



**Senate Bill 2799**  
**Section-By-Section Summary**  
**July 18, 2008**  
**Prepared by CHAPA**

On July 17, 2008, the Senate passed Senate Bill 2799, which adds a new Chapter to the General Laws (Ch. 40T) that gives a Right of First Refusal to the Department of Housing and Community Development or its designee to purchase publicly assisted housing that is for sale.

**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 Right of First Offer and Right of First Refusal. The definition is:-
  - “Preserve affordability” or “preserves affordability”, with respect to a publicly assisted housing development, to undertake reasonable and diligent actions to retain, renew and/or secure subsidies affecting a publicly assisted housing development in order to maintain at least the same number of units affordable to low, very low and extremely low -income households, respectively, as are currently occupied by such households, and to maintain as affordable to such households generally all units that are currently vacant, to the extent of available subsidies and taking into account the need to ensure that the development provides 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” or “publicly assisted housing development”, The chapter applies to housing that receives government assistance under any of the following programs. This is intended to be an exhaustive list:-
  - (i) section 8 of the United States Housing Act of 1937, as amended, 42 U.S.C. section 1437f as it applies to new construction, substantial rehabilitation, moderate rehabilitation, property disposition and loan management set-aside programs, or any other program providing project-based rental assistance;
  - (ii) section 42 of the Internal Revenue Code, as amended, 26 U.S.C. section 42, the federal Low-Income Housing Tax Credit Program;
  - (iii) section 101 of the Housing and Urban Development Act of 1965, as amended, 12 U.S.C. section 1701s as it applies to programs for rent supplement assistance thereunder; (iv) section 202 of the Housing Act of 1959, as amended, 12 U.S.C. Section 1701q; (v) section 221(d)(3) of the National Housing Act of 1934, as amended, 12 U.S.C. section 1715l (d)(3) or (5), the below market interest rate program;
  - (vi) section 221(d)(4) of the National Housing Act, as amended, 12 U.S.C. section 1715l (d)(4), to the extent the project’s rents are regulated pursuant to a government agreement; (vii) section 236 of the National Housing Act, as amended, 12 U.S.C. section 1715z-1; (viii) section 515 of the Housing Act of 1949, as amended, 42 U.S.C. section 1485; (ix) section 521 of the Housing Act of 1949, as amended, 42 U.S.C. section 1490a;
  - (x) the Urban Development Action Grant, as amended, 42 U.S.C. Section 5318, to the extent the project’s rents are regulated pursuant to a government agreement;
  - (xi) the Housing Development Action Grant, as amended, 42 U.S.C. section 1437o, to the extent the project’s rents are regulated pursuant to a government agreement;
  - (xii) section 13A of chapter 708 of the Acts of 1966;
  - (xiii) the Massachusetts Rental Voucher Program, so called, as described in line item 7004-9024 from year to year of the acts making annual appropriations for the commonwealth, as it applies to project-based rental assistance;
  - (xiv) The state Low Income Housing Tax Credit program, section 6I of chapter 62;
  - (xv) the State Housing Assistance for Rental Production, chapter 574 of the acts of 1983; (xvi) chapter 121A, to the extent that the project’s affordability of dwelling units are regulated pursuant to a written agreement with the affected municipality;
  - (xvii) for the purposes of section 3 and section 4, housing that, as of the effective date of this chapter, received government assistance under any of these programs and was not subject to a purchase contract, but which no longer receives any such government assistance shall be subject to the provisions of this chapter for 4 years from the date of the last termination.
  
- “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 Right of First Offer and Right of First Refusal, unless the property has an exception:  
 The execution of any agreement pursuant to which the owner or the holders of ownership interests in the owner of the publicly assisted housing agrees to any or all of the following: (i) relinquishes possession of the property; (ii) extends an option to purchase the property for a sum certain at the end of the assignment, lease, or encumbrance and provides that a portion of the payments received pursuant to the agreement is to be applied to the purchase price; (iii) assigns all rights and interests in all contracts that relate to the property; (iv) requires that the costs of all taxes and other government charges assessed and levied against the property during the term of the agreement are to be paid by the lessees either directly or through a surcharge paid to the owner; (v) extends an option to purchase ownership interest in the property, which may be exercised at any time after the execution of the agreement but shall be exercised after the expiration of the agreement; (vi) requires the assignee or lessee to maintain personal injury or property damage liability insurance on the property that names the owner as the additional insured; (vii) as defined by the department, transfers of membership or other ownership interests, or the controlling interests, to any one or more third parties, whether in a single transaction or a series of transactions; but shall not apply to any transfers between or among the holders of the partnership, membership, or other ownership interests in 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 a publicly assisted housing development 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 or mortgage; (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; or (iv) prepayment of a government program mortgage or contract.
- “Very low income” - household income of no more than 50 percent of the area median income.

**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.
- 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: Right of First Offer**

- 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 360 days, 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.
- If DHCD (or its designee) submits an offer, it shall notify the tenants and meet with them to discuss its plans.

### **Section 4: Right of First Refusal**

- DHCD has a Right of First Refusal to 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 and did not submit a counter offer, the owner shall have 24 months to complete the sale to any third party.
- If DHCD (or its designee) submits a counter offer, or an executed a contract but does not close on the transaction, then the owner will have 24 months from the date the counter offer was submitted or the end of the contract date to complete the sale under terms that are not “materially more favorable” than the original contract terms. If the sale is under terms that are “materially more favorable”, the owner shall offer DHCD a right of first refusal.
- 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 Right of First Offer (Section 3) and the Right of First Refusal (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 development 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 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 pursuant to a binding agreement in effect on the effective date of this chapter.

### **Section 7: Tenant Protection**

- 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.

### **Section 9: Certificate of Compliance**

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

### **Section 10: Advisory Committee and Regulations**

- DHCD shall establish a 12-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,
  - and 2 additional members chosen by DHCD.
- DHCD shall promulgate regulations within 150 days of passage.

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