



## THE AFFORDABLE HOUSING STUDY COMMISSION

### MEMORANDUM

To: Capacity Workgroup  
Nancy Muller  
From: Odetta MacLeish-White  
Date: January 5, 2006  
RE: Information for January 9, 2006 Conference Call

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The agenda for our conference call will cover two issues:

- Discussion of a state notice statute; and
- discussion of the “Preservation Series” that was outlined during our November meeting.

This memo serves to provide you with some background material to inform our conversation and refresh our memories about some conclusions we reached in November.

#### Notice Statute

I have provided you with the language of the Illinois statute and its rules which govern the form of the notice and accepted methods of delivery. Additionally, you have a draft Florida statute, based in large part on the Illinois law. The Florida draft is for discussion purposes only at this point, but I felt that it would be easier to think about how these policies will work in our state if we have something on paper from which to start.

I have had the opportunity to talk with Mary Kennedy, General Counsel for the Illinois Housing Development Authority (IHDA), and Kevin Jackson and Rachel Johnston, both of the Chicago Rehab Network (CRN). CRN is a coalition of 44 non profit agencies and was a key player in the passage of Illinois’s notice policy. IHDA is responsible for creating the rules that govern the form of the notice and the accepted methods of delivery to the parties identified in the statute. My conversations centered on determining what they were experiencing in implementing their notice statute. The conclusions I would like to share with you are as follows:

- The Illinois statute is “retroactive”, meaning once it was passed anyone who owned a property with federal assistance became subject to its provisions.<sup>1</sup> Rachel Johnston acknowledged that there has been some protest on this point, but CRN has addressed these arguments by pointing out the economic efficiency of preserving affordable housing (it will cost much more to build the same number of new units) and noting that owners have been receiving financial benefits over the years from their participation in these federal programs.
- Since the law’s passage in 2004, there has been only one resident association that has come forward under the law to try and purchase their property, and their ultimate success is still in question. This lack of response has been attributed to the fact that owners and residents are not aware of the law’s existence and there are no plans for more aggressive outreach and information sharing.

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<sup>1</sup> You will note some exceptions in Section 8 of the Illinois statute.



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- The Illinois statute provides a right of first refusal to tenants or tenant associations, but not to a government agency or non-profit. This means that truly effective use of the statute relies on having lawyers, tenant organizers and developers ready to move quickly. The tenants have to organize themselves or contract with a representative and provide an offer within such tight time frames that, without prior organizing, it is almost impossible to take advantage of the purchase opportunity. This experience suggests that Florida's statute should provide right of first refusal to other entities, such as a state agency that could hold properties short term and transfer ownership to a resident association or owner who will agree to maintain affordability.
- You will notice that Illinois's statute asks for 12 months notice. Rachel Johnston acknowledges that this is not long enough to pull funding together, without prior outreach and negotiations, but they were counseled by Jim Grow of the National Housing Law Project to match their policy to HUD's. However, if we can get 24 months notice she encourages us to do so.
- Illinois wrote their law to require highest and best use to determine a sales price. By giving highest and best use, it is hoped that owners will not claim that their property is being illegally taken. Mary Kennedy of IHDA does expect owners will challenge Illinois's notice statute along the same lines as the challenges in California and Minnesota. However, to date, no lawsuits have actually been filed.

It appears that owners were not at the table during the drafting of Illinois's statute<sup>2</sup>. The Capacity Workgroup should identify who else needs to be included in our conversation; we will make time at the February meeting to share our findings on the notice statute with the Finance Workgroup and from them we will get owner and developer points of view.

### Preservation Series

At the last Study Commission meeting, we moved forward in discussing the components of a preservation series, most likely conducted through the Florida Housing Coalition. The workgroup identified the following elements:

- Property management training for non profits;
- Asset management if the non profit is not doing their own property management;
- Less experienced non profits could go through core program before doing a preservation class while more experienced non profits could go through the advanced classes before doing the preservation classes; and
- FHC clinics may also be a mechanism for bringing programs to community groups, if locations and copying can be donated.

