

## Senate Bill No. 1205

### CHAPTER 26

An act to amend Sections 65863.10 and 65863.11 of the Government Code, relating to housing, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor May 26, 1999. Filed with  
Secretary of State May 26, 1999.]

#### LEGISLATIVE COUNSEL'S DIGEST

SB 1205, Escutia. Housing: governmental assistance.

Existing law prescribes requirements for an owner of a housing development to give notice to tenants of the proposed termination or prepayment of governmental assistance, and requires an owner to give specified entities an opportunity to purchase the development upon terms that represent a bona fide intention to sell.

This bill would provide that the owner is deemed in compliance with those notice requirements when the owner decides to sell or dispose of the property if, prior to July 1, 1999, the owner has accepted such a bona fide offer. The bill would revise certain conditions that must be met by a qualified purchaser and revise the definition of an assisted housing development for that purpose.

The bill would declare that it is to take effect immediately as an urgency statute.

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

SECTION 1. Section 65863.10 of the Government Code is amended to read:

65863.10. (a) As used in this section, the following terms have the following meaning:

(1) "Affected tenant" means a tenant household residing in an assisted housing development, as defined in paragraph (2), at the time notice is required to be provided pursuant to this section, that benefits from the government assistance.

(2) "Assisted housing development" means a multifamily rental housing development that receives governmental assistance under any of the following federal programs:

(A) New construction, substantial rehabilitation, moderate rehabilitation, property disposition, and loan management set-aside programs, or any other program providing project-based assistance, under Section 8 of the United States Housing Act of 1937, as amended (42 U.S.C. Sec. 1437f).

(B) The following federal programs:

(i) The Below-Market-Interest-Rate Program under Section 221(d)(3) of the National Housing Act (12 U.S.C. Sec. 1715(d)(3) and (5)).

(ii) Section 236 of the National Housing Act (12 U.S.C. Sec. 1715z-1).

(iii) Section 202 of the Housing Act of 1959 (12 U.S.C. Sec. 1701q).

(C) Programs for rent supplement assistance under Section 101 of the Housing and Urban Development Act of 1965, as amended (12 U.S.C. Sec. 1701s).

(D) Programs under Section 515 of the Housing Act of 1949, as amended (42 U.S.C. Sec. 1485).

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

(4) “Prepayment” means the payment in full or refinancing of the federally insured or federally held mortgage indebtedness prior to its original maturity date, or the voluntary cancellation of mortgage insurance, on an assisted housing development described in subparagraph (B) of paragraph (2) that would have the effect of removing the current low-income affordability restrictions contained in the applicable laws and the regulatory agreement.

(5) “Termination” means an owner’s decision not to extend or renew its participation in a federal subsidy program for an assisted housing development described in subparagraph (A) of paragraph (2), either at or prior to the scheduled date of the expiration of the contract, that may result in an increase in tenant rents or a change in the form of the subsidy from project-based to tenant-based.

(b) At least nine months prior to the anticipated date of termination of a subsidy contract or prepayment on an assisted housing development, the owner proposing the termination or prepayment of governmental assistance shall provide a notice of the proposed change to each affected tenant household residing in the assisted housing development at the time the notice is provided. The notice to the tenants shall contain all of the following:

(1) The anticipated date of the termination or prepayment of the federal program, and the identity of the federal program, as described in subdivision (a).

(2) The current rent and anticipated new rent for the unit on the date of the prepayment or termination of the federal program.

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

(4) A statement of the possibility that the housing may remain in the federal program after the proposed date of subsidy termination or prepayment if the owner elects to do so under the terms of the federal government’s offer.



(5) A statement of the owner's intention to participate in any current replacement federal subsidy program made available to the affected tenants.

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

(c) (1) The notice shall also be filed at the same time with the mayor of the city in which the assisted housing development is located, or if located in an unincorporated area with the chairperson of the board of supervisors of the county, with the appropriate local public housing authority, if any, and with the Department of Housing and Community Development.

