

AMENDED IN ASSEMBLY MAY 27, 2010  
AMENDED IN SENATE DECEMBER 17, 2009

**SENATE BILL**

**No. 454**

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**Introduced by Senator Lowenthal**

February 26, 2009

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An act to amend Sections 65863.10, 65863.11, and 65863.13 of the Government Code, relating to land use.

LEGISLATIVE COUNSEL'S DIGEST

SB 454, as amended, Lowenthal. Land use: zoning regulations.

The Planning and Zoning Law authorizes the legislative body of a city or county to adopt zoning ordinances regulating, among other things, the use of buildings, structures, and land as between industry, business, residences, open space, and other uses.

Existing law, until January 1, 2011, imposes notice and procedural requirements on an owner of specified types of government-subsidized rental housing regarding the owner's decision not to extend or renew participation in specified government-subsidized housing programs, *including the requirement that the owner, in specified circumstances relating to the property's status as government-subsidized rental housing, give notice of the opportunity to submit an offer to purchase the property to specified entities. Existing law requires the initial notice of a bona fide opportunity to submit an offer to purchase to include specified information.*

This bill would delete the repeal of these provisions, thereby extending their operation indefinitely, *and modify the information required to be included in the initial notice of a bona fide opportunity to submit an offer to purchase.*

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 65863.10 of the Government Code is  
 2 amended to read:  
 3 65863.10. (a) As used in this section, the following terms  
 4 have the following meaning:  
 5 (1) “Affected public entities” means the mayor of the city in  
 6 which the assisted housing development is located, or, if located  
 7 in an unincorporated area, the chair of the board of supervisors of  
 8 the county; the appropriate local public housing authority, if any;  
 9 and the Department of Housing and Community Development.  
 10 (2) “Affected tenant” means a tenant household residing in an  
 11 assisted housing development, as defined in paragraph (3), at the  
 12 time notice is required to be provided pursuant to this section, that  
 13 benefits from the government assistance.  
 14 (3) “Assisted housing development” means a multifamily rental  
 15 housing development that receives governmental assistance under  
 16 any of the following programs:  
 17 (A) New construction, substantial rehabilitation, moderate  
 18 rehabilitation, property disposition, and loan management set-aside  
 19 programs, or any other program providing project-based assistance,  
 20 under Section 8 of the United States Housing Act of 1937, as  
 21 amended (42 U.S.C. Sec. 1437f).  
 22 (B) The following federal programs:  
 23 (i) The Below-Market-Interest-Rate Program under Section  
 24 221(d)(3) of the National Housing Act (12 U.S.C. Sec. 1715 l(d)(3)  
 25 and (5)).  
 26 (ii) Section 236 of the National Housing Act (12 U.S.C. Sec.  
 27 1715z-1).  
 28 (iii) Section 202 of the Housing Act of 1959 (12 U.S.C. Sec.  
 29 1701q).  
 30 (C) Programs for rent supplement assistance under Section 101  
 31 of the Housing and Urban Development Act of 1965, as amended  
 32 (12 U.S.C. Sec. 1701s).  
 33 (D) Programs under Sections 514, 515, 516, 533, and 538 of  
 34 the Housing Act of 1949, as amended (42 U.S.C. Sec. 1485).  
 35 (E) Section 42 of the Internal Revenue Code.

1 (F) Section 142(d) of the Internal Revenue Code (tax-exempt  
2 private activity mortgage revenue bonds).

3 (G) Section 147 of the Internal Revenue Code (Section  
4 501(c)(3) bonds).

5 (H) Title I of the Housing and Community Development Act  
6 of 1974, as amended (Community Development Block Grant  
7 Program).

8 (I) Title II of the Cranston-Gonzales National Affordable  
9 Housing Act of 1990, as amended (HOME Investment Partnership  
10 Program).

11 (J) Titles IV and V of the McKinney-Vento Homeless  
12 Assistance Act of 1987, as amended, including the Department of  
13 Housing and Urban Development's Supportive Housing Program,  
14 Shelter Plus Care ~~program~~ *Program*, and surplus federal property  
15 disposition program.

16 (K) Grants and loans made by the Department of Housing and  
17 Community Development, including the Rental Housing  
18 Construction Program, CHRP-R, and other rental housing finance  
19 programs.

20 (L) Chapter 1138 of the Statutes of 1987.

21 (M) The following assistance provided by counties or cities in  
22 exchange for restrictions on the maximum rents that may be  
23 charged for units within a multifamily rental housing development  
24 and on the maximum tenant income as a condition of eligibility  
25 for occupancy of the unit subject to the rent restriction, as reflected  
26 by a recorded agreement with a county or city:

27 (i) Loans or grants provided using tax increment financing  
28 pursuant to the Community Redevelopment Law (Part 1  
29 (commencing with Section 33000) of Division 24 of the Health  
30 and Safety Code).

