

STATE OF NEW YORK

221--A

2023-2024 Regular Sessions

IN SENATE

(Prefiled)

January 4, 2023

Introduced by Sens. MYRIE, BAILEY, BRISPORT, BROUK, CLEARE, COONEY, FERNANDEZ, GIANARIS, GONZALEZ, HINCHEY, HOYLMAN-SIGAL, JACKSON, MAY, PARKER, RAMOS, RIVERA, SALAZAR, SANDERS, SEPULVEDA, SERRANO, WEBB -- read twice and ordered printed, and when printed to be committed to the Committee on Housing, Construction and Community Development -- recommitted to the Committee on Housing, Construction and Community Development in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the real property actions and proceedings law, in relation to establishing the tenant opportunity to purchase act

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

1 Section 1. Short title. This act shall be known and may be cited as
2 the "tenant opportunity to purchase act".

3 § 2. The real property actions and proceedings law is amended by
4 adding a new article 7-E to read as follows:

ARTICLE 7-E

TENANT OPPORTUNITY TO PURCHASE ACT

Section 799. Definitions.

8 799-a. Authority.

9 799-b. Applicability.

10 799-c. Exemptions.

11 799-d. Right of first refusal.

12 799-e. Tenant decision-making; tenant organizations.

13 799-f. Qualified purchasers.

14 799-g. Supportive partners.

15 799-h. Assignment of rights.

16 799-i. Waiver of rights.

17 799-j. Notice requirements.

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

LBD01986-02-4

- 1 799-k. Third-party purchaser rights.
- 2 799-l. Right to appraisal.
- 3 799-m. Purchase contract negotiation.
- 4 799-n. No selling of rights.
- 5 799-o. Tenant protections.
- 6 799-p. Price stabilization.
- 7 799-q. Incentives.
- 8 799-r. Enforcement.
- 9 799-s. Statutory construction.
- 10 799-t. Administration and reports.

11 § 799. Definitions. For the purposes of this article, the following
12 terms shall have the following meanings:

13 1. "AMI" or "area median income" means area median income established
14 by the U.S. department of housing and urban development (HUD), pursuant
15 to 42 U.S.C. § 1427 et seq., to establish local income classification
16 levels.

17 2. "Appraised value" means the value of the rental housing accommo-
18 modation as of the date of the appraisal, based on an objective, independ-
19 ent property valuation, performed according to professional appraisal
20 industry standards.

21 3. "Bona fide offer of sale" means an offer of sale for a rental hous-
22 ing accommodation that is either:

23 (a) For a price and other material terms at least as favorable to a
24 tenant, tenant organization, and qualified purchaser as those that the
25 owner has offered, accepted, or is considering offering or accepting,
26 from a purchaser in an arm's length third-party purchase contract; or

27 (b) In the absence of an arm's length third-party purchase contract,
28 an offer of sale containing a sales price less than or equal to a price
29 and other material terms comparable to that at which a willing seller
30 and a willing buyer would sell and purchase the rental housing accommo-
31 modation, or an appraised value.

32 4. "CPI" or "consumer price index" means the consumer price index
33 published by the United States department of labor, bureau of labor
34 statistics for the northeast census region. If publication of the
35 consumer price index ceases, or if it is otherwise unavailable or is
36 altered in a way as to be unusable, DHCR shall determine the use of an
37 appropriate substitute index published by the United States department
38 of labor, bureau of labor statistics or any successor agency.

39 5. "Community land trust" means a nonprofit corporation organized
40 pursuant to section 501 (c) (3) of the U.S. Internal Revenue Code that
41 satisfies all of the following criteria:

42 (a) Such nonprofit corporation's primary purpose is the creation and
43 maintenance of permanently affordable single-family or multifamily resi-
44 dences;

45 (b) All dwellings and units on the land owned by the nonprofit corpo-
46 ration are sold to a qualified owner to be occupied as the qualified
47 owner's primary residence or rented to persons and families of low
48 income as defined in subdivision ten of section twelve of the private
49 housing finance law; and

50 (c) The land owned by the nonprofit corporation, on which a dwelling
51 or unit sold to a qualified owner is situated, is leased by such corpo-
52 ration to the qualified owner for the convenient occupation and use of
53 such dwelling or unit for a renewable term of ninety-nine years.

54 6. "Days" shall mean calendar days unless otherwise indicated.

1 7. "Governing document" means a constitution, articles, bylaws, oper-
2 ating agreement, or other writings that govern the purpose and operation
3 of a tenant organization and the rights and obligations of its members,
4 which shall include provisions on the tenant organization's decision-
5 making processes and appointing officers and other authorized agents to
6 act on its behalf.

7 8. "DHCR" means New York state division of housing and community
8 renewal, or its successor agency.

9 9. "Highest and best use" means the reasonably probable legal use of a
10 property that is physically possible, appropriately supported, and
11 financially feasible and that results in the highest value of the prop-
12 erty.

13 10. "Matter-of-right" means a land use, development density, or struc-
14 tural dimension to which a property owner is entitled by current zoning
15 regulations or law.

16 11. "Owner" means one or more persons, corporation, partnership,
17 limited liability company, trustee, or any other entity, who is the
18 owner of record of a rental housing accommodation at the time of giving
19 notice of intention to sell, and each person, corporation, partnership,
20 limited liability company, trustee, or any other entity, who, directly
21 or indirectly, owns fifty percent or more of the equity interests in
22 such rental housing accommodation at the time of giving notice of inten-
23 tion to sell. For purposes of complying with the notice requirements
24 described in this article, "owner" may refer to any person acting as an
25 authorized agent of the owner.

26 12. "Permanent affordability" means that future rents and future sales
27 prices of a rental housing accommodation, or separate ownership inter-
28 ests in such rental housing accommodation, shall be made affordable to
29 households with targeted income levels no greater than one hundred thir-
30 ty percent area median income adjusted for family size.