(2) In addition to the information provided in the notice to the affected tenant, the notice to the mayor or chairman of the board of supervisors, the appropriate local public housing authority, if any, and the Department of Housing and Community Development shall contain information regarding the number of affected tenants in the project, the number of units that are government assisted and the type of assistance, the number of the units that are not government assisted, the number of bedrooms in each unit that is government assisted, and the ages and income of the affected tenants. The notice shall briefly describe the owner's plans for the project, including any timetables or deadlines for actions to be taken and specific governmental approvals that are required to be obtained, the reason the owner seeks to terminate the subsidy contract or prepay the mortgage, and any contacts the owner has made or is making with other governmental agencies or other interested parties in connection with the notice. The information contained in the notice shall be based on data that is reasonably available from existing written tenant and project records.

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

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



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

(g) If, prior to July 1, 1999, the owner has already accepted a bona fide offer from a qualified entity, as defined in subdivision (d) of Section 65863.11, at the time the owner decides to sell or otherwise dispose of the development, the owner shall be deemed in compliance with this section if the owner complies with any and all prepayment and opt out notice requirements imposed by federal law.

(h) This section shall remain in effect only until January 1, 2002, and as of that date is repealed, unless a later enacted statute, which is enacted on or before January 1, 2002, deletes or extends that date.

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

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

(1) “Assisted housing development” and “development” mean a multifamily rental housing development as defined in paragraph (2) of subdivision (a) of Section 65863.10.

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

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

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

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

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

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

(8) “Local public agencies” means housing authorities, redevelopment agencies, or any other agency of a city, county, or city



and county, whether general law or chartered, which are authorized to own, develop, or manage housing or community development projects for persons and families of low or moderate income and very low income.

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

(10) “Regional or national public agencies” means multicounty, state, or multistate agencies that are authorized to own, develop, or manage housing or community development projects for persons and families of low or moderate income and very low income.

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

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

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

(b) An owner of an assisted housing development who has not, prior to January 1, 1991, given notice of intent to terminate a subsidy contract or prepay the mortgage pursuant to Section 65863.10, shall not sell, or otherwise dispose of the development in a manner which would result in either (1) a discontinuance of its use as an assisted housing development, or (2) the termination of any low-income use restrictions which apply to the development, unless the owner or its agent proposing the removal of government assistance shall first have provided each of the entities, listed in subdivision (c), an opportunity to purchase the development at a price and upon terms which represent a bona fide intention to sell, in compliance with subdivision (g).

(c) The entities to whom an opportunity to purchase shall first be provided include the following:

- (1) The tenant association of the development.



(2) Local nonprofit organizations and public agencies.

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

(4) Profit-motivated organizations or individuals.

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

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

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

(3) Local nonprofit organizations and public agencies shall have no member among their officers or directorate with a financial interest in assisted housing developments that have terminated a subsidy contract or prepaid a mortgage on the development.

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

(f) If an owner decides to sell, or otherwise dispose of the assisted housing development pursuant to subdivision (b), at least the amount of time required for advance notice pursuant to Section



65863.10 prior to the anticipated date of termination of a subsidy contract or mortgage prepayment of a development that would result in either (1) a discontinuance of its use as an assisted housing development or (2) the termination of any low-income use restrictions that apply to the development, the owner shall first give notice of his or her bona fide intention to sell, or otherwise dispose of the development to each qualified entity on the list provided to the owner by the department, in accordance with subdivision (p), as well as to those qualified entities that directly contact the owner. The notice shall conform to the requirements of subdivision (g) and shall be sent to the entities by registered or certified mail, return receipt requested. The owner shall also post a copy of the notice in a conspicuous place in the common area of the development.

If the owner already has a bona fide offer to purchase from a qualified entity, at the time the owner decides to sell, or otherwise dispose of the development, the owner shall not be required to comply with the provisions of this subdivision.

(g) The initial notice of a bona fide intention to sell shall contain all of the following:

(1) The sales price; the terms of assumable financing, if any; the terms of the subsidy contract, if any; and proposed improvements to the property to be made by the owner in connection with the sale, if any.

(2) A statement that each of the type of entities listed in subdivision (c) has the right to purchase the development under this section in the order and according to the priorities established in subdivision (h).

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

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

(5) A statement that the owner has satisfied all notice requirements pursuant to subdivision (b) of Section 65863.10.