31 (ii) Local housing trust funds, as referred to in paragraph (3)  
32 of subdivision (a) of Section 50843 of the Health and Safety Code.

33 (iii) The sale or lease of public property at or below market  
34 rates.

35 (iv) The granting of density bonuses, or concessions or  
36 incentives, including fee waivers, parking variances, or  
37 amendments to general plans, zoning, or redevelopment project  
38 area plans, pursuant to Chapter 4.3 (commencing with Section  
39 65915).

1 Assistance pursuant to this subparagraph shall not include the  
 2 use of tenant-based Housing Choice Vouchers (Section 8(o) of the  
 3 United States Housing Act of 1937, 42 U.S.C. Sec. 1437f(o),  
 4 excluding subparagraph (13) relating to project-based assistance).  
 5 Restrictions shall not include any rent control or rent stabilization  
 6 ordinance imposed by a county, city, or city and county.

7 (4) “City” means a general law city, a charter city, or a city and  
 8 county.

9 (5) “Expiration of rental restrictions” means the expiration of  
 10 rental restrictions for an assisted housing development described  
 11 in paragraph (3) unless the development has other recorded  
 12 agreements restricting the rent to the same or lesser levels for at  
 13 least 50 percent of the units.

14 (6) “Low or moderate income” means having an income as  
 15 defined in Section 50093 of the Health and Safety Code.

16 (7) “Prepayment” means the payment in full or refinancing of  
 17 the federally insured or federally held mortgage indebtedness prior  
 18 to its original maturity date, or the voluntary cancellation of  
 19 mortgage insurance, on an assisted housing development described  
 20 in paragraph (3) that would have the effect of removing the current  
 21 rent or occupancy or rent and occupancy restrictions contained in  
 22 the applicable laws and the regulatory agreement.

23 (8) “Termination” means an owner’s decision not to extend or  
 24 renew its participation in a federal, state, or local government  
 25 subsidy program or private, nongovernmental subsidy program  
 26 for an assisted housing development described in paragraph (3),  
 27 either at or prior to the scheduled date of the expiration of the  
 28 contract, that may result in an increase in tenant rents or a change  
 29 in the form of the subsidy from project-based to tenant-based.

30 (9) “Very low income” means having an income as defined in  
 31 Section 50052.5 of the Health and Safety Code.

32 (b) (1) At least 12 months prior to the anticipated date of the  
 33 termination of a subsidy contract, the expiration of rental  
 34 restrictions, or prepayment on an assisted housing development,  
 35 the owner proposing the termination or prepayment of  
 36 governmental assistance or the owner of an assisted housing  
 37 development in which there will be the expiration of rental  
 38 restrictions shall provide a notice of the proposed change to each  
 39 affected tenant household residing in the assisted housing  
 40 development at the time the notice is provided and to the affected

1 public entities. An owner who meets the requirements of Section  
2 65863.13 shall be exempt from providing that notice. The notice  
3 shall contain all of the following:

4 (A) In the event of termination, a statement that the owner  
5 intends to terminate the subsidy contract or rental restrictions upon  
6 its expiration date, or the expiration date of any contract extension  
7 thereto.

8 (B) In the event of the expiration of rental restrictions, a  
9 statement that the restrictions will expire, and in the event of  
10 prepayment, termination, or the expiration of rental restrictions  
11 whether the owner intends to increase rents during the 12 months  
12 following prepayment, termination, or the expiration of rental  
13 restrictions to a level greater than permitted under Section 42 of  
14 the Internal Revenue Code.

15 (C) In the event of prepayment, a statement that the owner  
16 intends to pay in full or refinance the federally insured or federally  
17 held mortgage indebtedness prior to its original maturity date, or  
18 voluntarily cancel the mortgage insurance.

19 (D) The anticipated date of the termination, prepayment of the  
20 federal or other program or expiration of rental restrictions, and  
21 the identity of the federal or other program described in subdivision  
22 (a).

23 (E) A statement that the proposed change would have the effect  
24 of removing the current low-income affordability restrictions in  
25 the applicable contract or regulatory agreement.

26 (F) A statement of the possibility that the housing may remain  
27 in the federal or other program after the proposed date of  
28 termination of the subsidy contract or prepayment if the owner  
29 elects to do so under the terms of the federal government's or other  
30 program operator's offer.

31 (G) A statement whether other governmental assistance will  
32 be provided to tenants residing in the development at the time of  
33 the termination of the subsidy contract or prepayment.

34 (H) A statement that a subsequent notice of the proposed  
35 change, including anticipated changes in rents, if any, for the  
36 development, will be provided at least six months prior to the  
37 anticipated date of termination of the subsidy contract, or expiration  
38 of rental restrictions, or prepayment.

39 (I) A statement of notice of opportunity to submit an offer to  
40 purchase, as required in Section 65863.11.

