



Preserving Affordable Housing in Gentrifying Neighborhoods

Strategies to Prevent Displacement

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Introduction

In New York City, where you live plays an enormous role in determining the opportunities and public resources available to you. As Hurricane Sandy demonstrated starkly, location of residence also determines the extent to which you are asked to bear risk and other regional burdens. While some neighborhoods offer access to excellent public schools, well maintained parks, grocery stores with fresh food, safe streets, health-care facilities, and public transportation, others have few or none of these. Sadly it is often the low-income, minority, and immigrant families in New York City most in need of the best public resources that have least access to them.

New York Appleseed advocates for equity of access and fair allocation of resources to schools and neighborhoods in New York City and its greater metropolitan area. There is important work to be done to ensure that government programs offer lower-income families the ability to live in existing high-opportunity neighborhoods and suburban communities through policies that “affirmatively further” fair housing. Yet the pace and intensity of gentrification within New York City mean that groups like New York Appleseed must also work to ensure that lower-income residents have the option to remain in rapidly changing neighborhoods. Smart policy can mitigate the often destabilizing effects of gentrification – allowing longtime residents to remain in neighborhoods that are on their way to becoming higher-opportunity areas.

To address this issue, this manual compiles known strategies for preserving affordable housing in New York City’s rapidly gentrifying neighborhoods – tools currently available and tools available only in other jurisdictions which community-based groups, legislators and policy makers may wish to consider. Part I of this guide presents tools that are already available in the city and state. The first section of Part I outlines preservation tools that can apply to a wide range of properties, irrespective of whether they presently participate in an affordable housing program. In the “Practical Application” sections we note the specific issues that the programs at issue can address most effectively. The second section outlines preservation programs that apply to properties currently participating in specific affordable housing programs. Knowing if a building is in an existing program and whether or not any restrictions or covenants apply to it is necessary to determine which preservation tools might be a good fit.

Buildings participating in the following specific affordable housing programs may be eligible for targeted preservation programs:

- Section 8 programs
- Rent regulation
- Section 236
- Section 202 financing
- Mitchell-Lama
- Low Income Housing Tax Credits
- Other HUD funding

Our hope is that community advocates in New York City who are faced with imminent loss of affordable housing in their neighbor-

hoods and are searching for solutions will benefit from this presentation of available strategies in New York in a single document. Our descriptions of each tool and program are brief and intended to serve only as starting points for further exploration with expert guidance. Many of the programs require an experienced development team to capitalize on the preservation tools described here. In most cases, programs must often be combined with other strategies or subsidies.

Part II considers strategies for preserving affordable housing that other jurisdictions have implemented – California especially. Part II is divided into two sections – one with policy strategies for protecting tenants and the other with financing tools. For each program, an “In New York” section remarks on the extent to which each program is similar to or different from existing programs in New York City. Our intention is that advocates and policy makers who find existing policies inadequate can use Part II to imagine new possibilities for city and state legislation to preserve affordable units. In some cases, we have noted where a gap in city or state policy might afford an opportunity for advocacy based on programs in another jurisdiction. Depending on circumstances, New York Appleseed may even be able to partner with a community-based organization or legislator making the case for change.

Examples discussed cover topics including:

- Noticing Requirements
- Rights to Purchase and First Refusal
- Relocation or Replacement Requirements
- Municipal Planning Requirements
- Rent Regulation Policies
- Acquisition Loan and Housing Trust Funds

Whatever one thinks about gentrification and the return of middle-class populations to New York City, the forces driving the phenomena appear to be unyielding. Under these circumstances, we hope that this guide will prove useful in directing attention to strategies for ensuring that low-income residents – to the greatest extent possible – may remain in changing neighborhoods and may take advantage of the resources and opportunities that newcomers can bring.

It is our intention to update this guide regularly, so we invite your feedback on how it can be improved in later editions. Please contact David Tipson at DTipson@appleseednetwork.org.





