


# CALIFORNIA DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

# GUIDE TO AFFORDABLE HOUSING PRESERVATION LAWS

April 2026 Update

# Guide to Affordable Housing Preservation Laws

## A. Purpose and Intent of Affordable Housing Preservation Laws

### 1. Summary of Affordable Housing Preservation Laws

Affordable housing “preservation” refers to maintaining the long-term affordability of housing developments with expiring rental restrictions that keep rents affordable to low-income residents. Maintaining the affordability of these developments ensures both that current tenants can afford to stay in their homes and that future tenants can find an affordable place to live. Preservation is more critical than ever as thousands of affordable homes are at risk of converting to market-rate.

The California Department of Housing and Community Development (HCD) is the steward of Affordable Housing Preservation Laws (AHPL), which facilitate and give priority to the sale of affordable housing developments to entities that will maintain their long-term affordability. These laws also require that owners of affordable housing developments notify certain affected parties, including the existing tenants, about any potential upcoming end to the affordability restrictions.

One cornerstone of the state’s policy is preferential treatment for entities that are interested in buying a property to keep it affordable. This process begins when the owner of a California rental housing development with rental assistance or rental restrictions imposed under the terms of a federal, state, or local subsidy or land use program, seeks to terminate the assistance or restrictions (including by expiration of a deed restriction or prepayment of a mortgage).

Property owners must make key stakeholders aware of this opportunity through a Notice of Opportunity to Submit an Offer to Purchase (NOSOP). The law gives, among other things, a right of first refusal on the property to certain stakeholders that are determined to be a “Qualified Entity” (QE) by HCD and are willing to maintain the affordability of the property. It is therefore imperative that any parties potentially interested in purchasing properties to promote long-term affordability, including tenant associations; local, regional, and national nonprofit organizations and public agencies, including public housing authorities; and for-profit and non-profit housing developers and operators, complete the Qualified Entity Certification Form so that they can be notified of opportunities (NOSOPs) and benefit from the full advantages of being deemed a QE in the purchase process.

In addition, the owner of the property is generally required to give three-year, 12-month, and six-month notices to tenants and affected public entities, including the mayor of the city or the chair of the board of supervisors of the county where the property is located, the local public housing authority, and HCD.

If an affordable housing property owner does not comply with these noticing requirements, including failing to provide a preferential process for QEs wishing to preserve affordability, HCD, or any affected tenant or public entity, may bring legal action to enforce the law. Stakeholders are encouraged to notify HCD when a potential violation of the law has occurred.

To become a Qualified Entity or request assistance from HCD, visit the Affordable Housing Preservation Portal available at HCD's Preservation webpage.

## 2. Roadmap to Affordable Housing Preservation Laws

Below is an overview of how Affordable Housing Preservation Laws work together to help keep homes affordable in California:

### a. *Owner Certification*

Owners of Assisted Housing Developments (multifamily residential developments with five or more units that are subject to affordability restrictions, or a rent or mortgage subsidy contract), in which at least 5 percent of the units are affordable, must register their properties and complete an annual owner certification.

This requirement helps define the universe of affordable homes in California and when those affordable homes are reaching critical expiration or termination dates.

See Section C, Annual Owner Certification, for more details.

### b. *Notices Regarding Expiration of Affordability*

Owners of Assisted Housing Developments must provide notices to HCD, the local government where the property is located, the appropriate local public housing authority, and existing and prospective tenants at three years, 12 months, and six months prior to expiration of rental restrictions, termination of a subsidy contract, or prepayment of a mortgage.

This requirement ensures that tenants are notified of changes that will impact their housing costs, and funders like HCD, the housing authority, and the local government stay apprised of the upcoming impacts to the affordable housing portfolio.

See Section D, Overview of Notices Required by Affordable Housing Preservation Laws, for more details.

### c. *Priority to Preserve Affordability*

If there are less than five years left on a property's affordability provisions or an owner is eligible for prepayment or termination within the next five years, then at least 12 months prior to sale of the property, prepayment of a mortgage, termination of a subsidy contract, or expiration of rental restrictions, the owner also must provide a Notice of the Opportunity to Submit an Offer to Purchase (NOSOP) the development to Qualified Entities (QEs). QEs are those parties determined by HCD as qualified and interested in maintaining the affordability of the homes.

The NOSOP starts a 270-day (~9-month) offer period, during which the owner cannot accept purchase offers from anyone other than a QE, and the owner must accept a bona fide offer from a QE if one is received or record a new regulatory agreement keeping the homes affordable for at least 30 years.

See Glossary for the definition of bona fide offer.

Only if no bona fide offers are received from QEs during the offer period, or if all bona fide offers are withdrawn, can the owner sell to other buyers or maintain ownership but allow the expiration or termination to occur.

This requirement helps ensure that if there is a qualified party interested in maintaining the affordability of the homes and willing to make a bona fide offer, that sale will prevail over other offers and ensure the greatest likelihood of extending the affordability term for the property and the tenants.

See Section E, Sales and Purchase of Properties with Expiring Affordability for more details.

### d. *Monitoring and Enforcement*

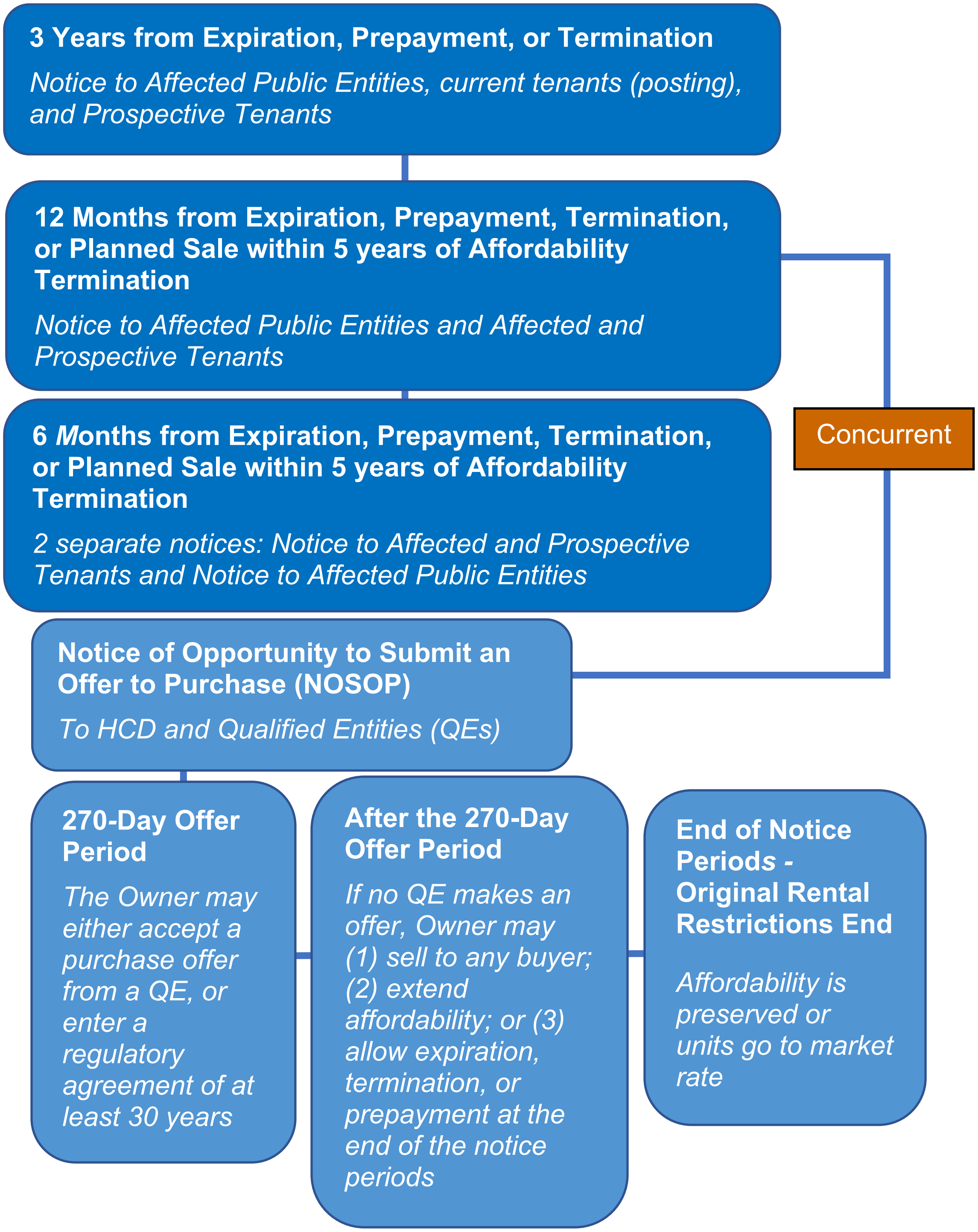
HCD tracks the status of at-risk properties, assists stakeholders in complying with the law, and reports annually to the Legislature. HCD maintains an Affordable Housing Preservation Portal available at HCD's Preservation webpage where concerns related to compliance with Affordable Housing Preservation Laws can be reported and investigated.

HCD has authority and is obligated to refer instances of non-compliance with regard to any aspect of the Affordable Housing Preservation Laws to the Attorney General for appropriate enforcement.

