

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 4]

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 (i) consisting of 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 in §*
 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 created in Chapter 9 (§ 36-141 et seq.); and (m) the Virginia housing*
 38 *opportunity tax credit established in § 58.1-439.30.*

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

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

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

57 representatives; and (iii) has notified the owner and the locality of its existence or establishment and has
 58 provided to such owner and the locality the names and addresses of at least two officers or representatives of
 59 such association. No owner or other entity shall be required to ascertain the association's compliance with
 60 this definition.

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

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

70 **§ 36-177. Adoption of notice requirements for termination of affordability restriction.**

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

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

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

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

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

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

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

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

108 **§ 36-178. Qualified designee.**

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

113 B. If a locality that has adopted an ordinance pursuant to § 36-177 chooses to appoint a qualified
 114 designee, the locality shall establish a process for selecting such qualified designee. A qualified designee
 115 shall enter into a written agreement with the locality that requires such qualified designee to agree to
 116 preserve the affordability of the publicly supported housing for at least 15 years and assume all rights and
 117 responsibilities attributable to the locality as a prospective purchaser of the publicly supported housing.

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

119 A. After a publicly supported housing owner delivers a written termination notice required by § 36-177,
 120 or after the date that such notice would be required from each owner, a locality that has adopted an
 121 ordinance pursuant to § 36-177 or its qualified designee appointed pursuant to § 36-178 may record in the
 122 land records of the locality in which the property is located and deliver to the owner a notice of right of first
 123 refusal in a form prepared by the locality. Such form shall include:

- 124 1. The legal description of the publicly supported housing;
- 125 2. An acknowledgement that the locality holds the right of first refusal to purchase the publicly supported
 126 housing or that such right has been assigned to a qualified designee and may be reassigned through a
 127 subsequent notice if the owner has not yet accepted a bona fide offer to purchase from a third-party buyer;
- 128 3. A list of each exemption to the right of first refusal provided in subsection D, including the determined
 129 length of extended affordability required of the third-party buyer for an exemption and a statement that the
 130 locality may choose to negotiate an alternative length of time with such buyer;
- 131 4. A statement that any bona fide offer to purchase the publicly supported housing shall acknowledge that
 132 the property is subject to the right of first refusal under this chapter;
- 133 5. A statement that the right of first refusal expires 24 months after the termination of affordability
 134 restrictions; and
- 135 6. A declaration that a copy of the recorded notice of right of first refusal was promptly delivered to the
 136 owner by the locality or qualified designee by electronic delivery, in-person delivery, or registered or
 137 certified mail with proof of such delivery attached.

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

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

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

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

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

- 157 a. An earnest money deposit that is no less than the least of the third-party buyer's offer or four percent of
 158 the sales price;
- 159 b. That the earnest money deposit is refundable until the earlier of 90 days or the date of closing in the
 160 event of a good faith failure of the locality or qualified designee to obtain financing;
- 161 c. Any other term that the property owner has agreed to waive; and
- 162 d. A commitment to maintain the affordability of the property as required by this section.

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

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

- 176 1. The publicly supported housing is not subject to a previously recorded notice of right of first refusal;
- 177 2. The third-party buyer agrees in good faith to extend the property's affordability for a certain length of
 178 time, as determined by the locality and specified in the notice of right of first refusal filed for the property,
 179 and includes such agreement in writing in the offer to purchase the property. The locality may not require
 180 more than 30 years of extended affordability to qualify for this exemption unless otherwise required by an

181 *alternative contract, program, or financial agreement. The locality may provide an opportunity for the third-*
182 *party buyer and the locality to negotiate a length of extended affordability alternative to that which was*
183 *specified in the notice of right of first refusal;*

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

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

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

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

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

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

204 **§ 36-180. Annual report.**

205 *Any locality with a population greater than 3,500 that has adopted an ordinance with the authority*
206 *granted in this chapter shall notify the Department of Housing and Community Development in the annual*
207 *report required by § 36-139.9.*