

2-3-2019

## Chapter 34 - Preservation and Relocation Rule, 2019

Maine State Housing Authority

**Summary:** Under Maine law, an owner of a Low-income Rental Housing Project may not take an action that would cause rental assistance or affordability restrictions in connection with the project to terminate without first giving a 90 day Notice to the Tenants, MaineHousing, and any municipal housing authority for the municipality in which the property is located.

MaineHousing has a right of first refusal to purchase the project at its Current Appraised Value. The owner and any purchaser of the Low-income Rental Housing Project must ensure that the current Tenants are allowed to either remain in their units at the same rent for 6 months following the loss of rental assistance or affordability restrictions, or receive relocation assistance.

This rule does the following: (1) outlines the requirements for the Notices to the Tenants and to MaineHousing, (2) sets forth a process for determining the Current Appraised Value of the Low-income Rental Housing Project, and (3) establishes the terms of relocation assistance that must be provided if the owner opts to provide relocation assistance rather than allow Tenants to stay in their units at the same rent for 6 months following the loss of rental assistance or affordability restrictions.

1. Definitions. The following terms shall have the following meanings:
  - a. “Actual Reasonable Moving and Related Expenses” may include reasonable and necessary costs for transportation for the Tenant; packing, moving, and unpacking the Tenant’s household goods; disconnecting and reconnecting household appliances and other personal property; storage of household goods; insurance for the replacement value of Tenant’s property during the move and any necessary storage; and the replacement value of property lost, stolen or damaged in the move (not through the Tenant’s neglect) if insurance is not readily available.
  - b. “Comparable Unit” means a unit that is decent, safe, and sanitary; functionally equivalent and equal to or better than a Tenant’s current unit; adequate in size to accommodate the occupants; reasonably accessible to the Tenant’s place of employment; generally as well located with respect to public and commercial facilities, such as schools and shopping; not subject to unreasonable adverse environmental conditions; and affordable to the Tenant.
  - c. “Current Appraised Value” means the value of a Low-income Rental Housing Project determined in accordance with Section 7.
  - d. “Director” means the Director of MaineHousing.

- e. “Low-income or Moderate-income” means gross income which does not exceed 80% of the area median income as determined by the U.S. Department of Housing and Urban Development.
  - f. “Low-income Rental Housing Project” means residential housing projects in which any of the units are subject to federal or state income eligibility restrictions and the rents within the projects are controlled, regulated or assisted by a federal or state agency pursuant to a regulatory or rental assistance agreement.
  - g. “MaineHousing” means the Maine State Housing Authority.
  - h. “Nonprofit Organization” means an entity that is exempt from state and federal taxation and has affordable housing as one of its purposes.
  - i. “Notice” means a written statement in plain easy to read format provided by hand-delivery or certified mail, return receipt requested.
  - j. “Tenant” or “Tenants” means the household living in a rental unit with financial assistance either in the form of rental assistance or rent restrictions, designed to make a rental unit affordable to Low-income or Moderate-income people.
  - k. “Uniform Relocation Act” means the Uniform Relocation Assistance and Real Property Acquisition Policies for Federal and Federally Assisted Programs, [42 USC Chapter 61](#).
2. Applicability. This rule applies to owners of Low-income Rental Housing Projects who intend to take an action that would terminate rental assistance or rental restrictions, including but not limited to, prepayment of a loan, sale of the Low-income Rental Housing Project, or election to discontinue housing assistance payments. This rule does not apply when rental assistance or rental restrictions expire.
3. Notice. The owner of a Low-income Rental Housing Project who intends to take such action, must provide Notice to the Tenants of the project, MaineHousing, and the municipal housing authority, if any, for the municipality in which the project is located at least 90 days prior to entering into a contract for sale of the Low-income Rental Housing Project or taking any other action which will terminate rental assistance or affordability restrictions.
- a. The Notice to the Tenant must include the following:
    - i. a statement of the action the owner intends to take;
    - ii. the anticipated date of the action;
    - iii. the impact on Tenant and the timing of the impact;

