



# Senate

General Assembly

**File No. 308**

*January Session, 2005*

Substitute Senate Bill No. 989

*Senate, April 13, 2005*

The Committee on Planning and Development reported through SEN. COLEMAN of the 2nd Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

***AN ACT CONCERNING THE PRESERVATION OF FEDERALLY-ASSISTED HOUSING AS LOW AND MODERATE INCOME HOUSING.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective July 1, 2005, and applicable to any*  
2 *termination of subsidy for the development occurring on or after July 1, 2006*)  
3 As used in sections 1 to 7, inclusive, of this act:

4 (1) "Development" means a rental housing development that  
5 receives government assistance under any covered program, including  
6 any property that is owned or whose mortgage is held by the United  
7 States Department of Housing and Urban Development and was  
8 formerly insured under any covered program, excluding the  
9 foreclosure of a development by an applicable agency.

10 (2) "Covered program" means any of the following:

11 (A) New construction, substantial rehabilitation, moderate

12 rehabilitation, property disposition and loan management set-aside  
13 programs or any other program providing project-based assistance  
14 under Section 8 of the United States Housing Act of 1937, as from time  
15 to time amended;

16 (B) The Below Market Interest Rate Program under Section 221(d)(3)  
17 of the National Housing Act, 12 USC 1715l(d)(3), (5);

18 (C) Section 236 of the National Housing Act, 12 USC 1715z-1;

19 (D) Section 202 of the Housing Act of 1959, 12 USC 1701q;

20 (E) Programs for rent supplement assistance under Section 101 of  
21 the Housing and Urban Development Act of 1965, 12 USC 1701s;

22 (F) Programs under Section 515 of the Housing Act of 1949, 42 USC  
23 1485;

24 (G) Programs under Section 521 of the Housing Act of 1949, 42 USC  
25 1490a; or

26 (H) The Low Income Housing Tax Credit program, 26 USC 42.

27 (3) "Applicable agency" means any governmental agency that  
28 administers a covered program.

29 (4) "Assisted unit" means a dwelling unit in a development,  
30 including a cooperative, that is receiving assistance pursuant to a  
31 covered program.

32 (5) "Nonprofit corporation" means a nonprofit corporation, as  
33 defined in subsection (w) of section 8-39 of the general statutes, or  
34 subsection (a) of section 8-395 of the general statutes.

35 (6) "Owner" means an individual, partnership, corporation,  
36 association, joint venture or business entity that owns or controls a  
37 development or any successor in interest of such individual,  
38 partnership, corporation, association, joint venture or business entity.

39 (7) "Tenant" means a tenant, subtenant, lessee, sublessee or other  
40 person entitled to possession, occupancy or benefits of a rental unit  
41 within the development.

42 (8) "Tenant association" means an association, organization or other  
43 entity that represents tenants in a development, including, but not  
44 limited to, an association that is incorporated as a nonprofit  
45 corporation or a cooperative.

46 (9) "Cooperative" shall have the same meaning as in subdivision (10)  
47 of section 47-202 of the general statutes, except that for the purposes of  
48 sections 2 to 7, inclusive, of this act, a cooperative shall be deemed to  
49 be a rental housing development and the terms "rent" and "rental" shall  
50 include occupancy payments made by a member of a cooperative and  
51 the term "tenants" shall include residents of a cooperative.

52 (10) "Eligible purchaser" means an entity entitled to purchase the  
53 development pursuant to subdivision (2) of subsection (a) of section 3  
54 of this act.

55 (11) "Relocation assistance" means the assistance payment to tenants  
56 who relocate, as provided in section 4 of this act.

57 (12) "Termination of subsidy for the development" or "termination  
58 of subsidy" means: (A) Any sale, transfer of title, lease or prepayment  
59 of a loan that was made pursuant to a covered program with respect to  
60 a development that would result in the cessation or reduction of the  
61 financial assistance or regulatory requirements designed to make the  
62 assisted unit affordable to low and moderate income households; or  
63 (B) an owner's decision not to extend or renew its contractual  
64 participation in a covered program, either at or prior to the scheduled  
65 date of the expiration of the contract; or (C) the expiration of  
66 restrictions for a development that may result in an increase in tenant  
67 rent or a change in the form of the subsidy from project-based to  
68 tenant-based.

