



HOUSING PRESERVATION NEWS

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California Expands Notice Provisions for At-Risk Properties for 2006

With the signing of Senate Bill 950 this October following on the signing of SB 1328 last year, the Governor marked the conclusion of two years of significant changes by the Legislature to the State Preservation Notice Law, which will be in effect for 2006. Highlights include:

- Updating the definition of at-risk housing in the state Revenue and Taxation Code to clarify that developments financed with certain federal subsidy programs are eligible to receive priority in competing for allocations of Low Income Housing Tax Credits, Tax Exempt Bonds and HCD subsidy programs such as the Multifamily Housing Program. This change removes the confusing reference in state law to two defunct federal programs, Title II and VI.
- Expanding from two to five years from the expiration date of the subsidies the time period in which owners selling their properties must give preservation purchasers the opportunity to submit a purchase offer. This change recognizes that many non-preservation sales have been taking place prior to the existing limit of two years from the expiration and allows preservation purchasers a chance to compete by giving them priority access to state resources.
- Expanding the definition of at-risk properties for notice purposes to include all subsidized apartment developments of five or more units. This change acknowledges the need to look at the at-risk status of thousands of apartments financed with state and local subsidies.

Summary of California Notice Law

California has approximately 150,000 federally subsidized apartments with rents affordable to lower income households. The majority of these were developed by private owners in the late 1960's, 70's and early 80's under various federal subsidy programs. In most cases, owners have reached the point in their subsidy agreements at which they have the right to terminate the restriction on their properties – by prepaying their original subsidized mortgages or by opting-out of their rental subsidy contracts. More than 70,000 of these are at risk of conversion to market rate in the next five years. In addition, California has 15,000 apartments developed during the first three years (1987-1989) of the Low Income Housing Tax Credit (LIHTC) program, when only 15 years of affordability was required. Nearly 5,000 of these early Tax Credit apartments are currently at high risk of conversion to

market rate because they lack any other restrictions protecting their affordability. Finally, there are more than 100,000 apartments in California developed with assistance from other federal, state and local programs whose restrictions expire on various dates determined under rules or agreements applicable to those programs or specific properties for which there is no single reliable source of data.

The termination of rental restrictions is a problem not only for the affected tenants, who may face potential displacement and/or rent increases, but also for their communities, which will suffer a permanent loss of affordable homes. The impact of conversion is compounded by the scarcity of affordable rental housing in most parts of the state and the fact that it typically costs two to three times as much to replace an affordable apartment as it does to preserve it.

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Many thanks to the National Housing Law Project for their assistance with the state Notice Law.

For more information on the changes in the State Notice Law go to :

www.chpc.net/pages/noticeprovision.html

In recognition of the impact of conversion, the federal government requires owners of properties that are at-risk of conversion to provide notice to tenants, and the U.S. Department of Housing & Urban Development (HUD). Properties with a USDA loan (515) or rental assistance (521) must also give notice to the USDA. Properties prepaying a HUD subsidized mortgage must also provide notices to state and local governments under federal law. Finding that the federal notice laws do not go far enough in providing advance warning to tenants and local governments or in encouraging preservation transfers, California

first passed its own State Notice Law in 1987, which has been updated periodically and is now found in Government Code Section 65863.10-13. The intent of the State Notice Law is to give tenants sufficient time to understand and prepare for potential rent increases, as well as to provide local governments and potential preservation buyers with an opportunity to develop a plan to preserve the property. This plan typically consists of convincing the owner to either (a) retain the rental restrictions in exchange for additional financial incentives or (b) sell to a preservation buyer at fair market value.

Properties Covered Under the Notice Law

Historically the State Notice Law has applied to apartments subsidized through the following federal programs: project-based Section 8 and United States Department of Agriculture (USDA) Section 521 rental assistance contracts, mortgages financed through Section 221 (d)(3) BMIR (Below Market Interest Rate) mortgage insurance, Section 236 IRP (Interest Reduction Payment) mortgage insurance, USDA Section 515 loans, loans and capital grants through Sections 202 and 811 for housing the low income elderly and disabled, and the Low Income Housing Tax Credit program.

As of July 1, 2005, pursuant to Senate Bill 1328, the State Notice Law expanded the definition of at-risk to include the following federal, state and local programs: tax-exempt bond financing, HOME, CDBG, and McKinney homeless programs, grants or loans made by the state department of Housing and Community Development (HCD), tax increment financing, housing trust funds, linkage funds, the sale or lease of public property at below market rates, or local land use incentives such as inclusionary zoning, parking variances and density bonuses.

Summary of State Notice and Right of Offer Requirements

Two notices are required to tenants and affected government agencies: the first at 12 months prior to termination or expiration of the restrictions, and a second notice at six (6) months. The notices must contain basic information about the owner's plans for the property with additional information required to be given to the public entities. A separate notice must be sent to preservation purchasers who have registered with HCD as Qualified Entities at least 12 months prior to termination, expiration or proposed sale. The purpose of this "Opportunity to Make a Purchase Offer" notice is to provide organizations willing to preserve the affordability with an opportunity to make a purchase offer.

In the event the owner chooses to sell, the submission of a bona fide offer by a Qualified Entity triggers a right of first refusal that gives the Qualified Entity the right to match the terms of any other purchaser.

As of July 1, 2005, owners proposing to sell or otherwise dispose of a covered property at any time during the five years prior to the expiration of restrictions must provide this notice at least 12 months in advance unless such sale or disposition would result in preserving affordability.

Summary of Exemption From the State Notice Requirements

Owners and purchasers seeking to change the financing and restrictions but still planning to preserve or increase the level of affordability can be exempt from the notice requirements discussed above. However, owners proposing to terminate their project-based rental subsidy

contracts are not eligible for the exemption. The purpose of the exemption is to further encourage owners either to preserve the affordability of their property by refinancing and retaining it or to sell to buyers who will preserve the affordability.