

STATE OF NEW YORK

1221

2023-2024 Regular Sessions

IN ASSEMBLY

January 13, 2023

Introduced by M. of A. L. ROSENTHAL, BENEDETTO -- read once and referred to the Committee on Housing

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:

1 Section 1. The private housing finance law is amended by adding a new
2 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 dwelling units prior to conversion, provided however that dwelling units which become vacant in assisted rental housing should not be rented to

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

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1 households whose income exceeds eighty percent of the New York metropol-
2 itan area median income as determined by the United States department of
3 housing and urban development.

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

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

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

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

22 (c) housing programs governed by section 202, 207, 221, 232, 236, or
23 811 of the national housing act, (12 U.S.C. 1701 et seq.), as they may
24 be amended from time to time.

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

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

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

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

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

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

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

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

55 12. "Notice" shall mean a written communication addressed to a tenant
56 association, or if no tenant association exists, to each tenant, or if

1 applicable, to a qualified entity, by means of first class and regis-
2 tered mail, or personal delivery upon a tenant association, or if no
3 tenant association exists, upon each tenant, or if applicable, a quali-
4 fied entity. Each such notice shall be deemed to have been given upon
5 the deposit of such first class and registered mail in the custody of
6 the United States postal service or upon receipt of personal delivery,
7 and by posting of such notice in the common areas of the assisted rental
8 housing.

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

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

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

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

35 17. "Tenant association" shall mean an association, whether incorpo-
36 rated or not, for which written consent to forming a tenant association
37 has been given by tenants representing at least sixty percent of the
38 occupied dwelling units within the same assisted rental housing, and
39 which association notifies or has notified the owner of the assisted
40 rental housing and the division of its existence or establishment and
41 has provided to such owner and the division the names and addresses of
42 at least two of the officers or representatives of such association.
43 Where more than one group of tenants in the same assisted rental housing
44 claims to be the tenant association for such assisted rental housing,
45 the division shall determine which group, if any, is the tenant associ-
46 ation for the purposes of this article in the same manner as the divi-
47 sion certifies a tenant association for the purposes of article two of
48 this chapter.

49 § 38-a. Notification of impending conversion. 1. Notice shall be
50 provided by the owner to the tenant association, or if no tenant associ-
51 ation exists, to each tenant, and to the division of the intention of
52 the owner to take any action that will result in the conversion of the
53 assisted rental housing.

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

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

9 (b) the address and/or addresses and the name and/or names of the
10 assisted rental housing and the type of program or programs to which the
11 assisted rental housing is subject;

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

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

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

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

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

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

25 (i) the amount of the outstanding mortgage as of the date of the
26 notice;

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

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

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

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

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

48 5. Where an owner decides not to convert the assisted rental housing
49 program, such owner may withdraw the notice of intention to convert the
50 assisted rental housing program, subject to the terms of any accepted
51 offer to purchase or executed purchase and sale agreement, and to exist-
52 ing statutory and common law remedies. In such event, the owner shall
53 give notice to the tenant association, or if no tenant association
54 exists, to each tenant, or if applicable, to a qualified entity, and to
55 the division. However, should the owner at any time decide to take an
56 action that will result in conversion, the twelve-month notice period of

1 this section as well as all other applicable requirements of this arti-
2 cle shall be complied with.

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

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

13 § 38-b. Notification of bona fide offer to purchase. 1. If the owner
14 receives a bona fide offer to purchase and intends to consider, or
15 respond to such bona fide offer to purchase, then notice shall be
16 provided by the owner to a tenant association, or if no tenant associ-
17 ation exists, to each tenant, or if applicable, a qualified entity, and
18 the division, no more than fifteen days from the date that such bona
19 fide offer to purchase is delivered to the owner. Such notice shall
20 contain the following information:

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

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

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

29 § 38-c. Appraisal determination. 1. The division shall convene an
30 advisory panel, which advisory panel shall determine the appraised value
31 of the assisted rental housing within thirty days of a tenant associ-
32 ation's, or if applicable, a qualified entity's notice to the owner and
33 the division pursuant to subdivision one of section thirty-eight-d or
34 subdivision one of section thirty-eight-e of this article.

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

53 3. Notice shall be provided by the division to the owner and the
54 tenant association, or if applicable, a qualified entity, fifteen days
55 before the intended date that such advisory panel is to initiate the
56 performance of the appraisal. In the instance when either the owner

1 fails to provide an appraiser within fifteen days of such notice or when
2 the tenant association, or if applicable, a qualified entity, fails to
3 provide an appraiser within fifteen days of such notice then the divi-
4 sion shall select the appraiser on behalf of the party or parties that
5 failed to select an appraiser. In such circumstance, the cost for the
6 appraiser selected by the division shall be borne by the party responsi-
7 ble for providing that appraiser.

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

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

21 § 38-d. Right of first refusal. 1. A tenant association, or if appli-
22 cable, a qualified entity, shall notify the owner and the division in
23 writing of its intent to exercise its right of first refusal within
24 sixty days from receipt of notice from the owner pursuant to subdivision
25 one of section thirty-eight-a of this article.

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

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

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

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

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

51 7. If a tenant association, or if applicable, a qualified entity, does
52 not submit its offer in writing to the owner and the division within the
53 time periods stated in subdivision two or three of this section follow-
54 ing notice by the owner in compliance with subdivision one of section
55 thirty-eight-a of this article, then such right will be deemed waived
56 and the owner shall have no further obligations under this section.

