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HOUSE BILL 1734

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State of Washington

52nd Legislature

1991 Regular Session

By Representatives Nelson, Mitchell, Leonard, Winsley, Ogden, May, Franklin, Van Luven, Wineberry and Anderson.

Read first time February 7, 1991. Referred to Committee on Housing.

1 AN ACT Relating to the purchase of section 8 assisted housing  
2 developments; adding a new chapter to Title 59 RCW; and prescribing  
3 penalties.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** This chapter may be known and cited as  
6 the section 8 assisted housing purchase act.

7 NEW SECTION. **Sec. 2.** Unless the context clearly requires  
8 otherwise, the definitions in this section apply throughout this  
9 chapter.

10 (1) "Department" means the department of community development.

11 (2) "Director" means the director of the department of community  
12 development.

13 (3) "Section 8 assisted housing development" and "development" mean  
14 a multifamily rental housing development that is assisted under section

1 8 of the United States housing act of 1937, as amended (42 U.S.C. Sec.  
2 1437f), but not including existing housing participating in either the  
3 section 8 certificate or voucher programs under a housing assistance  
4 contract with a public housing agency.

5 (4) "Owner" means an individual, corporation, association,  
6 partnership, joint venture, or business entity that holds title to a  
7 section 8 assisted housing development.

8 (5) "Tenant" means a tenant, subtenant, lessee, sublessee, or other  
9 person entitled to possession, occupancy, or benefits of a rental unit  
10 within a section 8 assisted housing development.

11 (6) "Tenant association" means a group of tenants whose purposes  
12 include the acquisition of a section 8 assisted housing development.

13 (7) "Low income" means a total household income that is less than  
14 eighty percent of the median income for comparably sized households in  
15 the standard metropolitan statistical area in which the development is  
16 located.

17 (8) "Very low income" means a total household income that is less  
18 than fifty percent of the median income for comparably sized households  
19 in the standard metropolitan statistical area in which the development  
20 is located.

21 (9) "Local nonprofit organization" means not-for-profit community  
22 or neighborhood-based organizations, including public development  
23 authorities, which serve or will serve the area within which the  
24 section 8 assisted housing development is located.

25 (10) "Local public agency" means a public housing authority, or any  
26 other agency of the city, county, or state which is authorized to own,  
27 develop, or manage housing or community development projects for  
28 persons and families of low income and very low income and which is  
29 situated in the area in which the section 8 assisted housing  
30 development is located.

1 (11) "Regional or national organization" means not-for-profit  
2 charitable organizations organized on a county, multicounty, state, or  
3 multistate basis which have as a purpose the ownership, development, or  
4 management of housing or community development projects for persons and  
5 families of low income or very low income.

6 (12) "Use restrictions" mean any federal, state, or local statute,  
7 regulation, ordinance, or contract which, as a condition of receipt of  
8 any housing assistance by a section 8 assisted housing development,  
9 establishes maximum limitations on tenant income as a condition of  
10 eligibility for occupancy of the units within a development, imposes  
11 any restrictions on the maximum rents that could be charged for any of  
12 the units within a development, or requires that rent for any of the  
13 units within a development be reviewed by any governmental body or  
14 agency before the rents are implemented.

15 NEW SECTION. **Sec. 3.** (1) An owner of a section 8 assisted  
16 housing development shall not serve a written notice of the anticipated  
17 expiration of a housing assistance contract under RCW 59.28.040,  
18 terminate a housing assistance contract, refuse to renew a housing  
19 assistance contract, or sell, lease, transfer, convey, or otherwise  
20 dispose of the development in a manner which would result in either:

21 (a) A discontinuance of its use as a section 8 assisted housing  
22 development; or

23 (b) The termination of any low-income use restrictions which apply  
24 to the development, unless the owner or its agent has provided each of  
25 the entities listed in subsection (2) of this section, an opportunity  
26 to purchase the development at a price and upon terms which represent  
27 a bona fide offer for sale, in compliance with section 4 of this act.

1 (2) The right of first refusal or the right to purchase created  
2 under section 4 of this act is conferred to the following entities in  
3 the following order and in accordance with the following priorities:

4 (a) A tenant association of the development, first priority;

5 (b) A local nonprofit organization, second priority;

6 (c) A local public agency, third priority;

7 (d) The city or county in which the development is located, fourth  
8 priority; and

9 (e) A regional or national organization, fifth priority.