31 13. "Purchase contract" means a binding written agreement whereby an
32 owner agrees to sell property including, without limitation, a purchase
33 and sale agreement, contract of sale, purchase option or other similar
34 instrument.

35 14. "Qualified purchaser" means a qualified purchaser meeting the
36 criteria described in section seven hundred ninety-nine-f of this arti-
37 cle.

38 15. "Rent" shall have the same meaning as in section seven hundred two
39 of this chapter.

40 16. "Rental agreement" means an agreement, oral, written or implied,
41 between an owner and a tenant for use or occupancy of a unit and for
42 housing services.

43 17. "Rental housing accommodation" means any real property, including
44 the land appurtenant thereto, containing one or more rental units and
45 located in New York state.

46 18. "Rental unit" or "unit" means any unit in any real property,
47 including the land appurtenant thereto, that is available for rent for
48 residential use or occupancy, located in New York state, together with
49 all housing services connected with the use or occupancy of such proper-
50 ty such as common areas and recreational facilities held out for use by
51 the tenant.

52 19. "Sale" or "sell" means the transfer, in exchange for money or any
53 other thing of economic value, of a present interest in the rental hous-
54 ing accommodation, including beneficial use, where the value of the
55 present interest is the fee interest in the rental housing accommo-
56 dation, or substantially equal to the value of that fee interest. For

1 purposes of this definition, a "transfer" may include those completed in
2 one transaction or a series of transactions over a period of time.

3 20. "Supportive partner" means a "supportive partner" meeting the
4 criteria set forth in section seven hundred ninety-nine-g of this arti-
5 cle.

6 21. "Tenant" means one or more renter, tenant, subtenant, lessee, sub
7 lessee, or other person entitled to the possession, occupancy, or bene-
8 fits of a rental unit within a rental housing accommodation. "Tenant"
9 shall not include transient guests who use or occupy a unit regardless
10 of any consideration paid or exchanged by such a transient guest or any
11 tenant that previously occupied the unit prior to the current occupant.

12 22. "Tenant organization" means tenants who have organized themselves
13 as a legal entity that:

14 (a) Can acquire an interest in real property;

15 (b) Represents at least a majority of the tenant-occupied rental units
16 in a rental housing accommodation as of the date of the owner's notice
17 of intent to sell;

18 (c) Has adopted a governing document; and

19 (d) Has appointed officers and any other authorized agents specif-
20 ically designated to execute contracts or act on its behalf.

21 23. "Third-party purchaser" means any person or entity other than a
22 tenant, tenant organization, or qualified purchaser, engaged or seeking
23 to engage, in purchasing a rental housing accommodation from an owner
24 under this article.

25 24. "TOPA buyer" means a tenant, tenant organization, or qualified
26 purchaser that is purchasing or has purchased a rental housing accommo-
27 dation from an owner under this article.

28 25. "Under threat of eminent domain" refers to the commencement of the
29 process of eminent domain, including but not limited to, any formal or
30 informal contact with the owner by the government or government agents
31 regarding the potential or ongoing assertion of eminent domain, and any
32 hearings or court proceedings regarding the same.

33 § 799-a. Authority. DHCR and their designees shall be authorized to
34 enforce the provisions of this article, and for such purposes, shall
35 have the powers of a law enforcement officer. DHCR shall be authorized
36 to establish standards, policies, and procedures for the implementation
37 of the provisions of this article to further the purpose set forth in
38 this article.

39 § 799-b. Applicability. The Tenant Opportunity to Purchase Act shall
40 apply to all rental housing accommodations which contain three or more
41 rental units unless otherwise exempted by this article.

42 § 799-c. Exemptions. 1. Residential property types exempted. The
43 following residential properties shall not be considered covered proper-
44 ties for purposes of this article:

45 (a) Properties owned by the municipal, state, or federal governments.

46 (b) Properties owned by and operated as a hospital, convent, monas-
47 tery, extended care facility, convalescent home, assisted living resi-
48 dence, facilities providing housing to runaway and homeless youth or
49 young adults, college or school dormitory or any institution operated
50 for charitable, hospital or educational purposes.

51 (c) Properties properly licensed as a hotel or motel.

52 (d) Residential properties undergoing refinancing, a loan modifica-
53 tion, short sale, deed in lieu of foreclosure or any other loss-mitiga-
54 tion option in order to maintain ownership of such properties.

55 (e) Multiple dwelling units or groups of multiple dwelling units
56 managed together under the same private ownership in which the majority

1 of dwelling units therein that will continue to be subject to federal,
2 state, or city income eligibility restrictions and in which rents for
3 such dwelling units are controlled, regulated, or assisted by a federal,
4 state, or city agency pursuant to a regulatory agreement or rental
5 assistance agreement designed to make such dwelling units affordable on
6 a project-based basis. Assisted rental housing programs shall include:

7 (i) any program created, administered, or supervised by the city or
8 state under article two, four, or eleven of the private housing finance
9 law, but shall not include any multiple dwelling owned or operated by a
10 company organized under article two or four of the private housing
11 finance law that was occupied prior to January first, nineteen hundred
12 seventy-four;

13 (ii) any program providing project-based assistance under section
14 eight of the United States housing act of 1937, as amended; and

15 (iii) housing programs governed by sections 202, 207, 221, 232, 236,
16 or 811 of the federal national housing act, 12 U.S.C. 1701 et seq., as
17 amended.

18 (f) Property held in cooperative or condominium forms of ownership.

19 (g) Manufactured homes and mobile homes as defined in section two
20 hundred thirty-three of article seven of the real property law.

21 2. Transfers exempted. The following transfers shall be exempted for
22 the purposes of this article:

23 (a) An inter-vivos transfer, even when transferred in exchange for
24 consideration, between spouses, domestic partners, parent and child,
25 siblings, grandparent and grandchild.

