

STATE OF NEW YORK

11252

IN ASSEMBLY

May 4, 2026

Introduced by M. of A. RAGA -- read once and referred to the Committee on Judiciary

AN ACT to amend the real property actions and proceedings law, in relation to establishing the commercial 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 "commercial 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

COMMERCIAL 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.

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.

18 799-k. Third-party purchaser rights.

19 799-l. Right to appraisal.

20 799-m. Purchase contract negotiation.

21 799-n. No selling of rights.

22 799-o. Tenant protections.

23 799-p. Incentives.

24 799-q. Enforcement.

25 799-r. Statutory construction.

26 799-s. Administration and reports.

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

LBD13709-01-5

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

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

7 2. "Appraised value" means the value of the commercial rental property
8 as of the date of the appraisal, based on an objective, independent
9 property valuation, performed according to professional appraisal indus-
10 try standards.

11 3. "Bona fide offer of sale" means an offer of sale for a commercial
12 rental property that is either:

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

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

22 4. "Commercial rental property" means a property which contains units
23 which are rented to commercial entities for the purposes of operating a
24 business.

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

32 6. "CTOPA buyer" means a commercial tenant or qualified purchaser that
33 is purchasing or has purchased a commercial rental property from an
34 owner under this article.

35 7. "Days" shall mean calendar days unless otherwise indicated.

36 8. "ESD" means the empire state development corporation.

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

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

44 11. "Owner" means one or more persons, corporation, partnership,
45 limited liability company, trustee, or any other entity, who is the
46 owner of record of commercial rental property at the time of giving
47 notice of intention to sell, and each person, corporation, partnership,
48 limited liability company, trustee, or any other entity, who, directly
49 or indirectly, owns fifty percent or more of the equity interests in
50 such commercial rental property at the time of giving notice of inten-
51 tion to sell. For purposes of complying with the notice requirements
52 described in this article, "owner" may refer to any person acting as an
53 authorized agent of the owner.

54 12. "Permanent affordability" means that future commercial rents and
55 future sales prices of a commercial rental property, or separate owner-

1 ship interests in commercial rental property, shall be made affordable
2 to small businesses.

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

7 14. "Qualified purchaser" means a qualified purchaser certified under
8 section seven hundred ninety-nine-f of this article.

9 15. "Rent" means the monthly or weekly amount charged in consideration
10 for the use and occupation of a unit of a property pursuant to a written
11 or oral rental agreement.

12 16. "Rental agreement" means an agreement, oral, written or implied,
13 between an owner and a commercial tenant for use or occupancy of a unit
14 of a property for the purposes of operating a small business.

15 17. "Rental unit" or "unit" means any unit in any real property,
16 including the land appurtenant thereto, that is available for rent for
17 commercial use, located in New York state.

18 18. "Sale" or "sell" means the transfer, in exchange for money or any
19 other thing of economic value, of a present interest in the commercial
20 rental property, including beneficial use, where the value of the pres-
21 ent interest is the fee interest in the commercial rental property, or
22 substantially equal to the value of that fee interest. For purposes of
23 this definition, a "transfer" may include those completed in one trans-
24 action or a series of transactions over a period of time.

25 19. "Small business" means a business which is resident in this state,
26 independently owned and operated, not dominant in its field and employs
27 one hundred or less persons.

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

31 21. "Tenant" or "commercial tenant" means one or more commercial
32 renter, tenant, subtenant, lessee, sublessee, or other person entitled
33 to the possession, occupancy, or benefits of a rental unit within a
34 commercial rental property.

35 22. "Third-party purchaser" means any person or entity other than a
36 commercial tenant or qualified purchaser, engaged or seeking to engage,
37 in purchasing a commercial rental property from an owner under this
38 article.

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

44 § 799-a. Authority. ESD and their designees shall be authorized to
45 enforce the provisions of this article, and for such purposes, shall
46 have the powers of a law enforcement officer. ESD shall be authorized to
47 establish standards, policies, and procedures for the implementation of
48 the provisions of this article to further the purpose set forth in this
49 article.

