

## 1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 *An Act to amend the Code of Virginia by adding in Title 36 a chapter numbered 13, consisting of sections*  
 3 *numbered 36-176 through 36-180, relating to preservation of affordable housing; definitions; civil*  
 4 *penalty.*

5 [H 1973]

6 Approved

7 **Be it enacted by the General Assembly of Virginia:**  
 8 **1. That the Code of Virginia is amended by adding in Title 36 a chapter numbered 13, consisting of**  
 9 **sections numbered 36-176 through 36-180, as follows:**

## 10 CHAPTER 13.

## 11 PRESERVATION OF AFFORDABLE HOUSING.

12 § 36-176. *Definitions.*13 *As used in this chapter, unless the context requires a different meaning:*14 *"Affiliate" means the same as that term is defined in § 13.1-725.*15 *"Affordability restriction" means a limit on the amount of rent that an owner may charge at publicly*  
 16 *supported housing as set forth in a contract.*17 *"Bona fide offer to purchase" means a signed purchase agreement made in good faith.*18 *"Day" means calendar day unless clearly specified as business day.*19 *"Locality" means the same as that term is defined in § 15.2-102.*20 *"Owner" means a person, firm, partnership, corporation, trust, organization, limited liability company or*  
 21 *other entity, or its successors or assigns, that holds title to publicly supported housing.*

22 *"Publicly supported housing" means any building, structure, or combination of related buildings and*  
 23 *structures operated as a single entity that a landlord provides for a consideration consisting of (i) 10 or more*  
 24 *rental dwelling units; (ii) with an affordability restriction in a contract requiring that such rent be affordable*  
 25 *for persons and families of low or moderate income; and (iii) that receives benefits from the following*  
 26 *programs, grants, or credits: (a) § 8 of the United States Housing Act of 1937, 42 U.S.C. § 1437(f), as it*  
 27 *applies to new construction, substantial rehabilitation, moderate rehabilitation, property disposition, and*  
 28 *loan management set-aside programs or any other program providing project-based rental assistance; (b)*  
 29 *the federal Low-Income Housing Tax Credit Program, 26 U.S.C. § 42; (c) § 101 of the Housing and Urban*  
 30 *Development Act of 1965, 12 U.S.C. § 1701s, as it applies to programs for rent supplement assistance; (d) §*  
 31 *202 of the Housing Act of 1959, 12 U.S.C. § 1701q; (e) the Below Market Interest Rate program codified at §*  
 32 *221(d)(3) of the National Housing Act, 12 U.S.C. § 1715 l(d)(3) and (5); (f) § 236 of the National Housing*  
 33 *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*  
 34 *private activity mortgage revenue bonds as codified in § 142(d) of the Internal Revenue Code or its*  
 35 *predecessors; (i) the Community Development Block Grant Program, 42 U.S.C. § 5301 et seq.; (j) the HOME*  
 36 *Investment Partnership Program, 24 C.F.R. § 92; (k) the National Housing Trust Fund, 24 C.F.R. § 93; (l)*  
 37 *the Virginia Housing Trust Fund; and (m) the Virginia housing opportunity tax credit.*

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

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

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

57 provided to such owner and the locality the names and addresses of at least two officers or representatives of  
 58 such association. No owner or other entity shall be required to ascertain the association's compliance with  
 59 this definition.

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

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

69 **§ 36-177. Notice requirements for termination of affordability restriction.**

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

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

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

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

86 B. Notice required by this section shall be delivered in a format prescribed by the locality. The owner  
 87 shall retain sufficient proof of delivery, as determined by the locality. Any notice required by this section to  
 88 tenants shall be provided in accordance with §§ 55.1-1200 and 55.1-1202.

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

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

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

107 **§ 36-178. Qualified designee.**

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

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

116 **§ 36-179. Right of first refusal.**

117 A. After the publicly supported housing owner delivers notice as required by § 36-177, or after the date  
 118 that such notice would be required from each owner, the locality or qualified designee may record in the land

119 records of the locality in which the property is located and deliver to the owner a notice of right of first  
120 refusal in a form prepared by the locality. Such form shall include:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 181       3. *The proposed property transfer does not constitute a sale;*  
182       4. *More than 24 months have elapsed since the termination of the affordability restrictions for the publicly*  
183 *supported housing; or*  
184       5. *The owner accepted a third party's offer to purchase the publicly supported housing before a*  
185 *reasonable time after the effective date of the ordinance adopted to implement the provisions of this chapter,*  
186 *as determined by the locality.*  
187       E. *The provisions of this section are secondary to the terms of the right of first refusal established by a*  
188 *locality through the contribution of local funds to the acquisition, development, or revitalization of publicly*  
189 *supported housing or within the agreements for assistance from locally managed funds or programs.*  
190       F. *The provisions of this section are secondary to the terms of the right of first refusal by a qualified*  
191 *nonprofit organization at the close of the compliance period for low-income housing tax credits, as*  
192 *authorized by 26 U.S.C. § 42(i)(7) and according to regulations promulgated by the Virginia Housing*  
193 *Development Authority.*  
194       G. *The locality or qualified designee may bring a civil action against an owner of publicly supported*  
195 *housing for which the locality or qualified designee has recorded a notice of right of first refusal if the owner*  
196 *has violated the provisions of this section, except when a certificate of compliance in accordance with the*  
197 *provisions of this section for that owner was recorded in the land records or the owner was not notified of*  
198 *noncompliance pursuant to the provisions of this section. The court may award punitive damages and*  
199 *provide injunctive relief. The court may award reasonable attorney fees and costs at trial and on appeal to a*  
200 *prevailing plaintiff in an action under this section.*  
201       **§ 36-180. Annual report.**  
202       *Any locality with a population greater than 3,500 that has adopted an ordinance with the authority*  
203 *granted in this chapter shall notify the Department of Housing and Community Development in the annual*  
204 *report required by § 36-139.9.*