1 (2) Notwithstanding paragraph (1), if an owner provides a copy  
2 of a federally required notice of termination of a subsidy contract  
3 or prepayment at least 12 months prior to the proposed change to  
4 each affected tenant household residing in the assisted housing  
5 development at the time the notice is provided and to the affected  
6 public entities, the owner shall be deemed in compliance with this  
7 subdivision, if the notice is in compliance with all federal laws.  
8 However, the federally required notice does not satisfy the  
9 requirements of Section 65863.11.

10 (c) (1) At least six months prior to the anticipated date of  
11 termination of a subsidy contract, expiration of rental restrictions  
12 or prepayment on an assisted housing development, the owner  
13 proposing the termination or prepayment of governmental  
14 assistance or the owner of an assisted housing development in  
15 which there will be the expiration of rental restrictions shall provide  
16 a notice of the proposed change to each affected tenant household  
17 residing in the assisted housing development at the time the notice  
18 is provided and to the affected public entities. An owner who meets  
19 the requirements of Section 65863.13 shall be exempt from  
20 providing that notice.

21 (2) The notice to the tenants shall contain all of the following:

22 (A) The anticipated date of the termination or prepayment of  
23 the federal or other program, or the expiration of rental restrictions,  
24 and the identity of the federal or other program, as described in  
25 subdivision (a).

26 (B) The current rent and rent anticipated for the unit during the  
27 12 months immediately following the date of the prepayment or  
28 termination of the federal or other program, or expiration of rental  
29 restrictions.

30 (C) A statement that a copy of the notice will be sent to the  
31 city, county, or city and county, where the assisted housing  
32 development is located, to the appropriate local public housing  
33 authority, if any, and to the Department of Housing and Community  
34 Development.

35 (D) A statement of the possibility that the housing may remain  
36 in the federal or other program after the proposed date of subsidy  
37 termination or prepayment if the owner elects to do so under the  
38 terms of the federal government's or other program administrator's  
39 offer or that a rent increase may not take place due to the expiration  
40 of rental restrictions.

1 (E) A statement of the owner’s intention to participate in any  
2 current replacement subsidy program made available to the affected  
3 tenants.

4 (F) The name and telephone number of the city, county, or city  
5 and county, the appropriate local public housing authority, if any,  
6 the Department of Housing and Community Development, and a  
7 legal services organization, that can be contacted to request  
8 additional written information about an owner’s responsibilities  
9 and the rights and options of an affected tenant.

10 (3) In addition to the information provided in the notice to the  
11 affected tenant, the notice to the affected public entities shall  
12 contain information regarding the number of affected tenants in  
13 the project, the number of units that are government assisted and  
14 the type of assistance, the number of the units that are not  
15 government assisted, the number of bedrooms in each unit that is  
16 government assisted, and the ages and income of the affected  
17 tenants. The notice shall briefly describe the owner’s plans for the  
18 project, including any timetables or deadlines for actions to be  
19 taken and specific governmental approvals that are required to be  
20 obtained, the reason the owner seeks to terminate the subsidy  
21 contract or prepay the mortgage, and any contacts the owner has  
22 made or is making with other governmental agencies or other  
23 interested parties in connection with the notice. The owner shall  
24 also attach a copy of any federally required notice of the  
25 termination of the subsidy contract or prepayment that was  
26 provided at least six months prior to the proposed change. The  
27 information contained in the notice shall be based on data that is  
28 reasonably available from existing written tenant and project  
29 records.

30 (d) The owner proposing the termination or prepayment of  
31 governmental assistance or the owner of an assisted housing  
32 development in which there will be the expiration of rental  
33 restrictions shall provide additional notice of any significant  
34 changes to the notice required by subdivision (c) within seven  
35 business days to each affected tenant household residing in the  
36 assisted housing development at the time the notice is provided  
37 and to the affected public entities. “Significant changes” shall  
38 include, but not be limited to, any changes to the date of  
39 termination or prepayment, or expiration of rental restrictions or  
40 the anticipated new rent.

1 (e) An owner who is subject to the requirements of this section  
2 shall also provide a copy of any notices issued to existing tenants  
3 pursuant to subdivision (b), (c), or (d) to any prospective tenant at  
4 the time he or she is interviewed for eligibility.

5 (f) This section shall not require the owner to obtain or acquire  
6 additional information that is not contained in the existing tenant  
7 and project records, or to update any information in his or her  
8 records. The owner shall not be held liable for any inaccuracies  
9 contained in these records or from other sources, nor shall the  
10 owner be liable to any party for providing this information.

11 (g) For purposes of this section, service of the notice to the  
12 affected tenants, the city, county, or city and county, the appropriate  
13 local public housing authority, if any, and the Department of  
14 Housing and Community Development by the owner pursuant to  
15 subdivisions (b) to (e), inclusive, shall be made by first-class mail  
16 postage prepaid.