Injunctive relief is available for any parties that are impacted by non-compliance of Affordable Housing Preservation Laws. For example, if owners fail to provide notices of expiring rental restrictions at the appropriate times, prior housing cost restrictions must be restored until the proper noticing time has passed, there may be restitution of non-compliant housing cost increases, and payment of attorney's fees can be required. Owners cannot discontinue housing cost restrictions until following the proper steps associated with the NOSOP are followed.

See Section F, HCD's Role in the Preservation Notice Process and Section G, Consequence of Non-Compliance with Affordable Housing Preservation Laws for more details.

*Figure 1. Noticing Process*




Note: An owner must provide a NOSOP to QEs along with the 12-month notice **or anytime the owner plans to sell the property within five years of the end of affordability.** The NOSOP gives QEs a 270-day opportunity to potentially buy the Assisted Housing Development to keep it affordable.

## 3. The Need to Preserve Affordable Housing

Federal, state, and local governments have invested heavily in, and facilitated the development of, hundreds of thousands of affordable rental homes in California over many decades. These investments support capital development and operations, ensuring public benefit commensurate with the investments. The affordability of some of these homes is secured by deed-recorded rental restrictions requiring all current and future owners to rent to income-qualified households at affordable rents for a predetermined period of time, typically ranging from 20 to 55 years. In other cases, the affordability is secured by rental assistance contracts of determinate length. At the end of these terms, or in those cases where owners may opt out of affordability agreements or contracts early, absent other restrictions the owners may legally convert the homes to market rate rentals. Conversion of homes to market rate can result in significant rent increases and displacement of current tenants, as well as the loss of affordable housing opportunities for current and future low-income households in need. Homes approaching the end of their term of affordability are deemed “at risk” and in need of preservation.

Properties at risk is a national issue. The National Low Income Housing Coalition (NLIHC) reported in 2021 that approximately 143,456 homes awarded LIHTC equity since 1990 lost their affordability restrictions early, and an estimated 176,760 federally assisted homes could be lost from the affordable housing stock over the next five years if preservation efforts are not expanded. The report found that most federally assisted homes with income and affordability restrictions expiring in the next five years are supported by the Low-Income Housing Tax Credit (LIHTC) or the Department of Housing and Urban Development’s (HUD) project-based Section 8 program. Historic investments in deeply targeted federal programs and strengthened preservation policies in the LIHTC program are especially needed.

In addition, 23 percent of public housing homes and four percent of homes assisted by Project-based Section 8 failed their last HUD Real Estate Assessment Center physical inspections. The NLIHC report concludes that more financial resources and stronger preservation protections are needed to ensure the continued affordability and physical quality of the federally assisted housing stock.

According to the California Housing Partnership (the Partnership, a private nonprofit organization with a public mission created by the California Legislature), between 1997 and 2021, California lost 20,792 affordable rental homes due to owner decisions to opt-out of affordability contracts or otherwise allow their developments to convert to market rate by not renewing agreements to keep rents affordable. These properties have project-based rental assistance contracts and/or loans or other resources from federal, state, or local public entities. These federal and state resources include investments from HUD, the U.S. Department of Agriculture (USDA), the California Housing Finance Agency (CalHFA), and the California Department of Housing and Community Development (HCD), along with equity from LIHTC and resources from bonds, including those administered by the California Debt Limit Allocation Committee (CDLAC). Local rental restrictions can also be secured by loans or grants, local housing trust funds, sale or lease of property at or below market rate, density bonuses, former redevelopment agency investments, and other incentives.

## B. Stakeholders and Properties Subject to Affordable Housing Preservation Laws

This section introduces the properties and parties that are subject to Affordable Housing Preservation Laws and lists the types of properties subject to, and exempt from, these laws.

### 1. Stakeholders Subject to Affordable Housing Preservation Laws

The rights and responsibilities of the stakeholders below are subject to Affordable Housing Preservation Laws. The following stakeholders are defined in Government Code sections 65863.10, subdivision (a), and 65863.11, subdivision(a).

#### a. *Owner*

An individual, corporation, association, partnership, joint venture, or business entity that holds title to the land on which an Assisted Housing Development is located. In a leasehold situation, owner includes both the lessor and lessee of the land.

#### b. *Affected Tenant*

A tenant household residing in an Assisted Housing Development at the time notice is required and who benefits from the government assistance.

#### c. *Qualified Entity*

A stakeholder certified by HCD as capable of operating the housing and related facilities. A Qualified Entity (QE) can be a tenant association, a local nonprofit or public agency, a public housing authority, a regional/national nonprofit or public agency, or a for-profit or non-profit housing developer. Information on how to qualify as a QE is included in the following sections.

#### d. *Affected Public Entities*

A governmental stakeholder who does not hold an interest in the property but is entitled to notice. These include the mayor of the city, or the chair of the board of supervisors of the county; the local public housing authority, if any; and HCD.

#### e. *California Department of Housing and Community Development*

The department within the State of California that enforces the Affordable Housing Preservation Laws.

***Best Practices for Trustees and New Owners Following Foreclosure on Low-Income Housing Tax Credit Properties***

Trustees and new owners should be aware that:

- The three-year decontrol period* still subjects the property to AHPL.
- Qualified Entities have a right of first refusal before affordability expires.
- As of January 1, 2026, HCD and the Tax Credit Allocation Committee (TCAC) must be notified of foreclosure events, including a notice of default, to support compliance and outreach. *Civ. Code § 2924b, subd. (c)(2)(G).*

** Under IRC § 42(h)(6)(E), a three-year "decontrol period" follows foreclosure, during which tenants remain protected.*

### 2. Properties Subject to Affordable Housing Preservation Laws

Affordable Housing Preservation Laws apply to any Assisted Housing Development, which is defined as any multifamily rental housing development of five or more units that receives governmental assistance under any of the programs listed below (Gov. Code, § 65863.10, subd. (a)(3)), unless it is exempt under Government Code section 65863.13.

- **Section 8 New Construction, Substantial Rehabilitation, Moderate Rehabilitation, Property Disposition and Loan Management Set-Aside programs**, or any other program providing project-based assistance under **Section 8 of the United States Housing Act of 1937**, as amended;
- **Section 221(d)(3) Below-Market-Interest-Rate Mortgage Insurance Program of the National Housing Act**;
- **Section 236 of the National Housing Act**;
- **Section 202 Direct Loans for Elderly and Handicapped Persons of the Housing Act of 1959**;
- **Section 811 of the Cranston-Gonzalez National Affordable Housing Act**;
- **Section 101 Rent Supplement Programs of the Housing and Urban Development Act** of 1965, as amended;
- **Sections 514, 515, 516, 521, 533 and 538 of the Housing Act** of 1949, as amended;
- **Section 42 of the Internal Revenue Code** (low-income housing tax credits);
- **Section 142(d) of the Internal Revenue Code** or its predecessors (tax-exempt private activity mortgage revenue bonds);
- **Section 147 of the Internal Revenue Code** (Section 501(c)(3) bonds);
- **Title I of the Housing and Community Development Act** of 1974, as amended (Community Development Block Grant program);

- **Title II of the Cranston-Gonzalez National Affordable Housing Act** of 1990, as amended (HOME Investment Partnership Program);
- **Titles IV and V of the McKinney-Vento Homeless Assistance Act of 1987**, as amended, including HUD's Supportive Housing Program, Shelter Plus Care program, and surplus federal property disposition program;
- **Grants and loans made by HCD**;
- **Grants and loans made by the California Housing Finance Agency** for rental housing;
- **Chapter 1138 of the California Statutes of 1987** (State Tax Credit Program);
- **Loans or grants provided using tax increment financing pursuant to the Community Redevelopment Law,** Part 1 (commencing with Section 33000) of Division 24 of the Health and Safety Code);
- **Local housing trust funds**, as referred to in Health and Safety Code section 50843 relating to the Local Housing Trust Fund Matching Grant Program;
- **The sale or lease of public property by a city or county** at or below market rates;
- **The granting of density bonuses, or concessions or incentives, including fee waivers, parking variances, or amendments to general plans, zoning, or redevelopment project area plans**, pursuant to State Density Bonus Law (Gov. Code, §§ 65915-65918);
- ***The Middle Class Housing Act of 2022*** *(Gov. Code, § 65852.24);*
- ***The Affordable Housing and High Road Jobs Act of 2022*** *(Chapter 4.1 (commencing with Gov. Code, § 65912.100));*
- ***Streamlined Ministerial Approval Process*** *(Gov. Code, § 65913.4); or*
- ***The Affordable Housing on Faith and Higher Education Lands Act of 2023*** *(Gov. Code, § 65913.16).*

Note: Properties formerly subject to a Low-Income Housing Tax Credit (LIHTC) restrictive covenant that have undergone foreclosure are still considered "assisted housing developments" during the subsequent three-year decontrol period, per Internal Revenue Code section 42(h)(6)(E). These properties remain subject to AHPL during that time.

***Rental Properties Not Subject to Affordable Housing Preservation Laws***

Properties with four or fewer units, properties subject only to rent control or rent stabilization ordinances imposed by a city or county, and properties that maintain affordability via tenant-based Housing Choice Vouchers are not subject to the Affordable Housing Preservation Laws. Public housing that is not otherwise restricted/supported by operating subsidy may also be exempt.

