

AFFORDABLE HOUSING PRESERVATION LAWS

ROLE OF AFFECTED PUBLIC ENTITIES



Government Code Sections 65863.10, 65863.11, and 65863.13

This Fact Sheet is intended to help Affected Public Entities understand Affordable Housing Preservation Laws and the role they can play to preserve affordable housing.

Introduction and Overview

When an owner of a California rental housing development with rental restrictions – known as an Assisted Housing Development – seeks to terminate these rental restrictions (including by expiration of a deed restriction, prepayment of a mortgage, or sale of the development), the owner is generally subject to the state's Affordable Housing Preservation Laws (AHPL).

In brief, this law gives, among other things, a right of first refusal to certain potential buyers that are determined to be a "Qualified Entity" (QE) by the California Department of Housing and Community Development (HCD), including some Affected Public Entities (APEs) and are willing to maintain the affordability of the property. **APEs may also become QEs**, meaning they could get preferential treatment when purchasing an affordable housing property under AHPL. Therefore, it is critical that parties, which may be interested in purchasing an Assisted Housing Development, be certified by completing the [QE Certification Form](#).¹

Who are Affected Public Entities?

APEs are governmental stakeholders entitled to receive notices, including, in some cases, the Notice of Opportunity to Submit an Offer to Purchase (NOSOP). APEs are:

- The mayor of a city, or the chair of the board of supervisors of a county;
- A local public housing authority; and
- California Department of Housing and Community Development (HCD).

How are Affected Public Entities Different from Qualified Entities?

An APE is a stakeholder who generally does not hold an interest in the property but is entitled to notice. APEs are the mayor of the city or the chair of the board of supervisors of the county, a local public housing authority, and HCD. To learn more about APEs' role in preserving affordable housing, see the section below on **Role of Affected Public Entities**.

On the other hand, a QE is a stakeholder certified by HCD as capable of operating the housing and related facilities. A QE can be a tenant association, a local non-profit or public agency, a regional/national non-profit or public agency, or a for-profit housing developer that has obtained certification from HCD. In other words, some APEs, such as local agencies and public housing authorities, may become QEs.

Once HCD approves an organization's [self-certification form](#),¹ it will be added to the list of QEs maintained by HCD. The form demonstrates an individual or organization's

¹ Self-certification document: <https://www.hcd.ca.gov/sites/default/files/docs/policy-and-research/qualified-entities-form.pdf>.

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ability to participate in the opportunity to submit an offer to purchase Assisted Housing Developments.

Advantages for Qualified Entities

Once HCD acknowledges an organization's certification as a QE, the owner of an Assisted Housing Development must generally provide QEs with a Notice of Opportunity to Submit an Offer to Purchase ([NOSOP](#))² an Assisted Housing Development prior to or concurrent with the 12-month notice to tenants. A QE may monitor [recent Preservation Notices](#)³ posted to HCD's Preservation webpage.

The NOSOP begins a 270-day offer period during which owners may only accept offers to purchase from QEs.

If the owner receives a bona fide offer from a QE during the 270-day period, then the owner must either accept one of the bona fide offers from a QE and execute a purchase agreement, or record a new regulatory agreement with a term of at least 30 years.

For more information on these transactions, the rights of QEs, and how to become a QE, please review the [Rights of Buyers of Affordable Housing Properties \(Qualified Entities\)](#) Fact Sheet² and HCD's [Guide](#).³

For more information on the NOSOP, see the [270-Day Offer Period: Owners & Buyers of Affordable Projects](#) Fact Sheet.

Role of Affected Public Entities

APEs play an important role in preserving affordable housing developments at risk of going to market rate through the following actions:

Seek Potential Buyers

APEs may seek or partner with buyers interested in preservation, also described as QEs within AHPL, and encourage them to make purchase offers or match non-preservation offers. Alternatively, APEs may directly exercise these rights and buy the development. This possibility is further discussed below.

Submit a Bona Fide Offer to Purchase

APEs may self-certify with HCD and become QEs (see **How are Affected Public Entities Different from Qualified Entities?** section above). Once certified, an APE may then respond to a NOSOP by submitting a bona fide offer to purchase the development with expiring affordability. They may choose to partner with other QEs.

² QE Fact Sheet: <https://www.hcd.ca.gov/sites/default/files/docs/policy-and-research/qualified-entities-factsheet.pdf>

³ Guide to Affordable Housing Preservation Laws: <https://www.hcd.ca.gov/sites/default/files/docs/policy-and-research/guide-to-affordable-housing-preservation-laws.pdf>.

