# Policy Brief - Right of First Refusal and Other Purchase Opportunity Policies Used to Buy Housing (May 2025)

Contents



Virginia Housing Commission

# Introduction

A right of first refusal is a right to purchase in advance of all other parties and with specified terms. It is traditionally triggered if an owner decides to sell certain property or assets. Rights of first refusal can exist in real estate, corporate securities, franchise agreements, transportation assets, resource leases, and various commercial assets. Most rights of first refusal are created by the agreement of involved parties, however the Federal Government, state legislatures, and local governments have enacted statutory rights of first refusal in an effort to meet a variety of goals including conserving land, protecting valuable assets, preventing housing displacement, and providing affordable housing.

Affordable housing is the subject of many right of first refusal policies (ROFR) throughout the country. Right of first refusal policies are one method by which a state or locality may preserve or provide a long-term source of affordable housing for residents. Some purchase opportunity policies limit the applicability of their right of first refusal policy to dedicated affordable housing properties. Others expand to include unsubsidized rentals, often called "naturally occurring affordable housing," to preserve rental housing in general. In these types of statewide and local laws, eligible buyers looking to preserve or construct affordable housing may include local/state government agencies, tenant associations and approved nonprofit and for-profit developers. Typically, these buyers might require a longer timeframe to assemble financing and may have difficulty competing with market-rate or luxury developers. ROFR and other purchase opportunity policies give these buyers an exclusive period within which to make an offer on the property, or the option to match any offer made by a private buyer. In ROFR policies, property owners must notify their governing bodies or agencies before finalizing a sale. The notification process can make governments aware of purchase opportunities that would only have been discovered using government resources.

In some cases, the right of first refusal creates an opportunity to create new dedicated affordable rental units. In other cases, it preserves already existing affordable housing units with income-restricted covenants. These policies can be a tool to mitigate displacement and preserve existing affordability. Many public bodies and agencies have utilized ROFR policies specifically to combat displacement by enabling tenants and homeowners to remain where they live rather than face eviction due to new ownership.

This brief examines many existing statewide right of first refusal policies and nearby local ROFR policies. It also briefly outlines similar policies, including tenant opportunity to purchase policies. Many states also have administrative codes that outline a ROFR process that must be adhered to when development owners agree to offer a ROFR to a qualified entity under a land use restriction agreement, or ROFR laws designed to acquire land for conservation purposes, but this brief does not outline those processes. This brief examines laws where ROFR is a mandated policy or a policy encouraged by a statute.

## Traditional ROFR

In this area of housing policy, a ROFR is a contractual right that allows an interested party the first right to purchase housing units under the same terms and conditions an owner would offer to a third-party buyer. Additionally, there are other purchase opportunity policies that are slightly different in process and still often referred to as ROFR policies. Purchase opportunities for housing threatened by sale or conversion, typically making it less affordable (Damrosch, 2020), are directed by specific procedural requirements, price setting methods, and enforcement mechanisms for prospective purchasers. Ordinarily, only the sale of a property will trigger a right of first refusal, but other events can trigger a right of first refusal when preserving affordability of housing at risk of losing affordability. Besides a right of first refusal policy, there are other types of purchase opportunities with similar intents. Types of purchase opportunities created by state or local law vary but typically take one of several different forms:

- A "right of first refusal," permitting a designated purchaser to acquire a property prior to it being sold to a third-party by matching the existing offer. In this type of purchase option, the owner has already successfully marketed the property or received a third-party offer.
- A "right to purchase," requiring the owner to sell to a designated purchaser at market value in lieu of converting the property to market-rate or another triggering event.
- A "right to make an offer," or "opportunity to purchase," or "right of first offer," with no obligation on the owner's part to sell. Owners still must provide notice to the eligible buyers and wait a specified period before putting the property on the market.

### Tenant Opportunity to Purchase

Tenant opportunity to purchase policies (TOPA), sometimes referred to as community opportunity to purchase, provide tenants in multifamily buildings with the opportunity to collectively purchase the building prior to the owner selling to a third-party. These policies, like ROFR policies, generally require landlords to provide advanced notice to tenants with a designated timeframe in order for the tenants to form a tenant association, or designate their right to purchase, and express interest in purchasing their units. Tenants can collectively bargain and negotiate to purchase their building.

### Mobile Home Park Purchase Rights

There are laws or ordinances that provide mobile home park residents with an opportunity to purchase if the owner chooses to sell the park. They operate similarly to a tenant opportunity to purchase policy.