26 (b) A transfer for consideration, by a decedent's estate to members of
27 the decedent's family if the consideration arising from the transfer
28 will pass from the decedent's estate to, or solely for the benefit of,
29 charity. For the purposes of this paragraph, the term "members of the
30 decedent's family" shall include:

31 (i) A spouse, domestic partner, parent, child, sibling, grandparent,
32 grandchild; and

33 (ii) A trust for the primary benefit of a spouse, domestic partner,
34 parent, child, sibling, grandparent, or grandchild.

35 (c) A transfer of bare legal title into a revocable trust, without
36 actual consideration for the transfer, where the transferor is the
37 current beneficiary of the trust.

38 (d) A transfer to a named beneficiary of a revocable trust by reason
39 of the death of the grantor of the revocable trust.

40 (e) A transfer pursuant to court order or court-approved settlement.

41 (f) A transfer by eminent domain or under threat of eminent domain.

42 (g) A transfer of a residential building to a tenant organization or
43 qualified purchaser pursuant to a transfer agreement in effect on the
44 effective date of this article, except that any renewal, modification,
45 or amendment of such agreement occurring on or after the effective date
46 of this article shall be subject to the provisions of this article.

47 (h) A transfer of legal title or an interest in an entity holding
48 legal title to a housing accommodation pursuant to a bona fide deed of
49 trust or mortgage, and thereafter any transfer by foreclosure sale or
50 deed in lieu of foreclosure pursuant to a bona fide deed of trust or
51 mortgage.

52 (i) A tax sale or transfer pursuant to tax foreclosure.

53 (j) A bankruptcy sale.

54 3. Exemption procedures. The owner of a rental housing accommodation,
55 or an individual, group of individuals, organization or facility which

1 believe that they are exempt under this article shall comply with proce-
2 dures that DHCR shall create for claiming such an exemption.

3 4. Voluntary election to participate. An owner whose property or
4 planned transaction is exempt from this article pursuant to sections
5 seven hundred ninety-nine-b or seven hundred ninety-nine-c of this arti-
6 cle may elect to subject their property to this article by complying
7 with procedures that DHCR shall promulgate through regulations, provided
8 that the owner who voluntarily subjects their property to this article
9 shall comply with this article in its entirety. Each tenant living in
10 such property shall be granted all of the rights described in this arti-
11 cle, including the opportunity to decide whether to exercise their right
12 of first refusal under section seven hundred ninety-nine-d of this arti-
13 cle. No owner shall be eligible for incentives described in section
14 seven hundred ninety-nine-g of this article without complying with this
15 article in its entirety.

16 § 799-d. Right of first refusal. 1. General construction. This
17 section shall be construed to confer a right of first refusal only upon
18 each tenant, tenant organization, and qualified purchaser.

19 2. Offer of sale to tenants, tenant organizations, and qualified
20 purchasers. Before an owner of a rental housing accommodation may sell
21 or accept an offer to sell a rental housing accommodation, the owner
22 shall give each tenant, tenant organization or qualified purchaser an
23 opportunity to purchase such rental housing accommodation at a price and
24 terms that represent a bona fide offer of sale.

25 (a) The owner's offer of sale shall include, at minimum:

26 (i) The asking price and terms of the sale. The terms and conditions
27 shall be consistent with the applicable timeframes described in subdivi-
28 sions three and four of this section;

29 (ii) A statement as to whether a purchase contract with a third-party
30 purchaser exists for the sale of the rental housing accommodation, and
31 if so, a copy of such purchase contract; and

32 (iii) A statement in English and at least one other language within
33 the property's census tract based on the latest United States Census,
34 stating that if the tenant requires the offer of sale in a language
35 other than English, they may contact DHCR and request the offer of sale
36 in their requested language and/or the assistance of an interpreter.

37 (b) If a tenant or tenant organization is receiving the offer of sale,
38 the owner shall deliver a written copy of the offer of sale to each
39 tenant or tenant organization by certified mail or e-mail.

40 (c) If a qualified purchaser is receiving the offer of sale, the owner
41 shall deliver the offer of sale to each qualified purchaser that previ-
42 ously made an offer to purchase the rental housing accommodation, and to
43 each tenant, by certified mail or e-mail. The owner shall submit an
44 offer of sale to each such qualified purchaser on the same day, and to
45 the extent possible, at the same time.

46 (d) If the owner has a purchase contract with a third-party purchaser
47 for the sale of the rental housing accommodation, the owner shall deliv-
48 er the offer of sale to each tenant, tenant organization or qualified
49 purchaser within two days of entering into a purchase contract with the
50 third-party purchaser.

51 (e) The owner shall also provide DHCR with a written copy of the offer
52 of sale and a statement certifying that the items described by paragraph
53 (a) of this subdivision were delivered to each tenant, tenant organiza-
54 tion, or qualified purchaser.

55 3. Time to accept offer. (a) The following procedures shall apply:

1 (i) Upon receipt of the offer of sale from the owner, a tenant organ-
2 ization shall have forty-five days to accept the offer of sale.

3 (ii) Upon receipt of the offer of sale from the owner, a qualified
4 purchaser shall have thirty days to accept the offer of sale.

5 (iii) The deadline to accept any offer of sale shall be extended as
6 necessary to allow the tenant organization or qualified purchaser to
7 exercise their right to an appraisal pursuant to section seven hundred
8 ninety-nine-1 of this article, if they believe that the offer of sale is
9 not a bona fide offer of sale.

10 (b) If, during these time periods, any qualified purchaser that has
11 received such offer of sale decides to accept the owner's offer of sale,
12 such qualified purchaser shall notify the owner and every other quali-
13 fied purchaser of such decision by e-mail or certified mail. After a
14 qualified purchaser notifies the owner of its decision to accept the
15 owner's offer of sale, meaning before any other qualified purchaser so
16 notified the owner, such qualified purchaser shall be deemed to have
17 accepted the offer of sale, and no other qualified purchaser shall
18 accept the owner's offer of sale, whether or not the time periods in
19 this subdivision have elapsed.

