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## AB-2926 Planning and zoning: assisted housing developments: notice of expiration of affordability restrictions. (2023-2024)

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### Assembly Bill No. 2926

#### CHAPTER 281

An act to amend Sections 65863.10, 65863.11, and 65863.13 of the Government Code, relating to land use.

[ Approved by Governor September 19, 2024. Filed with Secretary of State September 19, 2024. ]

#### LEGISLATIVE COUNSEL'S DIGEST

AB 2926, Kalra. Planning and zoning: assisted housing developments: notice of expiration of affordability restrictions.

(1) Existing law, the Planning and Zoning Law, requires an owner of an assisted housing development proposing the termination of a subsidy contract or prepayment of governmental assistance or of an assisted housing development in which there will be the expiration of rental restrictions to provide a notice of the proposed change to each affected tenant household residing in the assisted housing development, as specified. The Planning and Zoning Law defines "assisted housing development" for these purposes to mean a multifamily rental housing development of 5 or more units that receives governmental assistance under any of specified programs, including assistance provided by counties or cities under specified law in exchange for restrictions on the maximum rents, as specified, and on the maximum tenant income, as specified. The Planning and Zoning Law defines a "termination" for these purposes to mean an owner's decision 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, as specified. The Planning and Zoning Law defines the "expiration of rental restrictions" for these purposes to mean the expiration of rental restrictions for an assisted housing development, as specified, unless the development has other recorded agreements restricting the rent to the same or lesser levels for at least 50% of the units.

This bill would instead impose the above-described notice requirement on an owner prior to the anticipated date of termination of a subsidy contract or expiration of rental restrictions or prepayment on an assisted housing development, as specified. The bill would expand the definition of "assisted housing development" to include a development that receives assistance from counties or cities in exchange for affordability restrictions, as described above, pursuant to the Middle Class Housing Act of 2022; streamlining assistance pursuant to the Affordable Housing and High Road Jobs Act of 2022; specified law providing a streamlined, ministerial approval process for certain housing developments; or the Affordable Housing on Faith and Higher Education Lands Act of 2023. The bill would revise the definition of "termination" for these purposes to instead mean the failure of an owner to extend or renew its participation in the above-described programs, as specified. The bill would also revise the definition of "expiration of rental restrictions" to instead exclude an expiration in a development that has other recorded agreements restricting the rent to the same or lesser levels for at least 50% of the units or the same number of units, as specified, whichever is greater.

The Planning and Zoning Law requires an owner to include in the above-described notice certain information, as specified, including among other things, in the event of prepayment, termination, or the expiration of rental restrictions, whether the owner intends to increase rents during the 12 months following prepayment, termination, or the expiration of rental restrictions to a level greater than permitted under a specified provision of the Internal Revenue Code, relating to low-income housing tax credits. At

least 6 months prior to the anticipated date of termination of a subsidy contract, expiration of rental restrictions or prepayment on an assisted housing development, the Planning and Zoning Law requires an owner described above to provide a notice of the proposed change to each affected tenant household residing in the assisted housing development at the time the notice is provided and to the affected public entities that includes, among other things, a statement of the owner's intention to participate in any current replacement subsidy program made available to affected tenants. The Planning and Zoning Law requires an owner of an assisted housing development that is within 3 years of a scheduled expiration of rental restrictions to provide notice of the scheduled expiration of rental restrictions to any prospective tenant at the time the prospective tenant is interviewed for eligibility, and to existing tenants, as specified.

This bill, for the 12-month notice described above, would instead require an owner in the event of prepayment, termination, or the expiration of rental restrictions, to include in the above-described notice, as specified, whether the owner might increase rents during the 12 months following prepayment, termination, or the expiration of rental restrictions, regardless of whether that increase would be to a level greater than permitted under the above-described provisions of federal law. The bill would also require that the 6-month notice, as described above, additionally include a statement that the owner shall accept all enhanced Section 8 vouchers if the tenants receive them. The bill would additionally require an owner of an assisted housing development that is within 3 years of a scheduled termination of a subsidy contract to provide notice of the scheduled termination of a subsidy contract to any prospective tenant at the time the prospective tenant is interviewed for eligibility, and to existing tenants, as specified.

The Planning and Zoning Law provides for injunctive relief to any specified party who is aggrieved by a violation of these provisions.

This bill would specify that the parties who may obtain injunctive relief under these provisions include, but are not limited to, affected tenants that meet the requirements of a legitimate tenant organization, as defined in federal regulations, or a tenant association, as defined.

(2) The Planning and Zoning Law requires an owner of an assisted housing development, as defined, to give notice, as specified, prior to the anticipated date of the termination of a subsidy contract, the expiration of rental restrictions, or prepayment on an assisted housing development, to specified entities, except as provided. The Planning and Zoning Law prohibits an owner from terminating a subsidy contract or prepayment of a mortgage unless the owner or its agent has provided specified entities an opportunity to submit an offer to development, as specified. To qualify as a purchaser of an assisted housing development for these purposes, the Planning and Zoning Law requires specified entities to meet certain requirements, including, among other things, to be certified by the Department of Housing and Community Development (department), as specified. The Planning and Zoning Law requires the department to establish a process for certifying qualified entities and to maintain a list of entities that are certified, as specified.

This bill would define a "qualified entity" for these purposes to mean an entity that is a specified entity that meets the requirements described above. The bill would also revise the requirement for the department to establish the above-described certification process to clarify that the department is required to establish a process to certify entities meeting the requirements under existing law to have the opportunity to purchase an assisted housing development.

