# Right of First Refusal for Publicly Supported Housing

Delegate Elizabeth Bennett-Parker
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# Purpose and Bill History

- Brought to me by Virginia Housing Alliance ahead of 2024 session
- 160,000 publicly-supported affordable rental units in Virginia
    - 7,126 of these units are at risk of losing their affordability by 2028
    - 29,456 by 2033 due to expiring affordability restrictions.
- Bill aims to protect these units by providing a right of first refusal (ROFR) to localities or their qualified designees
- Passed in 2024, vetoed, amended to address concerns, passed in 2025, vetoed again

# How The Bill Would Apply

- The bill is permissive
- Specifically addresses multifamily rental buildings that have received state or federal assistance to create affordable units
  - Ex: Low Income Housing Tax Credit (LIHTC)
- When affordability restrictions are expiring and owner intends to sell, locality has a right of first refusal if they can match a third party offer and have previously adopted an ordinance
  - Owner receives same purchase price, housing remains affordable
  - If no matching offer, owner sells to third party

# Importance of Preservation

- Ensures our previous investments in affordable housing continue to benefit Virginians
- Prevents tenant displacement
- Saves money
  - 25-40% more expensive to develop a affordable unit through new construction compared to acquiring and rehabilitating an existing unit

# Process

- First, locality must adopt ordinance
- 2+ years out: owner sends notice
  - Locality may now file ROFR, appoint qualified designee
- 1 year out: locality may require updated notice of intent
- 2 years prior to restrictions expiring to 2 years after
  - Owner may accept 3rd party offer, sends notice
  - Locality/qualified designee has 30 days to make matching offer

**2 years before affordability restrictions expire**

Owner must send notice to locality and tenants. Locality may appoint a qualified designee. Locality may file in public records a notice of eligibility for ROFR, up until 2 months before termination of affordability.

Locality may require owner to submit proof of compliance within 30 days of required notice. Locality has 60 days from receipt or from when such proof should have been received to notify owner of their plans to contest compliance - otherwise, compliance is noted in property records.

**1 year before affordability restrictions expire**

Locality may require updated notice of intent from owner regarding expiration of affordability restrictions.

**At any point within this 4 year timeline**

If an owner accepts a 3rd party offer of sale, they must send notice to locality and qualified designees.

Until making an offer, a 3rd party can negotiate with the locality to continue affordability and thus exempt the property from ROFR.

**30 days from notice of acceptance of third-party offer of sale**

Locality or qualified designee has 30 days to exercise ROFR by making a matching offer.

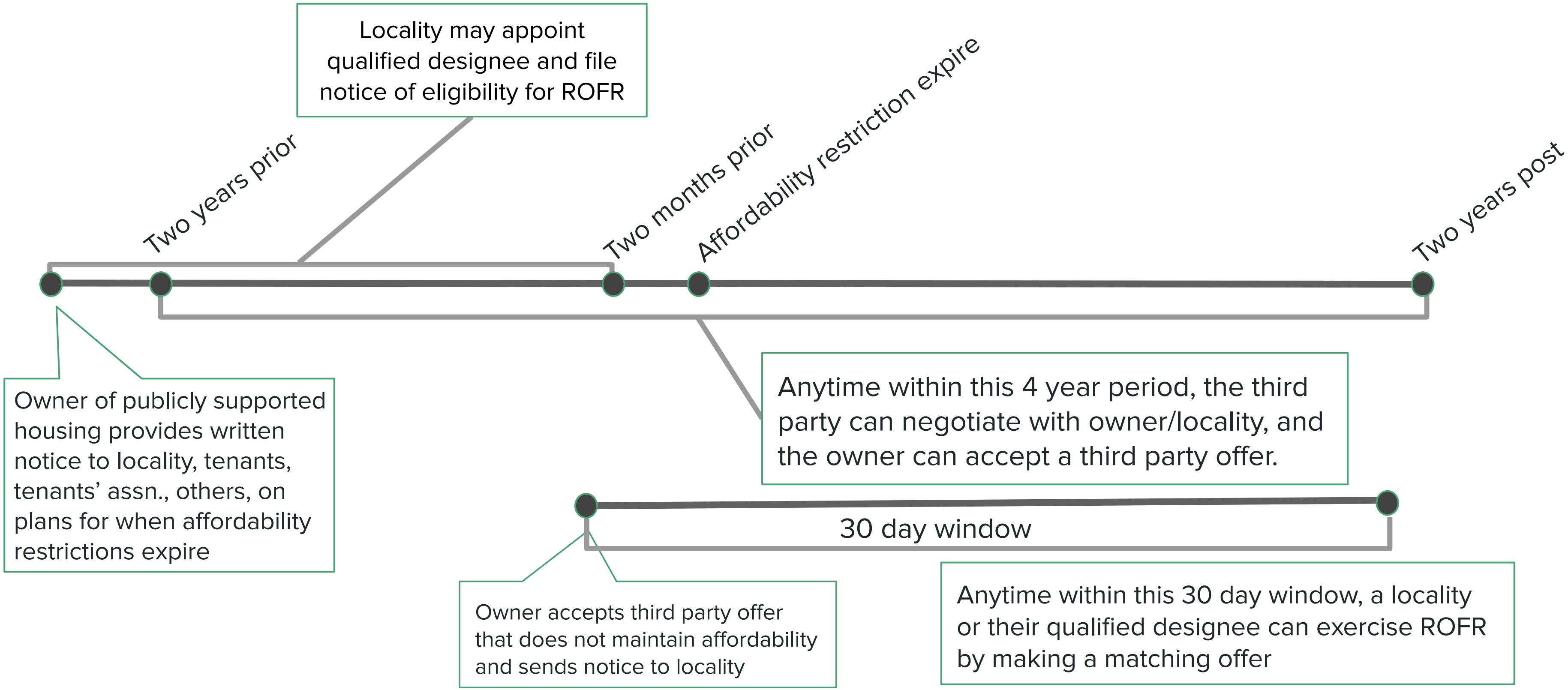
Locality may require owner to submit proof of compliance with ROFR within 45 days after 3rd party offer acceptance. Locality has 60 days from receipt or when such proof should have been received to notify owner of their plans to contest compliance - otherwise, compliance is noted in property records.

**2 years after affordability restrictions have expired**

The property is eligible for ROFR, as long as there is a notice of ROFR in the property records, for 2 years after affordability restrictions expire.

# Timeline

Before: GA bill passes, locality adopts ordinance



# Key Items

- Publicly supported housing
  - Multifamily rental housing of 10 units or more
  - Has affordability restrictions
  - Receives, or has received funding from state and federal assistance programs
- Qualified Designees
  - Could be a non-profit or for-profit housing provider, public housing authority, or a tenant association
  - Locality will determine the process to become a qualified designee
  - All designees must commit to preserving affordability for at least 15 years.
  - Cannot be assigned or changed after owner has accepted an offer from a third party or the locality learns the identity of the third party.
- Accountability
  - Localities can impose fines/fees on those who do not send the required notice of expiring affordability restrictions
  - Localities may require an additional notice to confirm plans one year before restrictions expire
  - Localities may require proof of compliance with ROFR within 45 days of 3rd party offer acceptance, 60 days from receipt to contest compliance
- Exemptions
  - "Sale" and "Third-party buyer" are defined to exclude transfers of ownership interest; transfers to an affiliate or family member of the owner or partial owner; and transfers due to eminent domain and foreclosures.
  - ROFR cannot be executed if 3rd party continues affordability
  - ROFR is secondary to ROFR at end of initial LIHTC compliance, any ROFR language in loans or agreements for local funds