

STATE OF NEW YORK

5836

2017-2018 Regular Sessions

IN SENATE

May 2, 2017

Introduced by Sens. KRUEGER, BAILEY, HAMILTON, HOYLMAN, SERRANO, STAVISKY -- read twice and ordered printed, and when printed to be committed to the Committee on Housing, Construction and Community Development

AN ACT to amend the private housing finance law, in relation to right of first refusal

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The private housing finance law is amended by adding a new article 2-A to read as follows:

ARTICLE II-A

RIGHT OF FIRST REFUSAL

Section 38. Definitions.

38-a. Notification of impending conversion.

38-b. Notification of bona fide offer to purchase.

38-c. Appraisal determination.

38-d. Right of first refusal.

38-e. First opportunity to purchase.

38-f. Prior notification.

38-g. Long term affordability.

38-h. Right of transfer.

38-i. Conversion of property.

38-j. Penalty.

38-k. Exclusions.

38-l. Judicial review.

§ 38. Definitions. For the purposes of this article, the following definitions shall apply:

1. "Affordable" shall mean that rental expenses for dwelling units do not exceed thirty percent of the annual gross household income of the existing tenants, and/or where rental expenses do not exceed the rent levels allowable pursuant to the rent restrictions applicable to such

EXPLANATION--Matter in italics (underscored) is new; matter in brackets [-] is old law to be omitted.

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1 dwelling units prior to conversion, provided however that dwelling units
2 which become vacant in assisted rental housing should not be rented to
3 households whose income exceeds eighty percent of the New York metropol-
4 itan area median income as determined by the United States department of
5 housing and urban development.

6 2. "Appraised value" shall mean the value as determined by a majority
7 vote of an advisory panel of three appraisers who shall perform such
8 appraisal in accordance with the American Arbitration Association's
9 rules for the real estate industry.

10 3. "Assisted rental housing" shall mean a privately-owned multiple
11 dwelling or group of multiple dwelling units managed together under the
12 same ownership in which the majority of dwelling units therein are
13 subject to federal, state or city income eligibility restrictions and in
14 which rents for such dwelling units are controlled, regulated or
15 assisted by a federal, state or city agency pursuant to a regulatory
16 agreement or rental assistance agreement designed to make such dwelling
17 units affordable on a project-based basis. Assisted rental housing
18 programs shall include:

19 (a) any program created, administered, or supervised by a municipality
20 or state under article two or article four of this chapter.

21 (b) any program providing project-based assistance under section eight
22 of the United States housing act of 1937, as it may be amended from time
23 to time; and

24 (c) housing programs governed by section 202, 207, 221, 232, 236, or
25 811 of the national housing act, (12 U.S.C. 1701 et seq.), as they may
26 be amended from time to time.

27 4. "Bona fide purchaser" shall mean a person or entity that has
28 tendered a bona fide offer to purchase the assisted rental housing.

29 5. "Bona fide offer to purchase" shall mean a good faith and without
30 fraud offer, made in writing and approved by the division that is
31 tendered by a bona fide purchaser no later than one hundred twenty days
32 after an appraisal performed pursuant to section thirty-eight-c of this
33 article, and that is non-binding on the owner with intent to convert.

34 6. "Conversion" or "convert" shall mean the transfer of title, leas-
35 ing, intention to sell or lease, mortgage pre-payment, withdrawal from
36 an assisted housing program, decision not to extend or renew partic-
37 ipation in the program or any other action taken by the owner that would
38 result in the termination of participation by the owner in the assisted
39 rental housing program.

40 7. "Household" shall mean all lawful occupants of any dwelling unit.

41 8. "Household income" shall mean, for any household, the sum of the
42 amount reported separately in the most recent individual or joint tax
43 return for wage or salary income, net self-employed income, interest,
44 dividends, rent received, royalties, social security or railroad retire-
45 ment benefits or disability benefits and all other income for each
46 member of the household reported on a tax return.