17 (h) Nothing in this section shall enlarge or diminish the  
18 authority, if any, that a city, county, city and county, affected  
19 tenant, or owner may have, independent of this section.

20 (i) If, prior to January 1, 2001, the owner has already accepted  
21 a bona fide offer from a qualified entity, as defined in subdivision  
22 (c) of Section 65863.11, and has complied with this section as it  
23 existed prior to January 1, 2001, at the time the owner decides to  
24 sell or otherwise dispose of the development, the owner shall be  
25 deemed in compliance with this section.

26 (j) Injunctive relief shall be available to any party identified in  
27 paragraph (1) or (2) of subdivision (a) who is aggrieved by a  
28 violation of this section.

29 (k) The Director of Housing and Community Development  
30 shall approve forms to be used by owners to comply with  
31 subdivisions (b) and (c). Once the director has approved the forms,  
32 an owner shall use the approved forms to comply with subdivisions  
33 (b) and (c).

34 SEC. 2. Section 65863.11 of the Government Code is amended  
35 to read:

36 65863.11. (a) Terms used in this section shall be defined as  
37 follows:

38 (1) “Assisted housing development” and “development” mean  
39 a multifamily rental housing development as defined in paragraph  
40 (3) of subdivision (a) of Section 65863.10.



1 (2) “Owner” means an individual, corporation, association,  
2 partnership, joint venture, or business entity that holds title to an  
3 assisted housing development.

4 (3) “Tenant” means a tenant, subtenant, lessee, sublessee, or  
5 other person legally in possession or occupying the assisted housing  
6 development.

7 (4) “Tenant association” means a group of tenants who have  
8 formed a nonprofit corporation, cooperative corporation, or other  
9 entity or organization, or a local nonprofit, regional, or national  
10 organization whose purpose includes the acquisition of an assisted  
11 housing development and that represents the interest of at least a  
12 majority of the tenants in the assisted housing development.

13 (5) “Low or moderate income” means having an income as  
14 defined in Section 50093 of the Health and Safety Code.

15 (6) “Very low income” means having an income as defined in  
16 Section 50105 of the Health and Safety Code.

17 (7) “Local nonprofit organizations” means not-for-profit  
18 corporations organized pursuant to Division 2 (commencing with  
19 Section 5000) of Title 1 of the Corporations Code, that have as  
20 their principal purpose the ownership, development, or  
21 management of housing or community development projects for  
22 persons and families of low or moderate income and very low  
23 income, and which have a broadly representative board, a majority  
24 of whose members are community based and have a proven track  
25 record of local community service.

26 (8) “Local public agencies” means housing authorities,  
27 redevelopment agencies, or any other agency of a city, county, or  
28 city and county, whether general law or chartered, which are  
29 authorized to own, develop, or manage housing or community  
30 development projects for persons and families of low or moderate  
31 income and very low income.

32 (9) “Regional or national organizations” means not-for-profit,  
33 charitable corporations organized on a multicounty, state, or  
34 multistate basis that have as their principal purpose the ownership,  
35 development, or management of housing or community  
36 development projects for persons and families of low or moderate  
37 income and very low income.

38 (10) “Regional or national public agencies” means multicounty,  
39 state, or multistate agencies that are authorized to own, develop,

1 or manage housing or community development projects for persons  
2 and families of low or moderate income and very low income.

3 (11) “Use restriction” means any federal, state, or local statute,  
4 regulation, ordinance, or contract that, as a condition of receipt of  
5 any housing assistance, including a rental subsidy, mortgage  
6 subsidy, or mortgage insurance, to an assisted housing  
7 development, establishes maximum limitations on tenant income  
8 as a condition of eligibility for occupancy of the units within a  
9 development, imposes any restrictions on the maximum rents that  
10 could be charged for any of the units within a development; or  
11 requires that rents for any of the units within a development be  
12 reviewed by any governmental body or agency before the rents  
13 are implemented.

14 (12) “Profit-motivated organizations and individuals” means  
15 individuals or two or more persons organized pursuant to Division  
16 1 (commencing with Section 100) of Title 1 of, Division 3  
17 (commencing with Section 1200) of Title 1 of, or Division 1  
18 (commencing with Section 15001) of Title 2 of, the Corporations  
19 Code, that carry on as a business for profit.

20 (13) “Department” means the Department of Housing and  
21 Community Development.

22 (14) “Offer to purchase” means an offer from a qualified or  
23 nonqualified entity that is nonbinding on the owner.

24 (15) “Expiration of rental restrictions” has the meaning given  
25 in paragraph (5) of subdivision (a) of Section 65863.10.

26 (b) An owner of an assisted housing development shall not  
27 terminate a subsidy contract or prepay the mortgage pursuant to  
28 Section 65863.10, unless the owner or its agent shall first have  
29 provided each of the entities listed in subdivision (d) an opportunity  
30 to submit an offer to purchase the development, in compliance  
31 with subdivisions (g) and (h). An owner of an assisted housing  
32 development in which there will be the expiration of rental  
33 restrictions must also provide each of the entities listed in  
34 subdivision (d) an opportunity to submit an offer to purchase the  
35 development, in compliance with subdivisions (g) and (h). An  
36 owner who meets the requirements of Section 65863.13 shall be  
37 exempt from this requirement.