***Rental Properties With Multiple Rental Restrictions***

If the Assisted Housing Development has other recorded agreements, noticing is not required if, after expiration of one agreement, the same number of units are restricted at the same or lesser income levels under the remaining agreement. In this case, there is no “expiration of rental restrictions” as defined in 65863.10(a)(5). Therefore, noticing is not required at this time. If a development’s expiring restriction applies to less than 50 percent of the total units, the remaining recorded agreement must apply to at least 50 percent of the total units to avoid noticing.

## C. Annual Owner Certification

Owners of Assisted Housing Developments must register their properties and complete an annual owner certification using HCD’s certification process.

### 1. Properties Subject to Annual Owner Certification

All owners of multifamily residential developments with five or more units in which at least 5 percent of the units are subject to affordability restrictions, or a rent or mortgage subsidy contract, must certify compliance annually, under penalty of perjury, with Government Code sections 65863.10, 65863.11, and 65863.13 to HCD at HCD’s Annual Owner Certification Portal accessed at Affordable Housing Preservation Portal. For new construction properties, registration should occur at the time of occupancy or as soon as possible after acquisition.

Prior to the close of escrow, an owner selling, leasing, or otherwise disposing of an Assisted Housing Development to a purchaser other than a QE must certify under penalty of perjury that it has complied with all provisions of Government Code sections 65863.10 and 65863.11. This certification must be recorded, contain a legal description of the property, and be indexed to the name of the owner as grantor.

### 2. Submittal Process and Timeline

To register properties subject to annual certification, owners must complete the annual online owner certification, which is located on the Affordable Housing Preservation Portal when logged into HCD's services site. Through that portal:

- Owners can certify up to 10 properties on each form.
- Owners with more than 10 properties must submit multiple certifications in order to certify all of their properties.
- Owners may monitor their certification status.
- Owners must certify compliance for each property annually regardless of when the affordability restrictions end.

If a property is operated under a ground lease or similar structure, the title holder and the lessee are mutually responsible for the completion of the certification.

## D. Overview of Notices Required by Affordable Housing Preservation Laws

Owners of Assisted Housing Developments must provide specified notices to HCD, the local government, and existing and prospective tenants beginning three years prior to scheduled expiration of rental restrictions, scheduled termination of a subsidy contract, or prepayment of a federally insured or federally held mortgage.

*Table 2. Timing and Recipients of Notices (*Gov. Code, § *65863.10.)*

| Type of Notice | When to Notice | Parties |
|---|---|---|
| Three-Year Notice of Intent to Prepay, Terminate, or Expiration of Subsidies | Three years prior to a scheduled expiration of rental restrictions, or scheduled termination of a subsidy contract, and at time of interview to Prospective Tenants | Affected Public Entities (the mayor of the city or the chair of the board of supervisors of the county, the local public housing authority, and HCD), Affected Tenants via posting, Prospective Tenants |
| Twelve-Month Notice of Intent to Prepay, Terminate, or Expiration of Subsidies | At least 12 months prior to expiration of rental restrictions, termination of a subsidy contract, or prepayment, and at time of interview to Prospective Tenants | Affected Public Entities, Affected Tenants, Prospective Tenants |
| Notice of Opportunity to Submit an Offer to Purchase | At least 12 months prior to expiration of rental restrictions, termination of a subsidy contract, prepayment, or sale | Qualified Entities via certified mail, HCD, Tenants via posting, and Affected Public Entities as an attachment to the 12-Month notice |
| Six-Month Notice of Intent to Prepay or Terminate, or Expiration of Subsidies | Six months prior to expiration of rental restrictions, termination of a subsidy contract, or prepayment, and at time of interview to Prospective Tenants | Affected Public Entities, Affected Tenants, Prospective Tenants |
| Notice to Affected Public Entities | Six months prior to expiration of rental restrictions | Affected Public Entities |

| Type of Notice | When to Notice | Parties |
|---|---|---|
| Notice of Any Significant Changes to the Six-Month Notice | After the six-month notice, any significant change to the contents of that notice must be noticed within seven business days | Affected Public Entities,<br>Affected Tenants |

Please note that the parties to be noticed are different for the various types of notices.

## 1. Property Owner Noticing and Sale Obligations

The person or entity that holds title to the land on which an Assisted Housing Development is located is responsible for compliance. If the development is on leased land, both the owner of the land and the owner of the leasehold interest in the development are jointly responsible for compliance. The owner and leaseholder should coordinate on noticing to avoid duplicative and confusing notices.

Prior to the date of prepayment, termination, or expiration of subsidy or rental restrictions on an Assisted Housing Development, owners are required, unless exempt under Government Code section 65863.13, to notify affected tenant households and Affected Public Entities (the mayor of the city or the chair of the board of supervisors of the county, the local public housing authority, and HCD) of the owner's intent to engage in or allow any of the following (Gov. Code, § 65863.10(a)):

- Prepayment of an assisted mortgage;
- Voluntary termination of mortgage insurance;
- Termination of rent subsidies; or
- The expiration of rental restrictions unless the development has other recorded agreements restricting the rent to the same or lesser levels for at least 50 percent of the units or the same number of units under the rent restrictions prior to the expiration, whichever is greater.

Special Note on Foreclosure and Decontrol Period: The three-year "decontrol period" that follows foreclosure—during which tenants remain protected under Internal Revenue Code section 42(h)(6)(E)—triggers AHPL requirement. The conclusion of this decontrol period constitutes an "expiration of rental restrictions" under Government Code section 65863.10(a)(5), which triggers AHPL requirements, including advance notices and the opportunity for Qualified Entities to make a prioritized purchase offer.

Owners must also provide a copy of any notices issued to existing tenants, and to any *prospective* tenant at the time the prospective tenant is interviewed for eligibility. All notices must be provided on an HCD-approved form.

Note: An owner is not required to obtain or acquire additional information that is not contained in the existing tenant and project records or to update any information in their records. The owner is not liable for any inaccuracies contained in these records or from other sources, nor is the owner liable to any party for providing this information.

A **Qualified Entity** (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 nonprofit or public agency, a public housing authority, a regional/national nonprofit or public agency, or a for-profit or non-profit housing developer that has obtained certification from HCD. Information on how to qualify as a QE is included in the *Sales and Purchases of Properties with Expiring Affordability* section below. In contrast, an **Affected Public Entity** is a stakeholder who generally does not hold an interest in the property but is entitled to notice. Affected Public Entities are the mayor of the city or the chair of the board of supervisors of the county, the local public housing authority, and HCD. Some Affected Public Entities, such as housing authorities and public agencies that develop or operate housing, may become certified by HCD as QEs.

| Example: Noticing Timeline for Main Street Apartments | |
|---|---|
| Main Street Apartments is a hypothetical Assisted Housing Development. With the upcoming affordability expiration date of December 31, 2027, the owner is obligated to provide the following notices by the listed dates. For additional support, the owner may contact HCD in advance of each deadline to request technical assistance. | |
| **Expiration of Affordability** | **December 31, 2027** |
| 3-Year Notice Due | December 31, 2024 |
| 12-Month Notice Due | December 31, 2026 |
| NOSOP Due | December 31, 2026 or before |
| 6-Month Notice Due | June 30, 2027 |

**a. *Three-Year Notice***

Three years before a scheduled expiration of rental restrictions, the prepayment of a federally insured or held mortgage, or the anticipated date of the scheduled termination of a subsidy contract, the owner of an Assisted Housing Development must provide notice using the HCD-approved form. Notice must be given to (1) any prospective tenant at the time the prospective tenant is interviewed for eligibility, and (2) to existing tenants by posting the notice in an accessible location on the property.

The notice must also be provided to Affected Public Entities (the mayor of the city or the chair of the board of supervisors of the county, the local public housing authority, and HCD).

**b. *Twelve-Month Notice***

At least one year before the anticipated date of the termination of a subsidy contract, the expiration of rental restrictions, or prepayment of a mortgage, the owner of the Assisted Housing Development must provide a written notice using the HCD-approved form to each prospective tenant and affected tenant household in the property. The owner must send a copy of the 12-month notice to the Affected Public Entities (the mayor of the city or the chair of the board of supervisors of the county, the local public housing authority, and HCD).

*i. Contents of 12-Month Notice*

These Notice forms include all of the following (Gov. Code, § 65863.10, subd. (b)):

(1) In the event of termination, a statement of the owner's intent to terminate the subsidy contract or rent restrictions upon expiration, or the expiration date of any contract extension;

(2) In the event of the expiration of rental restrictions, a statement that the restrictions will expire, and in the event of prepayment, termination, or the expiration of rental restrictions, whether the owner *might* increase rents during the 12 months following prepayment, termination, or the expiration of rental restrictions;

(3) In the event of prepayment, a statement that the owner intends to pay in full or refinance the federally insured or federally held mortgage indebtedness prior to its original maturity date, or voluntarily cancel the mortgage insurance;

(4) The anticipated date of the termination, prepayment of the federal or other program or expiration of rental restrictions, and the identity of the federal or other program described in the list on page 4;

(5) A statement that the proposed change would have the effect of removing the current low-income affordability restrictions in the applicable contract or regulatory agreement;

(6) A statement whether or not the applicable program allows the owner to elect to keep the housing in the program after the proposed termination or prepayment date and, if so, a statement as to whether the owner expects to elect to keep the housing in the program after such date if allowed;

(7) A statement whether other governmental assistance will be provided to tenants residing in the development at the time of the termination of the subsidy contract or prepayment;

(8) A statement that a subsequent notice of the proposed change, including anticipated changes in rents, if any, for the development will be provided at least six months prior to the anticipated date of termination of the subsidy contract, expiration of rental restrictions, or prepayment; and

(9) A statement that the Notice of Opportunity to Submit an Opportunity to Purchase has been sent to QEs, is attached to or included in the notice, and is posted in the common area of the development, as required in Section 65863.11.