20 4. Time to secure financing and close. If a tenant, tenant organiza-
21 tion, or qualified purchaser accepts an owner's offer of sale in accord-
22 ance with this article, the owner shall afford such tenant, tenant
23 organization, or qualified purchaser time to secure financing and close,
24 consistent with this article.

25 5. Rejection of offer. If each tenant, each tenant organization, and
26 qualified purchaser that received an offer of sale consistent with this
27 article, rejects such offer of sale or fails to respond within the time-
28 lines described in this section, the owner may immediately proceed with
29 the sale of the rental housing accommodation to a third-party purchaser
30 consistent with the price and material terms of that offer of sale.

31 § 799-e. Tenant decision-making; tenant organizations. 1. Tenant
32 decision-making. Except in the case of a duly formed tenant organiza-
33 tion, any action required of tenants under this article shall be
34 approved by at least a majority of tenant-occupied units.

35 2. Tenant organizations. (a) In order to submit an offer and respond
36 to the owner's offer of sale pursuant to section seven hundred ninety-
37 nine-d of this article, tenants shall:

38 (i) Form a tenant organization, approved by the requirements described
39 in subdivision one of this section, unless such a tenant organization
40 already exists in a form approved by the tenants.

41 (ii) Select a supportive partner, meeting the criteria described in
42 section seven hundred ninety-nine-g of this article.

43 (iii) Deliver an application for registration of the tenant organiza-
44 tion to DHCR, and deliver a copy of such application to the owner, by
45 hand or by certified mail on or before the deadline of submitting an
46 offer of purchase pursuant to section seven hundred ninety-nine-d of
47 this article. Such application shall include:

48 (A) the name, address, and phone number of tenant officers and the
49 supportive partner;

50 (B) a copy of the formation document, as filed;

51 (C) a copy of the governing document;

52 (D) documented approval that the tenant organization represents a
53 majority under subdivision one of this section as of the time of regis-
54 tration; and

55 (E) such other information as DHCR may reasonably require.

1 (b) Tenants may form and register the tenant organization with DHCR
2 pursuant to this subdivision at any time, provided that this section
3 shall not be construed to alter the time periods within which a tenant
4 organization may exercise the rights afforded by this article.

5 (c) Upon registration with DHCR, the tenant organization shall consti-
6 tute the sole representative of the tenants for purposes of this arti-
7 cle.

8 § 799-f. Qualified purchasers. 1. Qualified purchaser criteria. DHCR
9 shall establish an administrative process for certifying qualified
10 purchasers that shall include, but not be limited to, the following
11 minimum criteria:

12 (a) The purchaser is a bona fide nonprofit, as evidenced by the fact
13 that it is exempt from federal income tax under 26 U.S.C. § 501(c)(3);

14 (b) The purchaser has demonstrated a commitment to either:

15 (i) democratic residential control, as evidenced by its ownership and
16 governance structure and relationship with residents; or

17 (ii) a commitment to community engagement, as evidenced by relation-
18 ships with neighborhood-based organizations or tenant counseling organ-
19 izations;

20 (c) The purchaser has agreed to transfer ownership of the rental hous-
21 ing accommodation to the tenants when feasible if its tenants request
22 such transfer of ownership;

23 (d) The purchaser has demonstrated a commitment to the provision of
24 affordable housing for moderate, low, very low, and extremely low income
25 New York state residents, and to prevent the displacement of such resi-
26 dents;

27 (e) The purchaser has agreed to obligate itself and any successors in
28 interest to maintain the permanent affordability of the rental housing
29 accommodation, in accordance with section seven hundred ninety-nine-p of
30 this article;

31 (f) The purchaser has demonstrated the capacity, including, but not
32 limited to, the legal and financial capacity, to effectively acquire and
33 manage residential real property in New York state;

34 (g) The purchaser has acquired or partnered with another housing
35 development organization or nonprofit organization to acquire at least
36 one residential building using any public or community funding, or has
37 entered into a written memorandum of understanding with another housing
38 development organization or nonprofit organization for the purpose of
39 partnering with a housing development organization or nonprofit organ-
40 ization to acquire residential buildings using public or community fund-
41 ing; and

42 (h) The purchaser has agreed to attend mandatory training to be deter-
43 mined, from time to time, by DHCR.

44 2. Certification, term, and renewal. Purchasers that DHCR certifies as
45 having met the criteria in subdivision one of this section shall be
46 known as "qualified purchasers". A purchaser's certification as a qual-
47 ified purchaser shall be valid for four years. DHCR shall solicit new
48 applications for qualified purchaser status at least once each calendar
49 year, at which time existing qualified purchasers shall be eligible to
50 apply for renewed certification as qualified purchasers.

51 3. Existence and publication of qualified purchasers list. DHCR shall
52 publish on its website, and make available upon request, a list of qual-
53 ified purchasers. In addition to such other information as DHCR may
54 include, such list shall include contact information for each qualified
55 purchaser. Such contact information shall include, but need not be

1 limited to, a mailing address, an e-mail address that the qualified
2 purchaser monitors regularly, and a telephone number.

3 4. Disqualification of qualified purchaser and conflicts of interest.
4 DHCR shall promptly investigate any complaint alleging that a qualified
5 purchaser has failed to comply with this section. Subject to regulations
6 promulgated by DHCR, if, after providing the qualified purchaser with
7 notice and opportunity to be heard, DHCR determines that a purchaser
8 listed as a qualified purchaser has failed to comply with this section,
9 DHCR may suspend or revoke that purchaser's certification as a qualified
10 purchaser. DHCR shall establish a process for addressing potential and
11 actual conflicts of interests that may arise among supportive partners,
12 qualified purchasers, and tenants through promulgation of regulations.