1 However, where a tenant association, or if applicable, a qualified enti-
2 ty, has previously submitted a notice in accordance with subdivision one
3 of this section decides not to exercise such right, it may withdraw such
4 notice by giving written notice to that effect to the owner and to the
5 division.

6 § 38-e. First opportunity to purchase. 1. A tenant association, or if
7 applicable, a qualified entity, shall notify the owner and the division
8 in writing of its intent to exercise its right of first opportunity to
9 purchase within sixty days from receipt of notice from the owner pursu-
10 ant to subdivision one of section thirty-eight-a of this article.

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

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

24 4. Except where the owner and a tenant association, or if applicable,
25 a qualified entity, agree to a purchase price of the assisted rental
26 housing at an amount below the appraised value, any offer made pursuant
27 to this section shall be accepted by the owner.

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

39 § 38-f. Prior notification. Notwithstanding any other provision of
40 this article, where an owner has given notice prior to the effective
41 date of this article and the intent of such notice is to initiate a
42 procedure to withdraw the assisted rental housing from a program set
43 forth in subdivision three of section thirty-eight of this article, and
44 such notice was properly given in accordance with any other applicable
45 provision of law and more than forty-five days remain prior to the expi-
46 ration of the time period applicable to such notice, a tenant associ-
47 ation, or if applicable, a qualified entity, may complete any action
48 authorized by sections thirty-eight-c, thirty-eight-d and thirty-eight-e
49 of this article at any time prior to the expiration of such time period.

50 § 38-g. Long term affordability. A tenant association, or if applica-
51 ble, a qualified entity, including all successors in interest, which
52 chooses to exercise the rights provided for in section thirty-eight-d or
53 section thirty-eight-e of this article will be obligated to maintain the
54 assisted rental housing as affordable.

55 § 38-h. Right of transfer. 1. During the notice period provided for in
56 section thirty-eight-a of this article, the tenants, by written consent

1 of the tenants residing in at least sixty percent of the occupied dwell-
2 ing units within the same assisted rental housing, may transfer the
3 rights established by section thirty-eight-d and section thirty-eight-e
4 of this article to a qualified entity.

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

8 § 38-i. Conversion of property. Notwithstanding the provisions of
9 section thirty-eight-d and section thirty-eight-e of this article, when
10 a conversion occurs, an owner or bona fide purchaser shall allow the
11 current tenant or tenants to remain in their respective dwelling units
12 for the longer of six months from the effective date of the conversion
13 or until the tenant's lease expires, and at the same terms and condi-
14 tions as before such conversion. Such owner or purchaser may, with the
15 agreement of the tenant or tenants, relocate such tenant or tenants to
16 comparable units with comparable rents in accordance with procedures to
17 be established by the rules of the division. Nothing in this section
18 shall be deemed to limit, restrict or modify the rights of a current
19 tenant or tenants pursuant to the emergency tenant protection act of
20 nineteen seventy-four, the emergency housing rent control law, the city
21 rent and rehabilitation law or the rent stabilization law of nineteen
22 hundred sixty-nine.

23 § 38-j. Penalty. An owner found to have violated any provision of this
24 article shall, in addition to any other monetary and/or equitable
25 damages for which the owner may be liable, be liable for a civil penalty
26 of five thousand dollars per month per dwelling unit in the assisted
27 rental housing, and shall also pay to a tenant association, or if no
28 tenant association exists, each tenant, or if applicable, a qualified
29 entity, fees and costs incurred in bringing an enforcement proceeding.
30 The total civil penalties may not exceed one hundred thousand dollars
31 per dwelling unit. Nothing in this section shall be interpreted as
32 prohibiting the tenant association, or if no tenant association exists,
33 the tenants, or if applicable, a qualified entity, from seeking injunc-
34 tive relief against a non-compliant owner. Such proceeding shall be
35 brought in a court of competent jurisdiction.

36 § 38-k. Exclusions. 1. Nothing in this article shall affect any exist-
37 ing agreement between a tenant association and an owner regarding the
38 management and operation of the assisted rental housing or the transfer
39 of the assisted rental housing to a tenant association or similar organ-
40 ization in effect on the effective date of this article, except that any
41 renewal, modification or amendment of such agreement occurring on or
42 after the effective date of this article shall be subject to the
43 provisions of this article.

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

48 3. Nothing in this article shall affect an owner or purchaser who
49 wants to refinance in order to maintain participation in an assisted
50 rental housing program.

51 4. The provisions of this article shall not apply to a purchase by a
52 governmental entity implementing its powers of eminent domain; a judi-
53 cially supervised sale or transfer of property; any bankruptcy
54 proceedings; or operation of law.

55 5. The provisions of this article shall not apply where a notice as
56 described in section thirty-eight-f of this article was properly given

1 in accordance with any other applicable provision of law and forty-five
2 or fewer days remain prior to the expiration of such applicable notice
3 period.

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

7 § 38-1. Judicial review. Any person aggrieved by an appraisal determi-
8 nation made pursuant to section thirty-eight-c of this article, or by
9 the failure of the division to approve a bona fide offer to purchase,
10 may, within thirty days of the appraisal determination or action by the
11 division, seek judicial review pursuant to article seventy-eight of the
12 civil practice law and rules in the supreme court for the county in
13 which the assisted rental housing is located. In the event that a court
14 may find that the appraisal or action by the division constitutes the
15 equivalent of a taking without just compensation, the court shall
16 require that a new appraisal or determination be made. The time periods
17 set forth in this article shall be tolled during the pendency of such a
18 proceeding and until a new appraisal or determination, if needed, is
19 made.

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