### Right of First Refusal in the Federal Low-Income Housing Tax Credit (LIHTC) Program

The LIHTC program is the largest federal resource for creating and maintaining affordable housing. The federal government allocates tax credits to each state based on population and developers apply for these tax credits to construct affordable housing. Since most nonprofit developers are not required to pay taxes, they sell the tax credits to investors who are often large financial institutions, rather than use the credits themselves. In return, the developer using LIHTCs gets a large lump sum that they can use to cover the costs of construction. The program requires that affordability be maintained for 30 years (26 U.S. Code § 42 - Low-income housing credit, 2025). If the development does not remain affordable, the IRS may recapture the tax benefits – although enforcement usually ends in 15 years (National Housing Trust, 2021).

The LIHTC program offers nonprofit general partners the ROFR, allowing them to obtain full ownership of the LIHTC properties they manage by purchasing the investor stake once the tax credits have been fully claimed. Once the investors exit the properties, usually after 15 years, the nonprofits can gain ownership through ROFR (National Housing Trust, 2021). The ROFR in the LIHTC program differs from traditional ROFR policies because the price of the property is not based on a third party's offered price. Instead, it is based on the sum of the property's outstanding debt plus taxes owed, which is usually below market value.

While this provision is often considered helpful to nonprofit developers and assisting in the continuation of managing affordable housing, it has often raised confusion about whether a third-party offer is necessary to trigger the right of first refusal. The argument is often made that a third-party would not make an offer when the nonprofit already holds the right to purchase it at a below-market price. The ambiguity has led to third parties purchasing investor interests in LIHTC developments with high market values and then disputing the transfer of property to the nonprofit general partner in year 15. This can delay or prevent the transfer to nonprofit developers (Kimura, 2022).

## Common Concerns Regarding ROFR Policies

There does not appear to be published empirical research documenting the impacts of rights of first refusal policies on the marketability of land. However, economic theory and assertions made by parties who have participated in ROFR processes have suggested that ROFR policies can drive up costs for owners and deter potential buyers from bidding on the land in certain circumstances. To comply with the right of first refusal, owners must spend time and potentially money navigating legal processes and waiting for governments to either wave or exercise the right to buy the property (Damrosch, 2020). This uncertainty is sometimes anecdotally associated with driving up the cost of developing real estate in certain circumstances.

A right of first refusal may deter potential buyers from placing bids on properties that may be purchased when a right of first refusal is exercised (Walker, 1999). Without existing empirical research, it is difficult to assess the impact of this potential deterrent on properties subject to right of first refusal policies.

## Statewide Legislation

Many ROFR state laws enable state agencies, localities, and other mission-oriented entities to preserve affordable housing by granting them priority consideration as buyers who want to preserve affordable rental housing. Additionally, a few states have passed purchase opportunity policies that apply to tenants themselves, not larger entities or tenants' associations, and policies that are specifically designed for manufactured housing communities rather than multi-family developments. However, those tenant opportunity policies are not the focus of this brief.

### Highlights from State Legislation

- Most states that were studied have enacted statutes that grant the right of first refusal for local governments to acquire affordable housing developments allow the local governments to assign their ROFR to a designee (Colorado, Massachusetts, Oregon, and Minnesota). The designees must agree to ensure the continued affordability of the housing development. When the right of first refusal is provided or assigned to an approved entity, the local governments do not have to temporarily take ownership of the property or gather finances prior to selling the acquired property to a qualified developer.
    - California and Maryland grant the ROFR to qualified entities, like experienced developers, in addition to providing the ROFR to local governments. It does not have to be assigned.
- Most state ROFR laws are designed for the purchase of multi-family rental properties that have been federally subsidized, publicly supported, and/or are subject to income restrictions (California, Colorado, Maryland, Massachusetts, Oregon, Rhode Island, Maine, Texas)
    - New Jersey ROFR law applies to a specific set of individual units that were purchased through an affordable housing program.
    - Michigan's statute applies to properties that have been subject to tax foreclosure and does not require those properties to be affordable.
- Generally within ROFR state statutes, the local government or entity with the ROFR can only exercise their right for the purpose of creating or preserving affordable housing (California, Colorado, Maryland, Massachusetts, Oregon, Rhode Island, Maine, Texas, and Washington).
    - New Jersey's ROFR law applies to a specific set of individual units.

- Michigan's statute applies to any tax foreclosed upon property but can be used to create and preserve affordable housing.

- Many states also have statutes that are triggered not only when an affordable housing property is being sold, but also when affordable housing is being converted into market-rate housing, affordability provisions are expiring, or any actions occur that would terminate affordability (California, Maine, Maryland, Massachusetts, Oregon, and Rhode Island).