The Planning and Zoning Law requires a qualified entity that elects to purchase an assisted housing development under these provisions to make a bona fide offer, as provided, within 180 days of the owner's notice. 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 bona fide notice of the opportunity to accept a bona fide offer from a qualified entity, the Planning and Zoning Law requires an owner to notify the department of those offers and either accept a bona fide offer from a qualified entity to purchase or declare under penalty of perjury that, if the property is not sold pursuant to these provisions within 2 180-day periods, the owner will not sell the property for at least 5 years, as specified. When one or more bona fide offers to purchase have been made, as specified, and the owner wishes to sell, the Planning and Zoning Law requires the owners to accept the bona fide offer that meets the requirements of these provisions and execute a purchase agreement within 90 days of receipt of the offer. The Planning and Zoning Law authorizes an owner to accept an offer from a person or an entity that does not qualify as a purchaser of an assisted housing development during the 180-day period following the initial 180-day period, as specified.

This bill would extend the period in which a qualified entity may make a bona fide offer under these provisions from 180 days to 270 days. The bill would require that notification to the department of one or more bona fide offers be made within 90 days. The bill would delete the above-described requirement that applies when one or more bona fide offers to purchase have been made and the owner wishes to sell and would, instead, revise the option for the owner to accept the bona fide offer to require that the owner execute a purchase agreement. The bill would delete the option for an owner to declare that it will not sell the property for 5 years, as described above, and would instead authorize the owner to record a new regulatory agreement with a term of at least 30 years, as specified. If an owner does not receive a bona fide offer from one or more qualified entries within 270, or if after the 270 days all bona fide offers are withdrawn, the bill would authorize the owner to do any of specified actions, including selling the

property to any buyer. The bill would delete the above-described authorization for an owner to accept an offer from a person or entity that does not qualify as a purchaser after the initial 180-day period.

The Planning and Zoning Law requires owners of assisted housing development 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 these provisions and other applicable law annually, under penalty of perjury, in a form as required by the department.

This bill would expand this requirement to apply to owners of an assisted housing development in which at least 5% of the units on the property are subject to affordability restrictions or a rent or mortgage subsidy contract. The bill would make a conforming change in this regard. By expanding the requirement to certify compliance to apply to additional owners of assisted housing developments thereby expanding the scope of the crime of perjury, this bill would impose a state-mandated local program.

The Planning and Zoning Law authorizes the enforcement of these provisions by any qualified entity entitled to exercise the opportunity to purchase and right of first refusal, any tenant association at the property, or any affected public entity that has been adversely affected by an owner's failure to comply with these provisions, as specified.

The bill would additionally authorize enforcement of these provisions by a group of affected tenants that meets the requirements of a legitimate tenant organization, as specified, and would define tenant organization for this purpose, as specified.

(3) The Planning and Zoning law exempts an owner from providing the above-described notices if certain conditions are contained in a regulatory agreement, as specified, including a prohibition against the owner terminating a tenancy of a low-income household at the end of a lease term without demonstrating a breach of the lease.

This bill would additionally require that this regulatory agreement include a prohibition against an owner terminating a tenancy of a low-income household due to a planned renovation of the property.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

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## THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

**SECTION 1.** Section 65863.10 of the Government Code is amended to read:

**65863.10.** (a) As used in this section, the following terms have the following meanings:

(1) "Affected public entities" means the mayor of the city in which the assisted housing development is located, or, if located in an unincorporated area, the chair of the board of supervisors of the county; the appropriate local public housing authority, if any; and the Department of Housing and Community Development.

(2) "Affected tenant" means a tenant household residing in an assisted housing development, as defined in paragraph (3), at the time notice is required to be provided pursuant to this section, that benefits from the government assistance.

(3) "Assisted housing development" means a multifamily rental housing development of five or more units that receives governmental assistance under any of the following programs:

(A) New construction, substantial rehabilitation, moderate rehabilitation, property disposition, and loan management set-aside programs, or any other program providing project-based assistance, under Section 8 of the United States Housing Act of 1937, as amended (42 U.S.C. Sec. 1437f).

(B) The following federal programs:

(i) The Below-Market-Interest-Rate Program under Section 221(d)(3) of the National Housing Act (12 U.S.C. Sec. 1715l(d)(3) and (5)).

(ii) Section 236 of the National Housing Act (12 U.S.C. Sec. 1715z-1).

(iii) Section 202 of the Housing Act of 1959 (12 U.S.C. Sec. 1701q).

(iv) Section 811 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. Sec. 8013).

(C) Programs for rent supplement assistance under Section 101 of the Housing and Urban Development Act of 1965, as amended (12 U.S.C. Sec. 1701s).

(D) Programs under Sections 514, 515, 516, 521, 533, and 538 of the Housing Act of 1949, as amended (42 U.S.C. Sec. 1485).

(E) Section 42 of the Internal Revenue Code.

(F) Section 142(d) of the Internal Revenue Code or its predecessors (tax-exempt private activity mortgage revenue bonds).

(G) Section 147 of the Internal Revenue Code (Section 501(c)(3) bonds).

(H) Title I of the Housing and Community Development Act of 1974, as amended (Community Development Block Grant Program).

(I) Title II of the Cranston-Gonzalez National Affordable Housing Act of 1990, as amended (HOME Investment Partnership Program).

