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**SENATE COMMITTEE ON HOUSING**  
**Senator Nancy Skinner, Chair**  
**2023 - 2024 Regular**

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**Bill No:** AB 2926 **Hearing Date:** 6/18/2024  
**Author:** Kalra  
**Version:** 2/15/2024 Introduced  
**Urgency:** No **Fiscal:** Yes  
**Consultant:** Max Ladow

**SUBJECT:** Planning and zoning: assisted housing developments: notice of expiration of affordability restrictions

**DIGEST:** This bill changes the Preservation Notice Law (PNL) to: (1) require an owner of an assisted housing development to accept a bona fide offer from a qualified entity to purchase and to execute a purchase agreement, or to record a new regulatory agreement with a term of at least 30 years that meets specified requirements; (2) delete the option for an owner to decline to sell the property; and (3) make other clarifying changes.

**ANALYSIS:**

*Existing law:*

- 1) Defines various terms, pursuant to PNL, including:
  - a) “Assisted housing development” means a multifamily rental housing development of five or more units that receives governmental assistance under any of specified housing programs, including project-based Housing Choice (Section 8) vouchers, low-income housing tax credits, redevelopment funds, and density bonus developments;
  - b) “Expiration of rental restrictions” means the expiration of rental restrictions for an assisted housing development, unless the development has other recorded agreements restricting the rent to the same or lesser levels for at least 50% of the units; and
  - c) “Termination” means an owner’s decision not to extend or renew its participation in a federal, state, or local government subsidy program or private, nongovernmental subsidy program for an assisted housing development, either at or prior to the scheduled date of the expiration of the contract, that may result in an increase in tenant rents or a change in the form of the subsidy from project-based to tenant-based.

- 2) Establishes PNL, which requires an owner proposing the termination or prepayment of governmental assistance or the owner of an assisted housing development in which there will be the expiration of rental restrictions, at least 12 months prior to the anticipated date of the termination, expiration, or prepayment, to provide a notice of the proposed change to each affected tenant household residing in the assisted housing development and to the affected public entities. Exempts from this notice requirement an owner who records a new regulatory agreement at the close of escrow of the sale of the property and who complies with specified requirements. Requires the notice to include specified information.
- 3) Establishes that injunctive relief shall be available to any affected public entities or affected tenants who are aggrieved by a violation of (2) and other specified notice requirements.
- 4) Prohibits an owner of an assisted housing development from terminating a subsidy contract or prepaying a mortgage unless the owner or its agent has first provided specified preservation entities an opportunity to submit an offer to purchase the development. Requires an owner of an assisted housing development in which there will be an expiration of rental restrictions to provide the same entities an opportunity to submit an offer to purchase the development. Exempts from this first opportunity to purchase requirement an owner who records a new regulatory agreement at the close of escrow of the sale of the property and who complies with specified requirements.
- 5) Prohibits an owner of an assisted housing development from selling or otherwise disposing of the development at any time within the five years before the expiration of rental restrictions or at any time if the owner is eligible for prepayment or termination within five years unless the owner or its agent has first provided specified preservation entities an opportunity to submit an offer to purchase the development. Exempts an owner from this first opportunity to purchase requirement who records a new regulatory agreement at the close of escrow of the sale of the property and who complies with specified requirements.
- 6) Requires a preservation entity to do all of the following to qualify as a purchaser of an assisted housing development:
  - a) Be certified by HCD, based on demonstrated relevant prior experience in California and current capacity, as capable of operating the housing and related facilities for its remaining useful life, either by itself or through a management agent. Requires HCD to establish a process for certifying