- Two states passed right of first offer policies in addition to their right of first refusal statues (Colorado, Massachusetts).

- The timeline a purchaser has to exercise their ROFR by making an official offer on a property (after receiving notice) varies widely by state (Figure 1).

- Maryland's law states that the first $10,000 deposit made by a potential purchaser is nonrefundable.

- Rhode Island's law determines fair market value based on the property's "higher and best use", without affordability restrictions, as determined by the average of two independent appraisals performed by two appraisers qualified to perform multi-family appraisals. One appraiser must be selected from a list of appraisers developed by the state's housing finance corporation.

| State | Days to exercise ROFR |
|---|---|
| Massachusetts | 30 days |
| Washington | 30 days |
| Colorado | 30/44 days |
| Oregon | 45 days |
| Maine | 90 days |
| Maryland | 120 |
| California | 270 |

*Figure 1*

- Some state statutes contain penalties levied against property owners who do not comply with the requirements of an ROFR policy.

    - In Colorado, if an owner fails to follow the provisions of the ROFR statute, the penalty can range from $10,000 to $100,000.
    - In Maine, any owner that fails to provide proper notice is subject to a civil violation and penalty of at least $2,500.
    - In Massachusetts, if an owner fails to notify qualified purchasers within the appropriate time that the affordability of the property is being terminated, the owner must extend the affordability for the period that the notice was late. If an owner is six months late sending the notice, the affordability of the property must be maintained for an additional six months.

- Colorado's statute contains a sunset date that ends the right of first refusal and offer in 2030. The law was enacted with the goal of preserving units of affordable housing that are under affordability restrictions that expire between 2024 and 2030.

## Virginia

### Proposed 2025 House Bill 1973

HB 1973 creates a ROFR for localities or their designee for publicly supported housing. A version of this bill passed through the legislature in 2024 but was vetoed by the Governor. The intent was to give localities the option to preserve affordable housing for at least 15 years. This bill was vetoed again after passing through the legislature in the 2025 General Assembly Session (HB 1973, 2025).

### Manufactured Home Lot Rental Act

Virginia's Manufactured Home Lot Rental Act does not grant residents of a manufactured home park the ROFR. However, it requires owners to send written notice of the proposed sale and purchase price to residents when an owner receives an offer to purchase the park. The written notice must be sent at least 60 days prior to the closing date. In that 60-day period, the park owner must consider additional offers to purchase the park made by the residents themselves or an entity the residents empower to represent them (§ 55.1-1308.1, 2025). That entity must represent 25% of the residents of the in the manufactured home park. A bill introduced in Virginia's 2024 General Assembly would have essentially given both localities and entities representing tenants the right to purchase a manufactured home park before a third-party, but that provision did not become law (HB 1397, 2024).

## California

To prevent the loss of income-restricted affordable housing, the California Code (65863.11, 2025) allows qualifying entities the opportunity to submit an offer to purchase an assisted living development at market-value prior to being sold to a third party or prior to the owner terminating any subsidy contract. This means the first opportunity to purchase is granted to qualified entities even if an owner is not selling but wants to convert a property into market-rate housing. These entities with an opportunity to purchase prior to other parties include: tenants associations, local nonprofit organizations and public agencies, regional or national public agencies, and profit-motivated housing organizations or individuals. The qualifying entities must agree to maintain the affordability of the assisted living development and must be certified by the California Department of Housing and Community Development. The purchaser must ensure affordability for very low, low, or moderate 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.

> **Assisted living development -** a multifamily rental housing development of five or more units that receives governmental assistance.

The owner must publish a notice of opportunity to submit an offer to purchase the assisted living development containing a statement that each of the types of qualified entities has the right to purchase the development. If a potential qualified entity expresses interest in purchasing the property, the owner must send them a variety of information outlined in the law. An offer to purchase must be submitted within 270 days of the owner's notice of the opportunity to submit. If an offer to purchase the development is made by one of the qualifying entities, the owner must:

1) accept the offer; or
2) record a new 30-year minimum regulatory agreement with outlined affordability terms.
3) If an owner does not receive an offer within 270 days or all offers are withdrawn, the owner may sell the property to any buyer.

