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## Housing Initiative Clinic Briefs

### Illinois Federally Assisted Housing Preservation Act

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This Housing Initiative Clinic Brief reviews the Illinois Federally Assisted Housing Preservation Act and makes recommendations for improving its effectiveness.

### **Overview**

In response to the pending expiration of section 8 project-based contracts effecting over 42,000 units of affordable housing, the state of Illinois passed the Illinois Federally Assisted Housing Preservation Act in July of 2004. The purpose of the Act is to keep units of federally assisted housing in the affordable housing system wherever possible. When certain triggering events occur, the Act gives tenants' associations the right to purchase their buildings if they agree to maintain them as affordable housing. The Act provides a detailed framework for the acquisition process and allows tenant associations to partner with non-profit corporations or private developers to acquire the property.

### **What Types of Affordable Housing Are Covered?**

Only certain types of assisted buildings are covered by the Act, including buildings that receive any of the following subsidies:

- Any project-based rental assistance program under Section 8 of the 1937 Housing Act
- The HUD Below Market Interest Rate Program (§ 221(d)(3))
- § 236 of the National Housing Act
- § 202 of the National Housing Act
- § 101 of the Housing and Urban Development Act of 1965
- Rural rental housing under §§ 514 and 515 of the Housing Act of 1949
- The low income housing tax credit program under § 42 of the Internal Revenue Code

### **What Constitutes a Triggering Event?**

An owner of federally assisted property is required to notify tenants and municipal agencies 12 months prior to any of the following events, if such event would cause the building to exit the affordable housing system. These events trigger the tenants' right to try to acquire the building:

- Prepayment or refinancing of any federally insured or federally held mortgage
- Cancellation of mortgage insurance on assisted housing
- Termination or expiration of a development's participation in a federal subsidy program
- Termination or expiration of a development's affordability restrictions

The Act is NOT triggered by any of the following:

- Government taking by eminent domain
- Forced sale as a result of foreclosure
- Transfer by gift, devise, or operation of law
- Sale of the property that assures its continued use as affordable housing

## **What Happens Next?**

If any of the above triggering events occur, the tenants have the right to purchase the property assuming they can obtain the financing to do so. As a first step, tenants must create a Tenant Association, consisting of a majority of the tenants of the development. They are required to inform the owner of any designated representatives for the Association within 60 days of receipt of the owner's notice of an upcoming triggering event.

The Tenant Association may designate by agreement a nonprofit corporation or private purchaser to purchase the building, who then assumes all the tenants' rights under the Act. A form of agreement, for discussion purposes, is attached as Appendix A. Such an agreement must provide for the following:

- The maintenance of the development as affordable housing under state or federal rules
- The minimum length of time such restrictions will be in effect
- The right of the Tenant Association and individual tenants to bring an action to enforce the agreement, either by specific performance or injunction

After receiving notice of the existence of the Tenant Association, the owner must make a bona fide offer to sell the property to the Tenant Association within 60 days. The offer must include the owner's desired price, the terms of any seller financing or assumable financing, and any proposed improvements to be made by the owner in connection with the sale. The Tenant

Association then has 90 days to notify the owner of its intent to purchase the property, after which it may request any relevant information about the development in the possession of the owner. After filing notice, the Tenant Association has an additional 90 days to make a bona fide purchase offer. If the Tenant Association fails to meet any of the notification or offer deadlines, the owner is released from all requirements under the Act.

### **Appraisal**

In the event that the parties are unable to agree on a sales price, the Tenant Association and the owner may each pick their own appraiser to determine the fair market value of the property, based on its highest and best use without any affordability restrictions. If the two appraisals differ, the parties may average the two or else jointly hire a third appraiser, whose appraisal is binding in setting the purchase price. This process makes it very likely that tenants will need to pay the fair market price for the building, and tenants should plan accordingly.

### **Enforcement**

Both the Tenant Association and any individual tenant may sue the owner for violations of the Act. If determined to have violated any of its provisions, the owner must pay each tenant \$500 as well as the attorney's fees and costs required in bringing the action.

## **Resources**

The Housing Initiative Clinic at the Mandel Legal Aid Clinic has represented tenant groups in a variety of acquisitions and real estate transfers, all with the goal of creating and maintaining affordable housing. Please contact us with any affordable housing needs you may have.