47 9. "Division" shall mean the division of housing and community renewal
48 or successor agency.

49 10. "Financial assistance" shall mean any benefits received as a
50 result of an assisted rental housing program that act to maintain
51 affordable rents in the assisted rental housing.

52 11. "First opportunity to purchase" shall mean the opportunity by a
53 tenant association, or if applicable, a qualified entity, to purchase in
54 good faith and without fraud the assisted rental housing at or below its
55 appraised value before such assisted rental housing becomes subject to
56 conversion.

12. "Notice" shall mean a written communication addressed to a tenant association, or if no tenant association exists, to each tenant, or if applicable, to a qualified entity, by means of first class and registered mail, or personal delivery upon a tenant association, or if no tenant association exists, upon each tenant, or if applicable, a qualified entity. Each such notice shall be deemed to have been given upon the deposit of such first class and registered mail in the custody of the United States postal service or upon receipt of personal delivery, and by posting of such notice in the common areas of the assisted rental housing.

13. "Owner" shall mean any person or entity, or combination of such persons or entities, or any agent of such persons or entities, that has a controlling interest in assisted rental housing that is subject to conversion.

14. "Qualified entity" shall mean any individual, partnership, limited liability partnership, limited liability corporation, not-for-profit corporation or business corporation, or other entity authorized to do business in New York state and experienced in the management of affordable housing, designated by the tenants residing in at least sixty percent of the occupied dwelling units within the same assisted rental housing to act on its behalf pursuant to section thirty-eight-h of this article and approved in writing by the division and which obligates itself and any successors in interest to assume the ongoing responsibility of continuing maintenance and operation of the assisted rental housing as affordable for the duration of the housing's useful life and in accordance with the purposes of this article.

15. "Right of first refusal" shall mean the right of a tenant association, or if applicable, a qualified entity, to submit a good faith and without fraud offer, in writing to the owner to purchase the higher of the assisted rental housing's appraised value or the identical price, terms and conditions offered by a bona fide purchaser as approved by the division.

16. "Tenant" shall mean a lawful occupant who resides within a dwelling unit within such assisted rental housing pursuant to law or a lease recognized by either the owner of such assisted rental housing, the division or a court of competent jurisdiction.

17. "Tenant association" shall mean an association, whether incorporated or not, for which written consent to forming a tenant association has been given by tenants representing at least sixty percent of the occupied dwelling units within the same assisted rental housing, and which association notifies or has notified the owner of the assisted rental housing and the division of its existence or establishment and has provided to such owner and the division the names and addresses of at least two of the officers or representatives of such association. Where more than one group of tenants in the same assisted rental housing claims to be the tenant association for such assisted rental housing, the division shall determine which group, if any, is the tenant association for the purposes of this article in the same manner as the division certifies a tenant association for the purposes of article two of this chapter.

§ 38-a. Notification of impending conversion. 1. Notice shall be provided by the owner to the tenant association, or if no tenant association exists, to each tenant, and to the division of the intention of the owner to take any action that will result in the conversion of the assisted rental housing.

1 2. Such notice shall be provided no less than twelve months prior to
2 the taking of such action by the owner. Such notice shall include the
3 following information:

4 (a) the name and address of each owner of the assisted rental housing.
5 For any owner that is a corporation, the notice shall contain the names
6 and addresses of the officers and directors of the corporation and of
7 any person directly or indirectly holding more than ten percent of any
8 class of the outstanding stock of the corporation. For any owner that is
9 a partnership or joint venture, the notice shall contain the name and
10 address of each individual who is a principal or exercises control of
11 such entities;

12 (b) the address and/or addresses and the name and/or names of the
13 assisted rental housing and the type of program or programs to which the
14 assisted rental housing is subject;

15 (c) the nature of the action that the owner intends to take that will
16 result in a conversion;

17 (d) the date on which such action resulting in the conversion is
18 anticipated to take place;

19 (e) the provision of law, rule or regulation pursuant to which such
20 action is authorized;