Note: If an owner provides a copy of a federally required notice of termination of a subsidy contract or prepayment, HCD will deem an owner to be compliant with the state 12-month notice to tenants requirement if the notice was:

- provided to each affected tenant household 12 months prior to the proposed change;
- sent to those tenants residing in the Assisted Housing Development at the time the notice is provided to the Affected Public Entities; and
- in compliance with all other federal laws.

However, all other state notice requirements described in this Guide continue to apply. (Gov. Code § 65863.10, subd. (b)(2).)

### c. *Notice of Opportunity to Submit an Offer to Purchase (NOSOP)*

An owner must provide a NOSOP to QEs along with the 12-month notice or anytime the owner plans to sell the property within five years of the end of affordability. The NOSOP gives QEs a 270-day opportunity to potentially buy the Assisted Housing Development to keep it affordable. A complete description of the contents of the NOSOP and 270-day offer period is given in the *Sales and Purchase of Properties with Expiring Affordability* section below.

### d. *Six-Month Notice*

As with the 12-month notice to tenants, owners are required to notify affected tenant households and Affected Public Entities (the mayor of the city or the chair of the board of supervisors of the county, the local public housing authority, and HCD) in separate notices six months prior to the expiration of the anticipated date of termination of a subsidy contract, expiration of rental restrictions, or prepayment on an Assisted Housing Development. Owners must also provide a copy of any notices issued to existing tenants to any *prospective* tenant at the time the prospective tenant is interviewed for eligibility. All notices must be provided on the HCD-provided form – Tenants and the HCD-provided form – Affected Public Entities.

#### *i. Contents of the Six-Month Notice to Tenants*

The owner must send to the affected tenant households and prospective tenants (with a copy to Affected Public Entities (the mayor of the city or the chair of the board of supervisors of the county, the local public housing authority, and HCD), a six-month notice of intent to tenants using the HCD-approved form Six Month Notice to Tenants of Owners Intent to Pay or Terminate that includes all of the following, as provided in Government Code section 65863.10, subdivision (c):

(1) The anticipated date of termination or prepayment of the federal or other program, or the expiration of rental restrictions, and the identity of the federal or other program (see the list of programs beginning on page 4);

(2) The current rent and rent anticipated for the unit during the 12 months immediately following the date of prepayment or termination of the federal or other program (see the list of programs beginning on page 4), or expiration of rental restrictions;

(3) A statement that a copy of the notice will be sent to the city or the county where the Assisted Housing Development is located, to the local housing authority (if any), and to HCD;

(4) A statement of the possibility that the housing may remain in the federal or other program after the proposed date of subsidy termination or prepayment if the owner elects to do so under the terms of the federal government's or other

program administrator's offer or that a rent increase may not take place due to the expiration of rental restrictions;

(5) A statement of the owner's intent to participate in any current replacement subsidy program made available to the affected tenants;

(6) A statement that the owner will accept all enhanced Section 8 vouchers if the tenants receive them; and

(7) In the CC block of the Six-Month Notice form, include the name and telephone number of the city, county, or city and county, the appropriate local public housing authority, if any, HCD, and a legal services organization, that can be contacted to request additional written information about an owner's responsibilities and the rights and options of an affected tenant.

*ii. Contents of the Six-Month Notice to Affected Public Entities*

The owner must also provide a six-month notice to Affected Public Entities (the mayor of the city or the chair of the board of supervisors of the county, the local public housing authority, and HCD) using the HCD-approved form: Six Month Letter to Affected Public Entities. This notice provides Affected Public Entities with an overview of the entire property and provides greater detail on financing status of the property and information on the tenants that may be displaced should the property convert to market rate. The six-month notice to Affected Public Entities must include copies of the six-month notices provided to affected tenants.

The Six-Month Notice to Affected Public Entities must include all of the following, as provided in Government Code section 65863.10, subdivision (c)(3):

(1) Number of affected tenants in the project,

(2) Number of government-assisted units and the type of assistance,

(3) Number of units that are not government-assisted,

(4) Number of bedrooms in each government-assisted unit,

(5) The age and income of all affected tenants,

(6) A brief description of the owner's plans for the project, including:

- Any timetable or deadline for actions to be taken,
- Any governmental actions (e.g., renewal of Section 8) or approvals that must be obtained,
- The reason for termination or prepayment, and
- Any contacts the owner has made or is making with governmental agencies or interested parties in connection with the notice.

(7) Copies of any federally required notice of termination of the subsidy contract or prepayment that was provided at least six months prior to the proposed change.

*iii. Owner's Notice of Significant Change to Tenants (7-Day Clause)*

Owners must notify each affected tenant household and the Affected Public Entities (the mayor of the city or the chair of the board of supervisors of the county, the local public housing authority, and HCD) *within seven business days* of any significant change in the information required in the six-month notice to tenants unless they qualify for exemption pursuant to Government Code section 65863.13. The law defines "significant change" to include, but not be limited to, any change to the date of termination, prepayment, or expiration or any change in the anticipated new rent.

#### e. *Requirements to Serve Notice*

The Notice of Intent, Notice to Affected Public Entities, and Notice of Significant Change must be served by *first-class mail with prepaid postage* to each affected tenant household and Affected Public Entity (the mayor of the city or the chair of the board of supervisors of the county, the local public housing authority, and HCD). An owner may send a notice to a public agency electronically if the public entity has provided an email address for that purpose. (Gov. Code, § 65863.10, subd. (g).)

The owner must send the NOSOP to QEs by registered or certified mail, return receipt requested. The owner must also post a copy of the notice in a conspicuous place in the common area of the development. (Gov. Code, § 65863.11, subd. (g).)

### 2. Tenant's Rights and Remedies

#### a. *Notice Requirements*

Owners must provide notices to tenants of expiring affordability. If notices are not properly given, the tenants (among other parties) may seek injunctive relief and obtain attorney's fees and costs.

Three years, one year, and six months prior to (1) the expiration of rental restrictions, (2) the prepayment of a federally insured or held mortgage, or (3) the anticipated date of the termination of a subsidy contract, the property owner must provide notice to HCD, the local government, the local housing authority, and existing and prospective tenants. Owner requirements for each of the notices are highlighted in the section above titled *Notices to Tenants and Affected Public Entities with Expiring Affordability*.

Proper tenant notices provide tenants with crucial information about potential changes in the affordability of their homes so that, among other things, action can be taken to preserve affordability, tenants can act on accurate information, and any required tenant protections can be implemented. Noticing of the local government and HCD helps these entities verify compliance with tenant noticing and provide assistance.

Note: A list of notices received by HCD can be found at the Preserving Existing Affordable Housing website.

**b. *Tenant Resources Provided by the Owner***

Owners are required to inform tenants of the resources available to them six months prior to prepayment of a mortgage, termination of a subsidy contract, or expiration of rental restrictions. The section entitled *Notices to Tenants and Affected Public Entities with Expiring Affordability* lists the resources that must be included in the six-month notice. If a tenant believes that the owner has not complied with all the requirements of the law, tenants can contact any of the entities listed in the Tenant Resources, or HCD.

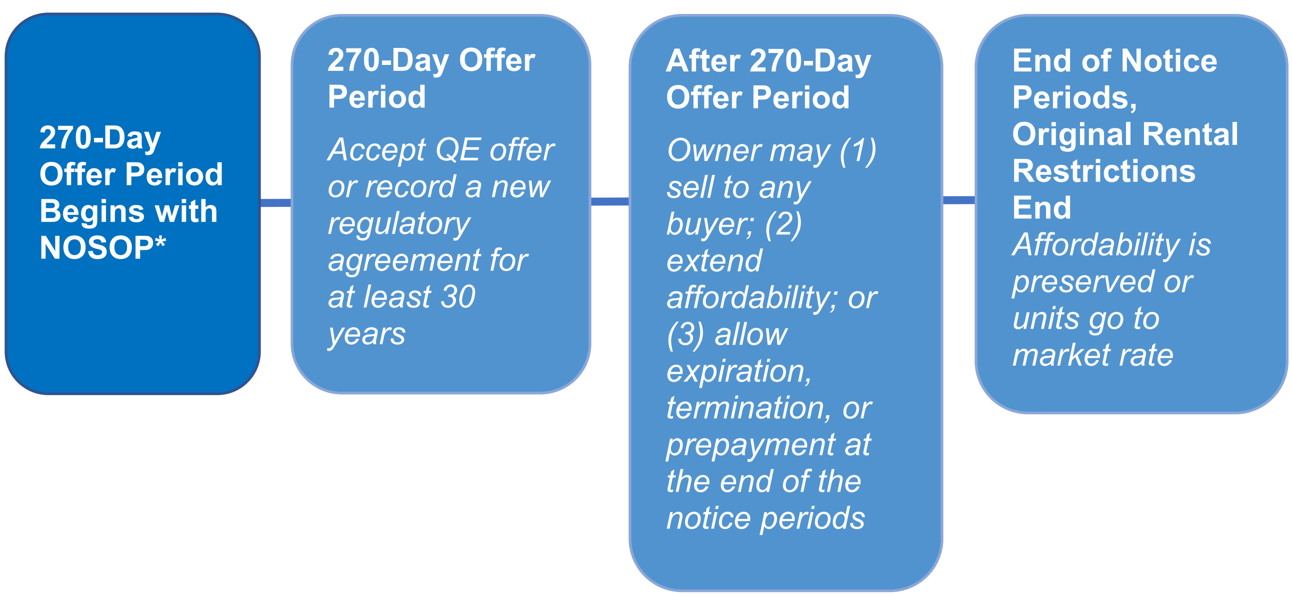
## E. Sales and Purchase of Properties with Expiring Affordability

When the owner of an Assisted Housing Development issues a Notice of Opportunity to Submit an Offer to Purchase (NOSOP), a 270-day period of preferential status begins for certain potential buyers who commit to maintaining affordability (Qualified Entities or QEs).