- iv. whether governmental assistance is available to the Tenant, in what form, and how Tenants may obtain the assistance;
  - v. the name and telephone number of the municipality; the municipal housing authority, if any; and a legal services organization that can be contacted to request additional information about an owner's responsibilities and the rights and options of the Tenant;
  - vi. whether the Tenants will be allowed to remain in their units at the same rent for 6 months following the loss of rental assistance or affordability restrictions; and
  - vii. whether the Tenant is eligible for relocation assistance as set forth below.
- b. The Notice to MaineHousing and the municipal housing authority, if any, must include:
- i. a copy of the above described Notice to the Tenant;
  - ii. a copy of any notices regarding the termination of assistance provided pursuant to Federal law;
  - iii. an itemized list of monthly operating expenses for the project;
  - iv. copies of the two most recent financial and physical inspection reports on the project, if any, filed with a federal, state, or local agency;
  - v. a description of capital improvements made within the two preceding calendar years at the project;
  - vi. the amount of project reserves;
  - vii. the rent paid for each unit and the subsidy, if any, paid by a governmental agency for each unit as of the date of the Notice;
  - viii. the vacancy rate at the project for each of the preceding two years; and
  - ix. the terms of assumable financing, if any, and the terms of the subsidy contract, if any.
- c. An owner may at least 30 days prior to sending the above Notices, request MaineHousing to waive the Notice requirements outlined in 3.b.ii-ix. MaineHousing may waive such Notice requirements if MaineHousing is not interested in purchasing the property.

4. Update of Notice. The owner will notify the Tenants, MaineHousing, and the municipal housing authority, if any, within seven business days of a change in any of the items addressed in the Tenant's Notice.
5. Right of First Refusal. MaineHousing has a right of first refusal to purchase the Low-income Rental Housing Project at its Current Appraised Value throughout the 90-day period.
6. Extension of Right of First Refusal. MaineHousing may extend the 90-day period by giving written notice to the owner within the 90-day period that MaineHousing intends to pursue the right of first refusal. The extension runs until 90 days after the Current Appraised Value is finally determined as outlined below.
7. Current Appraised Value. The Current Appraised Value of the Low-income Rental Housing Project is based on the value of the property based on its continued use as a Low-income Rental Housing Project as determined by an appraiser for MaineHousing and an appraiser for the owner. Both appraisers must be independent appraisers who are Certified General Real Property Appraisers licensed by the Maine Board of Real Estate Appraisers and have at least five (5) years of experience valuing income and rent restricted multifamily properties. Each party will pay for the cost of the appraiser selected by the party. If the difference between the two appraisals is within 10% of the lower of the two appraisals, the Current Appraised Value will be the average of the two appraisals. If the difference between the two appraisals is greater than 10% of the lower of the two appraisals, then the two appraisers will jointly select a third appraiser. If the two appraisers are unable jointly to select a third appraiser, either MaineHousing or the owner may, upon written notice to the other, request that the appointment be made by the American Arbitration Association or its designee. MaineHousing and the owner will share equally the cost of the third appraiser. The third appraiser will do its appraisal without reviewing the other appraisals. If the third appraisal is less than either of the first two appraisals, then the Current Appraised Value will be the average of the two lowest appraisals. If the third appraisal is greater than the first two appraisals, then the Current Appraised Value will be the average of the two highest appraisals. If the third appraisal falls between the previous two appraisals, the Current Appraised Value will be the value established by the third appraisal.
8. Termination of Right of First Refusal. If a bona fide purchaser enters into a contract with the owner to purchase the Low-income Rental Housing Project and to maintain the income and rent restrictions on the property for 30 additional years, MaineHousing's right of first refusal terminates. If the property is not sold to the bona fide purchaser with the income and rent restrictions maintained on the property for 30 additional years, MaineHousing's 90 day right of first refusal begins anew.
9. Six Month Stay or Relocation for Tenants. The owner and any purchaser must allow the current Tenants to remain in the units for 6 months from the loss of rental assistance or affordability restrictions, or the owner may relocate the Tenants to Comparable Units with comparable rents as set forth below. This section does not prevent termination of

a tenancy for good cause in accordance with applicable state law nor abrogate a Tenant's right to stay longer under a current lease or other document or law.