13 § 799-g. Supportive partners. 1. Supportive partner criteria. DHCR
14 shall establish an administrative process for certifying individuals or
15 organizations that meet the following minimum criteria:

16 (a) The individual or organization has demonstrated ability and capac-
17 ity to guide and support tenants in forming a tenant organization;

18 (b) The individual or organization has demonstrated ability and capac-
19 ity to assist tenants in understanding and exercising their rights under
20 this article;

21 (c) The individual or organization has demonstrated expertise, or
22 existing partnerships with other organizations with demonstrated exper-
23 tise, to counsel tenants on first-time homeownership and collective
24 ownership structures;

25 (d) The individual or organization has a demonstrated commitment to
26 creating democratic resident-controlled housing; and

27 (e) The individual or organization has agreed to attend mandatory
28 trainings, to be determined, from time to time, by DHCR.

29 2. Certification, term, and renewal. Individuals and organizations
30 that DHCR certifies as having met the criteria in subdivision one of
31 this section shall be known as "supportive partners". An individual or
32 organization's certification as a supportive partner shall be valid for
33 four years. DHCR shall solicit new applications for supportive partner
34 status at least once each calendar year, at which time existing support-
35 ive partners shall be eligible to apply for renewed certification as
36 supportive partners.

37 3. Purpose of supportive partner. A supportive partner shall function
38 in a supportive role to assist tenants in exercising their rights under
39 this article. This article shall not confer any rights to a supportive
40 partner. A supportive partner shall be distinct from a qualified
41 purchaser that is conferred subordinated rights under this article as
42 described in section seven hundred ninety-nine-g of this article. DHCR
43 may determine that a qualified purchaser described in section seven
44 hundred ninety-nine-f of this article that meets the criteria in subdivi-
45 sion one of this section shall also be eligible to serve as a support-
46 ive partner. DHCR may also serve as a supportive partner.

47 4. Existence and publication of supportive partners list. DHCR shall
48 publish on its website, and make available upon request, a list of
49 supportive partners. In addition to such other information as DHCR may
50 include, this list shall include contact information for each supportive
51 partner. Such contact information shall include, but need not be limited
52 to, a mailing address, an e-mail address that the supportive partner
53 monitors regularly, and a telephone number.

54 5. Disqualification of supportive partner and conflicts of interest.
55 DHCR shall promptly investigate any complaint alleging that a supportive
56 partner has failed to comply with this section. Subject to regulations

1 promulgated by DHCR, if, after providing the supportive partner with
2 notice and opportunity to be heard, DHCR determines that an individual
3 or organization listed as a supportive partner has failed to comply with
4 this section, DHCR may suspend or revoke such individual or organiza-
5 tion's certification as a supportive partner. DHCR shall establish a
6 process for addressing potential and actual conflicts of interests that
7 may arise among supportive partners, qualified purchasers, and tenants
8 through promulgation of regulations.

9 § 799-h. Assignment of rights. 1. A tenant or tenant organization may
10 assign rights under this section in compliance with sections seven
11 hundred ninety-nine-d and seven hundred ninety-nine-e to a qualified
12 purchaser of their choice.

13 2. Subject to regulations promulgated by DHCR, the assignment of
14 rights described in this section shall occur prior to the tenant or
15 tenant organization waiving their rights pursuant to section seven
16 hundred ninety-nine-i of this article, and only during the process
17 provided in section seven hundred ninety-nine-d of this article. Except
18 as provided in section seven hundred ninety-nine-i of this article, the
19 waiver and assignment of rights shall be made in a written agreement
20 executed by the tenant or tenant organization and the qualified purchas-
21 er.

22 3. Qualified purchasers shall not accept any payment, consideration,
23 or reward in exchange for the assignment of rights under this section.

24 § 799-i. Waiver of rights. 1. Tenants may affirmatively waive their
25 rights before the time periods specified in section seven hundred nine-
26 ty-nine-d of this article elapse, by notifying the owner in writing,
27 signed by the tenants and in compliance with section seven hundred nine-
28 ty-nine-e of this article.

29 2. Tenants' failure to complete actions required under section seven
30 hundred ninety-nine-d of this article within the allotted time periods,
31 and any extensions thereof, shall be deemed an implied waiver of such
32 tenants' rights.

33 § 799-j. Notice requirements. Any notices required or permitted by
34 this article shall also comply with regulations promulgated by DHCR.
35 DHCR shall develop model notices which owners may choose to use to
36 comply with the requirements of this section and shall make such notices
37 accessible to owners, including but not limited to, posting such notices
38 on DHCR's website. Such model notice shall include a list of certified
39 qualified purchasers.

40 § 799-k. Third-party purchaser rights. The right of a third-party to
41 purchase a rental housing accommodation shall be conditional upon the
42 exercise of tenant, tenant organization, and qualified purchaser rights
43 under this article. The time periods for submitting and accepting an
44 offer, securing financing, and closing under this article shall be mini-
45 mum periods, and the owner may afford any tenant, tenant organization,
46 and qualified purchaser a reasonable extension of such period, without
47 liability under a third-party purchase contract. Owners shall be
48 responsible for alerting any third-party purchasers regarding the appli-
49 cability of the tenant's right to purchase the property. Third-party
50 purchasers shall be presumed to act with full knowledge of the rights of
51 tenants, tenant organizations, and qualified purchasers and public poli-
52 cy under this article.

53 § 799-l. Right to appraisal. 1. Right to appraisal. This section shall
54 apply whenever an offer of sale is made to a tenant, tenant organiza-
55 tion, or qualified purchasers as required by this article and the offer
56 is made in the absence of an arm's-length third-party purchase contract.

1 2. Request for appraisal. The tenant, tenant organization, or quali-
2 fied purchaser that receives an owner's offer of sale may challenge such
3 offer of sale as not being a bona fide offer of sale, and request an
4 appraisal to determine the fair market value of the rental housing
5 accommodation. The party requesting the appraisal shall be deemed the
6 "petitioner" for purposes of this section. The petitioner shall deliver
7 the written request for an appraisal to DHCR and the owner by hand or by
8 certified mail within five days of receiving the offer of sale.