- qualified entities and maintain a list of entities that are certified, which must be updated at least annually;
- b) Agree to obligate itself and any successors in interest to maintain the affordability of the assisted housing development for households of very low, low, or moderate income for either a 30-year period from the date that the purchaser took legal possession of the housing or the remaining term of the existing federal government assistance, whichever is greater.
- 7) Requires an owner who decides to terminate a subsidy contract, prepay the mortgage, or sell or otherwise dispose of the assisted housing development, or if the owner has an assisted housing development in which there will be the expiration of rental restrictions, to first give notice of the opportunity to offer to purchase to each qualified entity on the list provided to the owner by HCD, as well as to those qualified entities that directly contact the owner. The notice of the opportunity to offer to purchase must be given before or concurrently with the notice required under 2) for a period of at least 12 months.
- 8) Requires a qualified entity that elects to purchase an assisted housing development to make a bona fide offer to purchase the development at the market value. A qualified entity's bona fide offer to purchase shall be submitted within 180 days of the owner's notice of the opportunity to submit an offer pursuant to 7), identify whether it is a tenant association, nonprofit organization, public agency, or profit-motivated organizations or individuals, and certify, under penalty of perjury, that it is qualified. If an owner has received a bona fide offer from one or more qualified entities within the first 180 days from the date of an owner's notice under 7), the owner must notify HCD of all such offers and either accept a bona fide offer from a qualified entity to purchase, or declare under penalty of perjury in writing to the qualified entity or entities and HCD that, if the property is not sold during the first 180-day period or a second 180-day period, it will not sell the property for at least five years after the end of the second 180-day period.
- 9) Requires an owner who declines to sell a property to a qualified entity to record the declaration with the county in which the property is located immediately after the end of the second 180-day period.
- 10) Allows an owner, during the 180-day period following the initial 180-day period required under 8), to accept an offer from a non-qualifying person or entity. This acceptance shall be made subject to the owner's providing each qualified entity that made a bona fide offer the first opportunity to purchase the development at the same terms and conditions as the pending offer to purchase, unless these terms and conditions are modified by mutual consent. The owner

must notify in writing HCD and those qualified entities of the terms and conditions of the pending offer to purchase. A qualified entity shall have 30 days from the date the notice is mailed to submit a bona fide offer to purchase, and that offer must be accepted by the owner. The owner is not required to comply with these requirements if the person or the entity making the offer during this time period agrees to maintain the development for persons and families of very low, low, and moderate income.

11) Requires HCD, among other things, to undertake the following responsibilities:

- a) Monitor compliance with the PNL by owners of assisted housing developments and provide a report to the Legislature on or before December 31 of each year that includes specified information relating to properties and units subject to the PNL;
- b) Require owners of assisted housing developments in which at least 25% of the units on the property are subject to affordability restrictions or a rent or mortgage subsidy contract to certify compliance with the PNL annually to HCD, under penalty of perjury, in a form as required by HCD; and
- c) Refer violations of the PNL to the Attorney General for appropriate enforcement action.

12) Exempts from specified sections of the PNL the following:

- a) An assisted housing development in which 25% or less of the units are subject to affordability restrictions; and
- b) An assisted housing development in which 25% or less of the units are subject to affordability restrictions that was developed in compliance with a local ordinance, charter amendment, specific plan, resolution, or other land use policy or regulation requiring that a housing development contain a fixed percentage of affordable units.

13) Exempts from the notice and opportunity to purchase requirements of the PNL an owner who includes specified conditions in a regulatory agreement that has been or will be recorded against the property at the close of escrow of the sale of the property and the owner complies with those conditions during the escrow period.

