



Legislation Text

File #: Int 0196-2022, Version: *

Int. No. 196

By Council Members Rivera, Nurse, Cabán, Stevens, Hanif, Brewer, Won, Richardson Jordan, Restler, Krishnan, Hudson, Williams, Avilés, Sanchez, Joseph, Bottcher, Velázquez, Barron, Schulman, De La Rosa, Fariás, Riley, Gutiérrez, Narcisse, Ayala, Ossé, Brooks-Powers, Louis, Brannan, Feliz, Abreu and The Speaker (Council Member Adams) (by request of the Brooklyn Borough President)

A Local Law to amend the administrative code of the city of New York, in relation to giving qualified entities a first opportunity to purchase and an opportunity to submit an offer to purchase certain residential buildings when offered for sale

Be it enacted by the Council as follows:

Section 1. Title 26 of the administrative code of the city of New York is amended by adding a new chapter 9-a to read as follows:

CHAPTER 9-a

FIRST OPPORTUNITY TO PURCHASE

§ 26-851 Definitions. For the purposes of this section, the following terms have the following meanings:

Bona fide purchaser. The term “bona fide purchaser” means a person that has tendered a bona fide offer to purchase a residential building.

Bona fide offer to purchase. The term “bona fide offer to purchase” means an offer to purchase a residential building, which offer is made in writing, in good faith and without fraud.

Commissioner. The term “commissioner” means the commissioner of housing preservation and development or the head of a successor agency charged with the administration of this chapter.

Community land trust. The term “community land trust” means a corporation that satisfies the following criteria: (i)(a) is incorporated pursuant to article 11 of the private housing finance law and section 402 of the not-for-profit corporation law; (b) the certificate of incorporation of which specifically provides for the provision

of housing for persons of low income, as such term is defined in subdivision 19 of section 2 of the private housing finance law, in the form of a community land trust; (c) has submitted such disclosure statements as shall be required by the department and received the approval of such department; (d) lawfully acquired all of its real property in full compliance with such corporation's certificate of incorporation and any agreements with a governmental entity with respect to such property or such corporation; and (ii) provides in its by-laws that it will (a) acquire parcels of land, primarily for conveyance under long-term ground leases, (b) transfer ownership of any structural improvements located on such leased parcels to the lessees, (c) retain a preemptive option to purchase any such structural improvement at a price determined by formula that is designed to ensure that the improvement remains affordable to low-income households, and (d) have a board of directors composed of lessees of housing associated with the entity, an adult resident of a particular geographic area specified in the bylaws of the organization and any other category of persons described in the bylaws of the organization.

Department. The term “department” means the department of housing preservation and development or a successor agency charged with the administration of this chapter.

Extremely low-income. The term “extremely low-income” means the income of a household that is no more than 30 percent of the area median income, adjusted according to the size of the household.

First opportunity to purchase. The term “first opportunity to purchase” means an opportunity for a qualified entity to purchase, in good faith and without fraud, a residential building at list price before such residential building becomes available for sale in the public market.

Low-income. The term “low-income” means the income of a household that is more than 50 percent of the area median income but no more than 80 percent of the area median income, adjusted according to the size of the household.

Opportunity to submit an offer to purchase. The term “opportunity to submit an offer to purchase” means the right of a qualified entity to submit to the owner of a residential building, in writing, in good faith and without fraud, an offer to purchase such building at the higher of either the list price or the identical price,

terms and conditions offered by another person that has submitted a bona fide offer to purchase.

Owner. The term “owner” means any person or entity, or combination of such persons or entities, or any agent of such persons or entities, that has a controlling interest in a residential building that is offered for or subject to sale.

Qualified entity. The term “qualified entity” means any entity that meets the criteria set forth in section 26-852, any nonprofit entity on the department’s Qualified Preservation Buyers List or similar department list, or any organization that has received funding to operate or implement a community land trust program.

Residential building. The term “residential building” means a building with three or more dwelling units which are rented, leased, let or hired out to be occupied, or are occupied, as the residence or home of three or more families living independently of each other.

Sale. The term “sale” means the transfer, in exchange for money or any other thing of economic value, of a present interest in a residential building, including beneficial use, where the value of the present interest is the fee interest in the residential building, or substantially equal to the value of that fee interest. For purposes of this definition, a transfer may be completed in one transaction or a series of transactions over time. The term “sale” includes short-sales.

Short-sale. The term “short-sale” means a sale approved by a mortgagee to a bona fide purchaser at a price that is less than the owner’s existing debt on the residential property.

Very low-income. The term “very low-income” means the income of a household that is more than 30 percent of the area median income but no more than 50 percent of the area median income, adjusted according to the size of the household.