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About New York Appleseed

New York Appleseed advocates for equity of access and fair allocation of resources to schools and neighborhoods in New York City and its greater metropolitan area. We collaborate with volunteer lawyers, parent groups, demographers, real estate professionals, government officials, and community advocates to uncover regional disparities, develop practical solutions, and advocate for implementation of our recommendations. New York Appleseed is a non-partisan, independent voice for reform. For more information, visit: ny.appleseednetwork.org.

About Appleseed

Appleseed, a nonprofit network of 17 public interest justice centers in the United States and Mexico, uncovers and corrects social injustices through legal, legislative, and market-based structural reform. Appleseed and Appleseed Centers bring together volunteers from the law, business, and academic professions to devise long-term solutions to problems affecting the underprivileged and underrepresented in such areas as education and financial access. For more information, visit: www.appleseednetwork.org.



PART I

PRESERVATION STRATEGIES IN NEW YORK

There are a variety of programs designed to help preserve affordable housing in New York City. In order to determine which programs might be available to any one property, the first step is to find out if the property is presently in an affordable housing program and what restrictions (if any) exist on the property. New York University's Furman Center for Real Estate and Urban Policy maintains a search tool called the Subsidized Housing Information Project (SHIP) that allows users to access information about individual properties including information about financing and property taxes.¹ In addition, the New York City Department of Finance maintains an Automated City Register Information System (ACRIS), which allows users to search documents that have been recorded in the Office of the City Register. On ACRIS, users can access copies of mortgages, deeds, and other documents relating to the ownership and financing of the property.²

Whether a property is currently benefitting from an affordable housing program will affect which preservation programs are available. This chapter on New York preservation strategies is divided into two sections. The first section outlines preservation tools that can apply to a wide range of properties, irrespective of whether they presently participate in an affordable housing program. The second section outlines preservation programs that apply to properties currently participating in a specific affordable housing program. Once one knows if a building is in an existing program and whether or not any restrictions or covenants apply to it, one can determine which preservation tools might be a good fit. Many of these programs require an experienced development team to effectively utilize the preservation tools described here.

¹ <http://datasearch.furmancenter.org/>

² <http://a836-acris.nyc.gov/Scripts/Coverpage.dll/index>

SECTION 1 GENERALLY APPLICABLE AFFORDABLE HOUSING TOOLS

Low-Income Housing Tax Credits (LIHTC)

This overview of the LIHTC program is provided for informational purposes, as LIHTC, along with other tools, are often a feature of preservation programs. LIHTC can also be utilized for new construction of affordable housing.

Description: The United States Internal Revenue Service (IRS) provides an annual allocation of housing tax credits to designated agencies that then award these credits to developers of qualified projects as incentives to encourage the use of private equity in the development of affordable housing projects. Developers then sell these credits to investors to raise capital for their projects, reducing the debt that the developer would otherwise have to borrow. By decreasing the debt that the developer must incur in order to complete a residential development, the developer can afford to decrease rents for tenants.

Administration: New York State Homes and Community Renewal (HCR) serves as the primary New York State allocating agency. The New York City Department of Housing Preservation and Development (HPD) also administers the program in New York City.

Population Served: To be eligible for the LIHTC program, a proposed project must satisfy four conditions. First, the project must be a residential rental property. Second, the developer must commit to one of two possible low-income occupancy threshold requirements: the 20-50 Rule which requires that at least 20% of the units must be rent restricted and occupied by households with incomes at or below 50% of the United States Department of Housing and Urban Development (HUD)-determined area median income³ (AMI) or the 40-60 Rule which requires that at least 40% of the units must be rent restricted and occupied by households with incomes at or below 60% AMI (adjusted for household size). Third, the developer must restrict rents charged for the low-income units such that tenant monthly housing costs, including a utility allowance, do not exceed the applicable LIHTC rent limits. Fourth, the developer must agree to operate the property under the rent and income restrictions for a minimum of 30 years, pursuant to written agreements with the agency issuing the tax credits.

