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LC005272

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2022

A N A C T

RELATING TO PROPERTY -- COMMUNITY OPPORTUNITY TO PURCHASE ACT

Introduced By: Senators Kallman, Ruggerio, Lawson, Sosnowski, Acosta, Goodwin,
McCaffrey, Anderson, and Calkin

Date Introduced: March 10, 2022

Referred To: Senate Housing & Municipal Government

It is enacted by the General Assembly as follows:

1 SECTION 1. Title 34 of the General Laws entitled "PROPERTY" is hereby amended by
2 adding thereto the following chapter:

3 CHAPTER 18.3

4 COMMUNITY OPPORTUNITY TO PURCHASE ACT

5 **34-18.3-1. Legislative findings and purpose.**

6 (a) The general assembly finds as follows:

7 (1) The state faces a severe and continuing housing crisis. Many state residents are unable
8 to obtain or retain affordable housing.

9 (2) This crisis has profoundly negative effects on the state. It causes dislocation, which
10 frays the social ties that bind our neighborhoods and communities together. It forces vulnerable
11 residents to leave their home, the state, for new communities where they are strangers. And it
12 contributes to homelessness, which is itself a severe and continuing crisis in the state.

13 (3) The state's housing crisis is caused, in large part, by a shortage of affordable rental
14 housing. The creation and preservation of such housing is therefore of paramount public concern.

15 (4) One obstacle to the creation and preservation of affordable rental housing is rapid
16 turnover in the state's real estate market. Nonprofit organizations seeking to create and preserve
17 affordable housing may be willing and able to pay market prices to purchase residential buildings
18 for sale, but nevertheless find themselves unable to purchase such buildings before they leave the
19 market. Nonprofit organizations serving the broader public interest must often move more

1 deliberately and borrow purchase money from non-traditional lenders in such real estate
2 transactions than private entities concerned solely with profit.

3 (b) The purpose of this chapter (which may be referred to as the "community opportunity
4 to purchase act") is to enhance nonprofit organizations' ability to purchase multi-family residential
5 buildings, at market prices, within a reasonable period of time and to thereby promote the creation
6 and preservation of affordable rental housing.

7 **34-18.3-2. Definitions.**

8 As used in this chapter:

9 (1) "Area median income" means the unadjusted area median income published by the U.S.
10 Department of Housing and Urban Development for the geographic area that includes the state.

11 (2) "Fee interest" means ownership of real property in fee simple absolute.

12 (3) "Multi-family residential building" or "building" means any privately-owned real
13 property in the state improved with three (3) or more residential rental units (whether or not the
14 property also includes non-residential uses). Any privately-owned real property on which three (3)
15 or more residential units are under construction, and any privately-owned vacant lot on which the
16 local zoning and other applicable laws would permit the construction of three (3) or more residential
17 rental units.

18 (4) "Notice of special restrictions" means an agreement executed by a qualified nonprofit
19 and recorded against a multi-family residential building purchased by such qualified nonprofit.
20 substantially in the form published by the agency.

21 (5) "Purchase of a multi-family residential building," or "purchase," means to acquire any
22 interest that is transferred pursuant to the sale of a multi-family residential building.

23 (6) "Purchaser" means the individual, individuals, entity, or entities engaged or seeking to
24 engage, in the purchase of a multi-family residential building.

25 (7) "Rhode Island housing" means the Rhode Island housing and mortgage finance
26 corporation ("RIHMFC") created pursuant to chapter 55 of title 42.

27 (8) "Sale of a multi-family residential building," or "sale," means any of the following:

28 (i) The transfer, in exchange for money or any other thing of economic value, of a present
29 interest in the multi-family residential building, including beneficial use, where the value of the
30 present interest is the fee interest in the multi-family residential building, or substantially equal to
31 the value of that fee interest;

32 (ii) If an interest in the multi-family residential building is held by a trust, the transfer, in
33 exchange for money or any other thing of economic value, of a beneficial interest in the trust, where
34 the value of the beneficial interest in the trust is substantially equal to the value of the fee interest

1 of the multi-family residential building; or

2 (iii) If an interest substantially equal to the value of the fee interest of the multi-family
3 residential building is held by any kind of corporate entity or partnership (including, but not limited
4 to, a corporation, limited liability company, general partnership, limited partnership, or limited
5 liability partnership), and if that interest is substantially equal in value to the total value of assets
6 held by the corporate entity or partnership, the transfer in exchange for money or any other thing
7 of economic value, of a controlling interest in the corporate entity or partnership. For purposes of
8 this section, in any instance in which multiple entities (whether those entities are natural persons,
9 trusts, corporate entities, partnerships, or any other kind of entity, or any combination of different
10 kinds of entities) hold interests in a multi-family residential building, the transfer of multiple
11 interests by or in those entities shall be considered the transfer of a single interest, if the transfers
12 are made in connection with substantially the same transaction or set of transactions.

13 (iv) "Sale of a multi-family residential building," or "sale," does not include any of the
14 following:

15 (A) Any transfer made under a mortgage, deed of trust, or deed in lieu of foreclosure;

16 (B) Any transfer made in connection with any bankruptcy proceeding (including, but not
17 limited to, any transfer made by a bankruptcy trustee);

18 (C) Any transfer of an interest in real property held by the federal government, by the state
19 government, or by any special district created by state law (including, but not limited to, any
20 transfer of any such interest held because of a taxpayer's nonpayment of tax);

21 (D) Any transfer by devise or intestacy, or any other transfer made in connection with a
22 bona fide effort to pass an interest in real property to one's devisees or heirs (including, but not
23 limited to, such transfers made in connection with a living trust);

24 (E) Any transfer between or among spouses, domestic partners, siblings (including, but not
25 limited to, half-siblings, step-siblings, and adoptive siblings), parents (including, but not limited to,
26 step-parents and adoptive parents) or guardians and their children, grandparents and their
27 grandchildren, aunts or uncles and their nieces or nephews, great-aunts or great-uncles and their
28 grand-nieces or grand-nephews, or first or second cousins, or any combination thereof; or

29 (F) Any transfer of an interest in a multi-family residential building income restricted at or
30 below an average of eighty percent (80%) of area median income for a minimum of ten (10) years
31 if such transfer is to an entity controlled by a housing authority, and that entity also participates in
32 the management, direction, or control of the building.