10 (3) The eligible entities identified in subsection (2) of this  
11 section are entitled to receive a bona fide offer to sell the  
12 development and have an opportunity to purchase the development under  
13 section 4 of this act. An eligible purchaser is not, however,  
14 automatically deemed a qualified purchaser. For the purposes of this  
15 section, to qualify as a purchaser of a section 8 assisted housing  
16 development, an entity listed in subsection (2) of this section shall  
17 do all of the following:

18 (a) Demonstrate to the department that it possesses the financial  
19 and organizational capacity to acquire the development and manage the  
20 housing and related facilities for their remaining useful life, either  
21 by itself, or in cooperation with others.

22 (b) Agree to obligate itself and any successors in interest to  
23 maintain the section 8 assisted housing development for low-income and  
24 very low-income persons and families for the remaining useful life of  
25 the development in at least the approximate percentages that those  
26 persons and families occupied that development at the date the owner  
27 submits a bona fide offer for sale or at least the approximate  
28 percentages specified in existing use restrictions, whichever is  
29 higher, and agree to seek any additional subsidies that may reasonably  
30 be available to attain the most affordable rents and highest

1 percentages of occupancy by those persons and families. A memorandum  
2 of this obligation shall be recorded in the department of records of  
3 the county in which the development is located; and

4 (c) Have no person among its officers, directors, or holding legal  
5 or beneficial ownership with a financial interest in the section 8  
6 assisted housing development or with a prior financial interest in a  
7 section 8 assisted housing development that has previously terminated  
8 a subsidy contract or prepaid a mortgage on the development. However,  
9 an eligible purchaser may have participation by bona fide tenants of  
10 the section 8 assisted housing development and not be disqualified  
11 under this subsection.

12 (4) If it is not economically feasible for a development to  
13 continue to conform to the use and occupancy restrictions described in  
14 subsection (3)(b) of this section, a purchaser shall be entitled to  
15 remove one or more units from the rent and occupancy requirements as  
16 may be necessary for the development to become economically feasible,  
17 except that once the development is again economically feasible, the  
18 purchaser shall designate the next available unit or units as low-  
19 income units until the original number of low-income units has been  
20 reestablished. However, any removal of units authorized by this  
21 subsection is subject to the prior review and approval of the  
22 department.

23 NEW SECTION. **Sec. 4.** (1) Before an owner takes any of the  
24 actions described in section 3(1) of this act, the owner shall first  
25 make a bona fide offer to sell the development to each entity described  
26 in section 3(2) of this act which has either been included on a list of  
27 all entities maintained by the department and made available to the  
28 owner upon request at the time of the bona fide offer to sell, or which  
29 has informed the owner that it desires to receive such an offer.

1 (2) If, at the time the owner is required to make an offer to sell  
2 under this section, the owner is making an offer to sell the  
3 development to any other entity or has received an offer to purchase  
4 the development from any other entity which the owner is prepared to  
5 accept, then the terms of the owner's offer to sell to eligible  
6 purchasers under this section shall be no less favorable than those  
7 contained in the existing offer to sell or purchase. Terms include,  
8 but are not limited to, the purchase price, terms of payment, any  
9 contingencies, and any assumable or purchase money financing.

10 (3) The offer to sell shall be in the form of a written copy of a  
11 bona fide offer for sale, under in subsection (4) of this section, sent  
12 to the entities by registered or certified mail, return receipt  
13 requested. The owner shall also post a copy of the offer for sale in  
14 a conspicuous place in the common area of the development.

15 (4) The initial bona fide offer for sale shall be in a form  
16 approved by the department and shall contain at least the following  
17 information and include the following statements with which the owner  
18 must comply:

19 (a) The sales price, the terms of assumable or purchase money  
20 financing, if any, the terms of the subsidy contract, if any, and  
21 proposed improvements to the development to be made by the owner in  
22 connection with the sale, if any;

23 (b) A statement that each of the entities listed in section 3(2) of  
24 this act has the right to purchase the development under this section,  
25 in the order and according to the priorities established in section  
26 3(2) of this act;

27 (c) A statement that the owner will make available to each of the  
28 entities listed in section 3(2) of this act, within fifteen days of  
29 receiving the request, the regulatory agreement for the development, if  
30 any, promissory notes, mortgages, or deeds of trust, itemized lists of

1 monthly operating expenses, capital improvements, as determined by the  
2 owner, made within each of the two preceding calendar years, the amount  
3 of project reserves, and copies of the two most recent financial and  
4 physical inspection reports on the development, if any, filed with  
5 federal, state, or local agencies;