50 § 799-b. Applicability. 1. This article shall only apply to commercial
51 rental properties, other than those exempt under this article, which:

52 (a) are in whole or in part on the national register of historic plac-
53 es, the list of national historic landmarks, the New York state register
54 of historic places, or any other list, register, or other collection of
55 places of historical significance approved by ESD in consultation with
56 the office of parks, recreation and historic preservation;

1 (b) have a commercial tenant which is on the national register of
2 historic places, the list of national historic landmarks, the New York
3 state register of historic places, or any other list, register, or other
4 collection of places of historical significance approved by ESD in
5 consultation with the office of parks, recreation and historic preserva-
6 tion; or

7 (c) are located in whole or in part within a historic district created
8 by the state or by a local law passed pursuant to section ninety-six-a
9 or one hundred nineteen-dd of the general municipal law.

10 2. This article shall only apply to tenants who are small businesses.

11 § 799-c. Exemptions. 1. Exempted properties. This article shall not
12 apply to the following commercial rental properties:

13 (a) Properties owned by municipal, state, federal, or foreign govern-
14 ments.

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

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

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

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

25 2. Exempted transfers. The following transfers shall be exempted for
26 the purposes of this article:

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

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

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

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

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

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

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

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

46 (g) A transfer of a commercial rental building to a tenant or quali-
47 fied purchaser pursuant to a transfer agreement in effect on the effec-
48 tive date of this article, except that any renewal, modification, or
49 amendment of such agreement occurring on or after the effective date of
50 this article shall be subject to the provisions of this article.

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

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

1 (j) A bankruptcy sale.

2 3. Exemption procedures. The owner of a commercial rental property, or
3 an individual, group of individuals, organization or facility which
4 believe that they are exempt under this article shall comply with proce-
5 dures that ESD shall create for claiming such an exemption.

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

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

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

27 (a) The owner's offer of sale shall include, but not be limited to:

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

31 (ii) A statement as to whether a purchase contract with a third-party
32 purchaser exists for the sale of the commercial real property, and if
33 so, a copy of such purchase contract; and

34 (iii) A statement in English and at least one other language, includ-
35 ing but not limited to the most popular language spoken other than
36 English based on the latest United States Census within the property's
37 census tract, stating that if the tenant requires the offer of sale in a
38 language other than English, they may contact ESD and request the offer
39 of sale in their requested language and/or the assistance of an inter-
40 preter.

41 (b) If a tenant is receiving the offer of sale, the owner shall deliv-
42 er a written copy of the offer of sale to each tenant by certified mail
43 or e-mail.

44 (c) If a qualified purchaser is receiving the offer of sale, the owner
45 shall deliver the offer of sale to each qualified purchaser that previ-
46 ously made an offer to purchase the commercial rental property, and to
47 each tenant, by certified mail or e-mail. The owner shall submit an
48 offer of sale to each such qualified purchaser on the same day, and to
49 the extent possible, at the same time.

50 (d) If the owner has a purchase contract with a third-party purchaser
51 for the sale of the commercial rental property, the owner shall deliver
52 the offer of sale to each tenant or qualified purchaser within two days
53 of entering into a purchase contract with the third-party purchaser.

54 (e) The owner shall also provide ESD with a written copy of the offer
55 of sale and a statement certifying that the items described by paragraph

1 (a) of this subdivision were delivered to each tenant or qualified
2 purchaser in accordance with this subdivision.

3 (f) Any number of tenants and/or a qualified purchaser may come to an
4 agreement to jointly purchase the commercial rental property.

