



S. 2190 Section by Section Summary – updated 11/18//09

Bill: S. 2190 - Act Preserving Publicly-Assisted Affordable Housing

S. 2190 adds a new Chapter to the General Laws (Ch. 40T) that 1) provides additional notification requirements as a building gets closer to use restriction termination, 2) provides an opportunity to the Department of Housing and Community Development or its designee to purchase publicly assisted housing that is for sale if the transaction does not preserve affordability and 3) provides for a maximum level that rents can be raised for a period of three years after a building's use restrictions terminate if the tenants do not receive enhanced Section 8 vouchers.

SECTION 1. Establishment of CH. 40T

Section 1: Definitions

Key definitions include:

- “Designee” – This definition determines who DHCD may select to negotiate to purchase a publicly assisted housing development and who may exercise the Department’s Right of First Refusal:-
“A municipality, local or regional housing authority, non-profit or for-profit corporation, or other entity qualified to do business in Massachusetts, which is capable of operating publicly assisted housing as decent, safe, and sanitary affordable housing, and which is selected by the department pursuant to subsection (b) of section 3.
- “Government program”, a program or combination of programs which provides government assistance under one or more of the programs identified below in the definition of publicly assisted housing.
- “Preserve affordability” - This definition determines the standard in which a designee purchasing the housing must maintain the property after the purchase, and determines if an owner making a sale that preserves affordability can avoid the purchase rights in Sections 3 and 4. An owner must undertake reasonable and diligent actions to retain, renew and/or secure subsidies to maintain at least the same number of units affordable to low, very low and extremely low -income households to the extent of available subsidies. The definition allows for mixed income housing not to exceed 80% area median income and prohibits displacement of tenants if the department determines the current income mix cannot provide quality housing to its tenants.
- “Protected low-income tenant” means a low income tenant residing in the publicly assisted housing development on the date of termination and whose rent was regulated by the government program being terminated.

- “Publicly assisted housing” The chapter applies to a housing unit or development that receives government assistance under any of the following programs. This is intended to be an exhaustive list:-
 - (i) section 8 project-based rental assistance;
 - (ii) the federal Low-Income Housing Tax Credit Program;
 - (iii) section 101 rent supplement assistance;
 - (iv) section 202 elderly housing;
 - (v) section 221 below market interest rate program;
 - (vi) section 221(d)(4) below market interest rate program;
 - (vii) section 236 senior housing interest subsidy;
 - (viii) section 515 rural rental housing loan program;
 - (ix) section 521 rural rental assistance program;
 - (x) the Urban Development Action Grant
 - (xi) the Housing Development Action Grant
 - (xii) section 13A State Housing Assistance for Rental Production or SHARP;
 - (xiii) the Massachusetts Rental Voucher Programs project-based rental assistance;
 - (xiv) The state Low Income Housing Tax Credit program;
 - (xv) the State Housing Assistance for Rental Production;
 - (xvi) chapter 121 Urban Redevelopment Program

- “Regulatory Agreement”, an affordable housing restriction that establishes an owner's obligations created pursuant to the efforts of the department or its designee to preserve affordability and which is consistent with G.L. Chapter 184 section 31, provided that in any project that is eligible for participation in the HUD mark up to market program, the restriction, insofar as it relates to the limiting of the level of rents, shall not apply to units covered by a section 8 housing assistance payment contract so long as such contract is effective.”

- “Sale” or “sell” - The following definition of “sale” is critical in that it triggers the purchase rights in Sections 3 & 4, unless the property has an exception. An act to which the owner or the holders of an ownership interest agrees to the disposition of the property by deed or otherwise, whether through a single transaction or a series of transactions, except for a disposition of such housing to an affiliate of the owner.

- “Tenant”, a tenant, subtenant, lessee, sub-lessee or other person legally entitled to possession; or occupancy of a rental unit within publicly assisted housing.