6 (d) A statement that the owner will make available to each of the  
7 entities listed in section 3(2) of this act, within fifteen days of a  
8 request, the most recent rent roll listing the size and income level of  
9 each tenant household, the rent paid by each tenant, the subsidy, if  
10 any, paid by a governmental agency as of the date of the bona fide  
11 offer for sale, and a statement of the vacancy rate at the development  
12 for each of the two preceding calendar years;

13 (e) A statement that the owner will authorize the release to each  
14 of the entities listed in section 3(2) of this act, within fifteen days  
15 of a request, of any information relating to the physical and financial  
16 condition of the development held by any federal, state, or local  
17 agency; and

18 (f) A statement that the owner will permit reasonable access to the  
19 development by each of the entities listed in section 3(2) of this act,  
20 upon reasonable advance notice, for the purpose of inspection, taking  
21 measurements, conducting surveys, or for any other reasonable purpose.

22 (5) If an eligible entity elects to purchase a section 8 assisted  
23 housing development, it shall deliver either its acceptance or a  
24 written bona fide offer to purchase the development within ninety days  
25 from the date of delivery or the date of posting of the owner's bona  
26 fide offer for sale. A copy of the acceptance or bona fide offer to  
27 purchase shall be delivered promptly to the department. As part of  
28 this acceptance or offer, the eligible entity shall identify whether it  
29 is a tenant association, a local nonprofit organization, a local public  
30 agency, a city or county, or a regional or national organization. If

1 the eligible entity accepts the owner's bona fide offer for sale then  
2 the parties shall execute a real estate purchase and sale agreement  
3 under subsection (7) of this section subject to any review or selection  
4 undertaken under section 7 of this act.

5 (6) An owner shall accept or reject a bona fide offer to purchase  
6 in writing within fifteen days after its receipt. A copy of the  
7 acceptance or rejection shall be delivered promptly to the department.  
8 The owner's duty to accept or reject a bona fide offer applies to all  
9 offers received by the owner from eligible entities, contingent on any  
10 review or selection undertaken under section 7 of the act. When an  
11 owner does not agree to the sales price or terms offered by the  
12 eligible entity in the bona fide offer to purchase, either the owner or  
13 the eligible entity may request that the value of the development be  
14 determined by an appraisal conducted by a qualified appraiser agreed  
15 upon by the owner and eligible entity, with each party to pay one-half  
16 of the cost of the appraisal. If the owner and eligible entity cannot  
17 agree on an appraiser, then the value of the development shall be  
18 determined by two independent appraisers qualified to perform  
19 multifamily housing appraisals, one of whom shall be selected and paid  
20 by the owner, and the other selected and paid by the eligible entity.  
21 If the two appraisers fail to agree upon the fair market value, the  
22 owner and eligible entity shall agree to either take an average of the  
23 two appraisals, or, jointly select and pay a third appraiser, whose  
24 appraisal shall be binding on the parties. The appraisal process shall  
25 be completed within one hundred sixty-five days after delivery of the  
26 owner's initial bona fide offer to sell, however, the appraisal process  
27 completion date shall be extended an additional thirty days when a  
28 third appraisal is conducted. All appraisers shall possess  
29 qualifications equivalent to those required by the members of the  
30 appraisers institute. Appraisals obtained by the owner and eligible

1 entities under this subsection may be used by the owner and eligible  
2 entities in connection with other purchase offers unless there has been  
3 a significant change in market conditions.

4 (7) When a bona fide offer for sale has been accepted by an  
5 eligible purchaser, when a bona fide offer to purchase has been made to  
6 an owner in response to a bona fide offer for sale and the offer is  
7 accepted, or when a bona fide offer to purchase is rejected and a  
8 purchase price is determined through the appraisal procedure described  
9 in subsection (6) of this section, a real estate purchase and sale  
10 agreement shall be executed by the owner and the purchaser within  
11 thirty days after delivery of the written acceptance or determination  
12 of the purchase price through the appraisal process.