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

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

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

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

15 (b) (i) If, during these time periods, any tenant or qualified
16 purchaser that has received such offer of sale decides to accept the
17 owner's offer of sale, such tenant or qualified purchaser shall notify
18 the owner and every other tenant and qualified purchaser of such deci-
19 sion by e-mail or certified mail. The tenant or qualified purchaser may
20 include in such notice that the tenant or qualified purchaser is willing
21 to partner with a tenant or qualified purchaser.

22 (ii) After a tenant or qualified purchaser notifies the owner of its
23 decision to accept the owner's offer of sale, meaning before any other
24 tenant or qualified purchaser so notified the owner, such tenant or
25 qualified purchaser shall be deemed to have accepted the offer of sale,
26 and no other tenant or qualified purchaser shall accept the owner's
27 offer of sale, whether or not the time periods in this subdivision have
28 elapsed. Any other tenant or qualified purchaser may contact the notify-
29 ing tenant or qualified purchaser.

30 4. Time to partner with a tenant or qualified purchaser. If a quali-
31 fied purchaser accepts an owner's offer of sale in accordance with this
32 article, the owner shall afford such qualified purchaser time to partner
33 with a tenant of the commercial rental property to complete the
34 purchase. If a tenant accepts an owner's offer of sale in accordance
35 with this article, the owner shall afford such tenant time to partner
36 with other tenants or a qualified purchaser of the commercial rental
37 property to complete the purchase. Such time afforded to a tenant or
38 qualified purchaser shall be up to sixty days after the receipt of the
39 offer of sale from the owner.

40 5. Time to secure financing and close. If a tenant or qualified
41 purchaser accepts an owner's offer of sale in accordance with this arti-
42 cle, the owner shall afford such tenant or qualified purchaser time to
43 secure financing and close, consistent with this article.

44 6. Rejection of offer. If each tenant and qualified purchaser that
45 received an offer of sale consistent with this article, rejects such
46 offer of sale or fails to respond within the timelines described in this
47 section, the owner may immediately proceed with the sale of the commer-
48 cial rental property to a third-party purchaser consistent with the
49 price and material terms of that offer of sale.

50 § 799-e. Tenant decision-making. Any action required of tenants under
51 this article shall be approved by at least one tenant of a commercial
52 rental unit. Tenants of multiple units may collectively perform any
53 action required of tenants under this article.

54 § 799-f. Qualified purchasers. 1. Qualified purchaser criteria. ESD
55 shall establish an administrative process for certifying qualified

1 purchasers that shall include, but not be limited to, the following
2 minimum criteria:

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

6 (b) The purchaser has demonstrated a commitment to small businesses;

7 (c) The purchaser has agreed to transfer ownership of the commercial
8 rental property to the tenants when feasible if its tenants request such
9 transfer of ownership;

10 (d) The purchaser has demonstrated a commitment to the provision of
11 affordable commercial rental units for small businesses, and to prevent
12 the displacement of such businesses;

13 (e) The purchaser has agreed to obligate itself and any successors in
14 interest to maintain the affordability of the commercial rental proper-
15 ty;

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

19 (g) The purchaser has agreed to attend mandatory training to be deter-
20 mined, from time to time, by ESD.

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

28 3. Existence and publication of qualified purchasers list. ESD shall
29 publish on its website, and make available upon request, a list of qual-
30 ified purchasers. In addition to such other information as ESD may
31 include, such list shall include contact information for each qualified
32 purchaser. Such contact information shall include, but need not be
33 limited to, a mailing address, an e-mail address that the qualified
34 purchaser monitors regularly, and a telephone number.

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

45 5. Tenant partner required. No qualified purchaser shall be permitted
46 to purchase a commercial rental property under this article unless part-
47 nered with a small business which is a tenant of the commercial rental
48 property. A qualified purchaser may partner with any number of tenants.