21 (f) the total number and type of dwelling units subject to a conver-
22 sion;

23 (g) the current rent schedule for the dwelling units along with an
24 estimation of the rent increases anticipated upon conversion;

25 (h) the income and expense report for the twelve-month period prior to
26 the notice including capital improvements, real property taxes and other
27 municipal charges;

28 (i) the amount of the outstanding mortgage as of the date of the
29 notice;

30 (j) the two most recent inspection reports from the real estate
31 assessment center of the United States department of housing and urban
32 development, for the assisted rental housing or group of multiple dwell-
33 ing units operated together under the same ownership for which such
34 inspection reports are required, or, the reports of the two most recent
35 comprehensive building-wide inspection reports that may have been
36 conducted by the division;

37 (k) a statement of notice in a manner approved by the division which
38 advises a tenant association, or if no tenant association exists,
39 advises each tenant, of the first opportunity to purchase as required by
40 section thirty-eight-e of this article, or of the right of first
41 refusal, as required by section thirty-eight-d of this article; and

42 (l) such other information the division may require.

43 3. During the twelve-month notification period provided for in subdi-
44 vision two of this section the owner may not sell or contract to sell
45 the assisted rental housing, but may engage in such discussions with
46 other interested parties.

47 4. Notice shall not be required of an owner who intends to maintain
48 the property as assisted rental housing or intends to transfer, lease or
49 refinance a mortgage in order to maintain the property as assisted
50 rental housing.

51 5. Where an owner decides not to convert the assisted rental housing
52 program, such owner may withdraw the notice of intention to convert the
53 assisted rental housing program, subject to the terms of any accepted
54 offer to purchase or executed purchase and sale agreement, and to exist-
55 ing statutory and common law remedies. In such event, the owner shall
56 give notice to the tenant association, or if no tenant association

1 exists, to each tenant, or if applicable, to a qualified entity, and to
2 the division. However, should the owner at any time decide to take an
3 action that will result in conversion, the twelve-month notice period of
4 this section as well as all other applicable requirements of this arti-
5 cle shall be complied with.

6 6. Notwithstanding any other provisions of this section, if any appli-
7 cable supervening statute or program has a notice requirement substan-
8 tially similar to any notice requirement of this section, then the
9 notice requirement under this section shall be that of the supervening
10 statute or program.

11 7. Notwithstanding any other provisions of this section, if the
12 notices required by this section require more information than is
13 required by any applicable supervening city, state or federal statute or
14 program, then such additional information shall be provided within the
15 time period established by the supervening statute or program.

16 § 38-b. Notification of bona fide offer to purchase. 1. If the owner
17 receives a bona fide offer to purchase and intends to consider, or
18 respond to such bona fide offer to purchase, then notice shall be
19 provided by the owner to a tenant association, or if no tenant associ-
20 ation exists, to each tenant, or if applicable, a qualified entity, and
21 the division, no more than fifteen days from the date that such bona
22 fide offer to purchase is delivered to the owner. Such notice shall
23 contain the following information:

24 (a) the name and address of the proposed bona fide purchaser; and

25 (b) the price and terms and conditions of the offer.

26 2. The owner shall not be required to provide notice in accordance
27 with subdivision one of this section if the bona fide purchaser making
28 the offer agrees to maintain the assisted rental housing as affordable.
29 The bona fide purchaser shall be required to inform the division as to
30 how such bona fide purchaser intends to keep the assisted rental housing
31 as affordable.

32 § 38-c. Appraisal determination. 1. The division shall convene an
33 advisory panel, which advisory panel shall determine the appraised value
34 of the assisted rental housing within thirty days of a tenant associ-
35 ation's, or if applicable, a qualified entity's notice to the owner and
36 the division pursuant to subdivision one of section thirty-eight-d or
37 subdivision one of section thirty-eight-e of this article.