To help in crafting a more specific preservation program, I am providing the FHC Workshop Schedule which shows their current modules. My intent in offering this information is to suggest that a Preservation Series can be constructed from existing programs, which may need some tailoring to the preservation topic. I encourage you to review FHC's classes before the conference call to see if there are elements which can be combined to create a new series, and to further refine what we need to include in our capacity building preservation classes.

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<sup>2</sup> I hasten to point out that CRN is a coalition of 44 non profits, including agencies that are involved with development and owning properties. Therefore, although for profit owners were not directly included, Rachel Johnston felt that their interests were being represented.



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### State of Illinois Federally Assisted Housing Preservation Act.

**Sec. 1. Short title.** This Act may be cited as the Federally Assisted Housing Preservation Act.  
(Source: P.A. 93-727, eff. 7-14-04.)

**Sec. 2.** It is the purpose of this Act to preserve and retain to the maximum extent possible, as housing affordable to low and moderate income families or persons, those privately owned dwelling units that were provided for such purposes with federal assistance, to protect the tenants of these units from displacement resulting from the loss of use restrictions attached to these units and to address the overall lack of affordable housing for low and moderate income families or persons in Illinois.  
(Source: P.A. 86-810.)

**Sec. 3. Definitions.** As used in this Act:

- (a) "IHDA" means the Illinois Housing Development Authority.
- (b) (Blank).
- (c) (Blank).
- (d) "Owner" means the person, partnership, or corporation that holds title to an assisted housing development.
- (e) "Assisted housing" or "assisted housing development" means a rental housing development, or a mixed use development that includes rental housing, that receives government assistance under any of the following programs:
  - (1) New construction, substantial rehabilitation, moderate rehabilitation, property disposition and loan management set-aside programs, or any other program providing project-based rental assistance, under Section 8 of the United States Housing Act of 1937, as amended.
  - (2) The Below-Market-Interest-Rate Program under Section 221(d)(3) of the National Housing Act.
  - (3) Section 236 of the National Housing Act.
  - (4) Section 202 of the National Housing Act.
  - (5) Programs for rent supplement assistance under Section 101 of the Housing and Urban Development Act of 1965, as amended.
  - (6) Programs under Section 514 or 515 of the Housing Act of 1949.
  - (7) Section 42 of the Internal Revenue Code.
- (f) "Tenant" means a tenant, subtenant, lessee, sublessee or other person entitled to possession, occupancy or benefits of a rental unit within the assisted housing.
- (g) "Tenant Association" means an association, corporation or other organization that represents at least a majority of the tenants in the assisted housing building.
- (h) "Prepayment" means the payment in full or refinancing of the federally insured or federally held mortgage indebtedness prior to its original maturity date, or the voluntary cancellation of mortgage insurance, on an assisted housing development described in paragraph (2), (3), or (4) of subsection (e) that would have the effect of removing the affordability restrictions applicable to the assisted housing development under the programs described in paragraph (2), (3), or (4) of subsection (e).
- (i) "Termination" means:
  - (1) the expiration or early termination of an assisted housing development's participation in a federal subsidy program for assisted housing described in paragraph (1) of subsection (e), or
  - (2) the expiration or early termination of an assisted housing development's affordability restrictions described in Section 42(g) of the Internal Revenue Code for assisted housing described in paragraph (7) of subsection (e), when that



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event results in an increase in tenant rents, a change in the form of subsidy from project-based to tenant-based, or a change in use of the assisted housing development to a use other than rental housing.

(j) "Affected public entities" means: the mayor of the city in which the assisted housing development is located or, if the development is located in an unincorporated area, the chairperson of the county board; the public housing authority in whose jurisdiction the assisted housing development is located, if any; and IHDA.

(k) "Affordability restrictions" means limits on rents that owners may charge for occupancy of a rental unit in assisted housing and limits on tenant income for persons or families seeking to qualify as tenants in assisted housing.

(Source: P.A. 93-727, eff. 7-14-04.)