69 (13) "Low and moderate income household" means any household

70 with an adjusted gross income that satisfies the occupancy  
71 requirements for income-restricted units in the development, existing  
72 before termination of subsidy for the development.

73 (14) "Affordability preservation transaction" means a transaction for  
74 the purpose of preserving a development as housing for low and  
75 moderate income households, which complies with all requirements of  
76 section 6 of this act.

77 Sec. 2. (NEW) (*Effective July 1, 2005, and applicable to any termination of*  
78 *subsidy for the development occurring on or after July 1, 2006*) (a) On and  
79 after July 1, 2005, any owner of a development shall, not later than one  
80 year before the termination of subsidy for the development, provide  
81 written notice of the owner's intent to terminate the subsidy, sent by  
82 first class mail or hand-delivered, to (1) each tenant residing in the  
83 development, (2) each tenant association representing tenants in the  
84 development, (3) the executive director of any housing authority of the  
85 municipality in which the development is located, (4) the chief  
86 executive officer of the municipality in which the development is  
87 located, (5) the executive director of the Connecticut Housing Finance  
88 Authority, (6) the Commissioner of Economic and Community  
89 Development, and (7) the executive director of the Connecticut  
90 Housing Coalition. The notice shall be posted in a conspicuous  
91 common area of the development accessible to the tenants. A copy of  
92 the notice shall be filed in the land records of the municipality in which  
93 the development is located.

94 (b) The notice shall (1) inform the persons and entities described in  
95 subsection (a) of this section that the owner intends to sell or otherwise  
96 dispose of the development or terminate the subsidy or rental  
97 restrictions for the development and that they have an option to  
98 purchase the property pursuant to sections 1 to 7, inclusive, of this act,  
99 (2) inform the tenants of their right to relocation assistance if the  
100 subsidy for the development is terminated, (3) identify the number of  
101 units that will no longer be subject to the restrictions imposed by the  
102 federal program, and (4) include information on the estimated rents

103 that will be charged compared to the rent charged under the federal  
104 program and the action the owner will take to assist displaced tenants  
105 in obtaining other housing.

106 Sec. 3. (NEW) (*Effective July 1, 2005, and applicable to any termination of*  
107 *subsidy for the development occurring on or after July 1, 2006*) (a) At least  
108 one year before the intended date of termination of subsidy for the  
109 development, the owner shall provide to each person and entity  
110 specified in subsection (a) of section 2 of this act a written copy of a  
111 bona fide offer to sell, to an eligible purchaser, sent by first class mail  
112 or hand delivered and post a copy of the offer to sell in a conspicuous  
113 place in the common area of the development accessible to tenants.  
114 Such offer shall be assignable by an eligible purchaser to (1) a  
115 nonprofit corporation, (2) a joint venture between an eligible purchaser  
116 and a nonprofit corporation, or (3) a limited partnership or limited  
117 liability company which is materially controlled by such eligible  
118 purchaser, nonprofit corporation or joint venture.

119 (b) An offer to sell made pursuant to this section shall include, but  
120 not be limited to:

121 (1) The essential terms of the sale, which shall include, but not be  
122 limited to, (A) the sale price, (B) the terms of seller financing, if any,  
123 including the amount, interest rate and amortization rate, (C) the terms  
124 of the assumable financing, including the amount, interest rate and  
125 amortization rate, and (D) any proposed improvements to the property  
126 to be made by the owner in connection with the sale or other economic  
127 concessions by the owner in connection with the sale.