(J) Titles IV and V of the McKinney-Vento Homeless Assistance Act of 1987, as amended, including the Department of Housing and Urban Development's Supportive Housing Program, Shelter Plus Care Program, and surplus federal property disposition program.

(K) Grants and loans made by the Department of Housing and Community Development, including the Rental Housing Construction Program, CHRP-R, and other rental housing finance programs.

(L) Grants and loans made by the California Housing Finance Agency for rental housing.

(M) Chapter 1138 of the Statutes of 1987.

(N) The following 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:

(i) Loans or grants provided using tax increment financing pursuant to the Community Redevelopment Law (Part 1 (commencing with Section 33000) of Division 24 of the Health and Safety Code).

(ii) Local housing trust funds, as referred to in paragraph (3) of subdivision (a) of Section 50843 of the Health and Safety Code.

(iii) The sale or lease of public property at or below market rates.

(iv) The granting of density bonuses, or concessions or incentives, including fee waivers, parking variances, or amendments to general plans, zoning, or redevelopment project area plans, pursuant to Chapter 4.3 (commencing with Section 65915).

(v) The Middle Class Housing Act of 2022 (Section 65852.24).

(vi) Streamlining assistance pursuant to the Affordable Housing and High Road Jobs Act of 2022 (Chapter 4.1 (commencing with Section 65912.100)).

(vii) Section 65913.4.

(viii) The Affordable Housing on Faith and Higher Education Lands Act of 2023 (Section 65913.16).

Assistance pursuant to this subparagraph shall not include the use of tenant-based Housing Choice Vouchers (Section 8(o) of the United States Housing Act of 1937, 42 U.S.C. Sec. 1437f(o), excluding paragraph (13) relating to project-based assistance). Restrictions shall not include any rent control or rent stabilization ordinance imposed by a county, city, or city and county.

(4) "City" means a general law city, a charter city, or a city and county.

(5) "Expiration of rental restrictions" means the expiration of rental restrictions for an assisted housing development described in paragraph (3) unless the development has other recorded agreements restricting the rent to the same or lesser levels for at least 50 percent of the units or the same number of units under the rent restrictions prior to the expiration, whichever is greater.

(6) "Low or moderate income" means having an income as defined in Section 50093 of the Health and Safety Code.

(7) "Owner" means an individual, corporation, association, partnership, joint venture, or business entity that holds title to the land on which an assisted housing development is located. If the assisted housing development is the subject of a leasehold interest, "owner" also means an individual, corporation, association, partnership, joint venture, or business entity that holds a

leasehold interest in the assisted housing development, and the owner holding title to the land and the owner with a leasehold interest in the assisted housing development shall be jointly responsible for compliance.

(8) "Prepayment" means the payment in full or refinancing of the federally insured or federally held mortgage indebtedness prior to its original maturity date, or the voluntary cancellation of mortgage insurance, on an assisted housing development described in paragraph (3) that would have the effect of removing the current rent or occupancy or rent and occupancy restrictions contained in the applicable laws and the regulatory agreement.

(9) "Termination" means the failure of an owner 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 described in paragraph (3), 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.

(b) (1) At least 12 months prior to the anticipated date of the termination of a subsidy contract, the expiration of rental restrictions, or prepayment on an assisted housing development, the owner shall provide a notice of the proposed change to each affected tenant household residing in the assisted housing development at the time the notice is provided and to the affected public entities. An owner who meets the requirements of Section 65863.13 shall be exempt from providing that notice. The notice shall contain all of the following:

(A) In the event of termination, a statement that the owner intends to terminate the subsidy contract or rental restrictions upon its expiration date, or the expiration date of any contract extension thereto.

(B) In the event of the expiration of rental restrictions, a statement that the restrictions will expire, and in the event of prepayment, termination, or the expiration of rental restrictions, whether the owner might increase rents during the 12 months following prepayment, termination, or the expiration of rental restrictions.

(C) In the event of prepayment, a statement that the owner intends to pay in full or refinance the federally insured or federally held mortgage indebtedness prior to its original maturity date, or voluntarily cancel the mortgage insurance.

(D) The anticipated date of the termination, prepayment of the federal or other program or expiration of rental restrictions, and the identity of the federal or other program described in subdivision (a).

(E) A statement that the proposed change would have the effect of removing the current low-income affordability restrictions in the applicable contract or regulatory agreement.

(F) A statement whether or not the applicable program allows the owner to elect to keep the housing in the program after the proposed termination or prepayment date and, if so, a statement as to whether the owner expects to elect to keep the housing in the program after such date if allowed.

(G) A statement whether other governmental assistance will be provided to tenants residing in the development at the time of the termination of the subsidy contract or prepayment.

(H) A statement that a subsequent notice of the proposed change, including anticipated changes in rents, if any, for the development, will be provided at least six months prior to the anticipated date of termination of the subsidy contract, or expiration of rental restrictions, or prepayment.

(I) A statement that the notice of opportunity to submit an offer to purchase has been sent to qualified entities, is attached to or included in the notice, and is posted in the common area of the development, as required in Section 65863.11.

(2) Notwithstanding paragraph (1), if an owner provides a copy of a federally required notice of termination of a subsidy contract or prepayment at least 12 months prior to the proposed change to each affected tenant household residing in the assisted housing development at the time the notice is provided and to the affected public entities, the owner shall be deemed in compliance with this subdivision, if the notice is in compliance with all federal laws. However, the federally required notice does not satisfy the requirements of Section 65863.11.

