VIRGINIA HOUSING
ALLIANCE

HB 1398
(Del. Bennett Parker)

Fact Sheet: Right of First Refusal (HB 1398)

Summary: VHA supports enabling legislation for localities to establish a right of first refusal during the sale of publicly supported multifamily rental housing at risk of expiring affordability.

Type of Housing Covered:

- "Publicly supported" housing includes multifamily rental housing of 10 units or more that has affordability restrictions and receives, or has received funding from state and federal assistance programs, which are specifically named in the legislation.

Notice Requirements:

- Two years before the termination of affordability restrictions, owners of publicly supported housing must send a notice to the locality and to their tenants with their intentions or plans regarding the termination. Compliance will be noted in property records. Localities can impose fines/fees to those who fail to comply.
- Localities may require an additional notice to confirm intent/plans one year before termination.

Qualified Designees:

- Localities may assign their ROFR to a qualified designee, which could be a non-profit or for-profit housing provider, public housing authority, or a tenant association. The locality will determine the process to become a qualified designee, but all designees must commit to preserving affordability.

Triggering Event:

- When the owner of an eligible property intends to accept a third-party offer of sale, they must notify the ROFR entity (the locality or qualified designee). The ROFR entity has 30 days to exercise the ROFR, during which the owner cannot accept the third-party offer. The ROFR entity exercises the ROFR through a matching offer. If such an offer is made, the owner must accept the offer by the ROFR entity.

Exemptions:

- "Sale" and "Third-party buyer" are defined to exclude transfers of ownership interest alone; transfers to an affiliate or family member of the owner or a person/entity that owns a portion of the property; and transfers due to eminent domain and foreclosures.
- If equivalent affordability restrictions will continue, the ROFR cannot be executed. This ROFR is secondary to the ROFR at the end of the initial compliance period in the LIHTC program and to any ROFR language in loans or agreements for local funds.

ROFR Timeline:

2 years before affordability restrictions expire

Owner must send notice to locality and tenants. Locality may appoint a qualified designee. Locality may file in public records a notice of eligibility for ROFR.

Locality may require owner to submit proof of compliance within 30 days of required notice. Locality has 60 days from receipt to notify owner of their plans to contest compliance - otherwise, compliance is noted in property records.

1 year before affordability restrictions expire

Locality may require updated notice of intent from owner regarding expiration of affordability restrictions.

Owner intends to accept a third-party offer of sale

Owner must send notice of intent to accept offer to locality and qualified designees.

30 days from notice of intent to accept third-party offer of sale

Locality and qualified designee has 30 days to decide to exercise ROFR or not, during which the owner cannot accept another offer.

Locality may require owner to submit proof of compliance within a time frame determined by locality. Locality has 60 days from receipt to notify owner of their plans to contest compliance - otherwise, compliance is noted in property records.

2 years after affordability restrictions have expired

The property is eligible for ROFR, as long as there is a notice is property records, for 2 years after affordability restrictions expire.

Any locality that has exercised this authority must report to DHCD about such activities by December 31st of each year.

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