128 (2) A statement that each of the following entities has the right to  
129 purchase the development for the purpose of preserving the  
130 development as low and moderate income housing according to the  
131 following order of priorities: (A) A tenant association which represents  
132 not less than twenty-five per cent of the tenants in the development,  
133 (B) a nonprofit corporation that has been designated by not less than  
134 twenty-five per cent of the tenants in the development for the purpose  
135 of assisting in the purchase or acquisition of the development, (C) any

136 other nonprofit corporation, (D) the housing authority of the  
137 municipality in which the development is located, or a nonprofit  
138 corporation designated by the housing authority, (E) the municipality  
139 in which the development is located, or a nonprofit corporation  
140 designated by the municipality, (F) the Department of Economic and  
141 Community Development, or a nonprofit corporation designated by  
142 the department, or (G) the Connecticut Housing Finance Authority, or  
143 a nonprofit corporation designated by the authority.

144 (c) The offer to sell shall expire unless at least one interested entity  
145 described in subdivision (2) of subsection (b) of this section notifies the  
146 owner, in writing, not later than two hundred forty days before the  
147 intended date of termination of subsidy for the development of its  
148 intent to purchase the development. If more than one entity within the  
149 same priority category provides such notice, priority shall be  
150 determined by the date and time that the notice is received by the  
151 owner.

152 (d) After receiving a notice from one or more interested entities of  
153 the entity's intent to purchase, the owner shall comply with any  
154 reasonable request to have access to the premises for the purposes of  
155 inspection or to make documents available to the interested entity  
156 during normal business hours at the owner's principal place of  
157 business not later than thirty days after the date the owner receives  
158 such a request. Access to documents shall include, but not be limited  
159 to: (1) Copies of financial and physical inspection reports filed with  
160 federal, state or local agencies, including, but not limited to, audit  
161 reports for the three most recent years, the most current capital needs  
162 assessment and a current operating and capital budget; (2) the most  
163 recent rent rolls, redacted to protect tenant confidentiality; (3) the  
164 current vacancy rate and a statement of the vacancy rate of the  
165 development for each of the two preceding years; and (4) all applicable  
166 notes, mortgages and regulatory documents and all rental assistance  
167 contracts with a governmental agency. Except as to documents which  
168 are public records, the owner may make the release of documents  
169 pursuant to this subsection subject to a confidentiality agreement

170 preventing their disclosure to anyone except the entity requesting  
171 them and its agents.

172 (e) The interested entity shall, not later than one hundred twenty  
173 days before the intended date of the termination of subsidy for the  
174 development, provide the owner with a bona fide offer to purchase  
175 evidenced by a purchase contract reflecting the sale price and any  
176 terms agreed to by the parties, or the sale price and terms determined  
177 pursuant to the contract, and a deposit equal to five per cent of the  
178 amount of the bona fide offer to purchase.

179 (f) If the parties are unable to agree on a purchase price, the  
180 interested entity shall have the right to purchase the property:

181 (1) If the interested entity matches the essential provisions of any  
182 existing bona fide offer to purchase the development made by another  
183 potential purchaser which the owner is prepared to accept; or

184 (2) If there is no bona fide offer, at a purchase price at its current  
185 appraised value to be established by an appraiser chosen by the  
186 interested entity and the owner. As used in this subdivision,  
187 "appraised value" means the value of the affected development for its  
188 highest and best use as housing but subject to any existing  
189 affordability restrictions that cannot be extinguished by the unilateral  
190 action of the owner. If the interested entity and the owner cannot agree  
191 on one appraiser, either party may notify the Connecticut Housing  
192 Finance Authority and the other party, in writing, of such  
193 disagreement. In such case, the interested entity shall choose one  
194 appraiser and the owner shall choose one appraiser and the two  
195 appraisers shall jointly choose a third appraiser. The three appraisers  
196 shall establish a value for the development. If the owner or the  
197 interested entity does not select an appraiser by the fifteenth day after  
198 the date of the mailing of the notice of the disagreement, the  
199 Connecticut Housing Finance Authority shall choose an appraiser for  
200 the owner or the interested entity. The costs of all appraisers shall be  
201 paid equally by the interested entity and the owner. If it is necessary to  
202 obtain appraisals to establish the purchase price, the time to close the

203 sale under subsection (g) of this section shall be extended by the time  
204 necessary to obtain such appraisals and determine a purchase price.