The owner must issue the NOSOP prior to or concurrent with the 12-month notice (which occurs 12-months before expiration, prepayment, termination, or any time the owner contemplates a sale within five years of affordability termination) to tenants and Affected Public Entities (the mayor of the city or the chair of the board of supervisors of the county, the local public housing authority, and HCD). This NOSOP gives QEs the opportunity to submit an offer to purchase the development. The NOSOP must be issued to QEs whether or not the owner intends or chooses to sell the property. (Gov. Code, § 65863.11, subds. (g) and (i).)

During the 270-day offer period, the owner may only accept purchase offers from a QE. (Gov. Code, § 65863.11, subd. (i).)

*Figure 2. Timeline for* 270-Day *Offer Period*



*Before or concurrent with 12-month Notice to Tenants

## 1. Qualified Entity Requirements and Certification Process

Potential buyers of Assisted Housing Developments who are listed as QEs through HCD's self-certification process are entitled to notice and to take advantage of provisions providing preferential treatment and the right of first refusal to purchase properties and preserve their affordability.

### a. *Types of Organizations That Can Act as Qualified Entities*

The NOSOP's 270-day offer period affords QEs a preferred opportunity to purchase a housing development if they are certified through HCD's certification process. As per Government Code section 65863.11, subdivision (d), these QEs include *only*:

- The tenant association of the development;
- Local, regional, or national nonprofit organizations, including developers and operators of affordable homes;
- Local, regional, or national public agencies, including housing authorities and public agencies that develop or operate affordable homes; and
- Profit-motivated housing organizations or individuals, including developers and operators of affordable homes.

### b. *Process for Becoming a Qualified Entity*

An organization or individual listed above may become a QE by doing all of the following as prescribed in Government Code section 65863.11, subdivisions (e)(1)-(3):

- Get certified by HCD through its self-certification process, which can be done by submitting the Qualified Entity Certification Form available on the HCD website. An entity may self-certify based on demonstrated relevant prior experience in California and current capacity as capable of operating the housing for its remaining useful life, either by itself or through a management agent.
- Agree to obligate itself and any successors in interest to maintain the housing development affordable to households of very low, low, or moderate income for either a 30-year period from the date the purchaser takes legal possession or the remaining term of the existing federal government assistance, whichever is greater.
- Agree to maintain the occupancy of very low-, low-, or moderate-income tenants in the approximate percentages that existed at the time the 12-month notice of intent was given or the approximate percentages specified in the existing use restrictions, whichever is higher. An owner who obligates themselves to a regulatory agreement that will ensure the affordability for at least 30 years of all units occupied by low- and very low-income households, or that are vacant at the time of executing a

purchase agreement, at Low-Income Housing Tax Credit Program rent limits is deemed in compliance with this requirement and the requirement of item 2 above.

- Agree to renew rent subsidies, if available, and if the subsidies are sufficient to maintain the project's fiscal viability.
- Agree to record, and actually record, the obligations of items 2, 3, and 4 above in a regulatory agreement prior to the close of escrow in the office of the county recorder of the county in which the development is located. The recording must contain a legal description of the property, indexed to the name of the owner as grantor.

Note: Local nonprofit organizations and public agencies shall have no member among their officers or directorate with a financial interest in Assisted Housing Developments that have terminated a subsidy contract or prepaid a mortgage on the development without continuing the low-income restrictions.

Note: If the development is determined not to be economically feasible by all entities with regulatory agreements and rent restrictions on the property, a purchaser shall be entitled to remove one or more units from rent and occupancy requirements as necessary to achieve feasibility, provided that once the development is again economically feasible, the purchaser must designate the next available units as low-income units up to the original number of those units.

Please subscribe to the HCD email list and select *Housing Planning and Policy* for further updates about the certification process.

### c. *List of Qualified Entities*

HCD maintains on its website a list of QEs and makes the list available to owners of Assisted Housing Developments and the public at Qualified Entities List.

### d. *HCD's Role in Sales and Purchase of Assisted Housing Developments*

HCD has a role in implementing Affordable Housing Preservation Laws as they pertain to sales and purchase of Assisted Housing Developments, as follows.

#### *i. Qualified Entity Certification*

HCD established a process of certification for QEs based on demonstrated relevant prior experience in California and current capacity. Owner certification and technical assistance materials can be found at HCD's Preservation webpage.

#### *ii. Qualified Entity List*

HCD maintains a list of Qualified Entities on its website.

#### *iii. Tracking and Enforcement*

Notifying local governments and HCD about potential loss of affordability helps verify compliance with tenant noticing requirements and with early intervention assistance. HCD receives and tracks notices and tracks compliance with Affordable Housing

Preservation Laws. It also provides information through its public website and through technical assistance. A list of notices received is available on the webpage. HCD is authorized to request information from counties and cities that provide assistance through local affordable housing programs as described in Government Code section 65863.10, subdivision (a)(3)(N).

In addition, HCD is required to report violations of the Affordable Housing Preservation Laws to the Attorney General for appropriate enforcement action. Potential violations can be reported to HCD via the Affordable Housing Preservation Portal, available at HCD's Preservation webpage.

## 2. Notice of Opportunity to Submit an Offer to Purchase

### a. *When a NOSOP is Required*

An owner of an Assisted Housing Development is prohibited by law from terminating a subsidy contract or prepaying a mortgage unless they have complied with the requirements for providing QEs with a NOSOP.

An owner must provide a NOSOP to both QEs and HCD, and post the NOSOP to the property, prior to or concurrently with the 12-month notice (described in Table 2) when: (1) the owner intends to terminate rental subsidies or mortgage insurance, or to prepay a federally assisted mortgage; or (2) the rental restrictions on the owner's property are set to expire.

In addition, an owner proposing to sell or otherwise dispose of a property at any time during the *five years* prior to the expiration of restrictions or within *five years* of eligibility for prepayment or termination must provide the NOSOP to QEs at least 12 months in advance unless the sale or disposition qualifies for exemption pursuant to Government Code section 65863.13.

### b. *How to Serve the NOSOP*

The NOSOP begins a 270-day offer period in which QEs have preferential status for purchase, with the intent of retaining affordability. The owner must send the notice to the geographically-relevant QEs on HCD's list and to QEs that directly contact the owner. Notified QEs should include all QEs in the county in which the development is located, and those whose area of interest includes "All Counties." If the owner elects to sell the property, these QEs are prioritized.

The owner must send the NOSOP to QEs by registered or certified mail, return receipt requested, and must also post a copy of the notice in a conspicuous place in the common area of the development. (Gov. Code, § 65863.11, subd. (g).)

Owners are required to notify HCD within 90 days of all QE offers received during the 270-day notice period and either accept an offer from a QE and execute a purchase agreement or *record a new regulatory agreement with a term of at least 30 years that,* *at a minimum, meets the criteria of Government Code section 65863.13, subdivision (a).* (Gov. Code, § 65863.11, subd. (i).)

While the intent of the law is to facilitate the transfer of properties to entities that will maintain rental affordability, an owner is never obligated to sell. If no bona fide offer from a QE is submitted in the 270-day offer period or if all bona fide offers are withdrawn, the owner may sell without restriction. (Gov. Code, § 65863.11, subd. (k).)

A bona fide offer is an offer that approaches fair market value under objectively reasonable analysis. See Glossary for the definition of bona fide offer.

#### c. *Contents of the NOSOP*

The following must be included in the 12-month NOSOP sent to QEs, in accordance with Government Code, section 65863.11, subdivision (h).

(1) A statement addressing each of the following:

- Whether the owner intends to maintain the current number of affordable units and level of affordability; and
- Whether the owner has executed a contract or agreement of at least five years' duration with a public entity to continue or replace subsidies to the property and to maintain an equal or greater number of units at an equal or deeper level of affordability and, if so, the length of the contract or agreement.