**This bill:**

- 1) Revises the definition of “assisted housing development” to include assistance provided by counties or cities in exchange for restrictions on the maximum rents that may be charged for units within a multifamily rental housing

development and on the maximum tenant income as a condition of eligibility for occupancy of the unit subject to the rent restriction, as reflected by a recorded agreement or other legally enforceable agreement with a county or city, including housing created pursuant to the following:

- a) The Middle Class Housing Act of 2022;
  - b) Streamlining assistance pursuant to the Affordable Housing and High Road Jobs Act of 2022;
  - c) The streamlined, ministerial process for mixed-income developments pursuant to SB 423 (Wiener, Chapter 778, Statutes of 2023); and
  - d) The Affordable Housing on Faith and Higher Education Lands Act of 2023.
- 2) Revises the definition of “expiration of rental restrictions” to mean the expiration of rental restrictions for an assisted housing development unless the development has other recorded agreements restricting the rent to the same or lesser levels for the same number of units, rather than at least 50% of the units.
  - 3) Revises the definition of “termination” to mean the failure of an owner to extend or renew its participation in a subsidy program as specified for an assisted housing development, either at or prior to the scheduled date of the expiration of the contract, that may result in an increase in tenant rents or a change in the form of the subsidy from project-based to tenant-based.
  - 4) Adds a definition of “qualified entity” to the PNL, which means an entity to whom an opportunity to purchase must be provided and that meets specified requirements.
  - 5) Requires the existing notice that must be provided by an owner of an assisted housing development at least 12 months prior to the anticipated date of the termination of a subsidy contract, expiration of rental restrictions, or prepayment, to specify whether the owner might increase rents during the 12 months following the anticipated date rather than whether they intend to increase rents during that period to a level greater than permitted under existing federal Low-Income Housing Tax Credit law.
  - 6) Requires, at least six months prior to the anticipated date of termination of expiring affordable rental properties, the existing notice to the tenants provided by the owner to also include a statement that the owner shall accept all enhanced Section 8 vouchers if the tenants receive them.
  - 7) Revises the existing requirement for owners of assisted housing developments that are within three years of a scheduled expiration of rental restrictions to

provide notice of the scheduled expiration of rental restrictions to prospective tenants, existing tenants, and affected public entities, to also apply the notice obligation to owners of assisted housing developments that are within three years of a scheduled termination of a subsidy contract.

- 8) Clarifies that the injunctive, legal, and equity relief currently available to affected public entities and affected tenants, as defined, for a violation of specified sections of the PNL includes, but is not limited to, a group of affected tenants that meets the requirements of a legitimate tenant organization, as defined in federal regulations, or a tenant association, as defined.
- 9) Increases from 180 to 270 days the time period during which a qualified entity's bona fide offer to purchase an assisted housing development at market value must be submitted after the owner's notice of the opportunity to submit an offer.
- 10) Requires an owner who has received a bona fide offer from one or more qualified entities within the first 270 days from the notice of opportunity date to notify the Department of Housing and Community Development (HCD) of all such offers within 90 days, and either accept a bona fide offer from a qualified entity to purchase and execute a purchase agreement, or record a new regulatory agreement with a term of at least 30 years that, at a minimum, meets specified criteria relating to preserving the affordability of the property.
- 11) Deletes the option, during the 180-day period following the initial 180-day notice of opportunity period, for an owner to accept an offer from a person or an entity that does not qualify under the parameters of 8), and the requirement that any such acceptance must be made subject to the owner's providing each qualified entity that made a bona fide offer the first opportunity to purchase the development at the same terms and conditions as the pending offer to purchase, unless those terms and conditions are modified by mutual consent. Further deletes the requirement for the owner to notify HCD and those qualified entities in writing of the terms and conditions of the pending offer to purchase, and repeals the 30-day window during which a qualified entity shall have the opportunity to submit a bona fide offer to purchase and which must be accepted by the owner. Deletes an exemption to this paragraph that an owner is not required to comply with these provisions if the person or entity making the offer during this time period agrees to maintain the affordability of the development for at least 30 years or as specified.
- 12) Requires owners of assisted housing developments in which at least 5% of the units on the property, rather than 25% in current law, are subject to affordability

restrictions or a rent or mortgage subsidy contract to certify compliance with the PNL to HCD annually, under penalty of perjury, in a form as required by HCD.