### **Sec. 4. Notice of intent to sell.**

(a) An owner may not sell or otherwise dispose of assisted housing, complete prepayment, or complete a termination unless, not less than 12 months before the prepayment, termination, sale, or disposal, the owner submits to all tenants of the assisted housing and to all affected public entities a notice of intent to complete prepayment, complete termination, sell, or otherwise dispose of the property.

(a-5) Every notice required under subsection (a) must include the address of the assisted housing, characteristics of the property including the number of units, and the names and addresses of the owners. The notice must also include the date on which the owner intends to sell, lease, complete prepayment, complete termination, or otherwise dispose of the property, as well as a detailed list of affordability restrictions applicable to the property. IHDA shall adopt rules concerning the content, format, delivery, and publication of such notices.

(b) Within 60 days after the date of the owner's notice pursuant to subsection (a), the tenants may notify the owner that they have formed a Tenant Association meeting the requirements of this Act and shall designate the name of its representative or representatives in the notice. The Tenant Association may enter into an agreement with a not-for-profit corporation or private purchaser in which the not-for-profit corporation or private purchaser agrees to represent the residents and maintain the development in a manner that preserves the housing development's existing affordability restrictions or that would qualify the housing development as affordable housing as defined in the Illinois Affordable Housing Act. The agreement must set forth the minimum length of time that the affordability restrictions will be in effect. The Tenant Association and individual tenants in the assisted housing shall each have the right to bring an action for specific performance or other injunctive relief for enforcement of the agreement, and the agreement must contain provisions to this effect along with such other remedies for breach as the Tenant Association and the not-for-profit corporation or private purchaser may agree. Once such an agreement is entered into, the not-for-profit corporation or private purchaser shall assume all rights and responsibilities attributed to the Tenant Association under this Act.

(Source: P.A. 93-727, eff. 7-14-04.)

**Sec. 5. Offer for sale to Tenant Association.** Within 60 days after the Tenant Association has complied with the requirements of Section 4, the owner shall, before selling, leasing, completing prepayment, completing termination, or otherwise disposing of the property, provide to the Tenant Association a bona fide offer for sale of the property which shall contain the essential terms of the sale, including, at a minimum, the following: the sales price; the terms of seller financing, if any, including the amount, the interest rate, and amortization rate thereof; the terms of assumable financing, if any, including the amount, the interest rate, and the amortization rate thereof; and proposed improvements, if any, to the property to be made by the owner in connection with the sale.

(Source: P.A. 93-727, eff. 7-14-04.)

### **Sec. 6. Notice of intent to purchase.**

(a) The Tenant Association shall notify the owner in writing, within 90 days after the receipt of the bona fide offer of sale, of its intent to purchase the assisted housing.

(b) The owner shall, after receiving a notice pursuant to subsection (a), comply with any reasonable request to make documents available to the Tenant Association, during normal business hours at the owner's principal place of business



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within 15 days of receiving such a request, including but not limited to: a floor plan of the development; itemized lists of monthly operating expenses, capital expenditures in each of the 2 preceding calendar years and deferred maintenance costs; the amount of project reserves; utility consumption rates; copies of financial and physical inspection reports filed with federal, State or local agencies; the most recent rent roll; a list of tenants; a list of vacant units; and a statement of the vacancy rate at the development for each of the 2 preceding calendar years.

(Source: P.A. 93-727, eff. 7-14-04.)

### **Sec. 7. Bona fide offer to purchase; contract.**

(a) The Tenant Association shall, within 90 days after it notifies the owner of its intent to purchase, provide the owner with a bona fide offer to purchase evidenced by a purchase contract reflecting a sales price and terms agreed to by the parties or the sales price and terms determined pursuant to subsection (b) of this Section and an earnest money deposit equal to 5% of the bona fide offer to purchase.

(b) If the parties are unable to agree to a sales price within the first 60 days of the 90 day period specified in subsection (a), the sale price of the assisted housing shall be based upon its fair market value, based on its highest and best use, without affordability restrictions, as determined by 2 independent appraisers qualified to perform multi-family housing appraisals. One appraiser shall be selected and paid by the owner and the other shall be selected and paid by the Tenant Association. If the appraisers fail to agree upon a fair market value, the owner and the Tenant Association shall either jointly select and pay a third appraiser whose appraisal shall be binding, or agree to take an average of the 2 appraisals. All appraisers shall be MAI certified. The determination of the sales price pursuant to this subsection shall be completed within the 90 day period specified in subsection (a) of this Section.