38 (c) An owner of an assisted housing development shall not sell,  
39 or otherwise dispose of, the development at any time within the  
40 five years prior to the expiration of rental restrictions or at any

1 time if the owner is eligible for prepayment or termination within  
2 five years unless the owner or its agent shall first have provided  
3 each of the entities listed in subdivision (d) an opportunity to  
4 submit an offer to purchase the development, in compliance with  
5 this section. An owner who meets the requirements of Section  
6 65863.13 shall be exempt from this requirement.

7 (d) The entities to whom an opportunity to purchase shall be  
8 provided include only the following:

9 (1) The tenant association of the development.

10 (2) Local nonprofit organizations and public agencies.

11 (3) Regional or national nonprofit organizations and regional  
12 or national public agencies.

13 (4) Profit-motivated organizations or individuals.

14 (e) For the purposes of this section, to qualify as a purchaser  
15 of an assisted housing development, an entity listed in subdivision  
16 (d) shall do all of the following:

17 (1) Be capable of managing the housing and related facilities  
18 for its remaining useful life, either by itself or through a  
19 management agent.

20 (2) Agree to obligate itself and any successors in interest to  
21 maintain the affordability of the assisted housing development for  
22 households of very low, low, or moderate income for either a  
23 30-year period from the date that the purchaser took legal  
24 possession of the housing or the remaining term of the existing  
25 federal government assistance specified in subdivision (a) of  
26 Section 65863.10, whichever is greater. The development shall be  
27 continuously occupied in the approximate percentages that those  
28 households who have occupied that development on the date the  
29 owner gave notice of intent or the approximate percentages  
30 specified in existing use restrictions, whichever is higher. This  
31 obligation shall be recorded prior to the close of escrow in the  
32 office of the county recorder of the county in which the  
33 development is located and shall contain a legal description of the  
34 property, indexed to the name of the owner as grantor. An owner  
35 that obligates itself to an enforceable regulatory agreement that  
36 will ensure for a period of not less than 30 years that rents for units  
37 occupied by low- and very low income households or that are  
38 vacant at the time of executing a purchase agreement will conform  
39 with restrictions imposed by Section 42(f) of the Internal Revenue  
40 Code shall be deemed in compliance with this paragraph. In

1 addition, the regulatory agreement shall contain provisions  
2 requiring the renewal of rental subsidies, should they be available,  
3 provided that assistance is at a level to maintain the project's fiscal  
4 viability.

5 (3) Local nonprofit organizations and public agencies shall  
6 have no member among their officers or directorate with a financial  
7 interest in assisted housing developments that have terminated a  
8 subsidy contract or prepaid a mortgage on the development without  
9 continuing the low-income restrictions.

10 (f) If an assisted housing development is not economically  
11 feasible, as defined in paragraph (3) of subdivision (h) of Section  
12 17058 of the Revenue and Taxation Code, a purchaser shall be  
13 entitled to remove one or more units from the rent and occupancy  
14 requirements as is necessary for the development to become  
15 economically feasible, provided that once the development is again  
16 economically feasible, the purchaser shall designate the next  
17 available units as low-income units up to the original number of  
18 those units.

19 (g) (1) If an owner decides to terminate a subsidy contract, or  
20 prepay the mortgage pursuant to Section 65863.10, or sell or  
21 otherwise dispose of the assisted housing development pursuant  
22 to subdivision (b) or (c), or if the owner has an assisted housing  
23 development in which there will be the expiration of rental  
24 restrictions, the owner shall first give notice of the opportunity to  
25 offer to purchase to each qualified entity on the list provided to  
26 the owner by the department, in accordance with subdivision (o),  
27 as well as to those qualified entities that directly contact the owner.  
28 The notice of the opportunity to offer to purchase must be given  
29 prior to or concurrently with the notice required pursuant to Section  
30 65863.10 for a period of at least 12 months. The owner shall  
31 contact the department to obtain the list of qualified entities. The  
32 notice shall conform to the requirements of subdivision (h) and  
33 shall be sent to the entities by registered or certified mail, return  
34 receipt requested. The owner shall also post a copy of the notice  
35 in a conspicuous place in the common area of the development.

36 (2) If the owner already has a bona fide offer to purchase from  
37 an entity prior to January 1, 2001, at the time the owner decides  
38 to sell or otherwise dispose of the development, the owner shall  
39 not be required to comply with this subdivision. However, the

1 owner shall notify the department of this exemption and provide  
2 the department a copy of the offer.