## **Recommendations**

The Housing Initiative is committed to promoting and improving housing policy in the state of Illinois to benefit low- and moderate-income families. With respect to the Illinois Federally Assisted Housing Preservation Act, the Housing Initiative would support:

- Lengthening the time tenants have to organize an association and respond to offers
- Providing assistance and funding to community groups involved in tenant organizing and the creation of tenant associations
- Creating a revolving loan fund to support feasibility studies and technical assistance for tenant groups exploring the acquisition of their building

Attachments: Appendix A – Form of Tenant Association/Developer Agreement

1           *This form was prepared by the Housing Initiative Clinic at the University of*  
2 *Chicago Law School’s Mandel Legal Aid Clinic, and is intended for use by Tenant*  
3 *Associations and Developers that partner for the purpose of preserving affordable*  
4 *housing in Illinois under the Illinois Federally Assisted Housing Preservation Act, 310*  
5 *ILCS 60/0.1 et seq.*

6           *The form addresses three different models of ownership: Developer-owned;*  
7 *tenant-owned (such as a co-operative); and ownership by a joint venture (e.g., an LLC or*  
8 *corporation) between the Tenant Association and Developer. This is merely a form,*  
9 *intended to serve as a guide, and is not legal advice. Anyone considering using this form*  
10 *should obtain their own legal counsel. Questions may be directed to Jeff Leslie, Clinical*  
11 *Professor of Law, University of Chicago Law School, at 773-834-9903.*

12  
13  
14           **TENANT ASSOCIATION/DEVELOPER AGREEMENT**

15  
16  
17           This Tenant Association/Developer Agreement (“Agreement”) is made and  
18 entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 20xx, by and between [*Tenant*  
19 *Association*] (“Association”), an association of tenants residing at [*list address(es)*]  
20 (“Property”), and [*Developer, a(n) STATE [not-for-profi] [for-profit]corporation*]  
21 (“Developer”).

22  
23           Section One: Purpose

24  
25           This Agreement, authorized by the Illinois Federally Assisted Housing  
26 Preservation Act (“Act”), 310 ILCS 60/4, is made for the purpose of outlining the rights  
27 and responsibilities of the Association and Developer in the acquisition and management  
28 of the Property, including the establishment or continuation of affordability restrictions  
29 on the Property. By entering into this Agreement, the parties agree to pursue the  
30 purchase of the Property to maintain its use as affordable housing.

31  
32           Section Two: Responsibilities Prior to Purchase of the Property

33  
34           (A) Financing

- 35           (1) The Developer [OR The Association OR The Developer and the Association  
36 jointly] shall use best efforts to secure the financing necessary for the  
37 purchase and rehabilitation, if required, of the Property. Financing may  
38 include customary guarantees typically required in affordable housing  
39 transactions.
- 40           (2) The Developer agrees to negotiate the purchase price according to the  
41 requirements of Section 60/7 of the Act, [OR, the Association agrees to  
42 negotiate the purchase price according to the requirements of Section 60/7 of  
43 the Act, and the Developer agrees to assist and consult with the Association in  
44 negotiating the purchase price OR Both the Association and the Developer  
45 jointly agree to negotiate the purchase price according to the requirements of  
46 Section 60/7 of the Act.]. Negotiating the purchase price shall include, but

1 shall not be limited to, notifying the owner of the Property of the intent to  
2 purchase the Property, and within 90 days after such notification, providing  
3 the owner with a bona fide offer to purchase evidenced by a purchase contract  
4 reflecting a sales price and terms agreed to by the parties (or the sales price  
5 and terms determined pursuant to the appraisal process described in Section  
6 60/7(b) of the Act) and an earnest money deposit equal to 5% of the bona fide  
7 offer to purchase.  
8

9 (B) If necessary, the Developer [OR the Association, OR the Developer and the  
10 Association jointly] shall locate and retain an appraiser for the purposes of determining  
11 the purchase price of the Property under Section 60/7(b) the Act. If the appraisers fail to  
12 agree upon a fair market value, the Developer [OR the Association, OR the Developer  
13 and the Association jointly] shall work with the owner of the Property to locate and retain  
14 a third appraiser, whose appraisal of the Property's value shall be binding, according to  
15 Section 60/7(b) of the Act.  
16

17 (C) Rehabilitation. The Developer [OR the Association, OR the Developer and the  
18 Association jointly] shall arrange for an assessment of the rehabilitation needs of the  
19 Property by qualified construction specialists and design professionals, as appropriate,  
20 shall obtain cost estimates, and shall be responsible for creation of development budgets  
21 and pro formas as may be required by the providers of financing for the acquisition and  
22 rehabilitation of the Property.  
23

24 (D) Liaison Activities

- 25 (1) The Association agrees to act as the liaison between the parties to this  
26 Agreement and the tenants. The liaison activities include, but are not limited  
27 to: organizing tenants; maintaining a list of current tenants and vacancies; and  
28 maintaining information on the property's condition (existing repairs, etc.)  
29 based on the best information available about which the Association has  
30 knowledge.  
31 (2) The Developer [OR the Association, OR the Developer and the Association  
32 jointly] agree(s) to be responsible for all communications with the owner of  
33 the Property.  
34 (3) The Association and the Developer agree to represent the parties to this  
35 Agreement in any community forum including, but not limited to, aldermanic  
36 contacts and neighborhood outreach.  
37

38 (E) Prior to the purchase of the Property, either party may terminate the agreement upon  
39 thirty days' written notice.  
40

41 Section Three: Responsibilities After Purchase of the Property  
42

43 (A) Upon the successful purchase of the Property, the Developer [OR the Association,  
44 OR the Developer and the Association jointly] shall hold title to the Property.