13 (8) The real estate purchase and sale agreement shall be in a form  
14 approved by the department and shall include at least the following:

15 (a) An agreement by the owner to provide the purchaser with all  
16 existing loan documents, including, regulatory agreements containing  
17 any use restrictions, promissory notes, and the mortgage or deed of  
18 trust within fifteen days from the date of the signing of the real  
19 estate purchase and sale agreement by all the necessary parties;

20 (b) An agreement by the owner to permit reasonable access to the  
21 development by the purchaser for the purpose of inspection, taking  
22 measurements, conducting surveys, or for any other reasonable purpose;

23 (c) An agreement by the owner and the purchaser that the  
24 transaction will close either one hundred eighty days from the date of  
25 the real estate purchase and sale agreement or three hundred sixty days  
26 from the date of the owner's bona fide offer to sell, whichever is  
27 later, or such shorter or longer period of time as may be agreed upon  
28 by the parties or directed by the department;

29 (d) An agreement by the purchaser to make a reasonable earnest  
30 money deposit or deposits, that are completely refundable, including

1 accrued interest, unless the purchaser succeeds in removing all  
2 inspection and financing contingencies, and agrees to either the sales  
3 price offered in the owner's bona fide offer for sale, or a negotiated  
4 offer for sale, or the sales price determined as the result of the  
5 appraisal process under subsection (6) of this section, in which case  
6 the deposit and accrued interest shall be applied towards the purchase  
7 of the development.

8 NEW SECTION. **Sec. 5.** Except as provided in section 6 of this  
9 act, an owner of a section 8 assisted housing development shall be  
10 released from the obligation to offer the right of first refusal or  
11 right to purchase to an eligible entity listed in section 3(2) of this  
12 act, upon the expiration of the applicable time periods specified in  
13 section 4 of this act, and submission of a written certification to the  
14 department, signed by the owner under penalty of perjury, that either  
15 of the following occurred:

16 (1) The owner complied with all notice and information requirements  
17 pursuant to a bona fide offer for sale of a section 8 assisted housing  
18 development under section 4 of this act and no written acceptance or  
19 bona fide offer to purchase was received from an eligible entity or no  
20 real estate purchase and sale agreement was executed by an eligible  
21 entity within the time periods under section 4 of this act; or

22 (2) An eligible entity that executed a real estate purchase and  
23 sale agreement during the applicable time period elected to terminate  
24 the agreement, or was unable to meet the terms of the agreement, the  
25 owner exercised due diligence in carrying out the conditions of the  
26 real estate purchase and sale agreement, and there was no other  
27 eligible entity willing to make a bona fide offer to purchase or  
28 fulfill the terms of the real estate purchase and sale agreement within  
29 the time remaining prior to expiration of the applicable time periods.

1        NEW SECTION.    **Sec. 6.**        During the one-year period after the  
2 date of an owner's release from the obligation to offer the right of  
3 first refusal or right to purchase to an eligible entity, under section  
4 5 of this act, an owner may make an offer to or accept an offer from an  
5 entity that does not qualify as an eligible entity under section 3(2)  
6 of this act at the same or different terms and conditions that were  
7 offered to an eligible entity in the initial bona fide offer for sale  
8 made under section 4(4) of this act. However, the offer or acceptance  
9 shall be subject to the owner providing each eligible entity the first  
10 opportunity to purchase the development at the same terms and  
11 conditions, which may be modified by mutual consent, as the pending  
12 offer to sell or purchase. The owner shall send written notification  
13 of the terms and conditions of the pending offer to sell or purchase to  
14 eligible entities by registered or certified mail, return receipt  
15 requested. The eligible entities have sixty days from the date the  
16 notice is received to respond to the owner by submitting a bona fide  
17 offer to purchase at the same terms and conditions, unless modified by  
18 mutual consent, which offer shall be accepted by the owner. The owner  
19 shall not be required to comply with the provisions of this section if  
20 the entity to which the offer is made or from which the offer is  
21 received during this time period agrees to maintain the development for  
22 persons and families of low income and very low income, in accordance  
23 with the provisions of section 3(3)(b) of this act.

24        NEW SECTION.    **Sec. 7.**        (1) Within ninety days of the effective  
25 date of this act, the department shall prepare a list of all known  
26 entities described in section 3(2) of this act which are eligible to  
27 receive a bona fide offer to sell under section 4(1) of this act. The  
28 department shall update the list of eligible entities at reasonable  
29 intervals. An entity's inclusion on the department's list of eligible

1 entities does not constitute endorsement or approval of that entity's  
2 qualifications or capacity to acquire and manage any development and  
3 shall not be construed as such. The department's failure to include an  
4 entity on the list shall not deprive an eligible entity of the right to  
5 exercise its opportunity to purchase a development under section 4 of  
6 this act.