3 (h) The initial notice of a bona fide opportunity to submit an  
4 offer to purchase shall contain all of the following:

5 ~~(1) A statement that the owner will make available to each of~~  
6 ~~the type of entities listed in subdivision (d), within 15 business~~  
7 ~~days of receiving a request therefor, the terms of assumable~~  
8 ~~financing, if any; the terms of the subsidy contract, if any; and~~  
9 ~~proposed improvements to the property to be made by the owner~~  
10 ~~in connection with the sale, if any.~~

11 *(1) A statement addressing all of the following:*

12 *(A) Whether the owner intends to maintain the current number*  
13 *of affordable units and level of affordability.*

14 *(B) Whether the owner has an interest in selling the property.*

15 *(C) Whether the owner has executed a contract or agreement*  
16 *of at least five years' duration with a public entity to continue or*  
17 *replace subsidies to the property and to maintain an equal or*  
18 *greater number of units at an equal or deeper level of affordability*  
19 *and, if so, the length of the contract or agreement.*

20 (2) A statement that each of the type of entities listed in  
21 subdivision (d) has the right to purchase the development under  
22 this section.

23 ~~(3) A statement that the owner will make available to each of~~  
24 ~~the type of entities listed in subdivision (d), within 15 business~~  
25 ~~days of receiving a request therefor, itemized lists of monthly~~  
26 ~~operating expenses, capital improvements as determined by the~~  
27 ~~owner made within each of the two preceding calendar years, the~~  
28 ~~amount of project reserves, and copies of the two most recent~~  
29 ~~financial and physical inspection reports on the development, if~~  
30 ~~any, filed with the federal, state, or local agencies.~~

31 ~~(4) A statement that the owner will make available to each of~~  
32 ~~the entities listed in subdivision (d), within 15 business days of a~~  
33 ~~request therefor, the most recent rent roll listing the rent paid for~~  
34 ~~each unit and the subsidy, if any, paid by a governmental agency~~  
35 ~~as of the date the notice of intent was made pursuant to Section~~  
36 ~~65863.10, and a statement of the vacancy rate at the development~~  
37 ~~for each of the two preceding calendar years.~~

38 *(3) (A) Except as provided in subparagraph (B), a statement*  
39 *that the owner will make available to each of the types of entities*

- 1 listed in subdivision (d), within 15 business days of receiving a  
 2 request therefor, that includes all of the following:
- 3 (i) Itemized lists of monthly operating expenses for the property.
  - 4 (ii) Capital improvements, as determined by the owner, made  
 5 within each of the two preceding calendar years at the property.
  - 6 (iii) The amount of project property reserves.
  - 7 (iv) Copies of the two most recent financial and physical  
 8 inspection reports on the property, if any, filed with a federal,  
 9 state, or local agency.
  - 10 (v) The most recent rent roll for the property listing the rent  
 11 paid for each unit and the subsidy, if any, paid by a governmental  
 12 agency as of the date the notice of intent was made pursuant to  
 13 Section 65863.10.
  - 14 (vi) A statement of the vacancy rate at the property for each of  
 15 the two preceding calendar years.
  - 16 (vii) The terms of assumable financing, if any, the terms of the  
 17 subsidy contract, if any, and proposed improvements to the  
 18 property to be made by the owner in connection with the sale, if  
 19 any.
- 20 (B) Subparagraph (A) shall not apply if 25 percent or less of  
 21 the units on the property are subject to affordability restrictions  
 22 or a rent or mortgage subsidy contract.
- 23 (C) A corporation authorized pursuant to Section 52550 of the  
 24 Health and Safety Code or a public entity may share information  
 25 obtained pursuant to subparagraph (A) with other prospective  
 26 purchasers, and shall not be required to sign a confidentiality  
 27 agreement as a condition of receiving or sharing this information,  
 28 provided that the information is used for the purpose of attempting  
 29 to preserve the affordability of the property.
- 30 ~~(5)~~
- 31 (4) A statement that the owner has satisfied all notice  
 32 requirements pursuant to subdivision (b) of Section 65863.10,  
 33 unless the notice of opportunity to submit an offer to purchase is  
 34 delivered more than 12 months prior to the anticipated date of  
 35 termination, prepayment, or expiration of rental restrictions.
- 36 (i) If a qualified entity elects to purchase an assisted housing  
 37 development, it shall make a bona fide offer to purchase the  
 38 development. A qualified entity's bona fide offer to purchase shall  
 39 identify whether it is a tenant association, nonprofit organization,  
 40 public agency, or profit-motivated organizations or individuals

1 and shall certify, under penalty of perjury, that it is qualified  
2 pursuant to subdivision (e). During the first 180 days from the date  
3 of an owner’s bona fide notice of the opportunity to submit an  
4 offer to purchase, an owner shall accept a bona fide offer to  
5 purchase only from a qualified entity. During this 180-day period,  
6 the owner shall not accept offers from any other entity.