(h) If a qualified entity elects to purchase an assisted housing development, it shall make a bona fide offer to purchase the development within 180 days from the date of an owner's bona fide



intention to sell. A qualified entity's bona fide offer to purchase shall identify whether it is a tenant association, nonprofit organization, public agency, or profit-motivated organizations or individuals and shall certify, under penalty of perjury, that it is qualified pursuant to subdivision (d). During the first 120 days from the date of an owner's bona fide notice of intention to sell, an owner shall only accept a bona fide offer to purchase from the tenant association. If at the end of the first 120-day period no purchase agreement has been executed, the owner may accept a bona fide offer to purchase from any qualified entity specified in subdivision (c) during the remaining 60 days.

(i) If at the end of that 180-day period no purchase agreement has been executed and a person or entity other than those entities listed in subdivision (c) has offered to purchase, or otherwise acquire the development, and the owner of the development has complied with the provisions of this section and Section 65863.10, the owner may accept a bona fide offer to purchase from this person or entity.

(j) When a bona fide offer to purchase has been made to an owner in response to a bona fide intention to sell, and the offer is accepted, a purchase agreement shall be executed.

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

(l) During the 180-day period following the initial 180-day period required pursuant to subdivision (h), an owner may accept an offer from a person or an entity that does not qualify under subdivision (d), provided that the acceptance does not conflict with applicable federal laws governing who may purchase an assisted housing development. This acceptance shall be made subject to the owner providing each qualified entity that made a bona fide offer to purchase the first opportunity to purchase the development at the same terms and conditions as the pending offer to purchase, unless these terms and conditions are modified by mutual consent. The owner shall notify in writing those qualified entities of the terms and conditions of the pending offer to purchase, sent by registered or certified mail, return receipt requested. The qualified entity shall have 15 days from the date the notice is mailed to submit a bona fide offer to purchase and that offer shall be accepted by the owner. The owner shall not be required to comply with the provisions of this subdivision if the person or the entity making the offer during this time period agrees to maintain the development for persons and



families of low and moderate income and very low income, in accordance with paragraph (2) of subdivision (d).

(m) This section shall not apply to any of the following: a government taking by eminent domain or negotiated purchase; a forced sale pursuant to a foreclosure; a transfer by gift, devise, or operation of law; a sale to a person who would be included within the table of descent and distribution if there were to be a death intestate of an owner; or an owner who certifies, under penalty of perjury, the existence of a financial emergency during the period covered by the first right of refusal requiring immediate access to the proceeds of the sale of the development. The certification shall be made pursuant to subdivision (o).

(n) An owner, at any time during the period subsequent to giving notice of the bona fide intention to sell in accordance with subdivision (f), may decide not to sell, or otherwise dispose of the development and may withdraw the notice of intention to sell. However, at any time that the owner again decides to sell, or otherwise dispose of the development, the provisions of this section shall apply.

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

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

(p) The department shall undertake the following responsibilities and duties:

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

(2) Compile, maintain, and update a list of entities in subdivision (c) that have either contacted the department with an expressed interest in purchasing a development in the subject area or have been identified by the department as potentially having an interest in participating in a right-of-first-refusal program. The department shall publicize the existence of the list statewide. Upon receipt of a



notice of intent under Section 65863.10, the department shall make the list available to the owner proposing the termination or removal of government assistance. If the department does not make the list available at any time, the owner shall only be required to send a written copy of the bona fide intention to sell to the qualified entities which directly contact the owner and to post a copy of the intention to sell in the common area pursuant to subdivision (f).

(q) The provisions of this section may be enforced either in law or in equity by any qualified entity entitled to exercise the right-of-first-refusal under this section, that has been adversely affected by an owner's failure to comply with the provisions of this section.

An owner may rely on the statements, claims, or representations of any person or entity that the person or entity is a qualified entity as specified in subdivision (c), unless the owner has actual knowledge that the purchaser is not a qualified entity. If the person or entity is not an entity as specified in subdivision (c), that fact, in the absence of actual knowledge as described in the preceding sentence of this subdivision, shall not give rise to any claim against the owner for a violation of this section.

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

(s) This section shall remain in effect only until December 31, 2000, and as of that date is repealed, unless a later enacted statute, which is enacted on or before December 31, 2000, deletes or extends that date.

SEC. 3. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

Nonprofit organizations purchasing affordable housing units must close escrow by June 10, 1999, to receive available tax credits. The enactment of this act before that date is necessary to extend the availability of those credits.