205 (g) The interested entity shall agree to close the sale not later than  
206 the date of the intended termination of subsidy for the development,  
207 unless extended by mutual agreement between the interested entity  
208 and the owner.

209 (h) Upon the settlement of any purchase of the development by an  
210 entity described in subsection (b) of this section under an option to  
211 purchase and offer of sale, the purchaser shall execute and record a  
212 regulatory agreement or covenant on the land records that shall restrict  
213 the use of the development to residential property for low and  
214 moderate income households for at least twenty years.

215 Sec. 4. (NEW) (*Effective July 1, 2005, and applicable to any termination of*  
216 *subsidy for the development occurring on or after July 1, 2006*) The owner  
217 shall pay to each tenant under this section who vacates a dwelling unit  
218 after the issuance of the notice required by subsection (a) of section 2 of  
219 this act but not more than twelve months after the termination of  
220 subsidy for the development the sum of two thousand dollars as  
221 relocation assistance. Such payment shall be made not later than the  
222 date on which the tenant vacates the unit. Such payments shall not be  
223 deemed to be income to the tenants. This section shall apply to all  
224 tenants in occupancy on the date the notice of intended termination of  
225 subsidy of the development is given pursuant to subsection (a) of  
226 section 2 of this act or who enter into occupancy after said date but  
227 before the termination of subsidy for the development. The assistance  
228 provided by this section shall be in addition to and not in place of any  
229 other rights or benefits that such tenant may have under sections 1 to  
230 7, inclusive, of this act or under any federal or other state law.

231 Sec. 5. (NEW) (*Effective July 1, 2005, and applicable to any termination of*  
232 *subsidy for the development occurring on or after July 1, 2006*) A violation  
233 of any provision of sections 1 to 7, inclusive, of this act shall be deemed  
234 an unfair or deceptive trade practice under chapter 735a of the general  
235 statutes. In the case of any such violation, the tenant association, one or

236 more tenants of the development, or an entity with a right to be  
237 notified under subsection (a) of section 2 of this act or the right to  
238 purchase under subsection (b) of section 3 of this act may bring an  
239 action for relief under said chapter 735a, including, but not limited to,  
240 injunctive relief and damages. The rights under this section shall be in  
241 addition to and not in place of any other rights or remedies available to  
242 such persons or entities under any other provision of law.

243       Sec. 6. (NEW) (*Effective July 1, 2005, and applicable to any termination of*  
244 *subsidy for the development occurring on or after July 1, 2006*) (a) It is the  
245 intent of the General Assembly that the provisions of sections 1 to 7,  
246 inclusive, of this act are in addition to, but not preemptive of,  
247 applicable federal laws governing the sale or other disposition of a  
248 development that would result in either (1) a discontinuance of its use  
249 as an assisted housing development, or (2) the termination of any low  
250 or moderate income use restrictions which apply to the development.

251       (b) The Connecticut Housing Finance Authority, in consultation  
252 with the Department of Economic and Community Development, may  
253 adopt such rules, policies, standards and procedures as may be  
254 necessary or appropriate to carry out the purposes of sections 1 to 7,  
255 inclusive, of this act.

256       Sec. 7. (NEW) (*Effective July 1, 2005, and applicable to any termination of*  
257 *subsidy for the development occurring on or after July 1, 2006*) The  
258 provisions of sections 1 to 7, inclusive, of this act shall not apply to an  
259 affordability preservation transaction undertaken by the owner in  
260 connection with the refinancing of such a development's governmental  
261 program mortgage, or undertaken by a buyer in connection with the  
262 sale, transfer or other disposition of such a development by contract or  
263 agreement with a proposed new mortgage lender or equity investor, or  
264 with the United States Department of Housing and Urban  
265 Development, the Connecticut Housing Finance Authority, the  
266 Department of Economic and Community Development or any other  
267 governmental agency or body, provided the contract or agreement  
268 requires the owner or buyer and owner's or buyer's respective

269 successors and assigns to comply with all of the following affordability  
270 preservation criteria contained in a regulatory agreement that has been  
271 recorded against the property:

272 (1) To maintain the development as low and moderate income  
273 housing on terms at least as advantageous to existing and future  
274 tenants as the terms required by the affected development's  
275 governmental program in effect before the date of notice required by  
276 subsection (a) of section 2 of this act for a period of time at least as long  
277 as what the remaining term of the governmental program would have  
278 been but for the termination of subsidy or for a period of time not less  
279 than twenty years after the date of the termination of subsidy,  
280 whichever is greater;

281 (2) To maintain at least as many dwelling units as low and moderate  
282 income housing as were required to be affordable to such households  
283 under the governmental program in effect prior to the termination of  
284 subsidy for a period of time not less than twenty years after the date of  
285 the termination of subsidy; and

286 (3) To maintain as rental subsidy program units such number of  
287 units as were required to be subsidy program units under the contract  
288 for the rental subsidy program in effect prior to the termination of  
289 subsidy for a period of time not less than twenty years after the date of  
290 the termination of subsidy, subject to the existence of a rental subsidy  
291 program.

292 Sec. 8. Section 8-68c of the general statutes is repealed. (*Effective July*  
293 *1, 2005, and applicable to any termination of subsidy for the development*  
294 *occurring on or after July 1, 2006*)

<p>This act shall take effect as follows and shall amend the following sections:</p>
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Section 1	<i>July 1, 2005, and applicable to any termination of subsidy for the development occurring on or after July 1, 2006</i>	New section
Sec. 2	<i>July 1, 2005, and applicable to any termination of subsidy for the development occurring on or after July 1, 2006</i>	New section
Sec. 3	<i>July 1, 2005, and applicable to any termination of subsidy for the development occurring on or after July 1, 2006</i>	New section
Sec. 4	<i>July 1, 2005, and applicable to any termination of subsidy for the development occurring on or after July 1, 2006</i>	New section
Sec. 5	<i>July 1, 2005, and applicable to any termination of subsidy for the development occurring on or after July 1, 2006</i>	New section
Sec. 6	<i>July 1, 2005, and applicable to any termination of subsidy for the development occurring on or after July 1, 2006</i>	New section
Sec. 7	<i>July 1, 2005, and applicable to any termination of subsidy for the development occurring on or after July 1, 2006</i>	New section
Sec. 8	<i>July 1, 2005, and applicable to any termination of subsidy for the development occurring on or after July 1, 2006</i>	Repealer section

HSG

Joint Favorable Subst. C/R

PD

*PD Joint Favorable*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

**OFA Fiscal Note**

**State Impact:**

Agency Affected	Fund-Effect	FY 06 \$	FY 07 \$
CT Housing Finance Authority (quasi-public)	RevBonds - Cost	See Below	See Below
Department of Economic & Community Development	GF - Cost	See Below	See Below

Note: RevBonds=Revenue Bonds; GF=General Fund

**Municipal Impact:** None

**Explanation**

Requiring the Department of Economic and Community Development (DECD) and the Connecticut Housing Finance Authority (CHFA) to handle tenant inquiries and assist tenant associations in developing financing will increase costs to both entities. It is estimated that DECD will require an additional Economic and Community Development Specialist, at a cost of \$55,000 in FY 06 and FY 07 plus fringe benefits<sup>1</sup>. Additional funds of approximately \$10,000 for each project would be required for technical assistance. It is also anticipated that CHFA could incur legal, architectural, underwriting and other associated costs estimated at over \$100,000 per project. There are approximately four projects statewide that this legislation could impact in the next year and over fifteen over the next four years.

Any increase in filing or notifications required of impacted municipalities is anticipated to result in a minimal workload increase.

<sup>1</sup> The fringe benefit costs for state employees are budgeted centrally in the Miscellaneous Accounts administered by the Comptroller. The estimated fringe benefit reimbursement rate as a percentage of payroll is 53.91%, effective July 1, 2004. However, first year fringe benefit costs for new positions do not include pension costs lowering the rate to 22.65%. The state's pension contribution is based upon the prior year's certification by the actuary for the State Employees Retirement System.