## Colorado

In 2024 Colorado passed the Local Governments Right to Property and Affordable Housing Act in an effort to preserve 4,400 units set to lose affordability protections in the next six years. The Act establishes a ROFR and right of first offer (ROFO) for local governments to acquire affordable multifamily properties and guarantee affordability (HB24-1175, 2024). The local government's right of first refusal is often noted as untraditional compared to other rights of first refusal because it functions more as a right for the local government to negotiate material terms for the purchase of multifamily affordable properties. Both the right of first refusal and right of first offer terminate on December 31, 2029. After the sunset date, a local government is not entitled to exercise either right.  If a property is subject to a restricted use covenant that is not tied to funding, it is not subject to the right of first refusal.

## Right of First Refusal

The ROFR applies to multifamily rental properties with five units or more (excluding accessory dwelling units and mobile homes parks) that (Colo. Rev. Stat. § 29-4-1202, 2025):

1) have previously received funding to support the creation, preservation or rehabilitation of affordable housing; and
2) as of July 1, 2024, are subject to a restricted use covenant or similar recorded agreement entered as a condition of receiving funding. This includes loans, grants, equity, bonds or tax credits from any funding source. This does not include tenant-based vouchers, grants or donations for energy upgrades, physical improvements or beautification, or market-rate properties with units required to be affordable exclusively under a local housing ordinance.

Local governments can exercise the ROFR themselves or assign it to a local or regional housing authority or the Colorado Housing and Financing Authority (CHFA). Owners of properties subject to ROFR must provide notice to their local governments and CHFA when the property's final affordability covenant is two years away from expiring. Then six months prior to the expiration, the owner must inform the same entities whether they intend to recapitalize and maintain the property as affordable, maintain the property without any affordability requirements, or sell.

The ROFR is triggered by events including:

1) signing a letter of intent, option to buy or sell, or other agreement with a buyer to sell or transfer the property; and
2) conditionally accepting an offer for the property's sale or transfer.

After a trigger event occurs, the seller has 14 days to inform the local government and CHFA that they intend to sell or transfer ownership of the property. An acceptable price must be included in the notice. Then the local government has 14 days to inform the seller if they intend to exercise their ROFR and 30 days to make a matched offer on the property.

Once the seller receives an offer from the local government, they can either:

1) accept the offer, the two parties then have 60 days to finalize the sale
    a. if an owner receives an all-cash offer from a third-party buyer, the local government must be able to close and finalize the sale of the property on the same timeline of that offer.
2) reject the offer and then inform the local government why the offer was rejected and invite them to make one subsequent offer. The owner must include in this notice the terms and conditions that would have to be included in an acceptable offer.

A second rejection ends the ROFR process unless the owner's terms change or the price drops by 5%, thus triggering another ROFR process.

If a local government has enacted its own ROFR with terms that are considered more favorable to the local government's ability to acquire and preserve affordable housing, then that local government is exempt from the state law. In that circumstance the current state ROFR law is considered a minimum requirement that local governments can expand upon.

### Right of First Offer

Unlike the ROFR, this provision of the Act applies to properties that are not designated affordable housing under restricted use covenants. It applies to multifamily residential or mixed-use rental properties that are at least 30 years old and contain 15-100 units, this excludes designated affordable housing mobile home parks, and accessory dwelling units. The right of first offer allows local governments in Colorado, or an assigned local housing authority, to make the first offer to purchase a qualifying property before it is listed for sale to third parties to covert the property into long-term affordable housing.

The owner must provide notice to the local government of their intent to sell before listing the property. Once the required information is received by the local government, the local government has 14 days to make the offer, and the seller then has 14 days to accept or reject the offer.

## Maine

Maine provides ROFR to the Maine State Housing Authority or the applicable municipal housing authority. Any owner of low-income rental housing may not sell, transfer, prepay a mortgage, or take any action that would result in the termination of any income eligibility restrictions, rent restrictions, or financial assistance designed to make the rental unit more affordable without first providing notice. Notice must be provided to the Maine State Housing Authority and the applicable municipal housing authority at least 90 days prior to entering a contract for the sale or transfer of the property. Within the 90-day period, the Housing Authority or the municipal housing authority has the option to purchase the property at its current appraised value. The option to purchase the property may be assigned to a nonprofit corporation with requirements that are determined by the Housing Authority or municipal housing authority. Any owner that fails to provide proper notice is subject to a civil violation and penalty of at least $2,500.

However, if the owner of the property enters into contract with a seller that agrees to maintain the property as low-income housing, the Housing Authority and municipal housing authority do not have the option to purchase.

## Maryland

Maryland has a statewide ROFR law that requires owners of assisted living projects to offer ROFR to certain approved purchasers. While this statewide ROFR law only applies to buildings that are considered assisted living projects, localities in Maryland have adopted their own ROFR programs that apply to buildings that are not income restricted in order to ensure affordability. The goal is the preservation of naturally occurring affordable housing (§7–101-§7–212., 2025). In 2024 Maryland also became the first state to codify a Tenants' Right of First Refusal law that allows tenants the first opportunity to buy a property under the same fair market terms and conditions an owner would offer to a third party.