38 2. The advisory panel shall consist of one appraiser selected by the
39 owner, one appraiser selected by the tenant association, or if applica-
40 ble, a qualified entity, and one appraiser to be selected either by
41 mutual agreement between the owner and the tenant association or if
42 applicable, a qualified entity, or by mutual agreement between the
43 appraiser that was selected by the owner and the appraiser selected by
44 the tenant association, or if applicable, a qualified entity, if such
45 condition is deemed acceptable to the owner and the tenants association,
46 or if applicable, a qualified entity, and is agreed upon in writing,
47 except that in the case of where there is no agreement between the owner
48 and the tenant association, or if applicable, a qualified entity, or
49 between the appraiser that was selected by the owner and the appraiser
50 selected by the tenant association, or if applicable, a qualified enti-
51 ty, then the appraiser will be selected by the division. The cost for
52 the appraiser shall be borne by the party responsible for providing
53 such appraiser. However, where the division must select the third
54 appraiser, the cost for such appraiser shall be equally borne by the
55 owner and the tenant association, or if applicable, a qualified entity.

1 3. Notice shall be provided by the division to the owner and the
2 tenant association, or if applicable, a qualified entity, fifteen days
3 before the intended date that such advisory panel is to initiate the
4 performance of the appraisal. In the instance when either the owner
5 fails to provide an appraiser within fifteen days of such notice or when
6 the tenant association, or if applicable, a qualified entity, fails to
7 provide an appraiser within fifteen days of such notice then the divi-
8 sion shall select the appraiser on behalf of the party or parties that
9 failed to select an appraiser. In such circumstance, the cost for the
10 appraiser selected by the division shall be borne by the party responsi-
11 ble for providing that appraiser.

12 4. The division shall promulgate rules for the timely determination of
13 the appraised value and that such rules are to be consistent with the
14 notice requirements mandated under this chapter. The division shall make
15 such appraised value publicly available within fifteen days from the
16 date of such advisory panel's determination.

17 5. In the instance where the owner and the tenant association, or if
18 applicable, a qualified entity, have mutually agreed upon an appraised
19 value for the assisted rental housing prior to the convening of the
20 advisory panel, the owner and the tenant association, or if applicable,
21 a qualified entity, may in writing apply to the division for a waiver
22 from subdivisions one through four of this section. The division shall
23 make a determination upon such application for a waiver within fifteen
24 days from receipt of such application.

25 § 38-d. Right of first refusal. 1. A tenant association, or if appli-
26 cable, a qualified entity, shall notify the owner and the division in
27 writing of its intent to exercise its right of first refusal within
28 sixty days from receipt of notice from the owner pursuant to subdivision
29 one of section thirty-eight-a of this article.

30 2. The tenant association, or if applicable, a qualified entity,
31 following notice by the owner in compliance with subdivision one of
32 section thirty-eight-a of this article, shall have one hundred twenty
33 days from the date of the notice of the determination of the appraised
34 value to submit its offer to purchase.

35 3. The tenant association, or if applicable a qualified entity,
36 following notice by the owner in compliance with subdivision one of
37 section thirty-eight-b of this article, shall have one hundred twenty
38 days from the date of a bona fide offer to purchase to submit its offer
39 to purchase.

40 4. If through no fault of a tenant association, or if applicable, a
41 qualified entity, or the owner, the time periods provided for in subdivi-
42 vision two or three of this section need to be extended, then such time
43 periods may be extended by the division. Should such time periods be
44 extended past the notice period provided for in subdivision one of
45 section thirty-eight-a of this article, then the provisions of the
46 applicable assisted rental housing program shall remain in full force
47 and effect to the extent permitted by law.

48 5. Unless the owner and a tenant association, or if applicable, a
49 qualified entity, otherwise agree to purchase the assisted rental hous-
50 ing below its appraised value, the owner shall sell such assisted rental
51 housing at the appraised value or at the price contained in a bona fide
52 offer to purchase price as approved by the division.

53 6. The division shall promulgate rules for the timely completion of
54 all lending program applications, credit reviews and loan closings.