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**OLR Bill Analysis**

sSB 989

***AN ACT CONCERNING THE PRESERVATION OF FEDERALLY-ASSISTED HOUSING AS LOW AND MODERATE INCOME HOUSING*****SUMMARY:**

This bill broadens certain requirements and imposes others on housing development owners that (1) received government assistance under certain Department of Housing and Urban Development (HUD) or other government agency programs, (2) fulfilled or will fulfill their obligation to those agencies, and (3) intend to stop making their rental units affordable to low- and moderate-income people.

It broadens notification requirements and adds entities to be notified. Current law requires development owners who financed buildings with certain federally insured mortgages to notify the Department of Economic and Community Development (DECD) commissioner, the chief executive officer of the town where the building is located, and all tenants at least one year before they prepay the mortgage. The bill requires the owner to notify tenants and various entities, including tenant association and the Connecticut Housing Finance Authority (CHFA), at least one year before selling or terminating a subsidy for the development of his intention and their right to purchase the development. Existing law, which the bill eliminates, specifies that notification is not to be construed to limit the owner's ability to prepay the mortgage or interfere with any existing contract.

The bill gives tenant associations and certain entities a right of first refusal to purchase the development.

It requires owners to pay \$2,000 to any tenant, tax free, who leaves the development after notice of subsidy termination is given, including those who move in after notice is given but before the termination of the subsidy.

The bill also:

1. exempts transactions that maintain affordability from the bill's requirements and specifies how affordability must be maintained;
2. specifies that its requirements are in addition to applicable federal laws for (a) discontinuing a development's affordable housing use or (b) terminating any low- or moderate-income use restrictions that apply to the development; and
3. allows the CHFA, in consultation with DECD, to adopt rules, policies, standards, and procedures necessary or appropriate for fulfilling the bill's requirements.

Violations of any of the bill's requirements subject an owner to penalties under the Connecticut Unfair Trade Practice Act (CUTPA).

EFFECTIVE DATE: July 1, 2005, and applicable to any subsidy termination for a subsidy for a covered development occurring on or after July 1, 2006.

## **REQUIRED OWNER NOTICES**

### ***When Notice is Required***

Under the bill, at least one year before an owner intends to terminate the subsidy for a HUD- or government-subsidized development, he must give written notice to various entities. Terminating a development's subsidy under the bill means (1) selling, transferring title, leasing, prepaying a loan insured or held by a covered program that would end or reduce the financial assistance that makes rental units affordable to low- and moderate-income income people; (2) an owner's decision not to extend or renew participation in a federal program covered by the bill either when or before the program contract expires; or (3) (a) the expiration of a development's rental restrictions, which may result in rent increases or (b) changing from a project-based subsidy to a tenant-based subsidy (e.g., from a HUD mortgage to Section 8 vouchers). Cooperatives are considered rental developments under the bill.

The owner must notice recipients:

1. each tenant and tenant association,
2. the chief executive officer of the town where the development is located,
3. the executive director of the housing authority where the development is located,
4. CHFA's executive director,
5. DECD commissioner, and
6. Connecticut Housing Coalition's executive director.

Under the bill, a tenant association is an association, organization, or other entity that represents a development's tenants, including a nonprofit corporation or a cooperative. A cooperative is a common interest community where an association owns the real property and each association member has ownership interest in it and is entitled to the exclusive possession of a unit, except that it is deemed "rental housing" under the bill. "Rent" and "rental" include occupancy payments made by cooperative members and "tenant" includes cooperative residents under the bill.

**Notice Contents**

The notice must:

1. describe what the owner intends to do (e.g., sell) and inform tenants that they have the right to purchase the property,
2. inform tenants of their right to relocation assistance if the development subsidy is terminated,
3. identify the number of units that will no longer be subject to federal program restrictions, and
4. include estimated rents once the subsidy is terminated as compared to the subsidized rents and include action that the owner will take to help displaced tenants obtain other housing.

The notice must be sent by first class mail or hand delivered, posted in

a common area of the development accessible to the tenants, and filed in the land records of the municipality where the development is located.