(c) (1) At least six months prior to the anticipated date of termination of a subsidy contract, expiration of rental restrictions or prepayment on an assisted housing development, the owner shall provide a notice of the proposed change to each affected tenant household residing in the assisted housing development at the time the notice is provided and to the affected public entities. An owner who meets the requirements of Section 65863.13 shall be exempt from providing that notice.

(2) The notice to the tenants shall contain all of the following:

(A) The anticipated date of the termination or prepayment of the federal or other program, or the expiration of rental restrictions, and the identity of the federal or other program, as described in subdivision (a).

(B) The current rent and rent anticipated for the unit during the 12 months immediately following the date of the prepayment or termination of the federal or other program, or expiration of rental restrictions.

(C) A statement that a copy of the notice will be sent to the city, county, or city and county, where the assisted housing development is located, to the appropriate local public housing authority, if any, and to the Department of Housing and Community Development.

(D) A statement of the possibility that the housing may remain in the federal or other program after the proposed date of subsidy termination or prepayment if the owner elects to do so under the terms of the federal government's or other program administrator's offer or that a rent increase may not take place due to the expiration of rental restrictions.

(E) A statement of the owner's intention to participate in any current replacement subsidy program made available to the affected tenants.

(F) A statement that the owner shall accept all enhanced Section 8 vouchers if the tenants receive them.

(G) The name and telephone number of the city, county, or city and county, the appropriate local public housing authority, if any, the Department of Housing and Community Development, and a legal services organization, that can be contacted to request additional written information about an owner's responsibilities and the rights and options of an affected tenant.

(3) In addition to the information provided in the notice to the affected tenant, the notice to the affected public entities shall contain information regarding the number of affected tenants in the project, the number of units that are government assisted and the type of assistance, the number of the units that are not government assisted, the number of bedrooms in each unit that is government assisted, and the ages and income of the affected tenants. The notice shall briefly describe the owner's plans for the project, including any timetables or deadlines for actions to be taken and specific governmental approvals that are required to be obtained, the reason the owner seeks to terminate the subsidy contract or prepay the mortgage, and any contacts the owner has made or is making with other governmental agencies or other interested parties in connection with the notice. The owner shall also attach a copy of any federally required notice of the termination of the subsidy contract or prepayment that was provided at least six months prior to the proposed change. The information contained in the notice shall be based on data that is reasonably available from existing written tenant and project records.

(d) The 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 shall provide additional notice of any significant changes to the notice required by subdivision (c) within seven business days to each affected tenant household residing in the assisted housing development at the time the notice is provided and to the affected public entities. "Significant changes" shall include, but not be limited to, any changes to the date of termination or prepayment, or expiration of rental restrictions or the anticipated new rent.

(e) (1) An owner who is subject to the requirements of this section shall also provide a copy of any notices issued to existing tenants pursuant to subdivision (b), (c), or (d) to any prospective tenant at the time the prospective tenant is interviewed for eligibility.

(2) The owner of an assisted housing development that is within three years of a scheduled expiration of rental restrictions or a scheduled termination of a subsidy contract shall also provide notice of the scheduled expiration of rental restrictions or a scheduled termination of a subsidy contract to any prospective tenant at the time the prospective tenant is interviewed for eligibility, and to existing tenants by posting the notice in an accessible location of the property. This notice shall also be provided to affected public entities. This paragraph is applicable only to owners of assisted housing developments where the rental restrictions are scheduled to expire after January 1, 2021.

(f) This section shall not require the owner to obtain or acquire additional information that is not contained in the existing tenant and project records, or to update any information in the owner's records. The owner shall not be held liable for any inaccuracies contained in these records or from other sources, nor shall the owner be liable to any party for providing this information.

(g) (1) For purposes of this section, service of the notice to the affected tenants shall be made by first-class mail postage prepaid.

(2) For purposes of this section, service of notice to the city, county, city and county, appropriate local public housing authority, if any, and the Department of Housing and Community Development shall be made by either first-class mail postage prepaid or electronically to any public entity that has provided an email address for that purpose.

(h) Nothing in this section shall enlarge or diminish the authority, if any, that a city, county, city and county, affected tenant, or owner may have, independent of this section.

(i) If, prior to January 1, 2001, the owner has already accepted a bona fide offer from a qualified entity, as defined in subdivision (c) of Section 65863.11, and has complied with this section as it existed prior to January 1, 2001, at the time the owner decides to

sell or otherwise dispose of the development, the owner shall be deemed in compliance with this section.

(j) Injunctive relief shall be available to any party identified in paragraph (1) or (2) of subdivision (a) who is aggrieved by a violation of this section, including, but 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 in paragraph (4) of subdivision (a) of Section 65863.11. Injunctive relief pursuant to this subdivision may include, but is not limited to, reimposition of the prior restrictions until any required notice is provided and the required period has elapsed, and restitution of any rent increases collected without compliance with this section. In a judicial action brought pursuant to this subdivision, the court may award attorney's fees and costs to a prevailing plaintiff.

(k) The Director of Housing and Community Development shall approve forms to be used by owners to comply with subdivisions (b), (c), and (e). Once the director has approved the forms, an owner shall use the approved forms to comply with subdivisions (b), (c), and (e).

**SEC. 2.** Section 65863.11 of the Government Code is amended to read:

**65863.11.** (a) Terms used in this section shall be defined as follows:

(1) "Assisted housing development" and "development" shall have the same meaning as in paragraph (3) of subdivision (a) of Section 65863.10.