If the owner opts to provide relocation assistance, the relocation assistance will be provided as follows:

- a. If the Tenant's income is at or below 80% of area median income, the owner must do the following: (i) prior to sending the 90-day Notice, contact the person to be displaced to explain the benefits, ascertain needs, and offer transportation for up to 3 available Comparable Units and (ii) pay the greater of the Tenant's Actual Reasonable Moving and Related Expenses or a one-time payment equal to the current fixed residential moving cost schedule established by the Federal Highway Administration or its successor agency pursuant to the Uniform Relocation Act.
- b. If the Tenant's income is at or below 60% of area median family income for the area, the owner shall in addition to 9.a above, make 12 months of replacement housing payments to the displaced person. The owner may make the payments in a lump sum or on a monthly basis. The amount of the replacement housing payments is the difference between the rent and utilities at either the replacement unit or a Comparable Unit found by the Developer, whichever is less, and the monthly rent and utilities of the vacated unit multiplied by 12.

10. Rule Limitations.

- a. Other Laws. If this rule conflicts with any provision of applicable federal or state law, such federal or state law shall control.
- b. Waivers. Upon determination for good cause, the Director of MaineHousing, or the Director's designee, may, subject to statutory limitations, waive any provision of this rule. Each waiver shall be in writing and shall be supported by documentation of the pertinent facts and grounds for the waiver.

**BASIS STATEMENT:** Under the Maine Housing Authorities Act, a landlord who plans to take an action that would result in the termination of financial assistance for tenants in low income housing must give notice to the tenants, to MaineHousing, and to any local housing authority; and give a right of first refusal to MaineHousing. This rule sets forth the required content of the notices, a mechanism for determining MaineHousing's purchase price, and the terms of relocation assistance to help displaced tenants.

**PROCESS:** An initial draft of the rule was e-mailed to interested parties on October 29, 2018 and on October 30, 2018, as well as distributed at a development partners meeting held on October 30, 2018. Notice of rulemaking was published on our website and in newspapers statewide on November 28, 2018. Additionally, the proposed rule was sent to interested parties by email or regular mail on November 29, 2018 and November 30, 2018.

MaineHousing held a public hearing on Tuesday, December 18, 2018. The comment period was open until 5:00 p.m. Friday, December 28, 2018. MaineHousing received comments from The Wishcamper Companies, Inc. and Pine Tree Legal Assistance, Inc. (Pine Tree Legal).

## SUMMARY OF COMMENTS AND MAINEHOUSING'S RESPONSE:

### **Section 2. Applicability**

*Comment:* The Wishcamper Companies, Inc. commented that a distinction between termination and expiration of rental assistance or rental restrictions should be made in the rule.

*Response:* The rule is intended to apply only when an owner takes an action that causes rental assistance or rental restrictions to terminate. We have added a sentence which affirmatively states that the rule does not apply when rental assistance or rental restrictions expire.

### **Section 3. Notice**

*Comment:* Pine Tree Legal commented that the notice to tenants should name and include contact information for Pine Tree Legal and be sent to Pine Tree Legal and non-profits that may be able to purchase the property and maintain the affordability.

*Response:* Since other organizations also may provide assistance to tenants, we are not specifying Pine Tree Legal in the rule. Notice to nonprofits is not required by statute, so we are not adding notice to non-profits to the rule.

### **Section 9. Six Month Stay or Relocation for Tenants**

*Comment:* Pine Tree Legal also commented that owners should be required to accept vouchers.

*Response:* MaineHousing is not requiring owners to accept vouchers because MaineHousing's rulemaking is intended to set forth a process rather than add to the statutory requirements.

### **Section 7. Current Appraised Value**

*Comment:* The Wishcamper Companies, Inc. also commented that the property should be appraised at its unrestricted value rather than based on its continued use as a Low Income Rental Housing Property. The Wishcamper Companies, Inc. argued that appraising the property based on its continued use as a Low Income Rental Housing Property could be an unlawful taking and that the legislature presumably wanted to provide a mechanism for MaineHousing to preserve affordability at a price the owner could obtain in an arm's length sale.

*Response:* Since the purpose of the statute is to preserve affordability, we understand "current appraised value" to apply to the property's value in its current and continuing use as a Low Income Rental Housing Property.

STATUTORY AUTHORITY: 30-A M.R.S.A. [§4741.1](#), [§4973](#), [§4976.1](#) and [§4977](#)

FISCAL IMPACT NOTE:

EFFECTIVE DATE: FEBRUARY 3, 2019