### ROFR in assisted living projects

An assisted living project is a building that contains 10 or more dwelling units that are rented to assisted households and has received federal financing under the National Housing Act, Housing Act of 1949, or project-based Section 8 Rental Assistance (does not include rental assistance made directly to a tenant under voucher programs). The owner of an assisted living project must provide written notice of intent to sell at least one year prior to the sale, end of terms of affordability, or conversion of the project, and give the notice and right of first refusal to:

1) each political subdivision in which the assisted project is located;
2) each local public housing authority;

3) each group that represents tenants at the assisted project and has registered with the Secretary of Housing and Community Development;
4) each low-income housing developer that has registered with the Secretary of Housing and Community Development and is exempt from taxation under § 501(a) of the Internal Revenue Code; and
5) any other person that has experience in the ownership or operation of low-income housing projects, is unrelated to the owner, and has registered with the Secretary of Housing and Community Development.

These potential purchasers may accept the owner's offer to purchase at fair market value within 120 days after the date of the owner's offer. Purchasers have one year to settle before the owner may sell to a third-party. Additionally, the first $10,000 of any deposit made by these potential purchasers is nonrefundable. If more than one party accepts the owner's offer, the Secretary selects the purchasing party by determining who will most benefit the assisted households. In those circumstances, the party whose offer was not accepted would be refunded their deposit. If the owner's offer to the bona fide parties is not accepted, the owner may sell to a third party as long as the terms of the purchase are not more favorable to the purchaser than those of the original offer. If the owner offers the property at more favorable terms than in the original offer, they must offer the bona fide purchasers the ROFR again.

### Tenants Right of First Refusal

In 2024 Maryland established a Tenant ROFR to purchase residential property containing three or fewer units. Prior to listing a residential property for sale, a landlord must provide written notice to tenants that informs tenants of their right to put in an offer to purchase the property. The written notice must include the sale price, settlement date, contingencies, and other terms the landlord includes in a sale contract. Tenants have 30 days to submit an offer. If the landlord receives an offer to purchase from the tenant, the landlord must, within five (5) days:

1) Accept the offer, if the offer contains the same or more favorable material terms as those contained in the landlord's notice, or

2) Deliver a counteroffer to the tenant with an explanation of the differences in material terms.

If the tenant (or group of tenants) affirmatively declines the offer of sale or does not respond within the 30-day period, the landlord may proceed with selling the property to a third party. Additionally, if the landlord intends to accept a purchase offer from a third party for an amount that is at least 10% lower than the purchase price offered to the tenant in any previous notice or negotiation, the landlord must reoffer the property to the tenant at the lower purchase offer. If the landlord fails to comply with the provisions of the Act, the landlord is subject to a maximum $1,000 fine and may be sued personally by the tenant for violations of the tenant ROFR. Unlike the Washington, D.C. TOPA law, the Maryland TOPA rights are not assignable by tenants to another group.

## Massachusetts

Massachusetts law offers the Massachusetts Department of Housing and Community Development (DHCD) a right of first offer and right of first refusal that is triggered if an owner wishes to sell an affordable housing project without ensuring affordability (Chapter 40T Section 3, 2025). From 2009 to 2019, The Massachusetts DHCD used 14 transactions to preserve 1,640 total units and 1,307 affordable units by exercising the right of first offer or right of first refusal provisions of the Massachusetts statute (Brauner, 2020).

An owner of publicly assisted housing must offer the Massachusetts DHCD the opportunity to purchase, or right of first offer, the housing prior to selling it to a third party or another event that would reduce or end the affordability of housing. However, the owner is not under any obligation to enter into an agreement to sell the property with the department. Before a property loses affordability, termination notices must be sent at least 24 months prior to the date of the termination of affordability. If a termination notice is not sent at the appropriate time, the owner must extend the affordability for the period that the notice was late.

The ROFO and ROFR are triggered when an owner sends an Offer to Sell notice indicating an intent to sell a covered affordable housing project without ensuring extended affordability. The DHCD may select a designee, who are typically experienced non-profit or for-profit housing developers, to act on its behalf as the purchaser of the housing as long as the designee agrees to preserve the affordability of the housing. If the municipality requests to be the designee, they are immediately designated by the DHCD. The DHCD or its designee has 90 days after receiving notice to make an offer to purchase the property. If the DHCD and the owner do not reach an agreement to sell the property after 90 days, the owner can sell the property to a purchaser of their choice.