(2) "Owner" shall have the same meaning as in paragraph (7) of subdivision (a) of Section 65863.10.

(3) "Tenant" means a tenant, subtenant, lessee, sublessee, or other person legally in possession or occupying the assisted housing development.

(4) "Tenant association" means a group of tenants who have formed a nonprofit corporation, cooperative corporation, or other entity or organization, or a local nonprofit, regional, or national organization whose purpose includes the acquisition of an assisted housing development and that represents the interest of at least a majority of the tenants in the assisted housing development.

(5) "Low or moderate income" means having an income as defined in Section 50093 of the Health and Safety Code.

(6) "Very low income" means having an income as defined in Section 50105 of the Health and Safety Code.

(7) "Local nonprofit organizations" means not-for-profit corporations organized pursuant to Division 2 (commencing with Section 5000) of Title 1 of the Corporations Code that have as their principal purpose the ownership, development, or management of housing or community development projects for persons and families of low or moderate income and very low income, and which have a broadly representative board, a majority of whose members are community based and have a proven track record of local community service.

(8) "Local public agencies" means housing authorities, redevelopment agencies, or any other agency of a city, county, or city and county, whether general law or chartered, which are authorized to own, develop, or manage housing or community development projects for persons and families of low or moderate income and very low income.

(9) "Regional or national organizations" means not-for-profit, charitable corporations organized on a multicounty, state, or multistate basis that have as their principal purpose the ownership, development, or management of housing or community development projects for persons and families of low or moderate income and very low income and own and operate at least three comparable rent- and income-restricted affordable rental properties governed under a regulatory agreement with a department or agency of the State of California or the United States, either directly or by serving as the managing general partner of limited partnerships or managing member of limited liability corporations.

(10) "Regional or national public agencies" means multicounty, state, or multistate agencies that are authorized to own, develop, or manage housing or community development projects for persons and families of low or moderate income and very low income and own and operate at least three comparable rent- and income-restricted affordable rental properties governed under a regulatory agreement with a department or agency of the State of California or the United States, either directly or by serving as the managing general partner of limited partnerships or managing member of limited liability corporations.

(11) "Use restriction" means any federal, state, or local statute, regulation, ordinance, or contract that, as a condition of receipt of any housing assistance, including a rental subsidy, mortgage subsidy, or mortgage insurance, to an assisted housing development, establishes maximum limitations on tenant income as a condition of eligibility for occupancy of the units within a development, imposes any restrictions on the maximum rents that could be charged for any of the units within a development; or requires that rents for any of the units within a development be reviewed by any governmental body or agency before the rents are implemented.

(12) "Profit-motivated housing organizations and individuals" means individuals or two or more persons organized pursuant to Division 1 (commencing with Section 100) of Title 1 of, Division 3 (commencing with Section 1200) of Title 1 of, or Chapter 5 (commencing with Section 16100) of Title 2 of, the Corporations Code, that carry on as a business for profit and own and operate at least three comparable rent- and income-restricted affordable rental properties governed under a regulatory agreement with a department or agency of the State of California or the United States, either directly or by serving as the managing general partner of limited partnerships or managing member of limited liability corporations.

(13) "Department" means the Department of Housing and Community Development.

(14) "Offer to purchase" means an offer from a qualified or nonqualified entity that is nonbinding on the owner.

(15) "Expiration of rental restrictions" has the meaning given in paragraph (5) of subdivision (a) of Section 65863.10.

(16) "Qualified entity" means an entity that meets the requirements of subdivisions (d) and (e).

(b) An owner of an assisted housing development shall not terminate a subsidy contract or prepay the mortgage pursuant to Section 65863.10, unless the owner or its agent shall first have provided each of the entities listed in subdivision (d) an opportunity to submit an offer to purchase the development, in compliance with subdivisions (g) and (h). An owner of an assisted housing development in which there will be the expiration of rental restrictions shall also provide each of the entities listed in subdivision (d) an opportunity to submit an offer to purchase the development, in compliance with subdivisions (g) and (h). An owner who meets the requirements of Section 65863.13 shall be exempt from this requirement.

(c) An owner of an assisted housing development shall not sell, or otherwise dispose 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 shall first have provided each of the entities listed in subdivision (d) an opportunity to submit an offer to purchase the development, in compliance with this section. An owner who meets the requirements of Section 65863.13 shall be exempt from this requirement.

(d) The entities to whom an opportunity to purchase shall be provided include only the following:

- (1) The tenant association of the development.
- (2) Local nonprofit organizations and public agencies.
- (3) Regional or national nonprofit organizations and regional or national public agencies.
- (4) Profit-motivated housing organizations or individuals.

(e) For the purposes of this section, to qualify as a purchaser of an assisted housing development, an entity listed in subdivision (d) shall do all of the following:

(1) Be certified by the department, 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. The department shall establish a process for certifying an entity meeting the requirements of subdivision (d) and maintain a list of entities that are certified, which list shall be updated at least annually.

(2) 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 specified in subdivision (a) of Section 65863.10, whichever is greater. The development shall be continuously occupied in the approximate percentages that those households who have occupied that development on the date the owner gave notice of intent or the approximate percentages specified in existing use restrictions, whichever is higher. This obligation shall be recorded before the close of escrow in the office of the county recorder of the county in which the development is located and shall contain a legal description of the property, indexed to the name of the owner as grantor. An owner that obligates itself to an enforceable regulatory agreement that will ensure for a period of not less than 30 years that rents for units occupied by low- and very low income households or that are vacant at the time of executing a purchase agreement will conform with restrictions imposed by Section 42(f) of the Internal Revenue Code shall be deemed in compliance with this paragraph. In addition, the regulatory agreement shall contain provisions requiring the renewal of rental subsidies, should they be available, provided that assistance is at a level to maintain the project's fiscal viability.