49 § 799-g. Supportive partners. 1. Supportive partner criteria. ESD
50 shall establish an administrative process for certifying individuals or
51 organizations that meet the following minimum criteria:

52 (a) The individual or organization has demonstrated ability and capac-
53 ity to guide and support small businesses in purchasing commercial prop-
54 erties;

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

4 (c) The individual or organization has demonstrated expertise, or
5 existing partnerships with other organizations with demonstrated exper-
6 tise, to counsel tenants on owning and managing commercial properties;

7 (d) The individual or organization has a demonstrated commitment to
8 helping small businesses; and

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

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

19 3. Purpose of supportive partner. A supportive partner shall function
20 in a supportive role to assist tenants in exercising their rights under
21 this article. This article shall not confer any rights to a supportive
22 partner. A supportive partner shall be distinct from a qualified
23 purchaser that is conferred subordinated rights under this article as
24 described in section seven hundred ninety-nine-g of this article. ESD
25 may determine that a qualified purchaser described in section seven
26 hundred ninety-nine-f of this article that meets the criteria in subdivi-
27 sion one of this section shall also be eligible to serve as a support-
28 ive partner. ESD may also serve as a supportive partner.

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

36 5. Disqualification of supportive partner and conflicts of interest.
37 ESD shall promptly investigate any complaint alleging that a supportive
38 partner has failed to comply with this section. Subject to regulations
39 promulgated by ESD, if, after providing the supportive partner with
40 notice and opportunity to be heard, ESD determines that an individual or
41 organization listed as a supportive partner has failed to comply with
42 this section, ESD may suspend or revoke such individual or organiza-
43 tion's certification as a supportive partner. ESD shall establish a
44 process for addressing potential and actual conflicts of interests that
45 may arise among supportive partners, qualified purchasers, and tenants
46 through promulgation of regulations.

47 § 799-h. Assignment of rights. 1. A tenant may assign rights under
48 this section in compliance with sections seven hundred ninety-nine-d and
49 seven hundred ninety-nine-e of this article to a qualified purchaser of
50 their choice.

51 2. Subject to regulations promulgated by ESD, the assignment of rights
52 described in this section shall occur prior to the tenant waiving their
53 rights pursuant to section seven hundred ninety-nine-i of this article,
54 and only during the process provided in section seven hundred ninety-
55 nine-d of this article. Except as provided in section seven hundred
56 ninety-nine-i of this article, the waiver and assignment of rights shall

1 be made in a written agreement executed by the tenant and the qualified
2 purchaser.

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

5 § 799-i. Waiver of rights. 1. Tenants may affirmatively waive their
6 rights before the time periods specified in section seven hundred nine-
7 ty-nine-d of this article elapse, by notifying the owner in writing,
8 signed by the tenants and in compliance with section seven hundred nine-
9 ty-nine-e of this article.

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

14 § 799-j. Notice requirements. Any notices required or permitted by
15 this article shall also comply with regulations promulgated by ESD. ESD
16 shall develop model notices which owners may choose to use to comply
17 with the requirements of this section and shall make such notices acces-
18 sible to owners, including but not limited to, posting such notices on
19 ESD's website. Such model notice shall include a list of certified qual-
20 ified purchasers.

21 § 799-k. Third-party purchaser rights. The right of a third-party to
22 purchase a commercial rental property shall be conditional upon the
23 exercise of tenant and qualified purchaser rights under this article.
24 The time periods for submitting and accepting an offer, partnering with
25 a tenant, securing financing, and closing under this article shall be
26 minimum periods, and the owner may afford any tenant and qualified
27 purchaser a reasonable extension of such period, without liability under
28 a third-party purchase contract. Owners shall be responsible for alert-
29 ing any third-party purchasers regarding the applicability of the
30 tenant's right to purchase the property. Third-party purchasers shall be
31 presumed to act with full knowledge of the rights of tenants and quali-
32 fied purchasers and public policy under this article.

33 § 799-l. Right to appraisal. 1. Right to appraisal. This section shall
34 apply whenever an offer of sale is made to a tenant or qualified
35 purchasers as required by this article and the offer is made in the
36 absence of an arm's-length third-party purchase contract.