Key Features: The IRS annually allocates housing tax credits to designated state agencies. Each state is limited to a total annual housing tax credit allocation of approximately \$2.00 per resident (adjusted each year for inflation), with only the first year of the 10 years of tax credits counting against the allocation. New York State typically suballocates a third of its credits to HPD. All distributing agencies must develop a “qualified allocation plan” (QAP) for distributing credits consistent with the jurisdiction’s housing priorities and certain federal requirements. Federal law requires that the allocation plan give priority to projects that serve the lowest-income families and are structured to remain affordable for the longest period of time.

There are two pools of credits available under this program: a 9% credit pool that provides funds to subsidize approximately 70% of eligible project costs and a 4% credit pool that subsidizes approximately 30% of eligible projects costs. In order to utilize the 9% credits, a project developer must participate in a competitive allocation of credits by presenting a project to the state’s LIHTC allocating agency and competing for the credits. The annual amount of 9% credits available to each state is based on population (see above), while 4% credit allocation is not subject to annual allocation caps. Four percent credits are known as “as of right” credits; they automatically come with the issuance of tax-exempt bonds (a topic discussed in subsequent sections) issued for affordable housing purposes.

Provided the property maintains compliance with program requirements, developers annually receive a dollar-for-dollar credit against their federal tax liability over a period of 10 years. The amount of the annual credit is based on the amount invested in the affordable housing development. Once tax credits are allocated to a project, the developer will typically sell the credits to corporate investors who supply private equity as a means of covering a portion of development costs. The investors often participate through pooled equity funds raised by “syndicators.” Syndicators serve as intermediaries between private investors seeking tax credits and real estate developers seeking equity financing. These “syndicators” and their investors receive credits that reduce their corporate federal income tax bills for ten years as well as a limited equity stake in the development. In recent years, more investors have become direct purchasers in LIHTC projects, forgoing the syndication route. Developers receive capital from investors, which reduces debt and decreases the rent a developer must charge to maintain profitability with the housing development.

Practical Application: Tax credit transactions are complex, but with an experienced team they are a great tool for purchasing properties from existing owners and financing preservation transactions. Community groups without tax credit experience can partner with various New York non-profit and private developers who have worked with local organizations.

³ HUD income limits can be accessed through the HUD website: www.huduser.org



Article 8-A loan

Description: This program targets buildings in need of renovation when the owners are unable to obtain financing privately.

Administration: This program is administered by HPD.

Population Served: A 30-year regulatory agreement requires the building to stay affordable by preventing the rental or sale of apartment units to any household with income exceeding 120% AMI. Under Article 8-A, the owner must covenant that as long as part of the loan remains unpaid, each housing unit must be available solely for persons with low incomes. Article 8-A defines persons with low incomes as those who cannot afford to pay enough to cause private enterprise to build a sufficient supply of adequate, safe, and sanitary dwellings.

Key Features: Article 8-A loans may be used for the elimination of any substandard or unsanitary condition in violation of code; the replacement of heating, plumbing, electrical, or other systems; or the improvement of the dwellings as necessary to prolong their useful lives. Rehabilitation is generally limited to the upgrading or replacement of major building systems with an emphasis on energy items. Loans cannot exceed the actual cost of rehabilitation. Loan amounts are capped at \$35,000 per dwelling unit with no maximum per building rehabilitation.

Under Article 8-A, the supervising agency may (as an alternative to permissible rent adjustments under rent control laws) adjust the rent for each unit upon completion of the rehabilitation with an 8-A loan. The initial rent, if set by the agency, is based solely on the debt service, provided that the agency may establish rents less than the debt service. Upon completion of a Class B multiple-unit dwelling, typically occupied by transient residents (or a Class A multiple-unit dwelling used for single-room-occupancy purposes), the agency establishes initial rents, and all units subsequent to the establishment of initial rents are subject to rent stabilization laws.