- “Tenant organization”, an organization established by the tenants of a publicly assisted housing development for the purpose of addressing issues related to their living environment and which meets regularly, operates democratically, is representative of all residents in such development, is completely independent of owners, management, and their representatives, and which has filed a notice of its existence with CEDAC, provided that, no owner or other third party shall be required to ascertain the organization’s compliance with this definition.

- “Termination”, the cessation, discharge or removal of any affordability restrictions affecting publicly assisted housing in the absence of a simultaneous replacement of said affordability restrictions with equivalent affordability restrictions-including, but not limited to: (i) non renewal or termination, in whole or severable part, of a government program contract; (ii)

expiration, in whole or in severable part, of an affordability restriction under a government program or the requirement to renew such restrictions; (iii) payment in full of a government program mortgage loan ; or (iv) prepayment of a government program mortgage loan.

- “Low, Very low, and Extremely income” - household income of no more than 80, 60, 30 percent of the area median income, respectively.

Section 2: Notices

- The owner must provide the tenants, tenant organization, municipality, DHCD and CEDAC with two notices in order to terminate: a notice 24 months and a notice 12 months before termination. The notices shall include the owner’s name and address, notification that the affordability restrictions may terminate and the date that may happen. The second notice shall also include notification that DHCD has a Right of First Refusal.
- The owner must also provide notice before a sale, which shall offer DHCD the opportunity to purchase the property to the extent the owner wishes to sell the property.
- There are transition terms protecting owners that are within two years but haven’t provided the required notice, which also ensure that owners provide the required notices within 90 days of enactment if they are past the 24 month and 12 month timeframes.

Section 3: Opportunity to Purchase

- DHCD has the ability to make an offer to purchase the property before the property may be sold, but the owner is not under any requirement to agree to the offer. The offer will remain open for 90 days from the notice of sale, but if after 2 years, the owner does not find a buyer and enter into a purchase contract, it shall have to go through the Section 3 process once again.
- DHCD may designate this right. If the municipality requests to be the designee, DHCD shall grant that request unless it promulgates regulations that determine situations where municipalities will not be eligible to be a designee. DHCD and the designee will enter into a regulatory agreement to ensure the disposition preserves affordability.
- The owner shall comply with reasonable requests for documents, inspections and information about the property, as stipulated in subsection (d) of Section 3.
- The department or its designee will enter into a confidentiality and access agreement with the owner in a form that is approved by the department. The agreement will describe matters relating to insurance, testing restrictions, inspections and confidentiality.
- If DHCD (or its designee) submits an offer, it shall notify the tenants of its plans.

Section 4: Right to Counteroffer or Execute Third Party Contract

- DHCD may purchase the property at the same price and terms of a market rate transaction.
- Within seven days of signing a purchase contract, the owner shall provide the proposed purchase contract to DHCD (or its designee) at the same price and terms as the purchase contract, but the proposal may not be less favorable than the following:

- Earnest money can't exceed the deposit in the third party contract, two percent of sales price or \$250,000.
 - The deposit shall be non-refundable after a 90 day due-diligence period, or a period greater than that if in the third party contract.
 - DHCD (or its designee) will have at least 240 days to close, or a greater period if in the third party contract.
- DHCD (or its designee) will have 30 days to execute the contract. Any times may be extended by mutual agreement of the owner and DHCD (or its designee).
 - DHCD (or its designee) may submit a counter offer to the owner, which the owner has 30 days from receipt to respond to.
 - If DHCD (or its designee) does not execute the contract within the specified time period, does not submit a counter offer, or fails to perform on the original contract or counteroffer the owner shall have 24 months to complete the sale to any third party.
 - If DHCD (or its designee) submits a counter offer that is rejected by the owner then the owner will have 24 months from the date the counter offer was submitted or the end of the contract date to complete a sale on terms that are not the same as or more favorable than the terms offered in the counteroffer.
 - The owner shall provide DHCD with a copy of the executed purchase contract within seven days of executing the contract and a copy of the deed within seven days of recording if the property is sold within the two year period. This shall be accompanied by a certification by the owner that the documents and agreements are accurate and complete.