If the seller decides to accept an offer from another potential purchaser, they must notify the DHCD, which can then invoke the ROFR provision to match the offer of the potential buyer. The department has 30 days to execute the purchase contract to acquire the property. The seller is obligated to provide a proposed purchase and sale agreement with the same price and terms as the other potential purchaser to the Department, with a few statutory exceptions;

- The closing date cannot be less than 240 days from the signing of the purchase and sale agreement.
- The deposit cannot exceed the lesser of 2% of the sales price or $250,000.
- The deposit must be refundable for at least 90 days.

Ten out of the 14 successful transactions have occurred through the initial ROFO process rather than a ROFR, even though the ROFO process is not binding (Brauner, 2020).

## Michigan

In Michigan, cities, towns, and land banks can exercise the right of first refusal to buy tax-foreclosed properties prior to conveyance. Cities, townships, and land banks must pay fair market value for tax-foreclosed property they purchased under their right of first refusal (MCL - Section 211.78m, 2025). If there are remaining proceeds left after the taxes, interest, penalties, fees, and costs have been paid, those proceeds go to the former owners (State of Michigan Public Acts, 2025).

### Detroit Use of Statewide Law to Provide Housing

After a new tax-collection policy and high property assessments, over one hundred thousand properties in Detroit, Michigan were foreclosed upon. In response to these foreclosures, the City enacted an anti-eviction program that utilizes Michigan's right of first refusal law. The Make It Home Program in Detroit, Michigan uses the right of first refusal granted through state law to help families avoid displacement. Over 1,600 families have avoided eviction and become homeowners since the program launched in 2017 (Detroit Michigan Mayor's Office, 2024). The city of Detroit leverages their right of first refusal to acquire tax foreclosed homes occupied by renters whose landlords failed to pay their property taxes, victims of property scams, those with solvable probate issues, and owners who would have qualified for property tax reductions. The properties were withdrawn from the County's tax foreclosure bid sale and sold back to occupants at affordable rates. After purchasing the properties, the city sells the properties to the United Community Housing Coalition (Coalition), who uses philanthropic money to purchase them at no extra cost. After purchasing the properties, the Coalition works with individual renters and homeowners to set affordable monthly payments to purchase the properties. The Coalition sells the properties to the occupants through a 0% interest land contract with monthly payments into an escrow account until the purchase price is reached. In 2024, the average cost a participating family paid to acquire a home was $6,500 (Detroit Michigan Mayor's Office, 2024).

## New Jersey

New Jersey allows municipalities the ROFR to purchase certain affordable housing units at the maximum allowable restricted sales price, or any lesser price (N.J. Admin. Code § 5:80-26.20 , 2025). If the municipality does not make an offer, the Department of Community Affairs, the New Jersey Housing and Mortgage Finance Agency, or a qualified non-profit entity have the option to purchase the unit before the owner can sell the housing to any other parties. Both the municipality and the state entities have the option to keep the unit affordable or convey the unit at fair market value. Nonprofits are subject to affordability restrictions.

> **Maximum allowable restricted sales price** - The maximum sales price of restricted ownership units within each affordable development is defined as affordable to households earning no more than 70 percent of area median income. Each affordable development must achieve an affordability average of 55 percent for restricted ownership units. In achieving this affordability average, moderate-income ownership units must be available for at least three different prices for each bedroom type, and low-income ownership units must be available for at least two different prices for each bedroom type.

The affordable housing units that are subject to this policy are called 95/5 units. They were built before 2001, purchased by homeowners through an affordable housing program, and are subject to affordability restrictions (Uniform Housing Affordability Controls N.J.A.C. 5:80-26.1 et seq). If a municipality purchases one of these income-restricted housing developments, they may: 1) convey or rent the housing to low-or-moderate income tenants, 2) maintain the units as low-income housing units, or 3) convey the housing at fair market value as long as 95% of the difference between the sale price and what the owner originally paid is given to a housing trust fund.

The owners of these affordable 95/5 units must notify the administrative agent and the Council on Affordable Housing of their intent to sell 90 days prior to selling a unit. The administrative agent must notify the municipality. Eligible buyers have 90 days to purchase the housing. If none of the outlined approved entities or any other third-party entities make an offer after one year, the ROFR is restored, and the owner must submit a new notice of intent to sell.