37 2. Request for appraisal. The tenant or qualified purchaser that
38 receives an owner's offer of sale may challenge such offer of sale as
39 not being a bona fide offer of sale, and request an appraisal to deter-
40 mine the fair market value of the commercial rental property. The party
41 requesting the appraisal shall be deemed the "petitioner" for purposes
42 of this section. The petitioner shall deliver the written request for an
43 appraisal to ESD and the owner by hand or by certified mail within five
44 days of receiving the offer of sale.

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

50 4. Selection of appraiser. The petitioner shall select an appraiser
51 from a list of independent, qualified appraisers, that ESD shall main-
52 tain. ESD-approved appraisers shall hold an active appraiser license
53 issued by the New York state board of real estate appraisal and shall be
54 able to conduct an objective, independent property valuation, performed
55 according to professional industry standards. All appraisers shall

1 undergo training organized by ESD before they are approved and added to
2 the ESD's list.

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

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

17 7. Validity of appraisal. The determination of the appraised value of
18 the commercial rental property, in accordance with this section, shall
19 become the sales price of the commercial rental property in the bona
20 fide offer of sale, unless:

21 (a) The owner and the petitioner agree upon a different sales price of
22 the commercial rental property; or

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

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

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

30 (iii) an owner who withdraws an offer of sale in accordance with this
31 paragraph shall be precluded from proceeding to sell the commercial
32 rental property to a third-party purchaser without complying with this
33 section by honoring the right of first refusal of tenants and qualified
34 purchasers; or

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

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

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

42 § 799-m. Purchase contract negotiation. 1. Bargaining in good faith.
43 The owner and any tenant and/or qualified purchaser shall bargain in
44 good faith regarding the terms of any offer for sale. Any one of the
45 following shall constitute prima facie evidence of bargaining without
46 good faith:

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

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

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

54 2. Reduced price. If the owner sells or contracts to sell the commer-
55 cial rental property to a third-party purchaser for a price less than
56 the price offered to the tenant or qualified purchaser in the offer of

1 sale, or for other terms, which would constitute bargaining without good
2 faith, the owner shall comply anew with all requirements of this arti-
3 cle, as applicable.

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

7 § 799-n. No selling of rights. 1. A tenant or qualified purchaser
8 shall not sell or otherwise convey any rights under this article.

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

11 § 799-o. Tenant protections. 1. No tenant in the commercial rental
12 property, including tenants who do not exercise rights to purchase under
13 this article, shall be evicted by the CTOPA buyer, for a failure to
14 purchase or for any other reason applicable to expiration of tenancy,
15 except for good cause; provided that such proceedings may be commenced
16 for non-payment of rent, illegal use or occupancy of the premises,
17 refusal of reasonable access to the owner or a similar breach by the
18 non-purchasing tenant of their obligations to the purchaser.

19 2. Should there be an expiration of the maximum allowable rent
20 provision of the state's emergency tenant protection regulations, and
21 the state's rent stabilization code, promulgated by the ESD, CTOPA
22 buyers shall adjust the rent annually to allow an increase of no more
23 than the increase in the CPI.

24 § 799-p. Incentives. 1. Access to buyers. ESD shall endeavor to main-
25 tain and publicize the list of qualified purchasers in a manner that, to
26 the maximum extent feasible, promotes the existence of the qualified
27 purchasers as a readily accessible pool of potential buyers for covered
28 properties. ESD shall, to the maximum extent permitted by law and other-
29 wise feasible, publicize the existence of this list in a manner intended
30 to facilitate voluntary sales to qualified purchasers in a manner that
31 avoids or minimizes the need for a broker, other search costs, or other
32 transactions.

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

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

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

51 § 799-q. Enforcement. 1. Powers and duties of ESD. ESD shall be
52 authorized to take all appropriate action, including but not limited to
53 the actions specified in section seven hundred ninety-nine-a of this
54 article, to implement and enforce this article.