(c) The Tenant Association shall agree to close on the sale within 90 days from the date the parties sign the contract to purchase.

(Source: P.A. 93-727, eff. 7-14-04.)

**Sec. 8.** The provisions of this Act shall not apply to any of the following: a government taking by eminent domain or negotiated purchase; a forced sale pursuant to a foreclosure; a transfer by gift, devise or operation of law; or an owner's sale or other disposition of assisted housing in a manner pursuant to which the property after the sale or other disposition continues to be assisted housing as defined in this Act.

(Source: P.A. 93-727, eff. 7-14-04.)

**Sec. 9.** If the Tenant Association fails to provide notice to the owner pursuant to Sections 4 or 6 or fails to meet the requirements of Section 7, the owner is released from any and all requirements and obligations under this Act.

(Source: P.A. 86-810.)

**Sec. 10.** Any notice provided for in this Act shall be deemed given when a written notice is delivered in person or mailed by certified or registered mail, return receipt requested, to the party to whom notice is given.

(Source: P.A. 86-810.)

**Sec. 10.1.** Civil action against owner. The Tenant Association, or one or more tenants in the assisted housing, may bring a civil action against an owner who has violated this Act. An owner found to have violated any provision of this Act shall, in addition to any other damages, pay a civil penalty to each tenant in the assisted housing in the amount of \$500 per tenant, and shall also pay the attorney's fees and costs incurred in bringing the action.

(Source: P.A. 93-727, eff. 7-14-04.)



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### **TITLE 47: HOUSING AND COMMUNITY DEVELOPMENT CHAPTER II: ILLINOIS HOUSING DEVELOPMENT AUTHORITY PART 375 NOTICE PROCEDURES UNDER THE FEDERALLY ASSISTED HOUSING PRESERVATION ACT**

#### **Section 375.101 Authority**

This Part is authorized by and adopted pursuant to Section 7.19 of the Illinois Housing Development Act [20 ILCS 3805/7.19] and the Federally Assisted Housing Preservation Act [310 ILCS 60] and shall govern the provision of notices required by the Federally Assisted Housing Preservation Act.

#### **Section 375.102 Purposes and Objectives**

This Part is established to implement the notice requirements under the Federally Assisted Housing Preservation Act. The purpose of this Part is to create a uniform procedure for producing and delivering notices under the Federally Assisted Housing Preservation Act.

#### **Section 375.103 Definitions**

As used in this Part, the following words or terms mean:

"Act": The Illinois Housing Development Act [20 ILCS 3805].

"Affected Public Entities": The mayor of the city or village in which the Assisted Housing Development is located or, if the Assisted Housing Development is located in an unincorporated area, the chairperson of the county board; the public housing authority in whose jurisdiction the Assisted Housing Development is located, if any; the local director of the federal housing agency that has insured, provided financing for or provided subsidies for the Assisted Housing Development; and IHDA.

"Affordability Restrictions": The limits on rents that owners may charge for occupancy of a rental unit in Assisted Housing and the limits on tenant income for persons or families seeking to qualify as tenants in Assisted Housing.

"Assisted Housing" or "Assisted Housing Development": A rental housing development, or mixed use development that includes rental housing, that receives government assistance under any of the following programs:

New construction, substantial rehabilitation, moderate rehabilitation, property disposition and loan management set-aside programs, or any other program providing project-based rental assistance under Section 8 of the United States Housing Act of 1937, as amended (42 USC 1437).

The Below-Market-Interest-Rate Program under Section 221(d)(3) of the National Housing Act (12 USC 1701).



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Section 236 of the National Housing Act (12 USC 1715z-1).

Section 202 of the National Housing Act (12 USC 1701q).

Programs for rent supplement assistance under Section 101 of the Housing and Urban Development Act of 1965, as amended (12 USC 1701s).