§ 26-852 Qualified entity. a. The commissioner shall promulgate rules establishing a process for certifying, on an annual basis, not-for-profit organizations that meet the following criteria:

1. The organization is exempt from federal income tax under paragraph (3) of subsection (c) of section 501 of title 26 of the United States code;

2. The organization has demonstrated a commitment to the provision of permanently affordable housing for extremely low-, very low-, and low-income city residents, and to preventing the displacement of such residents;

3. The organization has demonstrated a commitment to community representation, engagement and accountability, as evidenced by relationships with local residents, neighborhood-based organizations or tenant counseling organizations; and

4. The organization has demonstrated the capacity, including but not limited to the legal and financial capacity, to effectively acquire and manage residential real property at multiple locations in the city, or the organization partners with a housing development organization that has demonstrated such legal and financial capacity to effectively acquire and manage residential real property at multiple locations in the city.

b. The commissioner shall review new applications for qualified entity status at least three times each calendar year. A qualified entity that has been certified under this section shall remain qualified for two years, so long as it continues to meet the eligibility criteria set forth in subdivision a of this section. Any such qualified entity may apply for renewed certification when the commissioner accepts new applications for qualified entity status.

c. The commissioner shall post on the department's website and provide in hard copy on request, a list of qualified entities and their contact information, including but not limited to a mailing address, electronic mail address, and a telephone number.

d. The commissioner shall investigate any complaint alleging that a qualified entity has not complied with this chapter. If after providing the qualified entity with notice and opportunity to be heard, the department determines that a not-for-profit organization listed as a qualified entity failed to comply with this chapter, the department may suspend or revoke that not-for-profit organization's certification as a qualified entity.

§ 26-853 Notice of sale. a. An owner of a residential building shall provide notice to the department of such owner's action that will result in the sale of the residential building.

b. The owner shall provide such notice of sale no less than 180 days before taking such action. The notice may be provided fewer than 180 days before the owner takes such action where the owner shows good cause for delay, including but not limited to the owner's death or financial hardship, provided that the owner is not a corporation, or a limited liability company whose membership includes a corporation.

c. A notice of sale shall include the following information:

1. The name and address of each owner of the residential building;
2. All addresses and names of the residential building;
3. The action that will result in a sale;
4. The date on which such action is anticipated to take place;
5. The provision of law, rule or regulation pursuant to which such action is authorized, if any;
6. The total number and type of dwelling units subject to a sale;
7. The rent collected for each dwelling unit as of the date of the notice;
8. The income and expense report for the 12-month period before the notice of sale, including capital improvements, real property taxes and other municipal charges;
9. The amount of the outstanding mortgage as of the date of the notice;
10. The two most recent inspection reports of comprehensive building-wide inspections conducted by the department or the department of buildings, if any;
11. A statement that a qualified entity holds the opportunity to submit an offer to purchase as required by section 26-855 and the first opportunity to purchase as required by section 26-856; and
12. Such other information as the department may require.

d. An owner may withdraw a notice of sale, subject to the terms of any accepted offer to purchase or executed purchase and sale agreement, and to applicable statutory and common law remedies. In such event, the owner shall give notice of withdrawal to the department and to any qualified entity that submitted an offer to purchase such building. However, if the owner decides at any time to take an action that will result in a sale,

such owner shall comply with subdivisions a, b and c of this section and with all other applicable requirements of this chapter.

e. Notwithstanding any provision of this section to the contrary:

1. A person shall be deemed to have complied with the requirement to provide notice of sale or notice of withdrawal under this section if such person has complied with a substantially similar notice requirement imposed pursuant to a superseding city, state or federal statute or program; and

2. If the notice of sale or notice of withdrawal is required by this section to include more information than is required by any applicable superseding city, state or federal statute or program, the additional information required by this section shall be provided within the time period established by the superseding statute or program.

§ 26-854 Notice of bona fide offer to purchase. a. If the owner of a residential building receives a bona fide offer to purchase such building and intends to consider or respond to such offer, then the owner shall provide a notice of bona fide offer to purchase to all qualified entities and the department no more than 15 days from the date such bona fide offer to purchase is delivered to the owner.

b. A notice of bona fide offer to purchase shall include the following information:

1. The name and address of the person who made the offer; and

2. The price and terms and conditions of the offer.

c. Within 15 days of completing the sale of such building, the owner shall provide a notice of sale to the department and any qualified entity that submitted an offer to purchase such building.