7 (2) The department shall develop criteria for determining the  
8 financial and organizational qualifications of purchasers and may  
9 establish minimum standards which must be met by the purchasers. The  
10 general criteria will include consideration of consider the purchaser's  
11 knowledge and experience in acquisition and management of similar  
12 projects, staff capacity to handle acquisition and management,  
13 financial capacity to handle acquisition and management, references  
14 regarding experience, and demonstrated interest in effectuating the  
15 purpose of this chapter.

16 (3) The department shall promptly determine the financial and  
17 organizational qualifications of any eligible purchaser who has entered  
18 into a real estate purchase and sale agreement with an owner for a  
19 development under this chapter. The department may determine whether  
20 minimum qualification standards have been met by an eligible purchaser  
21 before an owner will be required to proceed with the sale of the  
22 development under this chapter.

23 (4) If an owner has entered into more than one real estate purchase  
24 and sale agreement with an eligible purchaser or has received more than  
25 one offer to purchase from eligible purchasers under this chapter, the  
26 department shall, subject to the priorities identified in section 3(2)  
27 of this act, determine which purchaser is most qualified to proceed  
28 with the purchase of the development and shall advise the owner and  
29 eligible purchasers accordingly.

1 (5) Within ninety days of the effective date of this act, the  
2 director shall appoint a task force to develop criteria for evaluating  
3 development acquisition opportunities and development acquisition  
4 feasibility. The task force will also advise the department on the  
5 promulgation of any rules which may be necessary or appropriate to  
6 effectuate the purpose of this chapter. The task force shall be  
7 composed of nine members including individuals who, in the director's  
8 judgment, are generally representative of the interests of the  
9 following: Cities, counties, public housing authorities, realtors,  
10 mortgage lending or servicing institutions, local nonprofit housing  
11 organizations, and tenant organizations. Two at-large members shall  
12 also be appointed.

13 (6) The department shall have the authority to promulgate rules  
14 under chapter 34.05 RCW which may be necessary or appropriate to  
15 effectuate the purpose of this chapter.

16 NEW SECTION. **Sec. 8.** The department may, at its option, record a  
17 summary of the requirements of this chapter with the department of  
18 records of the county in which the development is located, as to each  
19 section 8 assisted housing development in the state. The summary shall  
20 contain a legal description of the assisted housing development, shall  
21 state the name of the owner as grantor, and shall impart notice to any  
22 encumbrancers, purchasers, or transferees of the requirements contained  
23 in this chapter.

24 NEW SECTION. **Sec. 9.** The provisions of this chapter may be  
25 enforced either in law or in equity by any entity entitled to exercise  
26 the right of first refusal or right to purchase, by any tenant in a  
27 section 8 assisted housing development, by the department, or by any

1 other person adversely affected by an owner's or purchaser's failure to  
2 comply with the provisions of this chapter.

3 NEW SECTION. **Sec. 10.** In addition to any other sanction or  
4 remedial procedure which may be available, any owner failing to comply  
5 with the requirements of this chapter shall be subject to a civil  
6 penalty of up to twenty-five thousand dollars for each rental unit in  
7 a section 8 assisted housing development that is subject to this  
8 chapter. The penalty shall be recovered in a civil action brought on  
9 behalf of the state by the attorney general. Any civil penalties  
10 collected under this section shall be deposited in the housing trust  
11 fund established under chapter 43.185 RCW.

12 NEW SECTION. **Sec. 11.** This chapter does not limit the  
13 authority of local jurisdictions to enact laws granting a right of  
14 first refusal or right to purchase section 8 assisted housing  
15 developments within their jurisdiction. If the director determines  
16 that a local right of first refusal or right to purchase law provides  
17 rights, remedies, and procedures which are substantially equivalent to  
18 the rights, remedies, and procedures provided in this chapter, the  
19 director shall authorize the local jurisdiction to make an election to  
20 require owners to either comply with the local right of first refusal  
21 or right to purchase law or comply with the requirements of this  
22 chapter. The local jurisdiction shall promptly send written  
23 notification of its election to owners of section 8 assisted housing  
24 developments within its jurisdiction.

25 NEW SECTION. **Sec. 12.** If any provision of this act or its  
26 application to any person or circumstance is held invalid, the

1 remainder of the act or the application of the provision to other  
2 persons or circumstances is not affected.

3       NEW SECTION.   **Sec. 13.**       Sections 1 through 12 of this act shall  
4 constitute a new chapter in Title 59 RCW.