### **RIGHT OF FIRST REFUSAL**

At least one year before an owner intends to terminate the development's subsidy, he must provide each person or entity to whom he had to give the one-year notice about subsidy termination a written copy of a bona fide offer to sell. He must mail it first class or hand deliver it and post a copy in a conspicuous, common area of the development.

#### ***Owner's Offer to Sell***

Under the bill, the offer to sell includes the following essential sale terms:

1. the sale price;
2. terms of seller financing and assumable financing, including for each, the amount, interest rate, and rate at which it will be paid off; and
3. any proposed property improvements or other economic concessions that the owner will make in connection with the sale.

The offer to sell must also contain a statement that the following eligible entities, in order of priority, have the right to purchase the development to preserve it as affordable housing:

1. a tenant association representing at least 25% of the development's tenants,
2. a nonprofit corporation designated by at least 25% of the development's tenants to help purchase or acquire the development,
3. any other nonprofit corporation,
4. the housing authority in the town where the development is

located,

5. the town where the development is located,
6. DECD or a nonprofit corporation it designates, or
7. CHFA.

## **SALES BEFORE SUBSIDY TERMINATION**

### ***Notice of Intent to Purchase and Owner's Documentation***

A person or entity listed above that intends to purchase the development must notify the owner in writing at least 240 days before the intended subsidy termination date or else the offer to sell expires. After receiving this notice, the owner must comply with any reasonable request no later than 30 days after the owner receives the request notice (1) to have access to the premises for inspection purposes or (2) to make the following documents available during normal business hours at the owner's principal place of business:

1. copies of financial and physical inspection reports filed with federal, state, and local agencies, including (a) audit reports for the three most recent years, (b) the most current capital needs assessment, and (c) the current operating and capital budget;
2. the most recent rent rolls, edited to protect tenant privacy;
3. the development's current vacancy rate and the vacancy rate for each of the two preceding calendar years along with deferred maintenance costs; and
4. all applicable notes, mortgages, and regulatory documents and all rental assistance contracts with government agencies.

The development's owner may make the release of documents described above subject to a confidentiality agreement (to prevent disclosure to anyone outside of the requesting entity and its agents), other than documents that are public record.

### ***Offer to Purchase***

An interested person or entity must provide the owner with a bona fide purchase offer at least 120 days before the intended termination of subsidy date. The offer must include (1) a purchase contract listing the sale price and any terms agreed to by the parties or (2) the sale price and terms of the contract. It appears that, either way, the offer must include a deposit equal to 5% of the bona fide purchase offer.

### ***Purchase Price Disagreement, Property Appraisal, and Below Market Value Sale***

Under the bill, when the parties cannot agree to a purchase price, the interested person, tenant association, housing authority or other entity has the right to purchase the development under the bill if (1) it can match the essential provisions of another existing bona fide offer that the owner is prepared to accept or (2) if there is no other bona fide offer the person or entity can purchase the development, at a price determined by an appraiser whom the owner and interested party agree on. The bill defines appraised value as the development at its highest and best use as housing, subject to any existing affordability restrictions that the owner cannot unilaterally eliminate. This provision apparently acknowledges the fact that certain affordability restrictions might still apply after a federal program's requirements have expired.

Under the bill, if the owner and interested person or entity cannot agree on an appraiser, they must follow an alternative procedure. Under the alternative procedure, either side may notify CHFA and the other party of the disagreement in writing. Each party then chooses an appraiser and those two appraisers in turn choose a third. CHFA chooses the appraiser for any party that has not chosen one 15 days after the notice was mailed. The three appraisers then establish the development's value. The costs of all of the appraisers are paid equally by both sides.

### ***Closing the Sale***

The interested person or entity must agree to close the sale no later than the date that the owner intended to terminate the development's subsidy. But the closing date is extended by (1) a mutual agreement between the interested entity and the owner to extend it or (2) the amount of time needed to get appraisals and determine the purchase price under the alternative procedure described above.

