

## **Article 8: Housing**

### **Division 10: Affordable Housing Preservation**

(“*Affordable Housing Preservation*” added 2-27-2025 by O-21917 N.S.; effective 3-29-2025.)

#### **§98.1001 Purpose and Intent**

The purpose and intent of this Division is to expand on applicable federal and state laws to preserve affordable housing and ensure housing opportunities for very low-, low-, and moderate-income households are not permanently removed from the housing stock. The requirements of this Division are in addition to, and are not intended to preempt, federal and state laws governing the *sale of assisted housing developments*, including California Government Code sections 65863.10, 65863.11, and 65863.13.

(“*Purpose and Intent*” added 2-27-2025 by O-21917 N.S.; effective 3-29-2025.)

#### **§98.1002 Application**

This Division shall not apply to any *owner selling* an *assisted housing development* within the five-year period before the expiration of rental restrictions or within the five years of being eligible for prepayment or termination, as described in California Government Code section 65863.11(c).

(“*Application*” added 2-27-2025 by O-21917 N.S.; effective 3-29-2025.)

#### **§98.1003 Definitions**

For purposes of this Division, defined terms appear in italics. The following definitions apply in this Division:

*Assisted housing development* means a multifamily rental housing development of five or more dwelling units that receives governmental assistance under any of the programs listed in California Government Code section 65863.10(a)(3), as may be amended.

*Deliver* or *delivery* means sent by registered or certified mail, return receipt requested.

*Local nonprofit organizations* has the same meaning as in California Government Code section 65863.11(a)(7), as may be amended.

*Local public agencies* has the same meaning as in California Government Code section 65863.11(a)(8), as may be amended.

*Owner* means a *person* that holds title to the land on which an *assisted housing development* is located. If the land on which the *assisted housing development* is located is the subject of a leasehold interest, *owner* also means a *person* that holds a leasehold interest.

*Person* has the same meaning as in San Diego Municipal Code section 11.0210.

*Profit-motivated housing organizations and individuals* has the same meaning as in California Government Code section 65863.11(a)(12), as may be amended.

*Qualified entity* means *tenant associations, local nonprofit organizations, local public agencies, regional or national organizations, regional or national public agencies, and profit-motivated housing organizations and individuals*, that are certified as qualified purchasers of *assisted housing developments* on the most recently published list maintained by the California Department of Housing and Community Development or successor entity responsible for the registry of qualified entities under state law.

*Regional or national organizations* has the same meaning as in California Government Code section 65863.11(a)(9), as may be amended.

*Regional or national public agencies* has the same meaning as in California Government Code section 65863.11(a)(10), as may be amended.

*Sale or sell* means any transfer of all or substantially all of an *owner's* interest in an *assisted housing development*.

*Tenant association* has the same meaning as in California Government Code section 65863.11(a)(4), as may be amended.

(“*Definitions*” added 2-27-2025 by O-21917 N.S.; effective 3-29-2025.)

## **§98.1004      Exemptions**

- (a) This Division does not apply to the following transactions involving an *assisted housing development*:
  - (1) government acquisition through eminent domain;
  - (2) forced *sale* pursuant to foreclosure or other operation of law;
  - (3) transfer by gift;
  - (4) transfer to a person included in the table of descent and distribution when an *owner* dies intestate or by devise pursuant to the terms of a will;

- (5) refinancing where the *owner* remains unchanged;
  - (6) exit of a limited partner in a tax credit limited partnership year 15 restructuring where there is no *sale* of the *assisted housing development* to a third-party;
  - (7) *sale* due to a financial emergency that exists, and the *owner* certifies, under the penalty of perjury, the existence of the financial emergency that requires immediate access to the proceeds of the *sale*; and
  - (8) *sale* to a *qualified entity* where there is an executed purchase agreement, regulatory agreements, or other instruments recorded against the property that impose affordability restrictions on the maximum rents that may be charged for dwelling units within the *assisted housing development*, and the *qualified entity* satisfies the requirements imposed on *qualified entities* under San Diego Municipal Code section 98.1007(d).
- (b) This Division does not apply to properties with affordability restrictions required by local affordable housing land use programs where 30 percent or fewer of the dwelling units within the property are restricted as affordable.