Section 5. Ch. 30B Exemption

For the purposes of this chapter, an affected municipality shall not be subject to the provisions of section 16 of chapter 30B.

Section 6: Exemptions

The Opportunity to Purchase (Section 3) and the Right to Enter into a market contract (Section 4) shall not apply to:

- a government taking by eminent domain or negotiated purchase in lieu of eminent domain; a forced sale pursuant to a foreclosure; a deed-in-lieu-of foreclosure;
- a proposed sale that, as determined by the department, is to a qualified purchaser pursuant to terms and conditions that preserves affordability (See definition);
- a proposed sale of a publicly assisted housing which the department has determined has a Section 8 contract, as defined in publicly assisted housing in Section 1, for all the units in the development or has been the only government assistance and the buyer has agreed, in a recorded covenant or agreement with the department that is binding on future owners, to renew project-based Section 8 assistance, or any successor program for all units in the development as long as such assistance is available on comparable economic terms and conditions;

- a proposed sale of a publicly assisted development to an affiliate of the owner that is not a termination as determined by the department;
- a proposed sale of publicly-assisted housing which has more than 15 years of an affordability restriction remaining.
- a proposed sale pursuant to a purchase contract in effect on the effective date of this chapter.

Section 7: Tenant Protection from Rent Increases

- For three years after termination, the rent for a low income tenant in a publicly assisted housing development who does not receive an enhanced Section 8 voucher may not be increased by more than the consumer price index plus three percent.
- Any tenant who resided in publicly assisted housing as of the date of termination may not be evicted or involuntarily displaced except for good cause for the three year period.

Section 8: Regulatory Agreement

- Any purchase by DHCD or its designee shall be subject to a regulatory agreement. Nothing in the regulatory agreement shall preclude or diminish an owner of buyer from participating in US Department of Housing and Urban Development’s Mark Up to Market Program.

Section 9: Certificate of Compliance

- An owner who has not completed a sale and has complied with Section 2 (Notice) and/or Section 3 or has completed a sale and complied with Sections, 2, 3 and 4 may apply to DHCD for a certificate of compliance to be filed with the registry of deeds.

Section 10: Applicability of Purchase Rights Post Termination

- Any publicly-assisted housing that terminated prior to the existence of 40T is not subject to the purchase rights in Section 3 and 4. Any publicly-assisted housing that terminates subsequent to the passage of 40T will be subject to the purchase rights for 4 years after the last event that constituted a termination to the extent the owner wishes to sell during that time period.

SECTION II and SECTION III: State Low Income Housing Tax Credit Technical Amendment

- The legislation removes the 11-year rule prohibiting a taxpayer from investing in more than 10 years of State Low Income Housing Tax Credits.

SECTION IV: Establishment of Advisory Committee

- DHCD shall establish a 13-member advisory committee consisting of:
 - The Undersecretary of DHCD or her designee,
 - The Executive Director of the Community Economic Development Assistance Corporation,
 - 1 member selected by the Massachusetts Mayors Association,
 - 1 member selected by the Massachusetts Municipal Association,
 - 1 member selected by Citizens’ Housing and Planning Association,
 - 1 member selected by the Greater Boston Real Estate Board,

- 1 member selected by the Real Estate Bar Association for Massachusetts,
- 1 member selected by the Massachusetts Association of Community Development Corporations,
- 1 member selected by Massachusetts Legal Assistance Corporation,
- 1 member affiliated with the Affordable Housing Preservation Initiative of the Local Initiatives Support Corporation,
- 1 member selected by the Massachusetts NAHRO
- and 2 additional members chosen by DHCD.

SECTION V: Regulations

- DHCD shall promulgate regulations within 150 days of passage.