(3) Local nonprofit organizations and public agencies shall have no member among their officers or directorate with a financial interest in assisted housing developments that have terminated a subsidy contract or prepaid a mortgage on the development without continuing the low-income restrictions.



(f) If an assisted housing development is not economically feasible, as determined by all entities with regulatory agreements and deed-restrictions on the development, a purchaser shall be entitled to remove one or more units from the rent and occupancy requirements as is necessary for the development to become economically feasible, provided that once the development is again economically feasible, the purchaser shall designate the next available units as low-income units up to the original number of those units.

(g) If an owner decides to terminate a subsidy contract, or prepay the mortgage pursuant to Section 65863.10, or sell or otherwise dispose of the assisted housing development pursuant to subdivision (b) or (c), or if the owner has an assisted housing development in which there will be the expiration of rental restrictions, the owner shall first give notice of the opportunity to offer to purchase to each qualified entity on the list provided to the owner by the department, in accordance with subdivision (p), 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 pursuant to Section 65863.10 for a period of at least 12 months. The owner shall contact the department to obtain the list of qualified entities. The notice shall conform to the requirements of subdivision (h) and shall be sent to the entities by registered or certified mail, return receipt requested. The owner shall also post a copy of the notice in a conspicuous place in the common area of the development.

(h) The initial notice of a bona fide opportunity to submit an offer to purchase shall contain all of the following:

(1) A statement addressing all of the following:

(A) Whether the owner intends to maintain the current number of affordable units and level of affordability.

(B) Whether the owner has an interest in selling the property.

(C) Whether the owner has executed a contract or agreement of at least five years' duration with a public entity to continue or replace subsidies to the property and to maintain an equal or greater number of units at an equal or deeper level of affordability and, if so, the length of the contract or agreement.

(2) A statement that each of the type of entities listed in subdivision (d), or any combination of them, has the right to purchase the development under this section.

(3) (A) Except as provided in subparagraph (B), a statement that the owner will make available to each of the types of entities listed in subdivision (d), within 15 business days of receiving a request therefor, that includes all of the following:

(i) Itemized lists of monthly operating expenses for the property.

(ii) Capital improvements, as determined by the owner, made within each of the two preceding calendar years at the property.

(iii) The amount of project property reserves.

(iv) Copies of the two most recent financial and physical inspection reports on the property, if any, filed with a federal, state, or local agency.

(v) The most recent rent roll for the property listing the rent paid for each unit and the subsidy, if any, paid by a governmental agency as of the date the notice of offer to purchase was made pursuant to subdivision (g).

(vi) A statement of the vacancy rate at the property for each of the two preceding calendar years.

(vii) The terms of assumable financing, if any, the terms of the subsidy contract, if any, and proposed improvements to the property to be made by the owner in connection with the sale, if any.

(B) Subparagraph (A) shall not apply if 25 percent or less of the units on the property are subject to affordability restrictions or a rent or mortgage subsidy contract.

(C) A corporation authorized pursuant to Section 52550 of the Health and Safety Code or a public entity may share information obtained pursuant to subparagraph (A) with other prospective purchasers, and shall not be required to sign a confidentiality agreement as a condition of receiving or sharing this information, provided that the information is used for the purpose of attempting to preserve the affordability of the property.

(4) A statement that the owner has satisfied all notice requirements pursuant to subdivision (b) of Section 65863.10, unless the notice of opportunity to submit an offer to purchase is delivered more than 12 months before the anticipated date of termination, prepayment, or expiration of rental restrictions.

(i) If a qualified entity elects to purchase an assisted housing development, it shall make a bona fide offer to purchase the development at the market value determined pursuant to subdivision (k), subject to the requirements of this subdivision. A qualified entity's bona fide offer to purchase shall be submitted within 270 days of the owner's notice of the opportunity to submit an offer pursuant to subdivision (g), 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 pursuant to subdivision (e). If an owner has received a bona fide offer from one or more qualified entities within the first 270 days from the date of an owner's bona fide notice of the opportunity to submit an offer to purchase, the owner shall notify the department of all such offers within 90 days and either (1) accept a bona fide offer from a qualified entity to purchase and execute a purchase agreement, or (2) record a new regulatory agreement with a term of at least 30 years that, at a minimum, meets the criteria of subdivision (a) of Section 65863.13. Once a bona fide offer is made, the owner shall take all steps reasonably required to renew any expiring housing assistance contract, or extend any available subsidies or use restrictions, if feasible, before the effective date of any expiration or termination.

(j) The market value of the property shall be determined by negotiation and agreement between the parties. If the parties fail to reach an agreement regarding the market value, the market value shall be determined by an appraisal process initiated by the owner's receipt of the bona fide offer, which shall specifically reference the appraisal process provided by this subdivision as the means for determining the final purchase price. Either the owner or the qualified entity, or both, may request that the fair market value of the property's highest and best use, based on current zoning, be determined by an independent appraiser qualified to perform multifamily housing appraisals, who shall be selected and paid by the requesting party. All appraisers shall possess qualifications equivalent to those required by the members of the Appraisal Institute and shall be certified by the department as having sufficient experience in appraising comparable rental properties in California. If the appraisals differ by less than 5 percent, the market value and sales price shall be set at the higher appraised value. If the appraisals differ by more than 5 percent, the parties may elect to have the appraisers negotiate a mutually agreeable market value and sales price, or to jointly select a third appraiser, whose determination of market value and the sales price shall be binding.