### ***20-Year Restriction***

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When an eligible entity purchases a development it must execute and record on the town land records a regulatory agreement or covenant restricting the use of the development to housing affordable to low- and moderate-income families for at least 20 years. (The bill does not specify what is meant by low- and moderate-income.)

### **RELOCATION ASSISTANCE PAYMENT**

The bill requires an owner to pay \$2,000 (1) to all tenants occupying assisted units who leave after the owner sends the required notice of subsidy termination (for up to 12 months after the subsidy terminates) and (2) to people who become tenants after the notice is sent, but before the subsidy ends. The owner must pay the tenant on the day the tenant leaves. The bill specifies that the \$2,000 payment is not considered income to the tenant (although the bill does not specify whether this is for income tax or other purposes). The payment is in addition to any other rights or benefits available to the tenants under the bill.

Under the bill, an owner is an individual, partnership, corporation, association, joint venture, or business entity that owns or controls a development or its successor in interest.

“Tenant” includes subtenants or other people entitled to possession, occupancy, or benefits of a unit.

### **AFFORDABILITY PRESERVATION TRANSACTION**

Anyone undertaking an affordability preservation transaction is exempt from the bill’s requirements, such as when the owner refinances the development’s governmental program mortgage or a buyer will maintain the affordability of it. To qualify as an affordability preservation transaction, the closing contract or agreement must require the owner or buyer and their respective successors to comply with the affordability preservation criteria as contained in a regulatory agreement recorded against the property. The preservation criteria require that the owner maintain:

1. the development as low- and moderate-income housing on terms at least as advantageous to existing and future tenants as the terms required by the affected development's governmental

program in effect before the subsidy termination date for at least as long as what the remaining term of the governmental program would have been without the subsidy termination or at least 20 years after the subsidy termination date, whichever is greater;

2. at least as many housing units for low- and moderate-income use as were required under the program before the subsidy termination for at least 20 years after the date of the subsidy termination; and
3. as many subsidized units as were required under the contract for the rental subsidy program in effect before the subsidy termination for at least 20 years after the subsidy termination date, subject to the existence of a rental subsidy program.

## **VIOLATIONS**

The bill makes violations of its requirements subject to CUTPA, which prohibits businesses from engaging in unfair and deceptive acts or practices.

Under the bill, any tenant, tenant association, or other person or entity eligible to buy the development may bring suit under CUTPA, including for relief and damages. Any such suit is in addition to other legal rights or remedies.

## **APPLICABLE PROGRAMS**

### ***Developments***

The bill covers rental housing developments that received government assistance from any of the following federal programs, including any property held by HUD that was previously insured under them:

1. any program that provides project-based assistance under the Section 8 of the U. S. Housing Act of 1937 (42 USC § 1437 et seq.);
2. Below Market Interest Rate Program (12 USC § 1715l (d)(3), (5));
3. rental and cooperative housing for lower income families (12

- USC § 1715z-1);
4. supportive housing for the elderly (12 USC § 1701q);
  5. rent supplement programs for qualified lower income families (12 USC § 1701s);
  6. housing and related facilities for elderly, handicapped, low- and moderate-income people and families, or other low-income people and families in rural areas (42 USC § 1485);
  7. rural rental assistance payments (42 USC 1490a); and
  8. Low Income Housing Tax Credit program (26 USC § 42).

**BACKGROUND**

**CUTPA**

CUTPA allows the consumer protection commissioner to issue regulations defining what constitutes an unfair trade practice, investigate complaints, issue cease and desist orders, order restitution in cases involving less than \$5,000, enter into consent agreements, ask the attorney general to seek injunctive relief, and accept voluntary statements of compliance. It also allows individuals to bring suit. Courts may issue restraining orders; award actual and punitive damages, costs, and reasonable attorneys' fees; and impose civil penalties of up to \$5,000 for willful violations and \$25,000 for violation of a restraining order.

**COMMITTEE ACTION**

Select Committee on Housing

Joint Favorable Substitute Change of Reference  
Yea 7      Nay 4

Planning and Development Committee

Joint Favorable Report  
Yea 12      Nay 6