credit Program, 26 U.S.C. § 42; (c) § 101 of the Housing and Urban Development Act of 1965, 12 U.S.C. § 1701s, as it applies to programs for rent supplement assistance; (d) § 202 of the Housing Act of 1959, 12 U.S.C. § 1701q; (e) the Below Market Interest Rate program codified at § 221(d)(3) of the National Housing Act, 12 U.S.C. § 1715 l(d)(3) and (5); (f) § 236 of the National Housing Act, 12 U.S.C. § 1715z-1; (g) §§ 515 and 538 of the Housing Act of 1949, 42 U.S.C. § 1485; (h) tax-exempt private activity mortgage revenue bonds as codified in § 142(d) of the Internal Revenue Code or its predecessors; (i) the Community Development Block Grant Program, 42 U.S.C. § 5301 et seq.; (j) the HOME Investment Partnership Program, 24 C.F.R. § 92; (k) the National Housing Trust Fund, 24 C.F.R. § 93; (l) the Virginia Housing Trust Fund; and (m) the Virginia housing opportunity tax credit.*

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

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

*"Tenant association" means any association established by the tenants of publicly supported housing for the purpose of addressing issues related to their living environment that (i) operates democratically and represents all residents in the development; (ii) is completely independent of owners, management, and their representatives; and (iii) has notified the owner and the locality of its existence or establishment and has 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.*