§ 26-855 Opportunity to submit an offer to purchase. a. Each qualified entity shall have an opportunity to submit an offer to purchase as defined in section 26-851.

b. A qualified entity shall provide notice of intent to exercise an opportunity to submit an offer to purchase to the owner of a residential building and the department within 60 days after the notice of sale pursuant to subdivision a of section 26-853 has been made.

c. Following notice of sale by the owner in compliance with subdivision a of section 26-853, a qualified entity shall have 120 days from the date of such notice to submit its offer to purchase, during which time the owner may not accept any other offer to purchase.

d. Following notice of bona fide offer to purchase by the owner in compliance with section 26-854, a qualified entity shall have 120 days from the date of such notice to submit its offer to purchase, during which time the owner may not accept any other offer to purchase.

e. The commissioner may extend any time limit set forth in this section upon application and for good cause shown, provided that the party applying for the extension was not at fault in causing the need for the extension.

f. If a qualified entity does not submit an offer in writing to the owner and the department within the time periods stated in subdivisions c or d of this section following provision of notice of sale by the owner under subdivision a of section 26-853 or notice of bona fide offer to purchase by the owner under subdivision a of section 26-854, then such opportunity to submit an offer to purchase shall be deemed waived and the owner shall have no further obligations under this section.

g. A qualified entity that has submitted a notice of intent to exercise an opportunity to submit an offer to purchase under subdivision b of this section may withdraw such notice by submitting a written notice of waiver of rights to the owner and to the department.

§ 26-856 First opportunity to purchase. a. Each qualified entity shall have a right of first opportunity to purchase as defined in section 26-851. The owner may not accept any other offer to purchase before the expiration of the time for the first opportunity to purchase pursuant to subdivisions b and c of this section.

b. A qualified entity shall provide notice to the owner and the department of its intent to exercise its right of first opportunity to purchase within 60 days after the notice of sale pursuant to subdivision a of section 26-853 has been made.

c. A qualified entity shall have 120 days from the date of the notice of sale pursuant to subdivision a of

section 26-853 to submit its offer to purchase, during which time the owner may not accept any other offer to purchase.

d. The commissioner may extend any time limit set forth in this section upon application and for good cause shown, provided that the party applying for the extension was not at fault in causing the need for the extension.

e. If a qualified entity does not submit an offer in writing to the owner and the department within the time period stated in subdivision c of this section following notice of sale by the owner under subdivision a of section 26-853, then such right of first opportunity to purchase shall be deemed waived and the owner shall have no further obligations under this section.

f. A qualified entity that has submitted a notice of intent to exercise a first opportunity to purchase under subdivision b of this section may withdraw such notice by submitting a written notice of waiver of rights to the owner and to the department.

§ 26-857 Prior notification. Notwithstanding any other provision of this chapter, where an owner has listed a residential building for sale before the effective date of this chapter and such listing was properly posted under any other applicable provision of law and more than 45 days remain before the expiration of the time period applicable to such listing, a qualified entity may complete any action authorized by sections 26-855 and 26-856 at any time before the expiration of such time period.

§ 26-858 Notice requirements, generally. a. Wherever this chapter requires provision of notice, such notice shall be in writing and shall be provided to each recipient as required by this chapter through posting on a website designated by the commissioner and one or more of the following methods:

1. First class and registered mail;
2. Personal delivery; or
3. E-mail.

b. The commissioner shall designate a website through which a person may provide notice to another

under this chapter. The commissioner shall update the website at least daily and shall include disclaimers to the effect that (i) where a notice is provided on the website, such notice usually will not be provided in any other manner and (ii) it is the responsibility of any person interested in receiving any notice under this chapter to monitor the website for such notices.

c. Each such notice shall be deemed to have been given upon the deposit of such first class and registered mail in the custody of the United States postal service, upon receipt of personal delivery, upon delivery of e-mail or upon posting of such notice on the website approved by the commissioner, as applicable.

§ 26-859 Penalty. An owner found to have violated any provision of this chapter shall be liable for a civil penalty of \$30,000. Nothing in this section prohibits a qualified entity from seeking injunctive relief against a non-compliant owner in a court of competent jurisdiction.

§ 26-860 Exclusions; construction. a. The provisions of this chapter do not apply:

1. To any existing agreement regarding the transfer of a residential building to a qualified entity in effect on the effective date of this chapter, except that any renewal, modification or amendment of such agreement occurring on or after the effective date of this local law is subject to the provisions of this chapter;

2. To an owner or purchaser who refinances a residential building in order to maintain ownership of such building;

3. To any transfer of property effected by (i) a government entity implementing its powers of eminent domain, (ii) a judicial proceeding, including a judicially supervised sale, (iii) a bankruptcy proceeding, or (iv) other operation of law; or

4. Where a listing as described in section 26-857 was properly posted in accordance with any other applicable provision of law and 45 or fewer days remain before the expiration of such applicable notice of sale period.

b. Nothing in this chapter shall be construed as requiring an owner to give preference to any particular offer to purchase a residential building, or to accept any such offer.

§ 2. This local law takes effect 120 days after it becomes law, except that the commissioner of housing preservation and development shall take such measures as are necessary for the implementation of this local law, including the promulgation of rules, before such date.

Session 12

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Session 11

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LS # 10501

Int. 1977-2020