



# HOUSING PRESERVATION NEWS

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## State Affordable Housing Law Made Permanent

(Written by the California Rural Legal Assistance Foundation & CHPC)

*Editor's Note: There was not much to cheer about in terms of pro-affordable housing legislation passed at either a state or federal level in 2010. However, thanks to a dedicated legislator and his staff who worked tirelessly to craft a compromise to extend an important law protecting California's existing affordable homes from conversion without notice, we do have one story we think is worth telling.*

### Background

In a series of steps taken in the late 1980s and early '90s, the state legislature enacted California's affordable housing preservation notice law in response to the looming prospect of tens of thousands of affordable housing units being lost through conversion to market-rate housing. The State Preservation Notice Law (Government Code Section 65863.10 *et seq.*) requires owners of rental properties of five or more units in which affordability protections are ending, to give notice to tenants and governmental entities that the units may convert to market-rate. It also provides an opportunity for a new preservation-minded owner to purchase the property and preserve the affordability.

### Negotiation Avoids a Veto and a Sunset

The Notice Law has long contained a "sunset" provision that terminates the statute after a given date unless new legislation is enacted to extend that date. In past years, the Notice Law's sunset date has been extended several times, but was scheduled to again sunset on January 1, 2011. In anticipation of this deadline, a group of housing preservation advocates--the California Coalition for Rural Housing, California Rural Legal Assistance Foundation and the California Housing Partnership--worked closely with Senate Transportation and Housing Committee staff to permanently extend the Law.

Given the very real possibility of opposition by apartment owners leading to a veto by the Governor, it was not clear at the beginning whether a deal could be struck. Luckily for all concerned, Senate Transportation and Housing Committee Chair Senator Lowenthal played a leadership role by convening the interested parties in a series of meetings to identify points of agreement and disagreement. With the help of his committee staff person, Mark Stivers, the parties were able to work through their differences, make concessions where needed and finally to reach agreement through consensus. With Senator Lowenthal's leadership, Senate Bill 454 (Lowenthal) was then approved in both chambers and signed into law by the Governor on September 27, 2010.

### Summary of Changes to the State Housing Notice Law

SB 454 made two important revisions to the Notice Law. First, rather than simply extending the sunset date for a few more years, SB 454 removed the sunset provision altogether, making the Law permanent. In addition, SB 454 made some important

substantive changes. Under the Law, the owner of a covered property must provide an opportunity to interested parties to submit an offer to purchase the property and retain the affordability of the units. If in response, an entity expresses interest in purchasing the property, the Notice Law requires the owner to provide certain detailed information about the property to the potential purchaser. This includes information such as monthly operating expenses, recent capital improvements, the amount of project reserves, physical inspection reports, rent rolls, and vacancy rates.

While all of this information is clearly needed to be able to make an offer to purchase a property, property owners objected that providing this sort of information on a mixed-income development in which the majority of the units are market-rate units unnecessarily exposes proprietary business information to potential competitors and rarely leads to a feasible preservation purchase offer. Owners also pointed out that in many cases they intended to keep the units affordable anyway and that it was burdensome and intrusive to have to provide detailed proprietary information when there was no chance of a sale occurring.

In response, supporters of the Notice Law agreed to accept limitations on information owners would have to provide in return for owners declaring their intent to maintain the affordability or sell their property in the initial notice requirements. Supporters of the Law also agreed to exempt certain mixed-income projects from the disclosure obligations altogether in recognition of the extreme unlikelihood that these properties would be purchased and maintained as affordable housing.

In particular SB454 made the following changes to the Notice Law:

- The notice which is sent to qualified preservation purchasers registered with the California Department of Housing and Community Development must now include statement as to whether the owner (1) intends to maintain the current number of affordable units and level of affordability, (2) has an interest in selling the property and (3) has extended or replaced the expiring subsidies in a manner that will maintain or deepen the current affordability levels. The owner will not be able to later choose to end the affordability of the units if the owner does not provide this information and agree to receive an offer to purchase, which triggers a right of first refusal that continues for the 12 months following the termination date.
- Established an exception to the requirement for owners to disclose financial information about the property (as detailed above) for any property in which less than 25 percent of the units are subject to affordability restrictions or a rent or mortgage subsidy contract. Owners that meet this exception must still issue the notice of opportunity to submit an offer and include information about their intentions.
- Prohibits owners or their representatives from requiring CHPC or a public entity to sign a confidentiality agreement as a condition of receiving the required information. This will allow CHPC to fulfill its role of serving as an information clearinghouse about these properties and matching interested nonprofit and local government purchasers with willing sellers. Please contact CHPC Housing Preservation Specialist Nadia Shihab for more information: [nshihab@chpc.net](mailto:nshihab@chpc.net) or 415-433-6804, extension 316.

SB 454's provisions took effect on January 1, 2011.

### **PRESERVATION SERVICES FOR NONPROFIT AND LOCAL GOVERNMENT STAFF**

CHPC provides technical assistance, and training to help nonprofit and government agencies build and preserve affordable homes for California families and seniors. For more information, please contact our Housing Preservation Specialist, Nadia Shihab at [nshihab@chpc.net](mailto:nshihab@chpc.net) or 415-433-6804 x 316, or our Housing Policy Manager, Marilyn Wacks at [mwacks@chpc.net](mailto:mwacks@chpc.net) or 415-433-6804 x 313.



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