AFFORDABLE HOUSING PRESERVATION LAWS

TENANT'S RIGHTS

Government Code Sections 65863.10, 65863.11, and 65863.13

This Fact Sheet is intended to help you, as a tenant, understand your rights when an owner seeks to terminate rent limits on your building.

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).

When an owner makes the decision to no longer provide affordable housing, California AHPL generally requires them to follow certain rules. This includes a right of first refusal to certain potential buyers that are determined to be a "Qualified Entity" (QE) by the California Department of Housing and Community Development (HCD), including a tenant association, and that are willing to maintain the affordability of the property.

The owner must also give tenants notice at three years, twelve months, and six months prior to:

- The end of restrictions that limit what rent they can charge,
- The early payment of a mortgage that limits what rent they can charge or household income limits they can rent to, or
- The expiration of a contract which ensures the housing is affordable.

When are Owners Subject to Affordable Housing Preservation Laws?

The law applies to owners of multifamily rental housing with five or more units, defined by statute as Assisted Housing Developments, where some or all of the units have rent limits and income eligibility requirements. This does not apply to non-subsidized public housing, tenant-based vouchers from a public housing authority, and certain statutory exceptions.

How Can I Keep My Development Affordable?

To maintain affordability of your housing development, the law provides an advantage to qualified buyers or "Qualified Entities" (QEs) who wish to purchase the development and keep it affordable. QEs may be an existing or newly formed tenant association. *Tenant Association Rights* Fact Sheet. In order for a tenant association to become a QE, submission of the QE Certification Form[1] to HCD is required. Tenant associations that are interested in purchasing the development may partner with experienced non-profit affordable housing developers.

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

What Notices Will I Get Prior to Affordable Rental Limits Ending in My Building?

In most cases, at least **three years** before the scheduled end of rent limits, the owner must **post a notice in an accessible location on the property** that includes, among other things:

- The name of the program that is set to end.
- The anticipated date the program or contract ends.

At least **12 months** before ending rent limits, the owner must **provide a written notice to each affected tenant household** in the property that includes, among other things, the following:

- A statement of their intent to end participation in the affordable housing program.
- The anticipated date of termination.
- Notice of whether the owner might increase rents during the 12 months following the end of rental restrictions.

At least **six months** before the end of rent limits, the owner must provide **another written notice to you and every affected tenant household** that provides more detailed information on how the termination will affect you, including:

- The date the affordability will end.
- Your current rent and the rent that you will be charged for your unit during the 12 months after your current rental rate is terminated.
- Whether or not the property owner intends to participate in any replacement subsidy program to assist you with paying your rent in the future.
- Contact information for the city (or county for unincorporated communities), the local housing authority, the HUD Field Office, and legal services organizations for tenants to get more information about their rights.
- A statement acknowledging the owner must accept all enhanced Section 8 vouchers if the tenants receive them.

Additional Owner Requirements:

- Owners must notify each affected tenant household ***within seven business days*** of any significant change in the information provided in the original six-month notice.
- During the three noticing periods described above, owners must provide a copy of any notices issued to *existing* tenants to any housing *applicants* at the time of application for an affordable unit.

What Does the Notice Mean?

Affordability of Assisted Housing Developments can change over time. When that happens, the owner must notify the tenants of changes, including the possibility of a significant rent increase that could affect affordability. The owner may or may not choose to keep the units affordable.

The three-year notice must be posted in an accessible location of the property and given to prospective tenants to notify them of the possibility of changes in rents three years in the future. Receipt of a notice does not always mean that rents will increase to market rate levels. In some cases, the owner may ultimately agree to keep rents affordable, or the current tenants may receive Section 8 vouchers. The owner may also sell the development to a new owner who will keep the housing affordable. Alternatively, the development may charge up to market rate rents.

The 12-month notice informs tenants again, as well as potential buyers interested in preserving affordability of the development. During the 12 months prior to the noticed change, it will become clear whether the owner will maintain affordability, sell the development to a buyer who will maintain affordability, or raise rents up to market rates.

The six-month notice and any further updates must contain the anticipated new rent. Contact the property manager or the party listed on the notice for more information.

What are Tenants' Rights?

The city or county where the development is located, and the local housing authority, receive the same notices as the tenants. Tenants may choose to contact these organizations or the local legal services organization for more information.

If the owner is not following the law, affected tenants and affected households have rights under the law. An affected tenant is one who resides in a rent restricted housing units in an Assisted Housing Development at the time the notice is required. Legal guidance to affected tenants may be available from legal aid, other legal services, and local housing authorities. These organizations can help with tenant rights. They also monitor whether the owner is following the law.

An affected household, a group of affected tenants that meets the requirements of a legitimate tenant association as defined in federal regulations, or a tenant association (among others) can go to court and seek injunctive relief. The courts may deem injunctive relief to include continuation of the affordability program, repayment of any rent paid above the allowable limits, and attorney's fees and costs. If tenants and the tenant association have concerns about an owner's compliance, contact the HCD's Housing Accountability Unit via the Affordable Housing Preservation Portal, available at HCD's Preservation webpage.[2] The tenant association and affected households should also alert their local legal aid office. HCD may refer violations of the AHPL to the California Office of the Attorney General.

[2] Preserving Existing Affordable Housing: https://www.hcd.ca.gov/planning-and-research/preserving-existing-affordable-housing.

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[3] that includes a detailed Guide[4] on AHPL. Links to the law itself are provided in the header of this document.

If you 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.[5]

---

[3] Preserving Existing Affordable Housing: https://www.hcd.ca.gov/policy-and-research/preserving-existing-affordable-housing.

[4] 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.

[5] Ibid.