9 3. Time for appraisal. Beginning with the date of receipt of a written
10 request for an appraisal, and for each day thereafter until the peti-
11 tioner receives the appraisal, the time periods described in subdivision
12 three of section seven hundred ninety-nine-d of this article shall be
13 extended by an additional time of up to ten business days.

14 4. Selection of appraiser. The petitioner shall select an appraiser
15 from a list of independent, qualified appraisers, that DHCR shall main-
16 tain. DHCR-approved appraisers shall hold an active appraiser license
17 issued by the New York state board of real estate appraisal and shall be
18 able to conduct an objective, independent property valuation, performed
19 according to professional industry standards. All appraisers shall
20 undergo training organized by DHCR before they are approved and added to
21 the DHCR's list.

22 5. Cost of appraisal. The petitioner shall be responsible for two-
23 thirds and the owner shall be responsible for one-third of the total
24 cost of the appraisal.

25 6. Appraisal procedures and standards. The owner shall give the
26 appraiser full, unfettered access to the property. The owner shall
27 respond within five days to any request for information from the
28 appraiser. The petitioner may give the appraiser information relevant to
29 the valuation of the property. The appraisal shall be completed expe-
30 ditiously according to standard industry timeframes. An appraised value
31 shall only be based on rights an owner has as a matter-of-right as of
32 the date of the alleged bona fide offer of sale, including any existing
33 right an owner may have to convert the property to another use. Within
34 the restrictions in this subdivision, an appraised value may take into
35 consideration the highest and best use of the property.

36 7. Validity of appraisal. The determination of the appraised value of
37 the rental housing accommodation, in accordance with this section, shall
38 become the sales price of the rental housing accommodation in the bona
39 fide offer of sale, unless:

40 (a) The owner and the petitioner agree upon a different sales price of
41 the rental housing accommodation; or

42 (b) The owner elects to withdraw the offer of sale altogether within
43 fourteen days of receipt of the appraisal, in which case:

44 (i) the owner shall withdraw the offer of sale by delivering a written
45 notice by hand or by certified mail to DHCR and to the petitioner;

46 (ii) upon withdrawal, the owner shall reimburse the petitioner and
47 DHCR for their share of the cost of the appraisal within fourteen days
48 of delivery of written notice of withdrawal; and

49 (iii) an owner who withdraws an offer of sale in accordance with this
50 paragraph shall be precluded from proceeding to sell the rental housing
51 accommodation to a third-party purchaser without complying with this
52 section by honoring the right of first refusal of tenants, tenant organ-
53 izations and qualified purchasers; or

54 (c) The petitioner elects to withdraw the offer of sale altogether
55 within fourteen days of receipt of the appraisal, in which case:

1 (i) the petitioner shall withdraw the offer of sale by delivering a
2 written notice by hand or by certified mail to DHCR and to the owner;
3 and

4 (ii) upon withdrawal, the petitioner shall reimburse the owner and
5 DHCR for their share of the cost of the appraisal within fourteen days
6 of delivery of written notice of withdrawal.

7 § 799-m. Purchase contract negotiation. 1. Bargaining in good faith.
8 The owner and any tenant, tenant organization, and/or qualified purchas-
9 er shall bargain in good faith regarding the terms of any offer for
10 sale. Any one of the following shall constitute prima facie evidence of
11 bargaining without good faith:

12 (a) The failure of an owner to offer a tenant, tenant organization, or
13 qualified purchaser a price and other material terms at least as favora-
14 ble as that offered to a third-party purchaser;

15 (b) Any requirement by an owner that a tenant, tenant organization, or
16 qualified purchaser waive any right under this article; or

17 (c) The intentional failure of an owner, tenant, tenant organization,
18 or qualified purchaser to comply with the provisions of this article.

19 2. Reduced price. If the owner sells or contracts to sell the rental
20 housing accommodation to a third-party purchaser for a price less than
21 the price offered to the tenant, tenant organization, or qualified
22 purchaser in the offer of sale, or for other terms, which would consti-
23 tute bargaining without good faith, the owner shall comply anew with all
24 requirements of this article, as applicable.

25 3. Termination of rights. The intentional failure of any tenant,
26 tenant organization, or qualified purchaser to comply with the
27 provisions of this article shall result in the termination of their
28 rights under this article.

29 § 799-n. No selling of rights. 1. A tenant, tenant organization, or
30 qualified purchaser shall not sell or otherwise convey any rights under
31 this article.

32 2. An owner shall not coerce a tenant or tenant organization to waive
33 their rights under this article.

34 § 799-o. Tenant protections. 1. No tenant in the rental housing accom-
35 modation, including tenants who do not exercise rights to purchase under
36 this article, shall be evicted by the TOPA buyer, for a failure to
37 purchase or for any other reason applicable to expiration of tenancy,
38 except for good cause; provided that such proceedings may be commenced
39 for non-payment of rent, illegal use or occupancy of the premises,
40 refusal of reasonable access to the owner or a similar breach by the
41 non-purchasing tenant of their obligations to the purchaser.

42 2. Should there be an expiration of the maximum allowable rent
43 provision of the state's emergency tenant protection regulations, and
44 the state's rent stabilization code, promulgated by the division of
45 housing and community renewal, TOPA buyers shall adjust the rent annual-
46 ly to allow an increase of no more than the increase in the CPI.

47 § 799-p. Price stabilization. 1. Price stabilization. A rental housing
48 accommodation purchased by a TOPA buyer under this article shall be
49 subject to permanent affordability restrictions as set forth in this
50 section and by regulations promulgated by DHCR, which shall be promul-
51 gated with the intent of fulfilling the purpose of this section.