55 7. If a tenant association, or if applicable, a qualified entity, does
56 not submit its offer in writing to the owner and the division within the

1 time periods stated in subdivision two or three of this section follow-
2 ing notice by the owner in compliance with subdivision one of section
3 thirty-eight-a of this article, then such right will be deemed waived
4 and the owner shall have no further obligations under this section.
5 However, where a tenant association, or if applicable, a qualified enti-
6 ty, has previously submitted a notice in accordance with subdivision one
7 of this section decides not to exercise such right, it may withdraw such
8 notice by giving written notice to that effect to the owner and to the
9 division.

10 § 38-e. First opportunity to purchase. 1. A tenant association, or if
11 applicable, a qualified entity, shall notify the owner and the division
12 in writing of its intent to exercise its right of first opportunity to
13 purchase within sixty days from receipt of notice from the owner pursu-
14 ant to subdivision one of section thirty-eight-a of this article.

15 2. The tenant association, or if applicable, a qualified entity,
16 following notice by the owner in compliance with subdivision one of
17 section thirty-eight-a of this article, shall have one hundred twenty
18 days from the date of the notice of the determination of the appraised
19 value to submit its offer to purchase.

20 3. If through no fault of a tenant association, or if applicable, a
21 qualified entity, or the owner, the time period provided for in subdivi-
22 sion two of this section needs to be extended, then such time period may
23 be extended by the division. Should such time period be extended past
24 the notice period provided for in subdivision one of section thirty-
25 eight-a of this article, then the provisions of the applicable assisted
26 rental housing program shall remain in full force and effect to the
27 extent permitted by law.

28 4. Except where the owner and a tenant association, or if applicable,
29 a qualified entity, agree to a purchase price of the assisted rental
30 housing at an amount below the appraised value, any offer made pursu-
31 ant to this section shall be accepted by the owner.

32 5. If a tenant association, or if applicable, a qualified entity, does
33 not submit its offer in writing to the owner and the division within the
34 time periods stated in subdivision two of this section following notice
35 by the owner in compliance with subdivision one of section
36 thirty-eight-a of this article, then such right will be deemed waived
37 and the owner shall have no further obligations under this section.
38 However, where a tenant association, or if applicable, a qualified enti-
39 ty, has previously submitted a notice in accordance with subdivision one
40 of this section decides not to exercise such right, it may withdraw such
41 notice by giving written notice to that effect to the owner and to the
42 division.

43 § 38-f. Prior notification. Notwithstanding any other provision of
44 this article, where an owner has given notice prior to the effective
45 date of this article and the intent of such notice is to initiate a
46 procedure to withdraw the assisted rental housing from a program set
47 forth in subdivision three of section thirty-eight of this article, and
48 such notice was properly given in accordance with any other applicable
49 provision of law and more than forty-five days remain prior to the expi-
50 ration of the time period applicable to such notice, a tenant associ-
51 ation, or if applicable, a qualified entity, may complete any action
52 authorized by sections thirty-eight-c, thirty-eight-d and thirty-eight-e
53 of this article at any time prior to the expiration of such time period.

54 § 38-g. Long term affordability. A tenant association, or if applica-
55 ble, a qualified entity, including all successors in interest, which
56 chooses to exercise the rights provided for in section thirty-eight-d or

1 section thirty-eight-e of this article will be obligated to maintain the
2 assisted rental housing as affordable.

3 § 38-h. Right of transfer. 1. During the notice period provided for in
4 section thirty-eight-a of this article, the tenants, by written consent
5 of the tenants residing in at least sixty percent of the occupied dwell-
6 ing units within the same assisted rental housing, may transfer the
7 rights established by section thirty-eight-d and section thirty-eight-e
8 of this article to a qualified entity.

9 2. Notice of such transfer shall be provided to the owner and the
10 division in writing within sixty days from receipt of notice from the
11 owner pursuant to section thirty-eight-a of this article.