Programs under Section 514 or 515 of the Housing Act of 1949 (12 USC 1441 and 14 USC 1485).

Section 42 of the Internal Revenue Code (26 USC 42).

"IHDA": The Illinois Housing Development Authority.

"Members": The members of IHDA.

"Notice": The notice that an owner of an Assisted Housing Development must provide if that owner intends to sell or otherwise dispose of the Assisted Housing Development, complete a prepayment, or complete a termination of affordability restrictions.

"Owner": The person, partnership or corporation that holds title to an Assisted Housing Development.

"Prepayment": The payment in full or refinancing of the federally insured or federally held mortgage indebtedness prior to its original maturity date, or the voluntary cancellation of mortgage insurance, on an Assisted Housing Development under Section 221(d)(3), 236 or 202 of the National Housing Act that would have the effect of removing affordability restrictions applicable to the Assisted Housing Development under the programs described in those Sections.

"Preservation Act": Federally Assisted Housing Preservation Act [310 ILCS 60].

"Property": A property or development that contains Assisted Housing.

"Tenant": The tenant, subtenant, lessee, sublessee or other person entitled to possession, occupancy or benefits of a rental unit within an Assisted Housing Development.

"Termination": The:

expiration or early termination of an Assisted Housing Development's participation in a federal subsidy program for Assisted Housing under Section 8 of the United States Housing Act of 1937.

expiration or early termination of an Assisted Housing Development's affordability restrictions described in Section 42(g) of the Internal Revenue Code, when that event results in an increase in tenant rents, a change in the form of subsidy from project-based to tenant-based, or a change in use of the Assisted Housing Development to a use other than rental housing.



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### **Section 375.104 Amendment**

This Part may be amended or repealed by the members from time to time in accordance with the Illinois Administrative Procedure Act and in such manner as the members may determine consistent with the Act, the purposes of the Preservation Act, and other applicable provisions of law. This Part shall not constitute or create any contractual rights.

### **Section 375.105 Severability**

If any clause, sentence, subsection, Section or Subpart of this Part shall be adjudged by any court of competent jurisdiction to be invalid, that judgment shall not affect, impair or invalidate the remainder of this Part, but shall be confined in its operation to the clause, sentence, subsection, Section and Subpart to which the judgment is rendered.

### **Section 375.106 Gender and Number**

All terms used in any one gender or number shall be construed to include any other gender or number as the context may require.

### **Section 375.201 Content of Notice of Intent to Terminate Subsidy**

For owners required to provide notice to tenants of an Assisted Housing Development and to affected public entities under the Preservation Act, the notice shall include the following information:

- a) the address of each building included in the property;
- b) the number of occupied units in the property on the date of the notice;
- c) a description of the property, including the number of units, commercial space, garage, etc.;
- d) the date on which the owner intends to sell or otherwise dispose of the property, complete prepayment or complete a termination of affordability restrictions at the property;
- e) a detailed description of the affordability restrictions presently in place at the property;
- f) the name, address and contact information for the owner of the property; and
- g) a statement notifying the tenant that he/she has certain rights under the Preservation Act.

### **Section 375.202 Form of Notice**

Where a provision of the Preservation Act requires that notice be given to the tenants of an Assisted Housing Development and to affected public entities, the format of the notice shall be as specified in Appendix A.



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### Section 375.APPENDIX A Notice of Intent to Terminate Subsidy

Where a provision of the Preservation Act requires that notice be given to the tenants of an assisted housing development and to affected public entities, the format of the notice shall be as follows:

#### NOTICE OF INTENT TO TERMINATE SUBSIDY

Name of Property:

Address of Each Building Included in Property:

Owner:

Property Description:

Number of Occupied Units:

Anticipated Date of Sale or Other Action:

Affordability Restrictions:

Owner/Contact Information:

**THIS IS NOT AN EVICTION NOTICE.** It is a notice to advise all tenants in the property identified above that one of the following actions with respect to the above property will take place on the date referenced above:

- (i) the sale or other disposition of the property;
- (ii) the prepayment or refinancing of a federally insured or federally held mortgage secured by the property;
- (iii) the termination of the property's participation in a federal subsidy program for assisted housing.