## Oregon

Oregon law gives the ROFR to qualified purchasers to purchase federally subsidized housing in order to preserve affordability (ORS 456.263, 2025). The property owner of publicly supported housing must provide two-years notice to the Oregon Housing and Community Services Department (OHCS) and to each local government where the property is located, prior to any action that would terminate affordability. The increased notice allows the OHCS to track units that are at risk of losing affordability and potentially facilitate their preservation.

After receiving notice, the Oregon Housing and Community Services Department may appoint a designee to act as purchaser of the participating property after consulting with the local governments where the property is located.  Oregon requires a property owner to provide ROFR to OHCS, the local government, or the designee.

If the property owner accepts an offer from a third party, the owner must provide OHCS, the local government, or a designee with an opportunity to match that purchase offer. A qualified purchaser has 45 days from the date the notice was mailed to exercise their ROFR by delivering a matching offer. The owner must accept the matching offer from a qualified purchaser.

## Rhode Island

Rhode Island law grants the ROFR to qualified entities to purchase and preserve federally assisted or federally insured housing (R.I. Gen. Laws § 34-45-3, 2025). It is triggered not just by a proposed sale to a third-party entity, but also by an owner's intended federal mortgage prepayment or Section 8 contract termination.

The ROFR in Rhode Island is granted in order of priority: 1) the tenant association; 2) the Rhode Island Housing and Mortgage Finance Corporation; 3) the housing authority of the city or town in which the development is located; and 4) the municipal government of the city or town in which the development is located. One year before terminating their affordability contract with the federal government and before selling to a third party, the owner of the development must provide an offer to sell to one of the listed entities. The offer to sell must include the sales price, which cannot be higher than the fair market value (R.I. Gen. Laws § 34-45-8).

## Texas

Texas both requires owners to provide a right of first refusal to qualified organizations in limited cases and encourages the ROFR in developers who are applying for housing subsidies.

### ROFR for property owned by a land bank

Texas law grants ROFR to qualified community housing organizations to purchase deed-restricted affordable properties from municipal land bank programs to build affordable housing (Sec. 379E.001, 2025). This policy was designed to help municipalities meet their specific affordable housing development goals. To be qualified, an organization must:

1) Contain a portion of the property that the land bank is offering for sale within their geographical boundaries of operation;
2) Have built at least three single-family homes or duplexes, or one multifamily residential dwelling with four or more units within the organizations designated boundaries of operation; and
3) Within the preceding three-year period have developed or rehabilitated housing units within a two-mile radius of the property that the land bank is offering for sale.

The land bank is required to first offer a property for sale to qualified organizations. The municipality specifies their own time period, ranging from a minimum of nine months to a maximum of 26 months, during which the right of first refusal may be exercised by a qualifying organization. During that period, a land bank can only sell to a qualified organization. If no offers are provided in that time period or all qualified entities decline their right of refusal, the land bank may sell the property to any other qualified participating developer at the same price that the land bank offered the property to the qualified organizations. The municipality may also provide other rights of first refusal to any other nonprofit corporation exempted from taxes, as long as the preeminent right of refusal is provided to the qualified organizations that meet the established criteria.

### Encouraging developers to offer ROFR

Texas encourages developers to offer a ROFR to qualified entities by allocating subsidies for developers of affordable housing in part based on whether the developer provides an ROFR. Additional scoring points are awarded to the application of an entity applying for an allocation of low-income housing tax credits if they offer a right of first refusal to a qualified entity to purchase the development at the minimum price provided in the Texas Internal Revenue Code (Sec. 2306.001., 2025).

## Washington

Washington has ROFR for cities to purchase tax-foreclosed properties from the county for the purpose of developing affordable housing (RCW 36.35.150, 2025). When a county legislative authority purchases the tax-foreclosed property for non-public purposes, the county must give the city notice before acquiring the property. The notice must offer the city the opportunity to purchase the property for the original minimum bid plus any direct costs incurred by the county in the sale. If the city chooses to purchase the property:

1) The city must accept the offer within thirty days of receiving notice,
2) The city must guarantee that the property will be used for an affordable housing development; and
3) The city must agree to transfer the property to a local housing authority or other nonprofit entity eligible to receive assistance from a state affordable housing program.

# Local Legislation – ROFR for Rental Housing

## Montgomery County, Maryland

Montgomery County enacted its ROFR law in 1980 to preserve affordable housing and prevent displacement of low-income tenants (Montgomery County, Maryland, 2024). Under that law, the County, the Housing Opportunities Commission, or any certified tenant organization (in that order) must be offered the opportunity to buy any multifamily rental housing development of four or more units before the owner sells to another party (Sec. 53A-4., 2025). Selling in this case means either 1) transfer of title, 2) transfer of a majority interest in an owner in a 12-month period, or 3) lease of a rental housing for more than seven years.