- 13) Prohibits an owner from utilizing the current law exemption from the PNL notice requirement if they terminate a tenancy of a low-income household due to a planned renovation of the property during the escrow period.
- 14) Deletes the option for an owner to declare under penalty of perjury in writing to the qualified entity or entities and HCD that, if the property is not sold under the PNL during specified timeframes, that the owner will not sell the property for at least five years after the end of such timeframes.
- 15) Deletes the option for an owner to decline to sell a property to a qualified entity except for the circumstances in 10).
- 16) Makes clarifying and technical changes.

#### COMMENTS:

- 1) *Author's Statement.* "Subsidized housing is disappearing faster than we can build new housing. AB 2926 will help preserve our existing affordable housing by ensuring we keep these homes from converting to market rate. A recent report by the California Housing Partnership shared that between 1997 and 2022, California lost 22,078 affordable homes due to expired regulatory restrictions on government-assisted homes, which owners then decided to opt out of the restrictions, sell, or convert to market rate. Furthermore, another 4,749 affordable homes are at high risk of being lost in the next year, and 31,309 more over the next ten years. At a time when our state is facing a housing crisis, we must take proactive measures to preserve our affordable housing while continuing to build more to keep families from being displaced. There will be no harm or money loss to the owner who has benefited from the public subsidy. Property owners under this measure will still receive a fair market price and the policy will ensure homes are sold to a preservation buyer or re-restricted as affordable housing. As California is in the midst of a housing crisis, AB 2926 is a forward-looking measure that will preserve existing subsidized housing and keep people in their homes."
- 2) *California's Housing Crisis.* California is in the midst of a severe housing crisis. Over two-thirds of low-income renters are paying more than 30% of their income toward housing, a "rent burden" that means they have to sacrifice other essentials such as food, transportation, and health care.<sup>1</sup> In 2023, over

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<sup>1</sup> <https://chpc.net/housingneeds/>

181,000 Californians experienced homelessness on a given night, with a sharp increase in the number of people who became homeless for the first time.<sup>2</sup> The crisis is driven in large part by the lack of affordable rental housing for lower income people. According to the California Housing Partnership's (CHP) Housing Need Dashboard, in the current market, nearly 2 million extremely low-income and very low-income renter households are competing for roughly 687,000 available and affordable rental units in the state. Over three-quarters of the state's extremely low-income households and over half of the state's very low-income households are severely rent burdened, paying more than 50% of their income toward rent each month. CHP estimates that the state needs an additional 1.2 million housing units affordable to very low-income Californians to eliminate the shortfall.<sup>3</sup> By contrast, production in the past decade has been under 100,000 housing units per year – including less than 10,000 units of affordable housing per year.<sup>4</sup>

- 3) *Preservation of housing affordability.* Since the 1960s, developers have constructed at least 425,000 units of affordable rental housing in California with the assistance of federal, state, and local subsidies that require owners to maintain rents at affordable levels for specified periods of time. Examples of such subsidy programs include project-based Housing Choice Vouchers (Section 8), mortgages, low-income housing tax credits, state housing programs under HCD, and city and county redevelopment funds. The affordability restrictions on assisted units typically last 30 to 55 years, depending on the program. Once affordability obligations expire, owners may preserve the affordability of the units by renewing assistance or by refinancing with new public subsidies, or they may convert the development to market rate. Under some federal programs, owners can also terminate affordability restrictions early by prepaying the underlying mortgage early or opting out of the rental assistance contract.

