

# AFFORDABLE HOUSING PRESERVATION LAWS

## RIGHTS OF BUYERS OF AFFORDABLE HOUSING PROPERTIES

### (QUALIFIED ENTITIES)

Government Code Sections 65863.10, 65863.11, and 65863.13



**This Fact Sheet is intended to help potential buyers of affordable housing properties get preferential treatment and understand their rights under Affordable Housing Preservation Laws.**

## Introduction and Overview

When the owner of a California rental housing development that has 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) and are willing to maintain the affordability of the property. Therefore, it is critical that parties which may be interested in purchasing an Assisted Housing Development be certified by completing the [QE Certification Form](#).<sup>1</sup>

## 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](#))<sup>2</sup> an Assisted Housing Development prior to or concurrent with the 12-month notice to tenants.

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

Please note, QEs will only receive a NOSOP for properties within their specified area(s) of interest. To receive all NOSOPs, the QE must choose "All Counties" for their area of interest in the self-certification document.

The NOSOP, among other things, must include:

- Whether the owner intends to maintain the current level of affordability.
- A commitment to provide certain project financial information available to QEs when more than 25 percent of the units on the property are subject to affordability restrictions.

If the owner receives a bona fide offer from a QE during the 270-day period, then the owner must notify HCD of the offer within 90 days of receipt, and either:

- Accept one of the bona fide offers from a QE and execute a purchase agreement, or

---

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

<sup>2</sup> NOSOP: <https://www.hcd.ca.gov/sites/default/files/docs/policy-and-research/nosop-template.pdf>

# AFFORDABLE HOUSING PRESERVATION LAWS

## RIGHTS OF BUYERS OF AFFORDABLE HOUSING PROPERTIES

### (QUALIFIED ENTITIES)

Government Code Sections 65863.10, 65863.11, and 65863.13



- Record a new regulatory agreement with a term of at least 30 years.

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:

- 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. HCD provides a compliance certification template for owners.
- 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.

The [270-Day Offer Period: Owners & Buyers of Affordable Projects](#) Fact Sheet shows a flowchart for the 270-day offer period.

A QE interested in acquiring Assisted Housing Developments may contact the particular housing authority or city/county development agency. In addition, a QE may monitor [recent Preservation Notices](#)<sup>3</sup> posted to HCD's Preservation webpage.

### Effect of Noncompliance on Future Funding

HCD's [Negative Points Policy](#)<sup>4</sup> 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.

### What Constitutes a Bona Fide Offer?

To qualify as a bona fide offer, the QE's offer must meet these requirements:

- Offer to purchase the development at the market value determined pursuant to Government Code section 65863.11, subdivision (k);
- Submit the offer within 270 days of the NOSOP;
- Identify whether the QE is a tenant association, nonprofit organization, public agency, or profit-motivated organization or individual; and
- Certify that it is a QE.

---

<sup>3</sup> Preservation Notices: <https://www.hcd.ca.gov/sites/default/files/docs/policy-and-research/prsv/prsv-notice.xlsx>.

<sup>4</sup> HCD's Negative Points Policy: <https://www.hcd.ca.gov/sites/default/files/docs/grants-and-funding/negative-points.pdf>.



## How to Become a Qualified Entity

A “Qualified Entity” (QE) is a stakeholder that has been certified by HCD to be capable of operating a housing development and related facilities. By statute, a QE may be a public agency, a nonprofit or for-profit affordable housing developer, a tenant association of the development, or a profit-motivated housing organization or individual. QEs that are listed through HCD’s self-certification process are entitled to receive notice of properties with expiring affordability and may take advantage of favorable provisions under AHPL, described above.

For a stakeholder to take advantage of these specific purchase rights provided by AHPL, the stakeholder must meet the following criteria:

- Complete HCD’s [self-certification document](#) as having capacity to operate the housing development for its remaining useful life, either by itself or through a management agent.
- Obligate itself to maintain affordability of the housing for 30 years or the remaining term of the applicable subsidy, whichever is greater (along with other requirements).
- For local nonprofit organizations and public agencies, no member among their officers or directorate may have a financial interest in an assisted housing development that has terminated a subsidy contract or prepaid a mortgage without continuing the low-income restrictions.

HCD maintains a list of QEs and makes the list available to owners of Assisted Housing Developments and the public on HCD’s website at [QEs List](#).<sup>5</sup>

## Where Can I Find More Information?

This Fact Sheet is a broad overview intended to assist with implementation of AHPL. 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 webpage related to [Preserving Existing Affordable Housing](#)<sup>6</sup> that includes a detailed [Guide](#)<sup>7</sup> on AHPL. Links to the law itself are provided in the header of this document.

---

<sup>5</sup> QEs List: <https://www.hcd.ca.gov/sites/default/files/docs/policy-and-research/qualified-entities.xlsx>.

<sup>6</sup> Preserving Existing Affordable Housing: <https://www.hcd.ca.gov/policy-and-research/preserving-existing-affordable-housing>.

<sup>7</sup> 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>.

# AFFORDABLE HOUSING PRESERVATION LAWS

## RIGHTS OF BUYERS OF AFFORDABLE HOUSING PROPERTIES (QUALIFIED ENTITIES)

Government Code Sections 65863.10, 65863.11, and 65863.13



If QEs 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](#).<sup>8</sup>

---

<sup>8</sup> Ibid.