(k) If an owner does not receive a bona fide offer from one or more qualified entities within the 270 days specified in subdivision (i), or if after the 270 days specified in subdivision (i) all bona fide offers are withdrawn, the owner may do any of the following:

(1) Sell the property to any buyer.

(2) Extend the affordability restrictions for any period of time.

(3) Maintain ownership of the property and allow the expiration, termination, or prepayment to occur at the end of the notice periods specified in Section 65863.10.

(l) This section does not apply to any of the following: a government taking by eminent domain or negotiated purchase; a forced sale pursuant to a foreclosure; a transfer by gift, devise, or operation of law; a sale to a person who would be included within the table of descent and distribution if there were to be a death intestate of an owner; or an owner who certifies, under penalty of perjury, the existence of a financial emergency during the period covered by the offer to purchase requiring immediate access to the proceeds of the sale of the development. The certification shall be made pursuant to subdivision (q).

(m) Prior to the close of escrow, an owner selling, leasing, or otherwise disposing of a development to a purchaser who does not qualify under subdivision (e) shall certify under penalty of perjury that the owner has complied with all provisions of this section and Section 65863.10. This certification shall be recorded and shall contain a legal description of the property, shall be indexed to the name of the owner as grantor, and may be relied upon by good faith purchasers and encumbrances for value and without notice of a failure to comply with the provisions of this section.

A person or entity acting solely in the capacity of an escrow agent for the transfer of real property subject to this section shall not be liable for any failure to comply with this section unless the escrow agent either had actual knowledge of the requirements of this section or acted contrary to written escrow instructions concerning the provisions of this section.

(n) The department shall undertake the following responsibilities and duties:

(1) Maintain a form containing a summary of rights and obligations under this section and make that information available to owners of assisted housing developments as well as to tenant associations, local nonprofit organizations, regional or national nonprofit organizations, public agencies, and other entities with an interest in preserving the state's subsidized housing.

(2) Compile, maintain, and update a list of entities in subdivision (d) that have either contacted the department with an expressed interest in purchasing a development in the subject area or have been identified by the department as potentially having an interest in participating in a right-of-first-refusal program. The department shall publicize the existence of the list statewide. Upon receipt of a notice of intent under Section 65863.10, the department shall make the list available to the owner proposing the termination, prepayment, or removal of government assistance or to the owner of an assisted housing development in which there will be the expiration of rental restrictions. If the department does not make the list available at any

time, the owner shall only be required to send a written copy of the opportunity to submit an offer to purchase notice to the qualified entities which directly contact the owner and to post a copy of the notice in the common area pursuant to subdivision (g).

(3) (A) Monitor compliance with this section and Sections 65863.10 and 65863.13 by owners of assisted housing developments and, notwithstanding Section 10231.5, provide a report to the Legislature, which may be combined with the report submitted pursuant to Section 50408 of the Health and Safety Code, on or before December 31 of each year, containing information for the previous fiscal year, except that the report due December 31, 2022, shall include information for the 18 months from January 1, 2021, to June 30, 2022, inclusive, that includes, but is not limited to, the following:

(i) The number of properties and rental units subject to this section and Sections 65863.10 and 65863.13.

(ii) The number of properties and units that did any of the following:

(I) Complied with the requirements of this section and Sections 65863.10 and 65863.13.

(II) Failed to comply with the requirements of this section and Sections 65863.10 and 65863.13.

(III) Were offered for sale and therefore subject to the purchase right provisions of this section.

(IV) Were offered for sale and complied with the purchase right provisions of this section and the outcomes of the purchase right actions, including whether the property changed hands, to whom, and with what impact on affordability protections.

(V) Were offered for sale and failed to comply with the purchase right provisions of this section, the reason for their failure to comply, and the impact of their failure to comply on the affordability protections and the tenants who were residing in the property at the time of the failure.

(VI) Claimed exemptions from the obligations of this section pursuant to Section 65863.13 by category of reason for exemption.

(VII) Claimed exemptions from the obligations of this section and lost affordability protections and the impact on the tenants of the loss of the affordability protections.

(VIII) Were not offered for sale and complied with the requirement to properly execute and record a declaration.

(IX) Were not for sale and failed to comply with the requirement to properly execute and record a declaration.

(B) To facilitate the department's compliance monitoring, owners of assisted housing developments in which at least 5 percent of the units on the property are subject to affordability restrictions or a rent or mortgage subsidy contract shall certify compliance with this section and Sections 65863.10 and 65863.13 to the department annually, under penalty of perjury, in a form as required by the department.

(C) The department may request information, in a form prescribed by the department, from counties and cities that provide assistance to owners of projects as described in subparagraph (N) of paragraph (3) of subdivision (a) of Section 65863.10.

(D) The report required to be submitted pursuant to this paragraph shall be submitted in compliance with Section 9795.

(4) Refer violations of this section and Sections 65863.10 and 65863.13 to the Attorney General for appropriate enforcement action.