*(“Exemptions” added 2-27-2025 by O-21917 N.S.; effective 3-29-2025.)*

**§98.1005 Notice of Intent to Sell**

- (a) At least three months prior to any offering to *sell* an *assisted housing development*, the *owner* shall *deliver* a Notice of Intent to Sell to all *qualified entities* on the most recently published list of *qualified entities* maintained by the California Department of Housing and Community Development. Offering to *sell* includes listing a property with a real estate agent. The San Diego Housing Commission shall provide a hyperlink to the most recently published list of *qualified entities* on its website.
- (b) Concurrent with *delivery* under San Diego Municipal Code section 98.1005(a), the *owner* shall post a copy of the Notice of Intent to Sell in a conspicuous place in the common area of the *assisted housing development* to provide notice to its tenants. The San Diego Housing Commission shall post a copy of the Notice of Intent to Sell on its website.
- (c) A Notice of Intent to Sell shall contain the following:
  - (1) the address of the *assisted housing development*;
  - (2) the name and contact information of the *owner*;

- (3) a statement that the *owner* intends to *sell* the *assisted housing development* or a portion thereof;
  - (4) the intended date of offering to *sell*;
  - (5) a statement that specifically identifies all regulatory agreements or other instruments recorded against the property that limits the rent that may be charged for any of the dwelling units within the *assisted housing development*;
  - (6) a statement that *qualified entities* shall have an opportunity to purchase the *assisted housing development* and have a right of first refusal, as established in this Division; and
  - (7) a statement that *qualified entities* may request, in writing, all of the following information regarding the *assisted housing development*: itemized lists of monthly operating expenses; capital improvements made within the two preceding calendar years; the amount of project reserves; copies of the two most recent financial and physical inspection reports, if any, filed with federal, state, or local agencies; the most recent rent roll for the property that lists the rent paid for each unit and subsidy, if any, paid by a governmental agency as of the date of the Notice of Intent to Sell; the vacancy rate at the property for each of the two preceding calendar years; and the terms of assumable financing and subsidy contracts, if any. The *owner* shall provide the requested information within 15 days of receiving a *qualified entity*'s written request.
- (d) Any *qualified entity* may *deliver* a Letter of Interest to Acquire Assisted Housing Development to the *owner* within 30 days of *delivery* of the Notice of Intent to Sell.
  - (e) If the *owner* does not receive a Letter of Interest to Acquire Assisted Housing Development within 30 days of *delivering* a Notice of Intent to Sell, the *owner* may proceed with the intended *sale* of the *assisted housing development* to a third-party and has no further obligations under this Division.

(“*Notice of Intent to Sell*” added 2-27-2025 by O-21917 N.S.; effective 3-29-2025.)

**§98.1006 Qualified Entity Offer to Purchase**

- (a) Within 60 days of a *qualified entity* delivering a Letter of Interest to Acquire Assisted Housing Development, a *qualified entity* may submit to the *owner* a bona fide Offer to Purchase the *assisted housing development* at the market value determined by negotiation and agreement between the parties.
- (b) A bona fide Offer to Purchase means an offer to purchase that contains all of the following:
  - (1) the name, contact information, and form of organization of the *qualified entity*;
  - (2) the names and titles of the officers, directors, and similar persons in control of and principal investors in the *qualified entity*;
  - (3) a statement that the offeror is a *qualified entity* within the meaning of this Division; and
  - (4) the terms of the offer to purchase, including the purchase price, the proposed methods and terms of financing, the financing mechanisms by which the *qualified entity* will maintain the affordability of the *assisted housing development*, and any other terms of purchase.
- (c) If the *owner* receives a bona fide Offer to Purchase from a *qualified entity* and wishes to *sell*, the *owner* may accept any offer submitted by a *qualified entity* that meets the requirements of this Division and execute a purchase agreement for the *assisted housing development* within 30 days of offer acceptance. If multiple *qualified entities* submit bona fide Offers to Purchase that meet the requirements of this Division, the *owner* may accept any such offer.
- (d) Once a purchase agreement is executed, the *owner* and *qualified entity* have 120 days to close escrow, unless a different timeline is mutually agreed to by the parties. Prior to the close of escrow, the *qualified entity* shall satisfy the requirements imposed on *qualified entities* under San Diego Municipal Code section 98.1007(d).
- (e) If the *owner* rejects all bona fide Offers to Purchase received from *qualified entities* that meet the requirements of this Division, the *owner* shall comply with the right of first refusal requirements in San Diego Municipal Code section 98.1007.

