

Date of Hearing: April 27, 2011

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT

Norma Torres, Chair

AB 1216 (Fuentes) – As Introduced: February 18, 2011

SUBJECT: Land use: notice of proposed change: assisted housing developments.

SUMMARY: Gives tenants and affected public entities the ability to enforce the provisions of law requiring owners of assisted housing developments to give affordable housing developers and others the right to make an offer to purchase the development in order to preserve its affordability when the owner does not intend to extend or renew participation in a subsidy program. Specifically, this bill:

- 1) Gives tenants and affected public entities the ability to enforce the provisions of law requiring owners of assisted housing developments to give affordable housing developers and others the right to make an offer to purchase the development in order to preserve its affordability when the owner does not intend to renew participation in a subsidy program.
- 2) Specifies that the failure of an owner to record the required certification that all notice and other procedural requirements have been met prior to a sale to a purchaser who is not a qualified entity does not affect the rights of a purchaser or encumbrancer for value who acts in good faith and without notice of a failure to comply with the certification requirement.

EXISTING LAW

- 1) Requires owners of assisted housing development who intend not to extend or renew participation in a federal subsidy program to notify every affected tenant currently residing in the development and any affected public entities of the proposed change at least 12 months prior, and again six months prior, to the termination of the subsidy contract or expiration of rental restrictions (Government Code Section 65863.10).
- 2) Allows any affected tenant or affected public entity to seek injunctive relief should the owner fail to comply with the notice requirements (Government Code Section 65863.10).
- 3) Requires owners of assisted housing development who intend not to extend or renew participation in a federal subsidy program to provide an opportunity to submit an offer to purchase the development to various entities, including the tenant association of the development and affordable housing developers (Government Code Section 65863.11).
- 4) Requires the notice of opportunity to offer to purchase to be provided prior to or concurrent with the notice to tenants and affected public agencies (Government Code Section 65863.11).
- 5) Requires the notice of opportunity to offer to purchase to be posted in a conspicuous place in the common area of the development (Government Code Section 65863.11).

- 6) Specifies that during the first 180 days from the date the owner files the notice of opportunity to submit an offer to purchase, the owner can only accept offers from qualified entities (Government Code Section 65863.11).
- 7) Defines a qualified entity as one that agrees to maintain the affordability of the development for 30 years or for the remaining term of the existing federal assistance, whichever is longer, and that is capable of managing the housing and related facilities for its remaining useful life, either by itself or through a management agent (Government Code Section 65863.11).
- 8) Allows the owner, after the initial 180-day period, to accept offers from any person or entity for the next 180 days, so long as the owner first gives any qualified entity that submitted an offer to purchase an opportunity to match the pending offer at the same terms and conditions (Government Code Section 65863.11).
- 9) Specifies that the provisions of the opportunity-to-purchase provisions can be enforced by any qualified entity entitled to exercise the opportunity to purchase should the owner fail to comply (Government Code Section 65863.11).
- 10) Requires an owner selling, leasing, or otherwise disposing of an assisted housing development to a purchaser who is not a qualified entity to certify under penalty of perjury that the owner has complied with all notification requirements and other procedural requirements. The certification must be recorded and may be relied upon by good faith purchasers and encumbrances for value and without notice of a failure to comply with the provisions of the law. (Government Code Section 65863.11)

FISCAL EFFECT: None

COMMENTS:

Under state law, owners of assisted housing developments who intend not to extend or renew participation in a federal subsidy program must fulfill certain requirements. At least 12 months prior, and again six months prior, to the termination of the subsidy contract or expiration of rental restrictions, the owner must provide notice of the proposed change to every affected tenant currently residing in the assisted housing development. The owner must also provide notice at the same times to any affected public entities, such as the city or county in which the development is located, the local public housing authority, and the Department of Housing and Community Development (HCD). If the owner fails to comply, any affected tenant or affected public entity can seek injunctive relief.

The law also requires the owner to provide an opportunity to submit an offer to purchase the development to various entities, including the tenant association and affordable housing developers and operators. The owner must provide notice of the opportunity to offer to purchase prior to or concurrent with the required notice to tenants and affected public agencies, and must also post a copy of the notice in a conspicuous place in the common area of the development.

During the first 180 days from the date the owner files the notice of opportunity to submit an offer to purchase, the owner can only accept offers from qualified entities. To qualify as a purchaser of an assisted housing development, the entity must agree to maintain the affordability of the development for 30 years or for the remaining term of the existing federal assistance,

whichever is longer. After the initial 180-day period, the owner can accept offers from any person or entity for the next 180 days, so long as the owner first gives any qualified entity that submitted an offer to purchase an opportunity to match the pending offer. The law is intended to provide every opportunity to keep the development affordable.

Only those entities to which the owner is required to provide notice of the opportunity to offer to purchase have standing to enforce the offer-to-purchase provisions should the owner fail to comply. AB 1216 extends standing to enforce these provisions to tenants of the assisted housing development and any affected public agency.

According to the sponsor, the California Rural Legal Assistance Foundation, "HCD estimates that there are 149,000 units of privately owned, federally subsidized rental housing in California. Each year, hundreds of these units are at risk of being lost because agreements that have kept these units affordable are due to expire. As those agreements expire, owners have the option of converting the units to market-rate housing, thereby increasing rents and displacing low-income families. As a result, even as the state invests in the creation of new affordable housing for working Californians, a significant number of affordable units are disappearing through these expiring restrictions."

State law aims to prevent the loss of these affordable units by requiring owners to provide notice to entities that would maintain the development as affordable housing that they have a right to make an offer to purchase the property. Absent this notice, there is little chance to prevent these units from converting to market rate. If an owner fails to provide the required notice, the entities who should have received the notice can sue. However, the tenants who live in the assisted development, who have the greatest interest in insuring that the units remain affordable, cannot.

The sponsor reports that the law works when followed and that there are numerous examples of successful preservation purchases that came about because of the notice provisions. However, when the law is ignored, legal enforcement may be necessary. Unfortunately, the entities that currently have the right to enforce the provisions, primarily affordable housing developers, have little way of knowing that they had an option to purchase a development if they never received notice from the owner. Even if they become aware that an owner has failed to provide notice, they may be reluctant to sue because they may still want to try to purchase the property and do not want to enter into a legal battle with the owner. Expanding enforcement authority to include affected tenants as well as affected public agencies is a way to ensure that there is greater compliance, thus providing more opportunities to preserve housing affordability.

Double referred: The Assembly Committee on Rules referred AB 1216 to the Committee on Housing and Community Development and Local Government. If AB 1216 passes this committee, the bill must be referred to the Committee on Local Government.

REGISTERED SUPPORT / OPPOSITION:

Support

California Rural Legal Assistance Foundation (sponsor)
City of Santa Monica
Western Center on Law and Poverty

Opposition

None on file

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