

AFFORDABLE HOUSING PRESERVATION LAWS

TENANT ASSOCIATION RIGHTS



Government Code Sections 65863.10, 65863.11, and 65863.13

This Fact Sheet is intended to help tenant associations (organizations that represent a majority of tenants in a development) understand Affordable Housing Preservation Laws and the role they can play in preserving affordable housing.

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 California’s Affordable Preservation Laws (AHPL).

In brief, this law gives, among other things, a right of first refusal to certain potential buyers, including tenant associations, 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 tenant associations, which may be interested in purchasing an Assisted Housing Development, be certified by completing the [QE Certification Form](#).¹

What is a Tenant Association?

A tenant association is 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.

Tenant Associations as a Qualified Entity

“Qualified Entity” (QE) means an entity that is a tenant association of the development, a local nonprofit or public agency, a regional or national nonprofit organization or agency, or a profit-motivated housing organization or individual. To learn more about the benefits of becoming a QE, see the section below on **Advantages for Qualified Entities**. In order for tenant associations to be notified of opportunities and access advantages in the potential purchase and preservation of affordable housing, they must become a QE by meeting the following criteria:

- Complete HCD’s [self-certification document](#)² stating that the tenant association has the capacity to operate the housing development as affordable for its remaining useful life, either on its own or through a management agent.
- Agree to maintain the affordable housing for 30 years or the remaining term of

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

² Ibid.



Many tenant associations may not independently have the capacity to successfully operate affordable housing. But an experienced affordable housing partner may be able to assist. A tenant association could partner with other QEs such as an affordable housing developer, the local government, or the local housing authority, to purchase and operate the property. HCD maintains a list of these [eligible QEs](#).³ Local governments or local legal aid offices may also be able to provide information and more resources.

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.

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

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 must include, among other things, the following:

- 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
- 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.

³ HCD maintained list of QE: <https://www.hcd.ca.gov/sites/default/files/docs/policy-and-research/qualified-entities.xlsx>.

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- 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.

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 Sheet⁴ and HCD's [*Guide*](#).⁵

What are Tenant Associations' Rights?

If the owner is not following AHPL, the affected tenant associations may pursue remedies in court. A tenant association as defined above, or a group of affected tenants that meets the requirements of a legitimate tenant organization as defined in federal regulations, or an affected household, may seek injunctive relief. The courts may deem injunctive relief to include the continuation of the affordability program, repayment to tenants of any rent paid above the allowable limits, and attorney's fees and costs.

If Tenant Associations 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](#).⁶ The tenant association and affected households should also alert their local legal aid office. HCD may refer violations of the law to the California Office of the Attorney General.

⁴ QE Fact Sheet: <https://www.hcd.ca.gov/sites/default/files/docs/policy-and-factsheets/qualified-entities-factsheet.pdf>

⁵ 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>.

⁶ Ibid.

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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](https://www.hcd.ca.gov/policy-and-research/preserving-existing-affordable-housing)⁷ that includes a detailed [Guide](https://www.hcd.ca.gov/sites/default/files/docs/policy-and-research/guide-to-affordable-housing-preservation-laws.pdf)⁸ on AHPL. Links to the law itself are provided in the header of this document.

⁷ HCD's Preserving Existing Affordable Housing webpage:
<https://www.hcd.ca.gov/policy-and-research/preserving-existing-affordable-housing>.

⁸ 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>.