12 § 38-i. Conversion of property. Notwithstanding the provisions of
13 section thirty-eight-d and section thirty-eight-e of this article, when
14 a conversion occurs, an owner or bona fide purchaser shall allow the
15 current tenant or tenants to remain in their respective dwelling units
16 for the longer of six months from the effective date of the conversion
17 or until the tenant's lease expires, and at the same terms and condi-
18 tions as before such conversion. Such owner or purchaser may, with the
19 agreement of the tenant or tenants, relocate such tenant or tenants to
20 comparable units with comparable rents in accordance with procedures to
21 be established by the rules of the division. Nothing in this section
22 shall be deemed to limit, restrict or modify the rights of a current
23 tenant or tenants pursuant to the emergency tenant protection act of
24 nineteen seventy-four, the emergency housing rent control law, the city
25 rent and rehabilitation law or the rent stabilization law of nineteen
26 hundred sixty-nine.

27 § 38-j. Penalty. An owner found to have violated any provision of this
28 article shall, in addition to any other monetary and/or equitable
29 damages for which the owner may be liable, be liable for a civil penalty
30 of five thousand dollars per month per dwelling unit in the assisted
31 rental housing, and shall also pay to a tenant association, or if no
32 tenant association exists, each tenant, or if applicable, a qualified
33 entity, fees and costs incurred in bringing an enforcement proceeding.
34 The total civil penalties may not exceed one hundred thousand dollars
35 per dwelling unit. Nothing in this section shall be interpreted as
36 prohibiting the tenant association, or if no tenant association exists,
37 the tenants, or if applicable, a qualified entity, from seeking injunc-
38 tive relief against a non-compliant owner. Such proceeding shall be
39 brought in a court of competent jurisdiction.

40 § 38-k. Exclusions. 1. Nothing in this article shall affect any exist-
41 ing agreement between a tenant association and an owner regarding the
42 management and operation of the assisted rental housing or the transfer
43 of the assisted rental housing to a tenant association or similar organ-
44 ization in effect on the effective date of this article, except that any
45 renewal, modification or amendment of such agreement occurring on or
46 after the effective date of this article shall be subject to the
47 provisions of this article.

48 2. Nothing in this article shall affect any existing agreement between
49 an owner and one or more governmental entities relating to the manage-
50 ment and operation of a multiple dwelling that is not otherwise subject
51 to this chapter or to federal law.

52 3. Nothing in this article shall affect an owner or purchaser who
53 wants to refinance in order to maintain participation in an assisted
54 rental housing program.

55 4. The provisions of this article shall not apply to a purchase by a
56 governmental entity implementing its powers of eminent domain; a judi-

1 cially supervised sale or transfer of property; any bankruptcy
2 proceedings; or operation of law.

3 5. The provisions of this article shall not apply where a notice as
4 described in section thirty-eight-f of this article was properly given
5 in accordance with any other applicable provision of law and forty-five
6 or fewer days remain prior to the expiration of such applicable notice
7 period.

8 6. The provisions of this article shall prevail, notwithstanding any
9 contrary provisions of this chapter, the eminent domain procedure law,
10 or any other law.

11 § 38-1. Judicial review. Any person aggrieved by an appraisal determi-
12 nation made pursuant to section thirty-eight-c of this article, or by
13 the failure of the division to approve a bona fide offer to purchase,
14 may, within thirty days of the appraisal determination or action by the
15 division, seek judicial review pursuant to article seventy-eight of the
16 civil practice law and rules in the supreme court for the county in
17 which the assisted rental housing is located. In the event that a court
18 may find that the appraisal or action by the division constitutes the
19 equivalent of a taking without just compensation, the court shall
20 require that a new appraisal or determination be made. The time periods
21 set forth in this article shall be tolled during the pendency of such a
22 proceeding and until a new appraisal or determination, if needed, is
23 made.

24 § 2. This act shall take effect on the thirtieth day after it shall
25 have become a law.