**One or all of these actions may have the effect of terminating the affordability restrictions noted above.**

This notice is to advise you that the Federally Assisted Housing Preservation Act [310 ILCS 60] gives you certain rights. Tenants living on the property may form a tenants association and negotiate with the owner to purchase the property, subject to certain restrictions. Tenants may also enter into an agreement with a not-for-profit corporation or other entity to represent them in negotiations with the owner. If the negotiations are successful, the tenants association can buy the property. A more detailed discussion of the provisions of the law is attached to this notice as Exhibit A.

If you have any questions with regard to this notice, please contact the following individual at the number listed:

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Dated: \_\_\_\_\_



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### Section 375.EXHIBIT A Delivery of Notice to Tenants and Affected Public Entities

- a) Where a provision of the Preservation Act requires that notice be given to tenants of the Assisted Housing Development and affected public entities, the requirements may be met by transmitting the notice described in subsection (b) by one of the following methods:
- 1) delivering the notice, by certified mail or registered mail, return receipt requested, postmarked at least 12 months prior to the anticipated date of the action covered by the notice, to the following public persons or entities:
    - A) the mayor of the city or village in which the Assisted Housing Development is located or, if in an unincorporated area, the chairperson of the county board;
    - B) the public housing agency in whose jurisdiction the Assisted Housing Development is located, if any;
    - C) the Executive Director of IHDA; and
    - D) the federal agency providing mortgage loan insurance, subsidies or financing for the property, if any;
  - 2) delivering the notice to all affected tenants by certified or registered mail, return receipt requested, postmarked at least 12 months prior to the anticipated date of the covered action;
  - 3) posting, at least 12 months prior to the anticipated date of the covered action, a copy of the notice in a readily accessible location within each affected building; and
  - 4) publication of the notice in a newspaper for the locality in which the property is located.
- b) The text of the notice shall read as follows:

#### NOTICE TO TENANTS AND AFFECTED PUBLIC ENTITIES

The federally Assisted Housing Preservation Act (the Act) affects rental housing developments that have received subsidies from the federal government under various federal housing programs. Generally, these programs limit the amount of rent that owners can charge tenants. The Act refers to these limits as "affordability restrictions."

The Act requires owners of these developments to give tenants notice at least 12 months in advance of any of the following events:

The sale or other disposition of the development, which has the effect of removing the affordability restrictions on the development;



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The prepayment of the existing mortgage, on the development, or the termination of the mortgage insurance on the mortgage, if either of those actions would result in removing the affordability restrictions on the development; or

The termination of the development's participation in the federal program. One example is the termination of rental subsidies under the so-called Section 8 program.

You have received this notice because the owner of your development may take one of these actions. The Act gives tenants in your development certain rights:

You and the other tenants have the right to form a tenants association for the purpose of buying the development.

Within 60 days from the date of the owner's notice, you must notify the owner that you have formed an association and the names of the individuals who represent the association.

The owner will then have 60 days to present the association or its representative with a bona fide offer to sell the development. The association then has 90 days to notify the owner whether it intends to buy the development.

If the association is interested in buying the development, it has 90 additional days to present the owner with a purchase contract and negotiate the final sales price. Once the sales price is agreed to, the sale must close within 90 days.



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### FLORIDA FEDERALLY ASSISTED HOUSING PRESERVATION ACT DRAFT DOCUMENT (For Discussion Purposes Only)

**Sec. 1. Short title.** This Act may be cited as the Federally Assisted Housing Preservation Act.

**Sec. 2.** It is the purpose of this Act is to preserve and retain to the maximum extent possible, as housing affordable to low and moderate income families or persons, those privately owned dwelling units that were provided for such purposes with federal assistance, to protect the tenants of these units from displacement resulting from the loss of use restrictions attached to these units and to address the overall lack of affordable housing for low and moderate income families or persons in Florida.