7 (j) When a bona fide offer to purchase has been made to an  
8 owner, and the offer is accepted, a purchase agreement shall be  
9 executed.

10 (k) Either the owner or the qualified entity may request that  
11 the fair market value of the property, as a development, be  
12 determined by an independent appraiser qualified to perform  
13 multifamily housing appraisals, who shall be selected and paid by  
14 the requesting party. All appraisers shall possess qualifications  
15 equivalent to those required by the members of the Appraisers  
16 Institute. This appraisal shall be nonbinding on either party with  
17 respect to the sales price of the development offered in the bona  
18 fide offer to purchase, or the acceptance or rejection of the offer.

19 (l) During the 180-day period following the initial 180-day  
20 period required pursuant to subdivision (i), an owner may accept  
21 an offer from a person or an entity that does not qualify under  
22 subdivision (e). This acceptance shall be made subject to the owner  
23 providing each qualified entity that made a bona fide offer to  
24 purchase the first opportunity to purchase the development at the  
25 same terms and conditions as the pending offer to purchase, unless  
26 these terms and conditions are modified by mutual consent. The  
27 owner shall notify in writing those qualified entities of the terms  
28 and conditions of the pending offer to purchase, sent by registered  
29 or certified mail, return receipt requested. The qualified entity shall  
30 have 30 days from the date the notice is mailed to submit a bona  
31 fide offer to purchase and that offer shall be accepted by the owner.  
32 The owner shall not be required to comply with the provisions of  
33 this subdivision if the person or the entity making the offer during  
34 this time period agrees to maintain the development for persons  
35 and families of very low, low, and moderate income in accordance  
36 with paragraph (2) of subdivision (e). The owner shall notify the  
37 department regarding how the buyer is meeting the requirements  
38 of paragraph (2) of subdivision (e).

39 (m) This section shall not apply to any of the following: a  
40 government taking by eminent domain or negotiated purchase; a

1 forced sale pursuant to a foreclosure; a transfer by gift, devise, or  
 2 operation of law; a sale to a person who would be included within  
 3 the table of descent and distribution if there were to be a death  
 4 intestate of an owner; or an owner who certifies, under penalty of  
 5 perjury, the existence of a financial emergency during the period  
 6 covered by the first right of refusal requiring immediate access to  
 7 the proceeds of the sale of the development. The certification shall  
 8 be made pursuant to subdivision (p).

9 (n) Prior to the close of escrow, an owner selling, leasing, or  
 10 otherwise disposing of a development to a purchaser who does not  
 11 qualify under subdivision (e) shall certify under penalty of perjury  
 12 that the owner has complied with all provisions of this section and  
 13 Section 65863.10. This certification shall be recorded and shall  
 14 contain a legal description of the property, shall be indexed to the  
 15 name of the owner as grantor, and may be relied upon by good  
 16 faith purchasers and encumbrances for value and without notice  
 17 of a failure to comply with the provisions of this section.

18 Any person or entity acting solely in the capacity of an escrow  
 19 agent for the transfer of real property subject to this section shall  
 20 not be liable for any failure to comply with this section unless the  
 21 escrow agent either had actual knowledge of the requirements of  
 22 this section or acted contrary to written escrow instructions  
 23 concerning the provisions of this section.

24 (o) The department shall undertake the following  
 25 responsibilities and duties:

26 (1) Maintain a form containing a summary of rights and  
 27 obligations under this section and make that information available  
 28 to owners of assisted housing developments as well as to tenant  
 29 associations, local nonprofit organizations, regional or national  
 30 nonprofit organizations, public agencies, and other entities with  
 31 an interest in preserving the state’s subsidized housing.

32 (2) Compile, maintain, and update a list of entities in  
 33 subdivision (d) that have either contacted the department with an  
 34 expressed interest in purchasing a development in the subject area  
 35 or have been identified by the department as potentially having an  
 36 interest in participating in a right-of-first-refusal program. The  
 37 department shall publicize the existence of the list statewide. Upon  
 38 receipt of a notice of intent under Section 65863.10, the department  
 39 shall make the list available to the owner proposing the termination,  
 40 prepayment, or removal of government assistance or to the owner



1 of an assisted housing development in which there will be the  
2 expiration of rental restrictions. If the department does not make  
3 the list available at any time, the owner shall only be required to  
4 send a written copy of the opportunity to submit an offer to  
5 purchase notice to the qualified entities which directly contact the  
6 owner and to post a copy of the notice in the common area pursuant  
7 to subdivision (g).

8 (p) (1) The provisions of this section may be enforced either  
9 in law or in equity by any qualified entity entitled to exercise the  
10 opportunity to purchase and right of first refusal under this section,  
11 that has been adversely affected by an owner's failure to comply  
12 with this section.

13 (2) An owner may rely on the statements, claims, or  
14 representations of any person or entity that the person or entity is  
15 a qualified entity as specified in subdivision (d), unless the owner  
16 has actual knowledge that the purchaser is not a qualified entity.

