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:

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

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

ARTICLE 7-E

TENANT OPPORTUNITY TO PURCHASE ACT

Section 799. Definitions.
799-a. Authority.
799-b. Applicability.
799-c. Exemptions.
799-d. Right of first refusal.
799-e. Tenant decision-making; tenant organizations.
799-f. Qualified purchasers.
799-g. Supportive partners.
799-h. Assignment of rights.
799-i. Waiver of rights.
799-j. Notice requirements.

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

LBD01986-02-4

799-k. Third-party purchaser rights.
799-l. Right to appraisal.
799-m. Purchase contract negotiation.
799-n. No selling of rights.
799-o. Tenant protections.
799-p. Price stabilization.
799-q. Incentives.
799-r. Enforcement.
799-s. Statutory construction.
799-t. Administration and reports.

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

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

2. "Appraised value" means the value of the rental housing accommodation as of the date of the appraisal, based on an objective, independent property valuation, performed according to professional appraisal industry standards.

3. "Bona fide offer of sale" means an offer of sale for a rental housing accommodation that is either:

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

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

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

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

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

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

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

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

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

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

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

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

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

12. "Permanent affordability" means that future rents and future sales prices of a rental housing accommodation, or separate ownership interests in such rental housing accommodation, shall be made affordable to households with targeted income levels no greater than one hundred thirty percent area median income adjusted for family size.

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

14. "Qualified purchaser" means a qualified purchaser meeting the criteria described in section seven hundred ninety-nine-f of this article.

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

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

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

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

19. "Sale" or "sell" means the transfer, in exchange for money or any other thing of economic value, of a present interest in the rental housing accommodation, including beneficial use, where the value of the present interest is the fee interest in the rental housing accommodation, or substantially equal to the value of that fee interest. For

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

20. "Supportive partner" means a "supportive partner" meeting the criteria set forth in section seven hundred ninety-nine-g of this article.

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

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

(a) Can acquire an interest in real property;

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

(c) Has adopted a governing document; and

(d) Has appointed officers and any other authorized agents specifically designated to execute contracts or act on its behalf.

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

24. "TOPA buyer" means a tenant, tenant organization, or qualified purchaser that is purchasing or has purchased a rental housing accommodation from an owner under this article.

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

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

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

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

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

(b) Properties owned by and operated as a hospital, convent, monastery, extended care facility, convalescent home, assisted living residence, facilities providing housing to runaway and homeless youth or young adults, college or school dormitory or any institution operated for charitable, hospital or educational purposes.

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

(d) Residential properties undergoing refinancing, a loan modification, short sale, deed in lieu of foreclosure or any other loss-mitigation option in order to maintain ownership of such properties.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(j) A bankruptcy sale.

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

believe that they are exempt under this article shall comply with procedures that DHCR shall create for claiming such an exemption.

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

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

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

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

(i) The asking price and terms of the sale. The terms and conditions shall be consistent with the applicable timeframes described in subdivisions three and four of this section;

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

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

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

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

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

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

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

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

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

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

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

4. Time to secure financing and close. If a tenant, tenant organization, or qualified purchaser accepts an owner's offer of sale in accordance with this article, the owner shall afford such tenant, tenant organization, or qualified purchaser time to secure financing and close, consistent with this article.

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

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

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

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

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

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

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

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

(C) a copy of the governing document;

(D) documented approval that the tenant organization represents a majority under subdivision one of this section as of the time of registration; and

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

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

(c) Upon registration with DHCR, the tenant organization shall constitute the sole representative of the tenants for purposes of this article.

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

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

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

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

(ii) a commitment to community engagement, as evidenced by relationships with neighborhood-based organizations or tenant counseling organizations;

(c) The purchaser has agreed to transfer ownership of the rental housing accommodation to the tenants when feasible if its tenants request such transfer of ownership;

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

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

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

(g) The purchaser has acquired or partnered with another housing development organization or nonprofit organization to acquire at least one residential building using any public or community funding, or has entered into a written memorandum of understanding with another housing development organization or nonprofit organization for the purpose of partnering with a housing development organization or nonprofit organization to acquire residential buildings using public or community funding; and

(h) The purchaser has agreed to attend mandatory training to be determined, from time to time, by DHCR.

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

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

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

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

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

(a) The individual or organization has demonstrated ability and capacity to guide and support tenants in forming a tenant organization;

(b) The individual or organization has demonstrated ability and capacity to assist tenants in understanding and exercising their rights under this article;

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

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

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

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

3. Purpose of supportive partner. A supportive partner shall function in a supportive role to assist tenants in exercising their rights under this article. This article shall not confer any rights to a supportive partner. A supportive partner shall be distinct from a qualified purchaser that is conferred subordinated rights under this article as described in section seven hundred ninety-nine-g of this article. DHCR may determine that a qualified purchaser described in section seven hundred ninety-nine-f of this article that meets the criteria in subdivision one of this section shall also be eligible to serve as a supportive partner. DHCR may also serve as a supportive partner.

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

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

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

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

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

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

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

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

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

§ 799-k. Third-party purchaser rights. The right of a third-party to purchase a rental housing accommodation shall be conditional upon the exercise of tenant, tenant organization, and qualified purchaser rights under this article. The time periods for submitting and accepting an offer, securing financing, and closing under this article shall be minimum periods, and the owner may afford any tenant, tenant organization, and qualified purchaser a reasonable extension of such period, without liability under a third-party purchase contract. Owners shall be responsible for alerting any third-party purchasers regarding the applicability of the tenant's right to purchase the property. Third-party purchasers shall be presumed to act with full knowledge of the rights of tenants, tenant organizations, and qualified purchasers and public policy under this article.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

hundred. This subdivision shall not be construed to apply only to community land trusts.

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

4. Permanent affordability standards for tenants or tenant organizations. For a tenant or tenant organization purchasing a rental housing accommodation, permanent affordability standards created by DHCR shall:

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

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

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

5. Permanent affordability standards for qualified purchasers. For qualified purchasers purchasing the rental housing accommodation, permanent affordability standards created by DHCR shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) Penalties and remedies.

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

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

(A) Damages in an amount sufficient to remedy the harm to the plaintiff;

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

(C) Reasonable attorneys' fees.

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

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

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

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

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

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

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

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

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

§ 4. This act shall take effect on the one hundred eightieth day after it shall have become a law. Effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized to be made and completed on or before such effective date.