45 [NOTE: IF THE PROPERTY IS HELD JOINTLY BY THE DEVELOPER AND  
46 THE ASSOCIATION, THAT OWNERSHIP COULD TAKE NUMEROUS FORMS,

1 E.G. LLC OR CORPORATION, THAT WOULD REQUIRE ADDITIONAL  
2 DOCUMENTATION.]

3  
4 (B) Affordability Restrictions

5 (1) The parties to this Agreement shall establish the following affordability  
6 restrictions for the Property in order to make the building qualify as affordable  
7 housing under the Illinois Affordable Housing Act, 310 ILCS 65/1:

8 [LIST OF CURRENT OR EXPECTED AFFORDABILITY  
9 RESTRICTIONS ON PROPERTY – e.g. INCOME REQUIREMENTS  
10 (MAXIMUM 80% AMI), RENT LIMITS (MAXIMUM 30% OF  
11 INCOME OF TENANT MAKING 80% AMI) AND DURATION.]  
12

13 (2) The parties to this Agreement agree that any resale of the Property shall be  
14 subject to the aforementioned affordability restrictions.  
15

16 (3) The Developer and Association shall execute a document (which shall be  
17 recorded by the Developer in the land records of the appropriate county  
18 agency) making the affordability restrictions into a covenant on the Property  
19 that runs with the land.  
20

21 (C) Liaison Activities:

22 (1) The Association agrees to act as the liaison between the parties to this  
23 Agreement and the tenants. The liaison activities include, but are not limited  
24 to: organizing tenants; maintaining a list of current tenants and vacancies; and  
25 maintaining information on the property's condition (existing repairs, etc.)  
26 based on the best information available about which the Association has  
27 knowledge.

28 (2) The Association and the Developer agree to represent the parties to this  
29 Agreement in any community forum including, but not limited to, aldermanic  
30 contacts and neighborhood outreach.  
31

32 (D) The [Developer OR Association OR Developer and Association jointly] may manage  
33 the property itself or may hire a third party manager.  
34

35 (E) [If applicable,] The Property Manager's duties shall include, but not be limited to:  
36 [Here, parties can make or add in different options]  
37

38 [(F) Joint Committee

39 (1) The Association and Developer agree to form a Joint Committee to oversee  
40 the operation and management of the Property, with [X] representatives  
41 appointed by the Association and [Y] representatives appointed by the  
42 Developer .

43 (2) The Joint Committee shall have approval rights over the following:  
44 (i) building rules and regulations  
45 (ii) tenant charges (i.e. rent, laundry, parking, etc.)  
46 (iii) physical changes to the Property

1 (iv) [list other matters]]  
2  
3

4 Section Four: Right to Bring Action  
5

6 The Association and individual tenants of the Property, as third party beneficiaries of this  
7 agreement under Section 10.1 of the Act, shall have the right to bring an action for  
8 specific performance, other injunctive relief, or [*other such remedies for breach such as*  
9 *damages incurred due to breach of contract*] to enforce this Agreement.  
10

11 Section Five: Monetary Obligations  
12

13 The Developer agrees to be responsible for all monetary obligations of the Developer for  
14 activities under this Agreement.  
15

16 Section Six: Fee Provisions  
17

18 If the Developer acts as a consultant only, it shall receive a fee determined by the parties.  
19 [To the extent it is able to obtain financing], the Developer shall collect its fee as a  
20 consultant only for all services performed from the date of this Agreement through  
21 [DATE].  
22

23 [NOTE: Additional provisions should, at a minimum, specify the activities to be provided  
24 by the Developer consultant, the amount of the fee, and the timing for payment of the  
25 fee]  
26

27 Section Seven: Amendments

28 This Agreement can only be modified by an amendment in writing signed by both  
29 parties.  
30

31 IN WITNESS WHEREOF, this Agreement is executed as of the date first stated above  
32 by:  
33

34  
35 [Tenant Association Name/Address]  
36 \_\_\_\_\_  
37

[Developer Name/Address]  
\_\_\_\_\_

38 [name of signator]

[name of signator]