52 2. Term. Subject to regulations promulgated by DHCR, permanent afford-
53 ability standards shall restrict the use of the rental housing accommo-
54 modation to require that permanent affordability restrictions remain in
55 force for ninety-nine years and with an option to renew at year one

1 hundred. This subdivision shall not be construed to apply only to commu-
2 nity land trusts.

3 3. Permanent affordability. In exchange for the rights conferred under
4 this section, each TOPA buyer shall agree to maintain the permanent
5 affordability of the rental housing accommodation. No TOPA buyer shall
6 be entitled to a purchase contract under this section without executing
7 an agreement with DHCR to limit the future appreciation of the rental
8 housing accommodation and only sell, or rent, to income-eligible house-
9 holds in accordance with this section, section seven hundred ninety-
10 nine-q of this article and relevant standards and exemptions created by
11 DHCR through regulation. Under such agreement, each TOPA buyer shall
12 represent to DHCR that they agree to be bound by the permanent affor-
13 dability requirements under this section. The TOPA buyer shall deliver
14 such agreement to DHCR no later than the deadline for submitting an
15 offer provided under section seven hundred ninety-nine-d of this arti-
16 cle.

17 4. Permanent affordability standards for tenants or tenant organiza-
18 tions. For a tenant or tenant organization purchasing a rental housing
19 accommodation, permanent affordability standards created by DHCR shall:

20 (a) Restrict the resale price of the rental housing accommodation, or
21 separate ownership interests in the rental housing accommodation, by
22 limiting the annual market appreciation of the rental housing accommo-
23 dation, or separate ownership interest, to a percentage increase as
24 agreed upon by DHCR or the regulating municipal housing agency, not to
25 exceed an annual interest rate of three percent simple;

26 (b) Ensure that a unit in which a tenant determines to remain a renter
27 following a purchase under this article shall be maintained as a unit
28 subject to the requirements of section seven hundred ninety-nine-o of
29 this article, unless DHCR determines a valid exemption or alternative
30 standard should apply for such unit assisted by DHCR or other public
31 subsidy program which is subject to separate permanent affordability
32 requirements; and

33 (c) At minimum, make the restricted resale price of the rental housing
34 accommodation, or ownership interests in the rental housing accommo-
35 dation, available only to households with income at or below the average
36 AMIs of the initial TOPA buyers as of the initial purchase date of the
37 rental housing accommodation, as verified and recorded by DHCR as of the
38 initial purchase date and not to exceed one hundred percent of AMI.

39 5. Permanent affordability standards for qualified purchasers. For
40 qualified purchasers purchasing the rental housing accommodation, perma-
41 nent affordability standards created by DHCR shall:

42 (a) Restrict the resale price of the rental housing accommodation, or
43 separate ownership interests in the rental housing accommodation, by
44 limiting the annual appreciation of the rental housing accommodation, or
45 separate ownership interest, to a percentage increase as agreed upon by
46 DHCR or the regulating municipal housing agency, not to exceed an annual
47 interest rate of three percent simple;

48 (b) Ensure that a unit in which a tenant determines to remain a renter
49 following a purchase under this article shall be maintained as a unit
50 subject to the requirements of section seven hundred ninety-nine-o of
51 this article, unless DHCR determines a valid exemption or alternative
52 standard should apply for such unit assisted by DHCR or other public
53 subsidy program which is subject to separate permanent affordability
54 requirement; and

55 (c) Prioritize making vacant or vacated units in the rental housing
56 accommodation available to households with incomes at or below the aver-

1 age median income by zip code at the time of purchase but not to exceed
2 eighty percent of AMI.

3 6. Mechanism. Permanent affordability restrictions shall materialize
4 as at least one of the following:

5 (a) A restrictive covenant placed on the recorded title deed to the
6 rental housing accommodation that runs with the land and is enforceable
7 by DHCR against the TOPA buyer and its successors, and other affordabil-
8 ity restrictions in land leases or other recorded documents not specif-
9 ically listed in this subdivision, so long as DHCR determines that such
10 restrictions are enforceable and likely to be enforced such as a
11 recorded mortgage promissory note and/or regulatory agreements with
12 local housing agencies where government subsidies are involved; and

13 (b) A community land trust lease, which is a ninety-nine-year renewa-
14 ble land lease with affordability and owner-occupancy restrictions.

15 7. Required recordings and filings. (a) All covenants created in
16 accordance with section seven hundred ninety-nine-o of this article
17 shall be recorded before or simultaneously with the close of escrow in
18 the office of the county recorder where the rental housing accommodation
19 is located and shall contain a legal description of the rental housing
20 accommodation, indexed to the name of the TOPA buyer as grantee.

21 (b) Each TOPA buyer of the rental housing accommodation shall be
22 required to file a document annually with DHCR in which the TOPA buyer
23 affirmatively states the rents and share price for each unit in the
24 rental housing accommodation. DHCR may engage a third-party monitoring
25 agent to monitor the compliance of this subdivision, pursuant to DHCR
26 regulations.

27 § 799-q. Incentives. 1. Access to buyers. DHCR shall endeavor to main-
28 tain and publicize the list of qualified purchasers in a manner that, to
29 the maximum extent feasible, promotes the existence of the qualified
30 purchasers as a readily accessible pool of potential buyers for covered
31 properties. DHCR shall, to the maximum extent permitted by law and
32 otherwise feasible, publicize the existence of this list in a manner
33 intended to facilitate voluntary sales to qualified purchasers in a
34 manner that avoids or minimizes the need for a broker, other search
35 costs, or other transactions.

36 2. Partial transfer tax exemption. The tax rate shall be reduced in
37 accordance with section fourteen hundred two of the tax law with respect
38 to any deed, instrument, or writing that affects a transfer under this
39 article.