**Sec. 3. Definitions.** As used in this Act:

- (a) "Florida Housing" means the Florida Housing Finance Corporation.
- (b) "Owner" means the person, partnership, or corporation that holds title to an assisted housing development.
- (c) "Assisted housing" or "assisted housing development" means a rental housing development, or a mixed use development that includes rental housing, that receives government assistance under any of the following programs:
  - (1) New construction, substantial rehabilitation, moderate rehabilitation, property disposition and loan management set-aside programs, or any other program providing project-based rental assistance, under Section 8 of the United States Housing Act of 1937, as amended.
  - (2) The Below-Market-Interest-Rate Program under Section 221(d)(3) of the National Housing Act.
  - (3) Section 236 of the National Housing Act.
  - (4) Section 202 of the National Housing Act.
  - (5) Programs for rent supplement assistance under Section 101 of the Housing and Urban Development Act of 1965, as amended.
  - (6) Programs under Section 514 or 515 of the Housing Act of 1949.
  - (7) Section 42 of the Internal Revenue Code.
- (d) "Tenant" means a tenant, subtenant, lessee, sublessee or other person entitled to possession, occupancy or benefits of a rental unit within the assisted housing.
- (e) "Tenant Association" means an association, corporation or other organization that represents at least a majority of the tenants in the assisted housing building.
- (f) "Prepayment" means the payment in full or refinancing of the federally insured or federally held mortgage indebtedness prior to its original maturity date, or the voluntary cancellation of mortgage insurance, on an assisted housing development described in paragraph (2), (3), or (4) of subsection (c) that would have the effect of removing the affordability restrictions applicable to the assisted housing development under the programs described in paragraph (2), (3), or (4) of subsection (c).
- (g) "Termination" means:
  - (1) the expiration or early termination of an assisted housing development's participation in a federal subsidy program for assisted housing described in paragraph (1) of subsection (c), or
  - (2) the expiration or early termination of an assisted housing development's affordability restrictions described in Section 42(g) of the Internal Revenue Code for assisted housing described in paragraph (7) of subsection (c), when that event results in an increase in tenant rents, a change in the form of subsidy from project-based to tenant-based, or a change in use of the assisted housing development to a use other than rental housing.



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(h) "Affected public entities" means: the mayor of the city in which the assisted housing development is located or, if the development is located in an unincorporated area, the chairperson of the county board; the public housing authority in whose jurisdiction the assisted housing development is located, if any; the Florida Housing Finance Corporation ("Florida Housing"); and the Shimberg Center for Affordable Housing.

(i) "Affordability restrictions" means limits on rents that owners may charge for occupancy of a rental unit in assisted housing and limits on tenant income for persons or families seeking to qualify as tenants in assisted housing.

### **Sec. 4. Notice of intent to sell.**

(a) An owner may not sell or otherwise dispose of assisted housing, complete prepayment, or complete a termination unless, not less than 24 months before the prepayment, termination, sale, or disposal, the owner submits to all tenants of the assisted housing and to all affected public entities a notice of intent to complete prepayment, complete termination, sell, or otherwise dispose of the property.

(1) Every notice required under subsection (a) must include the address of the assisted housing, characteristics of the property including the number of units, and the names and addresses of the owners. The notice must also include the date on which the owner intends to sell, lease, complete prepayment, complete termination, or otherwise dispose of the property, as well as a detailed list of affordability restrictions applicable to the property. Florida Housing shall adopt rules concerning the content, format, delivery, and publication of such notices.

(b) Within 60 days after the date of the owner's notice pursuant to subsection (a), the tenants may notify the owner that they have formed a Tenant Association meeting the requirements of this Act and shall designate the name of its representative or representatives in the notice. The Tenant Association may enter into an agreement with a not-for-profit corporation or private purchaser in which the not-for-profit corporation or private purchaser agrees to represent the residents and maintain the development in a manner that preserves the housing development's existing affordability restrictions or that would qualify the housing development as affordable housing as defined in the Florida Statutes. The agreement must set forth the minimum length of time that the affordability restrictions will be in effect. The Tenant Association and individual tenants in the assisted housing shall each have the right to bring an action for specific performance or other injunctive relief for enforcement of the agreement, and the agreement must contain provisions to this effect along with such other remedies for breach as the Tenant Association and the not-for-profit corporation or private purchaser may agree. Once such an agreement is entered into, the not-for-profit corporation or private purchaser shall assume all rights and responsibilities attributed to the Tenant Association under this Act.