- (f) If the *owner* does not receive any bona fide Offers to Purchase from *qualified entities*, the *owner* may proceed with the intended *sale* of the *assisted housing development* to a third-party and has no further obligations under this Division.

(“*Qualified Entity Offer to Purchase*” added 2-27-2025 by O-21917 N.S.; effective 3-29-2025.)

**§98.1007 Qualified Entity Right of First Refusal**

- (a) Upon the *owner*’s rejection of all bona fide Offers to Purchase received from *qualified entities* and the *owner*’s intent to accept a third-party’s offer to purchase the *assisted housing development*, the *owner* shall first *deliver* a Notice of Right of First Refusal to all the *qualified entities* whose offers were rejected. A *qualified entity* has seven days from *delivery* of the Notice of Right of First Refusal to submit a counteroffer to the *owner* to purchase the *assisted housing development* on substantially the same terms and conditions as the pending third-party offer to purchase.
- (b) A Notice of Right of First Refusal shall contain all of the following:
- (1) the address of the *assisted housing development*;
  - (2) the name and contact information of the *owner*;
  - (3) a statement of the *owner*’s intention to accept an offer to purchase from a third-party;
  - (4) the terms and conditions of the pending third-party offer to purchase the *assisted housing development*; and
  - (5) a statement that the *qualified entity* has seven days to submit a counteroffer to purchase the *assisted housing development* on substantially the same terms and conditions as the pending third-party offer.
- (c) The *owner* shall accept a *qualified entity*’s counteroffer made under section 98.1007 and shall execute a purchase agreement for the *assisted housing development* within 30 days of offer acceptance. If multiple *qualified entities* submit counteroffers that meet the requirements of section 98.1007, the *owner* may accept any such offer.
- (d) Once a purchase agreement is executed, the *owner* and *qualified entity* have 120 days to close escrow, unless a different timeline is mutually agreed to by the parties. Prior to the close of escrow, the *qualified entity* shall:

- (1) Obligate itself and any successors in interest to maintain the existing affordability of the *assisted housing development* for very low-, low-, or moderate-income households on substantially the same terms and conditions; and
- (2) Commit to renew governmental assistance or subsidies, if available and economically feasible, to maintain the affordability of the *assisted housing development* for its remaining useful life; and
- (3) Agree to record a deed restriction that documents the maximum rents that may be charged for dwelling units within the *assisted housing development* and other use restrictions that shall be binding on the *qualified entity* and its successors in interest and assigns; and
- (4) If the *qualified entity* is a *local nonprofit organization* or *local public agency*, ensure no officers or directors will have a financial interest in the *assisted housing development* to be purchased.

(“*Qualified Entity Right of First Refusal*” added 2-27-2025 by O-21917 N.S.; effective 3-29-2025.)

## **§98.1008 Enforcement**

Any *qualified entity* entitled to notice and an opportunity to purchase an *assisted housing development* under this Division may bring an action for injunctive relief, damages, or any other remedy. In any judicial action brought to enforce this Division, the court may award reasonable attorney’s fees and costs to a *qualified entity*.

(“*Enforcement*” added 2-27-2025 by O-21917 N.S.; effective 3-29-2025.)