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Facilitate New Regulatory Agreements

Owners of developments with expiring affordability must either accept an offer to purchase from a QE if such an offer is made within 270 days of the date of the NOSOP or enter into a new regulatory agreement for a term of at least 30 years. APEs have an opportunity during this 270-day period to coordinate sources of funding or to facilitate new regulatory agreements that will preserve affordability.

Monitor Compliance

APEs may notify HCD about local programs with expiring affordability that are subject to AHPL. APEs are often parties to local regulatory agreements that ensure affordability, where HCD may have authority to enforce AHPL. APEs may also monitor and encourage owners to comply with their obligations under AHPL and may take legal action when necessary. Finally, if APEs have concerns about an owner's compliance, contact HCD's Housing Accountability Unit via the Affordable Housing Preservation Portal, available at [HCD's Preservation webpage](#).⁴

Education

APEs may assist with tenant education. Local entities can inform tenants that preservation strategies are in the works and educate them about their legal rights if conversion to market rate rents occurs. For example, owners of developments with expiring affordability must accept all enhanced Section 8 vouchers if the tenants receive them.

Notices to Affected Public Entities and Tenants

Three-Year Notice

The owner must provide a [notice](#)⁵ three years prior to the expiration of rental restrictions, scheduled termination of a subsidy contract, or prepayment of a mortgage. The notice must be provided to APEs, each affected tenant household in the property via posting, and prospective tenants.

Twelve-Month Notice

At least 12 months prior to the expiration of rental restrictions, termination of a subsidy contract, or prepayment, the owner must provide a [twelve-month notice](#)⁶ to APEs, each affected tenant household in the property, and prospective tenants.

Prior to, or concurrent with the 12-month notice (or any time the owner contemplates a sale, if the owner is eligible for prepayment or termination within five years), the owner also must provide notice to QE of the opportunity to submit an offer to purchase the

⁴ HCD's Preservation Webpage: <https://www.hcd.ca.gov/planning-and-research/preserving-existing-affordable-housing>

⁵ Three-year notice: <https://www.hcd.ca.gov/sites/default/files/docs/policy-and-research/three-year-notice-template.pdf>.

⁶ Twelve-month notice: <https://www.hcd.ca.gov/sites/default/files/docs/policy-and-research/twelve-month-notice-template.pdf>.

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development. APEs may be able to serve as QEs, and as such are afforded specific rights and privileges in these sales. See **How are Affected Public Entities Different from Qualified Entities?** section above for additional information.

Six-Month Notice

At least six months prior to expiration of rental restrictions, termination of a subsidy contract, or prepayment, the owner must provide a [six-month notice](#)⁷ to APEs, each affected tenant, and prospective tenants. This notice provides much more detailed project level information on the termination of the affordability restrictions.

For more information on tenant rights, please review [HCD's Tenant Rights](#) Fact Sheet⁸ and the [Guide to Affordable Housing Preservation Laws](#).⁹

Where Can I Find More Information?

This Fact Sheet is a broad overview intended to assist with implementation of APHL. The content in this Fact Sheet is not legal advice and does not describe all of AHPL's requirements. Government Code sections [65863.10](#), [65863.11](#), and [65863.13](#) contain all of the requirements for compliance.

HCD has developed a [Preserving Existing Affordable Housing](#)¹⁰ webpage that includes a detailed [Guide](#)¹¹ on AHPL. Links to the law itself are provided in the header of this document.

⁷ Six-month notice: <https://www.hcd.ca.gov/sites/default/files/docs/policy-and-research/six-month-notice-ape-template.pdf>.

⁸ Tenant Rights Fact Sheet: <https://www.hcd.ca.gov/sites/default/files/docs/policy-and-research/tenants-factsheet.pdf>

⁹ Guide to Affordable Housing Preservation Laws: <https://www.hcd.ca.gov/sites/default/files/docs/policy-and-research/guide-to-affordable-housing-preservation-laws.pdf>.

¹⁰ Preserving Existing Affordable Housing: <https://www.hcd.ca.gov/policy-and-research/preserving-existing-affordable-housing>.

¹¹ Guide to Affordable Housing Preservation Laws: <https://www.hcd.ca.gov/sites/default/files/docs/policy-and-research/guide-to-affordable-housing-preservation-laws.pdf>.