33 (9) "Sell," "sale," or "sold" means a transaction for the transfer of real estate from a seller
34 to a buyer, including, but not limited to, exchanges of real estate between the seller and buyer and

1 transactions involving the creation of a sales agreement.

2 (10) "Seller" means the individual, individuals, entity, or entities engaged, or seeking to
3 engage, in the sale of a multi-family residential building.

4 (11) "Qualified nonprofit housing development corporation" means a nonprofit
5 corporation, which has applied under 42 U.S.C. § 501(c)(3) for approval as a § 501(c)(3)
6 corporation with the Internal Revenue Service, or been so approved, and which is organized and
7 operated with one of its principal purposes being to provide housing for low- and moderate-income
8 persons.

9 **34-18.3-3. Qualified nonprofits.**

10 (a) Annual selection of qualified nonprofits. Rhode Island housing shall establish a process
11 for certifying on an annual basis, nonprofit organizations that meet the following criteria:

12 (1) The organization is a bona fide nonprofit as evidenced by the fact that it is exempt from
13 federal income tax under 26 USC § 501(c)(3).

14 (2) The organization has demonstrated a commitment to the provision of affordable
15 housing for low- and moderate-income residents, and to preventing the displacement of such
16 residents;

17 (3) The organization has demonstrated a commitment to community engagement as
18 evidenced by relationships with neighborhood-based organizations or tenant counseling
19 organizations.

20 (4) The organization has demonstrated the capacity (including, but not limited to, the legal
21 and financial capacity) to effectively acquire and manage residential real property at multiple
22 locations in the state.

23 (b) Nonprofit organizations that the agency certifies as having met these criteria shall be
24 known as "qualified nonprofits." An organization's certification as a qualified nonprofit shall be
25 valid for three (3) years. The agency shall solicit new applications for qualified nonprofit status at
26 least once each calendar year, at which time existing qualified nonprofits shall be eligible to apply
27 for renewed certification as qualified nonprofits. In the absence of new information raising doubts
28 about whether the organization qualifies as a qualified nonprofit, an existing qualified nonprofit's
29 application for renewed certification as a qualified nonprofit shall be routinely and swiftly granted.

30 **34-18.3-4. Existence and publication of qualified nonprofits list.**

31 RIHMFC shall publish on its website, and make available upon request, a list of qualified
32 nonprofits. In addition to such other information as the RIHMFC may include, this list shall include
33 contact information for each qualified nonprofit. This contact information shall include, but need
34 not be limited to, a mailing address, an email address that the qualified nonprofit monitors regularly,

1 and a telephone number.

2 **34-18.3-5. General provisions. First right to purchase conferred.**

3 (a) This chapter shall be construed to confer upon each qualified nonprofit a first right to
4 purchase any multi-family residential building for sale in the state. This first right to purchase shall
5 consist of both a right of first offer, and a right of first refusal.

6 (b) Confidential information protected. Any information obtained from a seller by a
7 qualified nonprofit under this chapter including, but not limited to, disclosures made and terms and
8 conditions of an offer of sale made shall be kept confidential to the maximum extent permitted by
9 law, except that a qualified nonprofit may, if otherwise permitted by law, share such information
10 with other qualified nonprofit to facilitate qualified nonprofit exercise of the rights conferred by
11 this chapter. Nothing in this chapter permits or requires the disclosure of information where such
12 disclosure is otherwise prohibited by law.

13 (c) Preexisting rights unaffected. This chapter shall not be construed to impair any contract,
14 or affect any property interest held by anyone other than the seller of a multi-family residential
15 building (including, but not limited to, any interest held under a mortgage, deed of trust, or other
16 security interest; any option to purchase; or any right of first offer or right of first refusal), in
17 existence before the effective date of this chapter.

18 **34-18.3-6. State owned buildings.**

19 When any state-owned property, either land or buildings, is to be sold, RIHMFC shall be
20 given sixty (60) days to enter into an agreement to purchase it at the appraised value. The
21 municipality where the property is located shall be given right of second refusal (another sixty (60)
22 days) to purchase, before the property goes on the open market.

23 **34-18.3-7. Enforcement. Seller certification.**

24 Every seller of a multi-family residential building in the city shall, within fifteen (15) days
25 of the sale of that building, submit to RIHMFC a signed declaration, under penalty of perjury,
26 affirming that the sale of that building substantially complied with the requirements of this chapter.
27 Each such declaration shall include the address of the relevant building; RIHMFC shall publish all
28 such addresses on its website at least once per week. Failure to file the declaration required by this
29 subsection (a) of this section shall be an infraction punishable by a fine not to exceed five thousand
30 dollars (\$5,000).

31 SECTION 2. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO PROPERTY -- COMMUNITY OPPORTUNITY TO PURCHASE ACT

- 1 This act would grant a right of first refusal to qualified nonprofits for the purchase of certain
- 2 multifamily properties.
- 3 This act would take effect upon passage.

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