17 (3) If the person or entity is not an entity as specified in  
18 subdivision (d), that fact, in the absence of actual knowledge as  
19 described in paragraph (2), shall not give rise to any claim against  
20 the owner for a violation of this section.

21 (q) It is the intent of the Legislature that the provisions of this  
22 section are in addition to, but not preemptive of, applicable federal  
23 laws governing the sale, or other disposition of a development that  
24 would result in either (1) a discontinuance of its use as an assisted  
25 housing development or (2) the termination or expiration of any  
26 low-income use restrictions that apply to the development.

27 SEC. 3. Section 65863.13 of the Government Code is amended  
28 to read:

29 65863.13. (a) An owner shall not be required to provide a  
30 notice as required by Section 65863.10 or 65863.11 if all of the  
31 following conditions are contained in a regulatory agreement that  
32 has been or will be recorded against the property at the close of  
33 escrow of the sale of the property and the owner of the property  
34 complies with the requirements below during the escrow period:

35 (1) No low-income tenant whose rent was restricted and or  
36 subsidized and who resides in the development within 12 months  
37 of the date that the rent restrictions are, or subsidy is, scheduled  
38 to expire or terminate shall be involuntarily displaced on a  
39 permanent basis as a result of the action by the owner unless the  
40 tenant has breached the terms of the lease.

1 (2) The owner shall accept and fully utilize all renewals of  
2 project-based assistance under Section 8 of the United States  
3 Housing Act of 1937, if available, and if that assistance is at a level  
4 to maintain the project’s fiscal viability. The property shall be  
5 deemed fiscally viable if the rents permitted under the terms of  
6 the assistance are not less than the regulated rent levels established  
7 pursuant to paragraph (7).

8 (3) The owner shall accept all enhanced Section 8 vouchers, if  
9 the tenants receive them, and all other Section 8 vouchers for future  
10 vacancies.

11 (4) The owner shall not terminate a tenancy of a low-income  
12 household at the end of a lease term without demonstrating a breach  
13 of the lease.

14 (5) The owner may, in selecting eligible applicants for  
15 admission, utilize criteria that permit consideration of the amount  
16 of income, as long as the owner adequately considers other factors  
17 relevant to an applicant’s ability to pay rent.

18 (6) For assisted housing developments described in paragraph  
19 (3) of subdivision (a) of Section 65863.10, a new regulatory  
20 agreement, consistent with this section, is recorded that restricts  
21 the rents and incomes of the previously restricted units, except as  
22 provided in paragraph (7), (8), or (9), to an equal or greater level  
23 of affordability than previously required so that the units are  
24 affordable to households at the same or a lower percentage of area  
25 median income.

26 (7) For housing developments that have units with project-based  
27 rental assistance upon the effective date of prepayment and  
28 subsequently become unassisted by any form of rental assistance,  
29 rents shall not exceed 30 percent of 60 percent of the area median  
30 income. If any form of rental assistance is or becomes available,  
31 the owner shall apply for and accept, if awarded, the rental  
32 assistance. Rent and occupancy levels shall then be set in  
33 accordance with federal regulations for the rental assistance  
34 program.

35 (8) For units that do not have project-based rental assistance  
36 upon the effective date of prepayment of a federally insured,  
37 federally held, or formerly federally insured or held mortgage and  
38 subsequently remain unassisted or become unassisted by any form  
39 of rental assistance, rents shall not exceed the greater of (i) 30  
40 percent of 50 percent of the area median income, or (ii) for projects

1 insured under Section 241(f) of the National Housing Act, the  
2 regulated rents, expressed as a percentage of area median income.  
3 If any form of rental assistance is or becomes available, the owner  
4 shall apply for and accept, if awarded, the rental assistance. Rent  
5 and occupancy levels shall then be set in accordance with federal  
6 regulations governing the rental assistance program.

7 (9) If, upon the recordation of the new regulatory agreement,  
8 any unit governed by regulatory agreement is occupied by a  
9 household whose income exceeds the applicable limit, the rent for  
10 that household shall not exceed 30 percent of that household's  
11 adjusted income, provided that household's rent shall not be  
12 increased by more than 10 percent annually.

13 (b) As used in this section, "regulatory agreement" means an  
14 agreement with a governmental agency for the purposes of any  
15 governmental program, which agreement applies to the  
16 development that would be subject to the notice requirement in  
17 Section 65863.10 and which obligates the owner and any  
18 successors in interest to maintain the affordability of the assisted  
19 housing development for households of very low, low, or moderate  
20 income for the greater of the term of the existing federal, state, or  
21 local government assistance specified in subdivision (a) of Section  
22 65863.10 or 30 years.

23 (c) Section 65863.11 shall not apply to any development for  
24 which the owner is exempt from the notice requirements of Section  
25 65863.10 pursuant to this section.

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