(o) (1) The provisions of this section may be enforced either in law or in equity by any affected tenant, as defined in paragraph (2) of subdivision (a) of Section 65863.10, any qualified entity entitled to exercise the opportunity to purchase and right of first refusal under this section, a group of affected tenants that meets the requirements of a legitimate tenant organization, as defined in federal regulations, a tenant association, as defined in paragraph (4) of subdivision (a) of Section 65863.11, or any affected public entity that has been adversely affected by an owner's failure to comply with this section. In any judicial action brought pursuant to this subdivision, the court may waive any bond requirement and may award attorney's fees and costs to a prevailing plaintiff.

(2) An owner may rely on the statements, claims, or representations of any person or entity that the person or entity is a qualified entity as specified in subdivision (d), unless the owner has actual knowledge that the purchaser is not a qualified entity.

(3) If the person or entity is not an entity as specified in subdivision (d), that fact, in the absence of actual knowledge as described in paragraph (2), shall not give rise to any claim against the owner for a violation of this section.

(p) It is the intent of the Legislature that the provisions of this section are in addition to, but not preemptive of, applicable federal laws governing the sale or other disposition of a development that would result in either (1) a discontinuance of its use as an assisted housing development or (2) the termination or expiration of any low-income use restrictions that apply to the development.

(q) Except as provided in subparagraph (B) of paragraph (3) of subdivision (n), this section does not apply to either of the following:

(1) An assisted housing development receiving government assistance as described in clauses (iv) to (viii), inclusive, of subparagraph (N) of paragraph (3) of subdivision (a) of Section 65863.10 in which 30 percent or less of the units are subject to affordability restrictions.

(2) An assisted housing development in which 30 percent 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 units affordable to extremely low, very low, low-, or moderate-income households.

(r) The department shall comply with any obligations under this section through the use of standards, forms, and definitions adopted by the department. The department may review, adopt, amend, and repeal the standards, forms, or definitions to implement this section. Any standards, forms, or definitions adopted to implement this section shall not be subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2.

**SEC. 3.** Section 65863.13 of the Government Code is amended to read:

**65863.13.** (a) An owner shall not be required to provide a notice as required by Section 65863.10 or 65863.11 if all of the following conditions are contained 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 of the property complies with the requirements below during the escrow period:

(1) No low-income tenant whose rent was restricted and or subsidized and who resides in the development within 12 months of the date that the rent restrictions are, or subsidy is, scheduled to expire or terminate shall be involuntarily displaced on a permanent basis as a result of the action by the owner unless the tenant has breached the terms of the lease.

(2) The owner shall accept and fully utilize all renewals of project-based assistance under Section 8 of the United States Housing Act of 1937, if available, and if that assistance is at a level to maintain the project's fiscal viability. The property shall be deemed fiscally viable if the rents permitted under the terms of the assistance are not less than the regulated rent levels established pursuant to paragraph (7).

(3) The owner shall accept all enhanced Section 8 vouchers, if the tenants receive them, and all other Section 8 vouchers for future vacancies.

(4) The owner shall not terminate a tenancy of a low-income household at the end of a lease term without demonstrating a breach of the lease. The owner shall not terminate a tenancy of a low-income household due to a planned renovation of the property.

(5) The owner may, in selecting eligible applicants for admission, utilize criteria that permit consideration of the amount of income, as long as the owner adequately considers other factors relevant to an applicant's ability to pay rent.

(6) For assisted housing developments described in paragraph (3) of subdivision (a) of Section 65863.10, a new regulatory agreement, consistent with this section, is recorded that restricts the rents and incomes of the previously restricted units, except as provided in paragraph (7), (8), or (9), to an equal or greater level of affordability than previously required so that the units are affordable to households at the same or a lower percentage of area median income.

(7) For housing developments that have units with project-based rental assistance upon the effective date of prepayment and subsequently become unassisted by any form of rental assistance, rents shall not exceed 30 percent of 60 percent of the area median income. If any form of rental assistance is or becomes available, the owner shall apply for and accept, if awarded, the rental assistance. Rent and occupancy levels shall then be set in accordance with federal regulations for the rental assistance program.

(8) For units that do not have project-based rental assistance upon the effective date of prepayment of a federally insured, federally held, or formerly federally insured or held mortgage and subsequently remain unassisted or become unassisted by any form of rental assistance, rents shall not exceed the greater of (i) 30 percent of 50 percent of the area median income, or (ii) for projects insured under Section 241(f) of the National Housing Act, the regulated rents, expressed as a percentage of area median income. If any form of rental assistance is or becomes available, the owner shall apply for and accept, if awarded,

the rental assistance. Rent and occupancy levels shall then be set in accordance with federal regulations governing the rental assistance program.

(9) If, upon the recordation of the new regulatory agreement, any unit governed by regulatory agreement is occupied by a household whose income exceeds the applicable limit, the rent for that household shall not exceed 30 percent of that household's adjusted income, provided that household's rent shall not be increased by more than 10 percent annually.

(b) As used in this section, "regulatory agreement" means an agreement with a governmental agency for the purposes of any governmental program, which agreement applies to the development that would be subject to the notice requirement in Section 65863.10 and which obligates the owner and any successors in interest to maintain the affordability of the assisted housing development for households of very low, low, or moderate income for the greater of the term of the existing federal, state, or local government assistance specified in subdivision (a) of Section 65863.10 or 30 years.

(c) Section 65863.11 shall not apply to any development for which the owner is exempt from the notice requirements of Section 65863.10 pursuant to this section.

**SEC. 4.** No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.