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VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act 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.

[H 1398]

Approved

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 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

57 supported housing or negotiates a purchase in lieu of eminent domain.

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

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

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

79 **§ 36-177. Notice requirements for termination of affordability restriction.**

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

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

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

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

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

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

110 E. Any locality may adopt an ordinance to require that an owner subject to the notice requirements
 111 of this section submit to the locality, no more than 30 days after the notice requirement date, sufficient
 112 verification, as defined by the locality, that the owner has complied with the provisions of this section. If
 113 the locality plans to contest the validity of such verification, the locality shall notify the owner, by
 114 certified mail, return receipt requested, within 60 days of receipt of such verification. If the locality finds
 115 no contest to the validity of the verification, a certificate of compliance shall be recorded in the land
 116 records of the locality within 60 days of the locality's receipt of the verification from the owner. The
 117 certificate of compliance shall (i) contain a legal description of the property, (ii) identify the owner as

118 the grantor, and (iii) be acknowledged by the owner and the locality in the manner required for
119 acknowledgement of a deed.

120 F. Any locality may impose by ordinance a fine, penalty, tax, fee, charge, or assessment upon the
121 publicly supported housing owner for failure to comply with the notice provisions of this section, except
122 that no locality shall impose a fine, penalty, tax, fee, charge, or assessment upon the publicly supported
123 housing property owner once a certificate of compliance is recorded in the land records of the locality.

124 **§ 36-178. Qualified designee.**

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

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

136 **§ 36-179. Opportunity to offer to purchase.**

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

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

143 1. The documents provided by the owner to the locality or qualified designee under this section shall
144 be confidential and exempt from the provisions of the Virginia Freedom of Information Act (§ 2.2-4300
145 et seq.) unless the property owner consents in writing or upon order by a court. Notwithstanding the
146 provisions of this subdivision, disclosure may be made to potential funding sources, regulatory agencies,
147 or agents or consultants of the locality or qualified designee in connection with a transaction between
148 the owner and the locality or qualified designee, subject to any appropriate confidentiality agreements.

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

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

155 **§ 36-180. Right of first refusal.**

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

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

162 2. An acknowledgement by the locality that the instrument holds the right of first refusal to purchase
163 the publicly supported housing under this chapter, that the acknowledging party may assign such right
164 of first refusal to a qualified designee, and that such right may be reassigned;

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

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

169 5. A declaration that a copy of the recorded notice of right of first refusal was promptly delivered to
170 the owner by the locality or qualified designee by electronic delivery, in-person delivery, or registered
171 or 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
173 provided for the acknowledgement of deeds.

174 B. A locality may require that, within five business days after the owner has accepted a bona fide
175 offer to purchase from a third party for the publicly supported housing that is subject to a recorded
176 notice of right of first refusal, an owner send notice, 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
178 the terms and conditions of the offer and shall be subject to the same confidentiality provisions in

179 § 36-179.

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

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

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

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

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

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

195 C. A locality may require that an owner that sells publicly supported housing subject to the notice of
196 right of first refusal in subsection A to a third-party buyer, the locality, or qualified designee submit to
197 the locality sufficient verification, as defined by the locality and within a certain timeframe as
198 determined by the locality, that the owner has complied with the provisions of this section. The locality
199 has no more than 60 days from receipt of such verification to notify the owner, by certified mail, return
200 receipt requested, whether the locality intends to contest the validity of the verification. If the locality
201 finds no contest to the validity of the verification, a certificate of compliance shall be recorded in the
202 land records of the locality within 60 days from the date the locality received such verification. The
203 certificate of compliance under this section shall contain a legal description of the property, the identity
204 of the owner as the grantor, and an acknowledgment by the owner and the locality in the manner
205 required for acknowledgment of a deed.

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

207 1. The third-party buyer agrees to equivalent affordability restrictions, as defined by the locality, on
208 the publicly supported housing to ensure that such property remains publicly supported housing for at
209 least 15 more years;

210 2. The proposed property transfer does not constitute a sale;

211 3. More than 24 months have elapsed since the termination of the affordability restrictions for the
212 publicly supported housing; or

213 4. The owner accepted a third party's offer to purchase the publicly supported housing before a
214 reasonable time after the effective date of the ordinance adopted to implement the provisions of this
215 chapter, as determined by the locality.

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

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

224 G. The locality or qualified designee may bring a civil action against an owner of publicly supported
225 housing where the locality or qualified designee has recorded a notice of right of first refusal if the
226 owner has violated the provisions of this section. The court may award punitive damages and provide
227 injunctive relief. The court may award reasonable attorney fees and costs at trial and on appeal to a
228 prevailing plaintiff in an action under this section.

229 **§ 36-181. Annual report.**

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

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

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

237 3. A list of the qualified designees appointed by the locality and copies of the agreements between
238 such qualified designees and the locality.

239 4. The number of offers to purchase executed by the locality or qualified designee, the number of

- 240 *such offers that were accepted by the owner, and a summary of the terms for such sales agreements.*
241 *5. The number of times the locality or qualified designee exercised the right of first refusal to*
242 *purchase a property and a summary of the terms for such sales agreements.*
243 *6. A description of the method used by the locality to determine when and for which properties to*
244 *execute the right of first refusal or make an offer to purchase.*