40 3. Potential federal tax benefits. Any qualified purchaser that
41 purchases a rental housing accommodation under the right of first
42 refusal set forth in section seven hundred ninety-nine-d of this article
43 shall, to the maximum extent permitted by law and otherwise feasible, be
44 obliged to work with the owner in good faith to facilitate an exchange
45 of real property of the kind described in 26 U.S.C. § 1031, for the
46 purpose of facilitating the owner's realization of any federal tax bene-
47 fits available under that section of the internal revenue code.

48 4. Information to owners. DHCR shall produce an information sheet
49 describing the benefits of an owner's decision to accept a tenants' or
50 qualified purchaser's offer of purchase made in connection with the
51 right of first refusal established in this article. DHCR shall make
52 this information sheet accessible to owners and buyers by publication on
53 DHCR's website.

54 § 799-r. Enforcement. 1. Powers and duties of DHCR. DHCR shall be
55 authorized to take all appropriate action, including but not limited to

1 the actions specified in section seven hundred ninety-nine-a of this
2 article, to implement and enforce this article.

3 2. Implementation. (a) DHCR shall promulgate rules and regulations
4 consistent with this article.

5 (b) DHCR shall adopt regulations to implement a petition and hearing
6 procedure for administering the enforcement of this article.

7 (c) DHCR shall establish and make available standard documents to
8 assist owners, tenants, tenant organizations, and qualified purchasers
9 in complying with the requirements of this article through an online
10 portal, provided that use of such documents does not necessarily estab-
11 lish compliance.

12 (d) Owner certification and disclosures. Every owner of a residential
13 property in the state shall, within fifteen days of the sale of such
14 residential property, submit to DHCR a signed declaration, under penalty
15 of perjury, affirming that the sale of such residential property
16 complied with the requirements of this article. Such declaration shall
17 include the address of the relevant residential property and the name of
18 each new owner of the rental housing accommodation. DHCR shall publish
19 all such addresses on its website. Failure to file a declaration
20 required by this paragraph shall result in the penalty described in
21 subparagraph (i) of paragraph (b) of subdivision three of this section.

22 3. Enforcement. (a) Civil action. Any party may seek enforcement of
23 any right or provision under this article through a civil action filed
24 with a court of competent jurisdiction and, upon prevailing, shall be
25 entitled to remedies, including those described in paragraph (b) of this
26 subdivision.

27 (b) Penalties and remedies.

28 (i) Civil penalties. An owner who willfully or knowingly violates any
29 provision of this article shall be subject to a cumulative civil penalty
30 imposed by DHCR in the amount of up to one thousand dollars per day, per
31 tenant-occupied unit in a rental housing accommodation, for each day
32 from the date the violation began until the requirements of this article
33 are satisfied, payable to the New York housing trust fund.

34 (ii) Legal remedies. Remedies in civil action brought under this
35 section shall include the following, which may be imposed cumulatively:

36 (A) Damages in an amount sufficient to remedy the harm to the plain-
37 tiff;

38 (B) In the event that an owner sells a rental housing accommodation
39 without complying with the requirements of this article, and if the
40 owner's violation of this article was knowing or willful, mandatory
41 civil penalties in an amount proportional to the culpability of the
42 owner and the value of the rental housing accommodation. There shall be
43 a rebuttable presumption that this amount is equal to ten percent of the
44 sale price of the rental housing accommodation for a willful or knowing
45 violation of this article, twenty percent of the sale price for a second
46 willful or knowing violation, and thirty percent of the sale price for
47 each subsequent willful or knowing violation. Civil penalties assessed
48 under this paragraph shall be payable to the New York housing trust
49 fund; and

50 (C) Reasonable attorneys' fees.

51 (iii) Equitable remedies. In addition to any other remedy or enforce-
52 ment measure that a tenant, tenant organization, qualified purchaser, or
53 DHCR may seek under this section, any court of competent jurisdiction
54 may enjoin any sale or other action of an owner that would be made in
55 violation of this article.

1 § 799-s. Statutory construction. The purpose of this article shall be
2 to prevent the displacement of lower-income tenants in New York and to
3 preserve affordable housing by providing an opportunity for tenants to
4 own or remain renters in the properties in which tenants reside as
5 provided in this article. If a court finds ambiguity and there is any
6 reasonable interpretation of this article that favors the rights of the
7 tenant, then the court shall resolve ambiguity toward the end of
8 strengthening the legal rights of the tenant or tenant organization to
9 the maximum extent permissible under law.

10 § 799-t. Administration and reports. 1. DHCR shall report annually on
11 the status of the tenant opportunity to purchase act program to the
12 legislature or to such legislative committee as the legislature may
13 designate. Such reports shall include, but shall not be limited to the
14 following:

15 (a) Statistics on the number and types of sales of tenant occupied
16 properties;

17 (b) Statistics on the number of tenants and qualified purchasers that
18 invoke action under this article;

19 (c) Number and types of units covered by this article; and

20 (d) Any other information the legislature or legislative committee may
21 request.

22 2. DHCR shall make available translation services in languages other
23 than English, where requested in advance by a tenant, tenant organiza-
24 tion, qualified purchaser, owner, or member of the public as it relates
25 to TOPA, to interpret and translate documents and procedures as needed.

26 § 3. Severability clause. If any clause, sentence, paragraph, subdivi-
27 sion, section or part of this act shall be adjudged by any court of
28 competent jurisdiction to be invalid, such judgment shall not affect,
29 impair, or invalidate the remainder thereof, but shall be confined in
30 its operation to the clause, sentence, paragraph, subdivision, section
31 or part thereof directly involved in the controversy in which such
32 judgement shall have been rendered. It is hereby declared to be the
33 intent of th legislature that this act would have been enacted even if
34 such invalid provisions had not been included herein.

35 § 4. This act shall take effect on the one hundred eightieth day after
36 it shall have become a law. Effective immediately, the addition, amend-
37 ment and/or repeal of any rule or regulation necessary for the implemen-
38 tation of this act on its effective date are authorized to be made and
39 completed on or before such effective date.