The California Housing Partnership Corporation (CHPC) annually assesses the loss, and the risk of loss, of affordable rental properties that receive public financing. As of April 2024, between 1997 and 2023, California lost 19,249 affordable homes with project-based rental assistance contracts and/or loans from HUD, CalHFA, and HCD, or LIHTC, due to owner decisions to opt out, sell, or allow their developments to convert to market rate. Another 33,910 affordable rental homes – or 6% of the total current supply – are at risk of conversion in the next 10 years, and 7,350 homes may no longer be affordable as soon as next year. Nearly 60% of these at-risk homes serve seniors and

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<sup>2</sup> <https://www.huduser.gov/portal/datasets/ahar/2023-ahar-part-1-pit-estimates-of-homelessness-in-the-us.html>

<sup>3</sup> <https://chpc.net/housingneeds/>

<sup>4</sup> <https://www.hcd.ca.gov/policy-research/housing-challenges.shtml>



people with disabilities, and Los Angeles, San Francisco, San Diego, and Orange Counties account for more than half more than half of all at-risk units (20,351 units).

Preserving affordable housing is a key strategy for protecting the state's limited affordable housing stock and preventing displacement of lower income tenants. Such preservation typically occurs when these units are purchased by a government entity or nonprofit that then extends the affordability covenants. CHPC estimates the average cost to purchase an affordable housing unit and maintain the affordability is \$270,000, about half of the cost to build a new affordable housing unit.

- 4) *PNL*. California's PNL requires owners of affordable housing looking to convert to market rate to give notice of the opportunity to submit a purchase offer at full market value one year in advance to potential buyers interested in preserving affordability, as well as to notify tenants and the state and local government of the impending affordability expirations. Over the first six months, owners may only sell to a preservation buyer. In the following six months, preservation buyers who submitted a purchase offer have a right of first refusal to match any other offer. However, because owners are not obligated to sell at all, they can instead hold the property, commit to not selling for an additional five years, and after the five years has elapsed, can convert the property to market rate, displacing existing low-income tenants in the process. In general, an owner is exempt from both the notice requirements and priority purchase provisions if they or a successor owner agree to retain existing tenants and extend the affordability of the units for at least 30 years. HCD is obligated to monitor compliance with the law, and the PNL allows affected tenants and local governments the right to enforce the law via legal remedies.

This bill amends various provisions of the PNL, with the most significant change being deleting the option for an owner to hold on to the property for five years; instead, owners of assisted developments with expiring affordability restrictions will be required either to sell the property to a qualified preservation buyer at fair market value, or to re-restrict the development as affordable housing for at least another 30 years. Other notable changes include:

- a) Updating the list of affordable housing programs covered by the law to include recently enacted streamlining legislation;
- b) Prohibiting an owner seeking an exemption from notice and sale requirements from terminating a tenancy due to a planned renovation during escrow;

- c) Requiring an owner, in the 12-month notice to tenants, to state whether any rent increases may occur, as opposed to just rent increases in excess of Low-Income Housing Tax Credit limits;
- d) Requiring an owner, in the 6-month notice to tenants, to state that they will accept enhanced Section 8 vouchers if existing tenants receive them;
- e) Requiring owners of developments with at least 5% affordable units, as opposed to 25%, to certify compliance with the law annually; and
- f) Clarifying that tenant associations, not just individual tenants, may enforce the law.

These changes are intended to increase the chances that thousands of affordable homes at risk of conversion will be preserved, reduce the displacement of existing low-income residents, and prevent the state’s already large shortage of affordable rental homes from growing.

5) *Double referral.* This bill was also referred to the Judiciary Committee.

**RELATED LEGISLATION:**

**AB 1521 (Bloom, Chapter 377, Statutes of 2017)** — strengthened the PNL by requiring an owner of an assisted housing development to accept a bona fide offer to purchase from a qualified purchaser, if specified requirements are met, and by giving HCD additional enforcement authority.

**FISCAL EFFECT:** Appropriation: No    Fiscal Com.: Yes    Local: Yes

**POSITIONS:** (Communicated to the committee before noon on Wednesday, June 12, 2024.)

**SUPPORT:**

California Housing Partnership (Co-Sponsor)  
California Rural Legal Assistance Foundation (Co-Sponsor)  
National Housing Law Project (Co-Sponsor)  
California Housing Consortium  
East Bay Housing Organizations  
Housing California

**OPPOSITION:**

None received

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