(2) A statement that each QE, or any combination of them, has the right to purchase the development pursuant to the terms of the Affordable Housing Preservation Laws;

(3) A statement that the owner will make available to each QE within 15 business days of receiving a request all of the following items:

- Itemized lists of monthly operating expenses for the property,
- Capital improvements made within each of the two preceding calendar years at the property,
- The amount of project property reserves,
- Copies of the two most recent financial and physical inspection reports on the property, filed with federal, state, or local agencies, if any,
- The most recent rent roll for the property listing the rent paid for each unit and the subsidy, if any, paid by a governmental agency as of the date of the NOSOP,
- The vacancy rate for the development for each of the two preceding calendar years,
- The terms of assumable financing, if any,
- The terms of the subsidy contract, if any, and
- Proposed improvements to the property to be made by the owner in connection with the sale, if any.

Note: An owner is not required to provide this information if 25 percent or less of the units on the property are subject to affordability restrictions or a rent or mortgage subsidy contract. A public entity or the California Housing Partnership may share any of this information with other prospective purchasers and cannot be required to sign a confidentiality agreement as a condition of receiving or sharing this information, provided that the information is used for the purpose of attempting to preserve the affordability of the property.

(4) A statement that all 12-month notice requirements have been satisfied, unless the NOSOP is delivered more than 12 months prior to the anticipated date of termination, prepayment, or expiration (i.e., prior to the 12-month notice of intent to tenants).

### d. *Exemptions from the NOSOP*

An owner of an Assisted Housing Development is exempt from providing the NOSOP in the following circumstances (Gov. Code, §§ 65863.11, subds. (l) and (q), and 65863.13):

- 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;
- A sale to a person who would be included within the table of descent and distribution if there were to be a death intestate of an owner;
- An owner who certifies, under penalty of perjury, to the existence of a financial emergency requiring immediate access to the proceeds of the sale of the development during the 270-day offer period;
- Sale to a preservation buyer consistent with Government Code section 65863.13;
- Assisted Housing Developments receiving government assistance as described in Government Code section 65863.10, subdivision (a)(3)(N)(iv)-(viii) in which 30 percent or less of the units are subject to affordability restrictions in exchange for density bonuses, or concessions or incentives, including fee waivers, parking variances, or amendments to general plans, zoning, or redevelopment project area plans, pursuant to Government Code sections 65915-65918; or
- An assisted housing development in which 30 percent or less of the units are subject to affordability restrictions that were developed in compliance with a local ordinance, charter amendment, specific plan, resolution, or other land use policy or regulation requiring that a housing development contain a fixed percentage of units affordable to extremely low-, very low-, low-, or moderate-income households.

### e. *Timing of the NOSOP*

An owner must provide a NOSOP to both QEs and HCD prior to or concurrent with the 12-month notice to affected tenants, but no later than one year prior to termination, expiration, or prepayment.

In addition, an owner proposing to sell or otherwise dispose of a property at any time during the *five years* prior to the expiration of restrictions or within *five years* of eligibility for prepayment or termination must provide the NOSOP to QEs at least 12 months in advance unless the sale or disposition qualifies for exemption pursuant to Government Code section 65863.13.

### 3. 270-Day Offer Period

The 270-day offer period begins on the date included in the owner's NOSOP. This may be different than the date of service or the date the NOSOP was mailed. Government Code section 658563.11 contains additional details as cited.

#### a. Bona Fide Offers from Qualified Entities During the 270-Day Offer Period

During the 270 days after the date of the owner's NOSOP, the owner may only accept bona fide offers to purchase from QEs. A QE offering to purchase an Assisted Housing Development must:

- Make a bona fide offer, within 270 days from the date of the owner's NOSOP, to purchase the property at market value (as determined by an appraisal process initiated by the owner's receipt of the bona fide offer, as described fully in Government Code section 65863.11, subdivision (j)); and
- Identify whether the entity is a tenant association, nonprofit organization, public agency, including public housing authorities, or profit-motivated organization or individual and certify, under penalty of perjury, that it meets all the requirements of a QE. (Gov. Code, § 65863.11, subd. (i).)

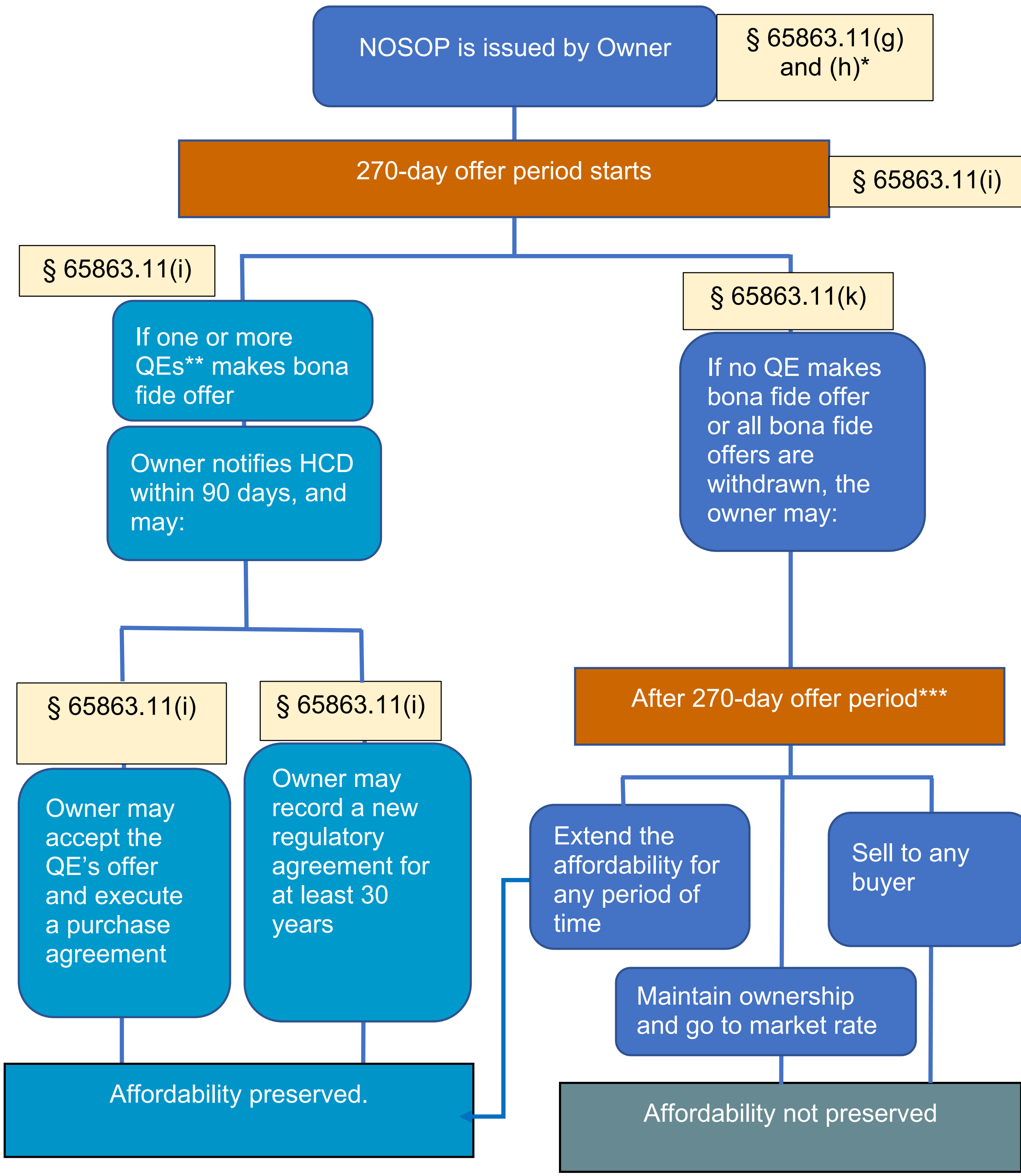
If one or more bona fide offers are made within the 270 days, the owner must take all steps reasonably required to renew any expiring housing assistance contract or extend any available subsidies or use restrictions, if feasible, before the effective date of any expiration or termination. (Gov. Code, § 65863.11, subd. (i).)

The owner may not accept an offer from any entity other than a QE during these 270 days. If the owner receives one or more bona fide offers from a QE or QEs that meets these requirements, the owner must notify HCD of all bona fide offers within 90 days and either:

- Accept one of the bona fide offers from a QE subject to the valuation process described in Government Code section 65863.11, subdivision (j) and execute a purchase agreement; or
- Record a new regulatory agreement with a term of at least 30 years that, at a minimum, meets the criteria of Government Code section 65863.13, subdivision (a).

The owner of the affected property and QEs have rights and responsibilities regarding these transactions, as written in Government Code section 65863.11, subdivisions (i)-(j). Figure 3 below summarizes the 270-day offer period.

*Figure 3.* 270-Day *Offer Period*




* GC §§ 65863.10 and .11 **QE is Qualified Entity ***See section 3c below

### b. No Bona Fide Offer From a QE After 270 Days

If an owner does not receive a bona fide offer from one or more QEs within the 270-day offer period, or if after the 270-day offer period all bona fide offers are withdrawn, the owner may do any of the following (see Gov. Code, § 65863.10, subd. (k)):

- Sell the property to any buyer. If the property is sold to a non-QE, the owner must record a compliance certification prior to the close of escrow. Contact HCD via the Affordable Housing Preservation Portal, available at HCD's Preservation webpage for a copy of the compliance certification template.
- Extend the affordability restrictions for any period of time.
- Maintain ownership of the property and allow the expiration, termination, or prepayment to occur at the end of the notice periods specified in Government Code section 65863.10.