Montgomery County amended their law in 2024 to allow the County to assign its ROFR to qualified affordable housing developers (Bixby, 2024). This simplified their ROFR process. Previously, the County had to pay the full purchase price of the multifamily property, which was often tens of millions of dollars, and then sell the property to an affordable housing development partner within a few hours of acquisition. Under this new amendment to the County's ROFR law, the County will no longer have to temporarily own the property or reserve finances before the property is sold to a qualified affordable housing developer.

The County received 369 ROFR notices from 2015-2023 but only exercised their ROFR 12 times (Montgomery County, Maryland, 2024). The goal of these amendments is to help the County preserve their affordable housing supply by exercising their ROFR more often and efficiently by reducing the need for staff resources and financing costs.

> *The County Executive may assign the right of first refusal, or a contract to purchase rental housing, to an entity qualified by the Montgomery County Department of Housing and Community Affairs to receive such assignment under this subsection. The Department may designate an entity as a qualified entity if the Department determines that the entity:*
>
> *(A) has demonstrated expertise in acquiring, maintaining, and managing rental and affordable housing;*
> *(B) is a bona fide nonprofit, a for-profit entity, or a governmental housing agency or authority, in good standing under the laws of the State of Maryland at the time of assignment;*
> *(C) is registered and licensed to do business in Maryland;*
> *(D) commits in writing to maintain the affordability of housing acquired under this subsection; and*
> *(E) commits in writing that it must not disclose any information or documentation it receives from an owner pursuant to this Chapter unless required by law* (Sec. 53A-4., 2025).

## Prince George’s County, Maryland

In 2013, Prince George’s County enacted a Right of First Refusal Program to expand the availability of affordable rental housing. The Prince George’s County Code allows the Prince George’s County Department of Housing and Community Development the ROFR to purchase a property that consists of 20 or more dwelling units or assign its ROFR to a third party (Prince George's County, 2025). Property Owners and prospective buyers may request that DHCD approve an exception to the County’s ROFR (County Right of First Refusal Program, 2025). The County maintains a list of developers who may serve as potential assignees to exercise the County’s ROFR and reopens the list to consider other developers every few years. In 2023 10 offers of ROFR were received the County and the County exercised their ROFR authority two times (2023 Annual Report, 2024). In 2024 the County received five offers of ROFR. Program years 2021 and 2022 experienced more transactions, and the County attributes the reduction to the increasing interest rates causing a slow down in the sale of multifamily rental properties (2024 Annual Report , 2024)

In 2021, Prince George’s County established a Right of First Refusal Preservation Fund funded with $15 million from the American Rescue Plan to provide flexible financing in the form of loans for the acquisition, rehabilitation, and stabilization of the rental apartments in the County (Pointer, 2021).

## Washington, D.C.

The program features the Tenant Opportunity to Purchase Act (TOPA) and the District Opportunity to Purchase Act (DOPA). TOPA allows tenants or a designee the first opportunity to purchase a housing development when an owner plans to put it on the market and a right of first refusal to match a third party contract. DOPA gives the city the right to purchase the property if the tenants do not exercise their right (D.C. Law 3-86 Rental Housing Conversion and Sale Act of 1980, 2025). Washington D.C.’s TOPA program is the oldest in the country and has been used to preserve over 16,000 affordable units since its enactment in 1980 (Knudsen, 2024). However, less than 5% of property offers from 2009-2025 resulted in sales to residents (Coalition for Nonprofit Housing and Economic Development, 2023).

Tenants can transfer their right to purchase to a third party, such as a qualified nonprofit housing organization, or purchase the building and retain ownership themselves. Ownership is typically structured through a creation of a limited equity corporation where residents collectively own their building, but the building has resale restrictions to preserve long-term affordability for future ownership.

In 2018 the program was amended to eliminate single-family dwellings, including condominiums and co-ops, from the provisions of TOPA. Before the law, TOPA covered single-family properties (Summary of Act 22-339, 2018). It was amended to combat the problem of renters of single-family homes demanding high sums to release their TOPA rights. Renters in properties with two to four units and buildings with five or more units still have the right to purchase under TOPA (Kass, 2018).

# Conclusion

Many properties throughout the commonwealth are at risk of losing affordability as income eligibility and other affordability restrictions expire. Virginia has the option to preserve or create affordable housing units through a right of first refusal policy that includes or builds upon these provisions in other states.

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