**Sec. 5. Offer for sale to Tenant Association.** Within 60 days after the Tenant Association has complied with the requirements of Section 4, the owner shall, before selling, leasing, completing prepayment, completing termination, or otherwise disposing of the property, provide to the Tenant Association a bona fide offer for sale of the property which shall contain the essential terms of the sale, including, at a minimum, the following: the sales price; the terms of seller financing, if any, including the amount, the interest rate, and amortization rate thereof; the terms of assumable financing, if any, including the amount, the interest rate, and the amortization rate thereof; and proposed improvements, if any, to the property to be made by the owner in connection with the sale.

### **Sec. 6. Notice of intent to purchase.**

(a) The Tenant Association shall notify the owner in writing, within 90 days after the receipt of the bona fide offer of sale, of its intent to purchase the assisted housing.

(b) The owner shall, after receiving a notice pursuant to subsection (a), comply with any reasonable request to make documents available to the Tenant Association, during normal business hours at the owner's principal place of business within 15 days of receiving such a request, including but not limited to: a floor plan of the development; itemized lists of monthly operating expenses, capital expenditures in each of the 2 preceding calendar years and deferred maintenance



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costs; the amount of project reserves; utility consumption rates; copies of financial and physical inspection reports filed with federal, State or local agencies; the most recent rent roll; a list of tenants; a list of vacant units; and a statement of the vacancy rate at the development for each of the 2 preceding calendar years.

### **Sec. 7. Bona fide offer to purchase; contract.**

(a) The Tenant Association shall, within 90 days after it notifies the owner of its intent to purchase, provide the owner with a bona fide offer to purchase evidenced by a purchase contract reflecting a sales price and terms agreed to by the parties or the sales price and terms determined pursuant to subsection (b) of this Section and an earnest money deposit equal to 5% of the bona fide offer to purchase.

(b) If the parties are unable to agree to a sales price within the first 60 days of the 90 day period specified in subsection (a), the sale price of the assisted housing shall be based upon its fair market value, based on its highest and best use, without affordability restrictions, as determined by 2 independent appraisers qualified to perform multi-family housing appraisals. One appraiser shall be selected and paid by the owner and the other shall be selected and paid by the Tenant Association. If the appraisers fail to agree upon a fair market value, the owner and the Tenant Association shall either jointly select and pay a third appraiser whose appraisal shall be binding, or agree to take an average of the 2 appraisals. All appraisers shall be MAI certified. The determination of the sales price pursuant to this subsection shall be completed within the 90 day period specified in subsection (a) of this Section.

(c) The Tenant Association shall agree to close on the sale within 90 days from the date the parties sign the contract to purchase.

**Sec. 8.** The provisions of this Act shall not apply to any of the following: a government taking by eminent domain or negotiated purchase; a forced sale pursuant to a foreclosure; a transfer by gift, devise or operation of law; or an owner's sale or other disposition of assisted housing in a manner pursuant to which the property after the sale or other disposition continues to be assisted housing as defined in this Act.

**Sec. 9.** If the Tenant Association fails to provide notice to the owner pursuant to Sections 4 or 6 or fails to meet the requirements of Section 7, the owner is released from any and all requirements and obligations under this Act.

**Sec. 10.** Any notice provided for in this Act shall be deemed given when a written notice is delivered in person or mailed by certified or registered mail, return receipt requested, to the party to whom notice is given.

**Sec. 10.1.** Civil action against owner. The Tenant Association, or one or more tenants in the assisted housing, may bring a civil action against an owner who has violated this Act. An owner found to have violated any provision of this Act shall, in addition to any other damages, pay a civil penalty to each tenant in the assisted housing in the amount of \$500 per tenant, and shall also pay the attorney's fees and costs incurred in bringing the action.



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