

State of Illinois and City of Chicago Preservation Policy Summaries

Illinois Federally Assisted Housing Preservation Act 310 ILCS 60/1 et seq.

Purpose of the Act:

- Preserve federally assisted housing that is at risk of losing use restrictions attached to the units keeping them affordable.
- Upon certain triggering events, the Act gives Tenant Associations new rights to purchase their buildings to keep the units affordable.
- Tenants may act on their own, in partnership with a developer, or assign their rights to a developer.

Covered Housing Programs:

- Any project-based rental assistance program under Section 8 of the 1937 Housing Act
- BMIR Section 221(d)(3) units
- Section 236 of the National Housing Act
- Section 202 of the National Housing Act
- Section 101 of the Housing and Urban Development Act of 1965
- Rural rental housing under Sections 514 and 515 of the Housing Act of 1949
- The low income housing tax credit program under § 42 of the Internal Revenue Code

Triggering Events:

Owners of covered housing must comply with this law when any of the following events would cause the building to exit the affordable housing program.

- Prepayment or refinancing of any federally insured or federally held mortgage
- Cancellation of mortgage insurance on assisted housing
- Termination or expiration of a development's participation in a federal subsidy program
- Termination or expiration of a development's affordability restrictions

The law is not triggered if the affordable housing program will not end (e.g. through a sale to a preservation buyer).

Requirements under the Act:

- **Notice of intent to sell or termination of subsidy.** At least 12 months prior to the triggering event, the owner must give notice to the tenants, IHDA, mayor, and local PHA.
 - In the notice, tenants are notified that they have the right to form a tenant association that could purchase the property. "Tenant Association" is defined as a group consisting of a majority of the tenants in the development.

- Tenants have 60 days to notify the owner that they have formed a tenant association and are executing their rights under the Act.
 - After this notice is sent, tenants could enter into an agreement with a preservation buyer to assign their rights to. If they choose to do this, the agreement must provide that the preservation buyer will maintain the property as affordable housing and explain the length of that commitment
- **Offer for sale to Tenant Association.** After an owner receives a notice from the Tenant Association, the owner must make a bona fide offer to sell the property within 60 days. The offer must include the purchase price and terms and conditions of sale.
- **Notice of intent to purchase.** The Tenant Association or its designee then has 90 days to notify the owner of its intention to purchase the property.
- **Bona fide offer to purchase; contract.** The Tenant Association will have an additional 90 days to make a bona fide purchase offer. The seller must cooperate to ensure an agreement can be made.
 - If the seller and buyer cannot agree to a fair purchase price, they can hire appraisers to determine what the fair market value of the property is, based on its highest and best use without any affordability restrictions.

Consequences of Noncompliance:

- If at any point the Tenant Association fails to meet its deadlines, the owner is released from all obligations under the Act.
- Both the Tenant Association and any individual tenant may sue the owner for violating the Act, and the owner must pay \$500 per tenant, plus attorney's fees.
- Owners, who do not comply with the state and local laws, will also be in noncompliance with HUD.

City of Chicago Affordable Housing Preservation Ordinance (AHPO)

Purpose of the Ordinance:

- Preserve federally assisted housing that is at risk of losing use restrictions attached to the units keeping them affordable.
- City Ordinance is second step in preserving use restriction if tenants do not exercise their rights under the State Act described above.

Covered Housing Programs:

- Same as the State Act above

Triggering Events:

- Same as the State Act above

Requirements under the Ordinance:

- **Notification to department.** Requires owners of federally subsidized rental housing to notify the Department of Planning and Development (DPD) at least 12 months before the development's affordability restrictions expire or are terminated.
 - Owners need to fill out the [AHPO Owner Notice Form](#) and submit it along with the required attachments to DPD.
 - This allows time for the department to solicit bids from pre-qualified, affordable housing developers to purchase the property and maintain it as affordable housing should tenants opt not to exercise their rights under state law to purchase the development.
- **Contingent sales agreement – Right of first refusal.** If tenants do not exercise their rights under the State Act, a qualified developer has 120 days after initial notice to make a bona fide offer to purchase the property.
 - An owner may negotiate with any non-qualified developer, but any agreement of sale executed between parties will be contingent upon the right of first refusal of a qualified developer.
 - An owner is required to provide the commissioner with a copy of the contingent sales agreement, which will be made available to all qualified developers for consideration.
 - If the qualified developer makes an identical offer to a non-qualified developer, the parties have 120 days to close on the sale of the property. If the qualified developer fails to close on the sale within 120 days, the owner may sell the property to the non-qualified developer.

Consequences of Noncompliance:

- Any violation of the ordinance will result in a fine not less than \$200 nor more than \$1,000 for each offense. Each day that a violation continues will constitute a separate and distinct offense to which a separate fine will apply.
- Any tenant or tenant association may enforce the provisions of the ordinance by means of a civil action in which the court may provide injunctive relief or award treble damage and the plaintiff's court costs and reasonable attorney fees.
- Owners, who do not comply with the state and local laws, will also be in noncompliance with HUD.