### c. *Limits on Owner Obligation*

While the intent of the law is to facilitate the transfer of properties to entities that will maintain rental affordability, an owner is never obligated to sell, and if all noticing requirements are met in a timely manner and no bona fide offer from a QE is submitted during the 270-day offer period, the owner may sell to any buyer without restriction. Note that affordability restrictions must continue through the notice period specified in Government Code section 65863.10 or longer if needed to ensure proper noticing procedures were followed.

## 4. Exemptions From Affordable Housing Preservation Laws – Regulatory Agreement

Specific sales and transfers may be exempted from the requirements of the Affordable Housing Preservation Laws. An owner of an Assisted Housing Development is exempt if the owner agrees to sell or otherwise transfer the property to a buyer who complies with the following conditions during the escrow period, and upon sale records a regulatory agreement with a governmental entity binding successor owners to the following conditions for the remaining term of governmental assistance or 30 years, whichever is greater:

### a. *Displacement Prohibited*

No low-income tenant whose rent was restricted or subsidized and who resides in the development within 12 months of the date that the rent restrictions are, or subsidy is, set to expire or terminate, will be involuntarily displaced on a permanent basis as a result of the action of the owner, unless the tenant has breached the terms of the lease. (Gov. Code, § 65863.13, subd. (a)(1).)

**b. *Project-Based Section 8 Renewals***

The owner must accept and fully utilize all renewals of project-based assistance under Section 8 of the United States Housing Act of 1937, if available, provided that assistance is at a level to maintain the project's fiscal viability. (Gov. Code, § 65863.13, subd. (a)(2).)

**c. *Section 8 Vouchers***

Owners must accept all enhanced Section 8 vouchers and all other Section 8 vouchers for future vacancies. (Gov. Code, § 65863.13, subd. (a)(3).)

**d. *Termination of Tenancy***

The owner cannot terminate a tenancy of a low-income household at the end of a lease term without demonstrating a breach of the lease by the tenant. The owner shall not terminate a tenancy of a low-income household due to a planned renovation of the property. (Gov. Code, § 65863.13, subd. (a)(4).)

**e. *Screening Criteria – Tenant's Amount of Income***

In selecting eligible applicants for admission, owners may consider the amount of a prospective tenant's income, as long as they also adequately consider other factors relevant to an applicant's ability to pay rent. (Gov. Code, § 65863.13, subd. (a)(5).)

**f. *Regulated Rents***

*i. Rent-Restricted Units (Gov. Code, § 65863.13, subd. (a)(6))*

Restricts the rents and incomes of the previously restricted units, except as provided in paragraph (ii), (iii), and (iv) below, to an equal or greater level of affordability than previously required so that the units are affordable to households at the same or a lower percentage of area median income (AMI).

*ii. Project-Based Rental Assistance (Gov. Code, § 65863.13, subd. (a)(7))*

For a development with units that have project-based rental assistance at the time of prepayment and that subsequently become unassisted by any form of rental assistance, rents upon loss of assistance must not exceed 30 percent of 60 percent of AMI. If any form of rental assistance is or becomes available, the owner must apply for and accept, if awarded, the rental assistance.

*iii. Unassisted Units (Gov. Code, § 65863.13, subd. (a)(8))*

For units that do not have project-based rental assistance at the time of prepayment and will remain unassisted, rents must not exceed the greater of:

(1) 30 percent of 50 percent of AMI; or

(2) For projects insured under Section 241(f) of the National Housing Act, the regulated rents under the terms of that program expressed as a percentage of AMI.

If any form of rental assistance is or becomes available, the owner must apply for and accept, if awarded, the rental assistance.

*iv. Units Occupied by Tenants Exceeding Income Limit (Gov. Code, § 65863.13, subd. (a)(9))*

If, upon recording the new regulatory agreement, any unit governed by the regulatory agreement is occupied by a household whose income exceeds the applicable limit, the rent for that household must not exceed 30 percent of that household's adjusted income, provided that the household's rent must not be increased by more than 10 percent annually.

> Area median income is the midpoint of a specific area's income distribution based on a four-person household. It is calculated annually by the U.S. Department of Housing and Urban Development (HUD). State Income limits are based on the HUD limits. For more information, go to HCD's Income Limits tool.

## F. HCD's Role in the Preservation Notice Process

### 1. Public Outreach

HCD is tasked with providing information and monitoring compliance with Affordable Housing Preservation Laws. (Gov. Code, § 65863.11, subd. (n).)

#### a. *Compliance Information and Notice Templates*

HCD maintains on its website a summary of rights and obligations under Affordable Housing Preservation Laws and makes that information available to owners of Assisted Housing Developments as well as to tenant associations, local nonprofit organizations, regional or national nonprofit organizations, public agencies, and other entities with an interest in preserving the state's subsidized housing.

Notice forms and instructions for owners and QEs are also published on the website. Technical assistance and answers to inquiries are available via the Affordable Housing Preservation Portal, available at HCD's Preservation webpage.

To ensure compliance with Affordable Housing Preservation Laws, HCD may request information from counties and cities that provide assistance through local affordable housing programs as described in Government Code section 65863.10, subdivision (a)(3)(N).

### b. *List of Qualified Entities*

HCD compiles, maintains, and updates a list of Qualified Entities that is publicized on its website and is available statewide. QEs may be added to the list through HCD's self-certification process using the Qualified Entity Certification Form.

### c. *Affordable Housing Data and Technical Assistance*

In addition to HCD's Affordable Housing Preservation Portal, available at HCD's Preservation webpage, the California Housing Partnership (CHPC, or the Partnership) is a private nonprofit organization with a public mission created by the Legislature in 1988. The Partnership helps nonprofit, state, and local government housing organizations, as well as state leaders who implement laws and programs, to provide necessary resources for sustainable and affordable housing. The Partnership's website provides access to research, data, and technical assistance regarding affordable housing preservation.

### d. *Housing Elements*

Since 1969, California has required that all local governments (cities and counties) adequately plan to meet the housing needs of everyone in the community. California's local governments meet this requirement by adopting housing plans (housing element) as part of their "general plan." An effective housing element provides the necessary conditions for developing and preserving an adequate supply of housing, including housing affordable to seniors, families, and workers.

The housing element must identify and analyze units that are at risk of converting from affordable to market-rate during the next 10 years. If units are found to be at-risk, the housing element must estimate the total cost of replacing and preserving these units and include a list of entities with the capacity to acquire multifamily developments at-risk. The analysis should guide policies and actions necessary to address the critical activity of preserving at-risk units. (Gov. Code, § 65583, subd. (a)(9).)

HCD plays the critical role of reviewing every local government's housing element to determine whether it complies with state law to ensure that housing plans contain policies and actions to support the preservation of at-risk units. Together, the Affordable Housing Preservation Laws and the at-risk analysis of housing elements are complementary tools for preserving existing affordable housing.

## 2. Annual Owner Compliance Certification and Report to Legislature

HCD must monitor compliance with Government Code sections 65863.10, 65863.11, and 65863.13 and report annually to the Legislature. To that end, owners of Assisted Housing Developments in which at least 5 percent of the units are subject to affordability restrictions, or a rent or mortgage subsidy contract, are required to certify to HCD annually that they are in compliance with these Sections. The annual owner certification must be made under penalty of perjury, on the website as required by HCD.

Information about certification and the online registration are available by logging in to the Affordable Housing Preservation Portal.

HCD is required under Government Code section 65863.11, subdivision (n)(4) to report violations of Affordable Housing Preservation Laws to the Attorney General for appropriate enforcement action.

## G. Consequences of Non-Compliance with Affordable Housing Preservation Laws

If an owner fails to provide notices of expiring rental restrictions at the appropriate times, the term of affordability must be extended until the proper noticing requirements are met under Government Code section 65863.10.

Injunctive relief is available to any affected tenant or public entity who is aggrieved by a violation of Government Code section 65863.10, including a group of affected tenants that meets the requirements of a legitimate tenant organization, as defined in federal regulations, or a tenant association as defined in Government Code section 65863.11, subdivision (a)(4). Injunctive relief may include, but is not limited to, reimposition of the prior restrictions until any required notice is provided and the required noticing period has elapsed, restitution of any non-compliant rent increases, and potential payment of attorneys' fees and costs to a prevailing plaintiff.

Any QE entitled to exercise the opportunity to purchase under Government Code section 65863.11, and any tenant association at the property or any Affected Public Entity (the city, the county, the local public housing authority, or HCD) that has been adversely affected by an owner's failure to comply with Government Code section 65863.11, may seek relief in law or in equity. In any judicial action brought to enforce Government Code section 65863.11, the court may waive any bond requirement and may award attorney's fees and costs to a prevailing plaintiff.

In addition, under Government Code section 65863.11, subdivision (n)(4), HCD must refer violations to the Attorney General for appropriate enforcement action.