55 2. Implementation. (a) ESD shall promulgate rules and regulations
56 consistent with this article.

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

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

7 (d) Owner certification and disclosures. Every owner of a commercial
8 rental property in the state shall, within fifteen days of the sale of
9 such commercial rental property, submit to ESD a signed declaration,
10 under penalty of perjury, affirming that the sale of such commercial
11 rental property complied with the requirements of this article. Such
12 declaration shall include the address of the relevant commercial rental
13 property and the name of each new owner of the commercial rental proper-
14 ty. ESD shall publish all such addresses on its website. Failure to file
15 a declaration required by this paragraph shall result in the penalty
16 described in subparagraph (i) of paragraph (b) of subdivision three of
17 this section.

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

23 (b) Penalties and remedies.

24 (i) Civil penalties. An owner who willfully or knowingly violates any
25 provision of this article shall be subject to a cumulative civil penalty
26 imposed by ESD in the amount of up to one thousand dollars per day, per
27 tenant-occupied unit in a commercial rental property, for each day from
28 the date the violation began until the requirements of this article are
29 satisfied.

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

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

34 (B) In the event that an owner sells a commercial rental property
35 without complying with the requirements of this article, and if the
36 owner's violation of this article was knowing or willful, mandatory
37 civil penalties in an amount proportional to the culpability of the
38 owner and the value of the commercial rental property. There shall be a
39 rebuttable presumption that this amount is equal to ten percent of the
40 sale price of the commercial rental property for a willful or knowing
41 violation of this article, twenty percent of the sale price for a second
42 willful or knowing violation, and thirty percent of the sale price for
43 each subsequent willful or knowing violation; and

44 (C) Reasonable attorneys' fees.

45 (iii) Equitable remedies. In addition to any other remedy or enforce-
46 ment measure that a tenant or qualified purchaser, or ESD may seek under
47 this section, any court of competent jurisdiction may enjoin any sale or
48 other action of an owner that would be made in violation of this arti-
49 cle.

50 § 799-r. Statutory construction. The purpose of this article shall be
51 to prevent the displacement of small business tenants in New York and to
52 preserve affordable commercial rental units by providing an opportunity
53 for tenants to own or remain renters in the properties in which tenants
54 do business as provided in this article. If a court finds ambiguity and
55 there is any reasonable interpretation of this article that favors the
56 rights of the tenant, then the court shall resolve ambiguity toward the

1 end of strengthening the legal rights of the tenant to the maximum
2 extent permissible under law.

3 § 799-s. Administration and reports. 1. ESD shall report annually on
4 the status of the tenant opportunity to purchase act program to the
5 legislature or to such legislative committee as the legislature may
6 designate. Such reports shall include, but shall not be limited to the
7 following:

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

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

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

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

15 2. ESD shall make available translation services in languages other
16 than English, where requested in advance by a tenant qualified purchas-
17 er, owner, or member of the public as it relates to CTOPA, to interpret
18 and translate documents and procedures as needed.

19 § 3. Severability clause. If any clause, sentence, paragraph, subdivi-
20 sion, section or part of this act shall be adjudged by any court of
21 competent jurisdiction to be invalid, such judgment shall not affect,
22 impair, or invalidate the remainder thereof, but shall be confined in
23 its operation to the clause, sentence, paragraph, subdivision, section
24 or part thereof directly involved in the controversy in which such judg-
25 ment shall have been rendered. It is hereby declared to be the intent of
26 the legislature that this act would have been enacted even if such
27 invalid provisions had not been included herein.

28 § 4. This act shall take effect on the one hundred eightieth day after
29 it shall have become a law and shall apply to any offers to purchase a
30 commercial real property accepted on and after such date. Effective
31 immediately, the addition, amendment and/or repeal of any rule or regu-
32 lation necessary for the implementation of this act on its effective
33 date are authorized to be made and completed on or before such effective
34 date.