### 1. Effect of Noncompliance on Future Funding

HCD's Negative Points Policy ensures that limited critical funding resources are directed to sponsors that demonstrate ongoing capacity to successfully operate and manage affordable housing developments. Failure to comply with AHPL is a non-curable event which will result in the applicable sponsor(s) receiving negative points on any future applications for HCD funding.

## H. Contact and Resources

Contact HCD's Housing Accountability Unit via the Affordable Housing Preservation Portal, available at HCD's Preservation webpage. This site contains links to other preservation resources.

## Appendix: Glossary of Terms

**Government Code Section 65863.10, subdivision (a)(1-9), Government Code Section 65863.11, subdivision (a)(1-16), Government Code Section 65863.13, subdivision (a)(2) and (b).**

**Affected Public Entities**: The mayor of the city in which the Assisted Housing Development is located, or, if located in an unincorporated area, the chair of the board of supervisors of the county; the appropriate local public housing authority, if any; and the California Department of Housing and Community Development (HCD).

**Affected Tenant**: A tenant household residing in an Assisted Housing Development at the time notice is required and who benefits from the government assistance.

**Assisted Housing Development**: A multifamily rental development of five or more units that receives governmental 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 assistance, under Section 8 of the United States Housing Act of 1937, as amended (42 U.S.C Sec. 1437f);
- Below Market Interest Rate Program under Section 221(d)(3) of the National Housing Act (12 U.S.C. Sec. 1715 l(d)(3) and (5));
- Section 236 of the National Housing Act (12 U.S.C. Sec. 1715z-1);
- Section 202 of the Housing Act of 1959 (12 U.S.C. Sec. 1701q);
- Section 811 of the Cranston-Gonzalez National Affordable Housing Act:
- Programs for rent supplement assistance under Section 101 of the Housing and Urban Development Act of 1965, as amended (12 U.S.C. Sec. 1701s);
- Programs under Sections 514, 515, 516, 521, 533 and 538 of the Housing Act of 1949, as amended (42 U.S.C. Sec. 1485);
- Section 42 of the Internal Revenue Code;
- Section 142(d) of the Internal Revenue Code or its predecessors (tax-exempt private activity mortgage revenue bonds);
- Section 147 of the Internal Revenue Code (Section 501(c)(3) bonds);

- Title I of the Housing and Community Development Act of 1974, as amended (Community Development Block Grant Program);
- Title II of the Cranston-Gonzalez National Affordable Housing Act of 1990, as amended (HOME Investment Partnership Program);
- Titles IV and V of the McKinney-Vento Homeless Assistance Act of 1987, as amended, including the U.S. Department of Housing and Urban Development's Supportive Housing Program, Shelter Plus Care program, and surplus federal property disposition program;
- Grants and loans made by HCD;
- Grants and loans made by the California Housing Finance Agency for rental housing.
- Chapter 1138 of the Statutes of 1987 (State Tax Credit Program); or
- The following assistance provided by counties or cities in exchange for restrictions on the maximum rents that may be charged for units within a multifamily rental housing development and on the maximum tenant income as a condition of eligibility for occupancy of the unit subject to the rent restriction, as reflected by a recorded agreement with a county or city:
    - Loans or grants provided using tax increment financing pursuant to the Community Redevelopment Law (Part I (commencing with Section 33000) of Division 24 of the Health and Safety Code);
    - Local housing trust funds, as referred to in paragraph (3) of subdivision (a) of Section 50843 of the Health and Safety Code;
    - The sale or lease of public property at or below market rates; or
    - The granting of density bonuses, or concessions or incentives, including fee waivers, parking variances, or amendments to general plans, zoning, or redevelopment project area plans, pursuant to Government Code sections 65915-65918;
    - The Middle Class Housing Act of 2022 (Gov. Code, § 65852.24);
    - The Affordable Housing and High Road Jobs Act of 2022 (Chapter 4.1 (commencing with Gov. Code, § 65912.100));
    - Streamlined Ministerial Approval Process (Gov. Code, § 65913.4); or
    - The Affordable Housing on Faith and Higher Education Lands Act of 2023 (Gov. Code, § 65913.16).

**Bona Fide Offer**: If a Qualified Entity (QE) elects to purchase an Assisted Housing Development, it shall make a Bona Fide Offer. To qualify as a Bona Fide Offer, the offer must meet these requirements:

1) Offer to purchase the development at the market value determined pursuant to Government Code section 65863.11, subdivision (k);

2) Submit the offer within 270 days of the Notice of Opportunity to Submit an Offer to Purchase (NOSOP);
3) Identify whether the QE is a tenant association, nonprofit organization, public agency, including public housing authorities, or profit-motivated organization or individual; and
4) Certify that it is a QE.

**City**: A general law city, a charter city, or a city and county.

**Expiration of Rental Restrictions**: The expiration of rental restrictions for an Assisted Housing Development described in [Government Code section, 65863.10(a)(3)] unless the development has other recorded agreements restricting the rent to the same or lesser levels for at least 50 percent of the units or the same number of units under the rent restrictions prior to the expiration, whichever is greater.

**Fiscal Viability**: The property is deemed fiscally viable if the rents permitted under the terms of the assistance are not less than the established regulated rent levels.

**Local Nonprofit Organizations**: Not-for-profit corporations organized pursuant to Division 2 (commencing with Section 5000) of Title I of the Corporations Code that have as their principal purpose the ownership, development, or management of housing or community development projects for persons and families of low or moderate income and very low income, and which have a broadly representative board, a majority of whose members are community based and have a proven track record of local community service.

**Local Public Agencies**: Housing authorities, redevelopment agencies, or other agency of a city, county, or city and county, whether general law or chartered, which are authorized to own, develop, or manage housing or community development projects for persons and families of low or moderate income and very low income.

**Low or Moderate Income**: Having an income as defined in Section 50093 of the Health and Safety Code.

**Owner**: An individual, corporation, association, partnership, joint venture, or business entity that holds title to the land on which an Assisted Housing Development is located. If the Assisted Housing Development is the subject of a leasehold interest, “owner” also means an individual, corporation, association, partnership, joint venture, or business entity that holds a leasehold interest in the Assisted Housing Development, and the owner holding title to the land and the owner with a leasehold interest in the Assisted Housing Development must be jointly responsible for compliance.

**Prepayment**: 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 identified Assisted Housing Development that would have the effect of removing the current low-income current rent and/or occupancy restrictions contained in the applicable laws and regulatory agreement.

**Profit-Motivated Organizations or Individuals**: Individuals or two or more persons organized pursuant to Division 1 (commencing with Section 100) of Title 1 of, Division 3 (commencing with Section 1200) of Title 1 of, or Chapter 5 (commencing with Section 16100) of Title 2 of, the Corporations Code, that carry on business for profit and own and operate at least three comparable rent- and income-restricted affordable rental properties governed under a regulatory agreement with a department or agency of the State of California or the United States, either directly or by serving as the managing general partner of limited partnerships or managing member of limited liability corporations.

**Regional or National Organizations**: Not-for-profit charitable corporations organized on a multicounty, state, or multistate basis that have as their principal purpose the ownership, development, or management of housing or community development projects for persons and families of low or moderate income and very low income and own and operate at least three comparable rent- and income-restricted affordable rental properties governed under a regulatory agreement with a department or agency of the State of California or the United States, either directly or by serving as the managing general partner of limited partnerships or managing member of limited liability corporations.

**Regional or National Public Agencies**: Multicounty, state, or multistate agencies that are authorized to own, develop, or manage housing or community development projects for persons and families of low or moderate income and very low income and own and operate at least three comparable rent- and income-restricted affordable rental properties governed under a regulatory agreement with a department or agency of the State of California or the United States, either directly or by serving as the managing general partner of limited partnerships or managing member of limited liability corporations.

**Regulatory Agreement**: An agreement, with a governmental agency for any governmental program, that applies to developments subject to the State Preservation Notice Requirements and which obligates the owner and any successors in interest to maintain the affordability of the Assisted Housing Development for households of very low, low, or moderate income for the greater of the term of the existing federal, state, or local government assistance or 30 years.

**Tenant**: A tenant, subtenant, lessee, sublessee, or other person legally in possession or occupying the Assisted Housing Development.

**Tenant Association**: A group of tenants who have formed a nonprofit corporation, cooperative corporation, or other entity or organization, or a local nonprofit, regional, or national organization whose purpose includes the acquisition of an Assisted Housing Development and that represents the interest of at least a majority of the tenants in the Assisted Housing Development.

**Termination**: The failure of an owner to extend or renew participation in a federal, state, or local government subsidy program or private, nongovernmental subsidy program for an identified Assisted Housing Development either at or prior to the scheduled date of the expiration of the contract, that may result in an increase in tenant rents or a change in the form of the subsidy from project-based to tenant-based.

**Use Restrictions**: Any federal, state, or local statute, regulation, ordinance, or contract that, as a condition of receipt of any housing assistance, including a rental subsidy, mortgage subsidy, or mortgage insurance, to an Assisted Housing Development, establishes maximum limitations on tenant income as a condition of eligibility for occupancy of the units within a development, imposes any restrictions on the maximum rents that could be charged for any of the units within a development, or requires that rents for any of the units within a development be reviewed by any governmental body or agency before the rents are implemented.

**Very Low Income**: Having an income as defined in Section 50105 of the Health and Safety Code.