Practical Application: This loan program is one of the most straightforward and readily available. It is ideal for buildings facing code violations and needing systems repair and replacement. It is not a good fit for buildings that require major or gut renovations.

Preservation Participation Loan Program (PLP)

Description: PLP was created to provide low interest loans to private residential building owners for the moderate or substantial rehabilitation of housing for low- to moderate-income households.

Administration: HPD administers this program.

Population Served: There is no income targeting for this program, but buildings are subject to affordability and use restrictions through 30-year regulatory agreements and, following rehabilitation, all units are registered in the New York State Rent Stabilization system.

Key Features: The program operates in conjunction with a group of pre-qualified participating lenders. Borrowers are free to work with the participating lender of their choice. HPD provides second mortgages in the form of city capital or federal HOME funds. Combined with bank or tax-exempt bond financing, the blended financing cost is below the market rate. Projects may be eligible to apply to HPD's competitive rounds for LIHTC and other sources of financing.

HPD and the lenders collaborate in underwriting the loan, and all projects must meet HPD's design and construction standards. During construction and after rehabilitation, real property taxes may be eligible for abatement. Allowable income levels and rents depend on the type of subsidy used and on the existing affordability restrictions in place.

Practical Application: This is a very active program, and it is ideally suited for rent-stabilized buildings that require moderate or substantial rehabilitation.

Low-Income Affordable Marketplace Program (LAMP) – Tax-Exempt Bonds

Description: LAMP provides tax-exempt bond financing to refinance existing HUD and private mortgages, thereby reducing interest rates significantly.

Administration: New York City's Housing Development Corporation (HDC) administers this program.

Population Served: This program provides financing for affordable rental housing reserved for individuals and families earning a maximum income of 60% AMI.

Key Features: Loans are provided to private for-profit and non-profit developers in the form of first mortgages, which are made through proceeds from sales of tax-exempt bonds. Second mortgages are also used with this program and are funded through HDC's corporate reserves and typically provided at a 1% interest rate. Furthermore, by using tax-exempt bonds the development can automatically receive as of right 4% LIHTC which help to increase the affordability of these apartments. All apartments are subject to rent stabilization.

Practical Application: LAMP funds can be used for properties that are not presently receiving any assistance, and are often used for distressed properties that house families of a variety of incomes. Residents hoping to participate in the LAMP program need to partner with a non-profit or for-profit developer, and the project would likely require some additional subsidy.

All Affordable Housing Program

Description: The All Affordable Housing Program permits the proceeds from tax-exempt, taxable, and 501(c)(3) bonds to finance preservation projects. Additional financing is frequently obtained via LIHTC, HCR, as well as federal sources including the HOME Investment Partnerships Program and Community Development Block Grants (CDBG).

Administration: This program is administered by the New York State Housing Finance Agency (HFA).

Population Served: To qualify for this program, a majority of the units in a project must be affordable to households earning no more than 60% AMI.

Key Features: Rehabilitation costs must not be less than 20% of the bond amount.

Practical Application: This program is ideal for buildings in which the majority of households are earning no more than 60% AMI, and for which other sources of financing, as mentioned above, are also available.



501(c)(3) Bond Financing Program

Description: The 501(c)(3) Bond Financing Program provides funding for the creation, preservation, or rehabilitation of buildings which have been acquired by an eligible 501(c)(3) entity. If a property is already owned by a 501(c)(3) entity, refinancing may be available provided that the property undergoes some renovation.

Administration: 501(c)(3) bonds are issued by HDC or HFA.

Population Served: 501(c)(3) bonds may be issued to finance facilities used for the operation of 501(c)(3) non-profit organizations, such as charities and certain educational organizations.

Key Features: As opposed to private activity bonds, the 501(c)(3) Bond Financing Program permit is less restrictive with respect to what kind of work can be funded.

Practical Application: The funds provided by this program are readily available as there is no volume cap. Some additional subsidy will be required and the 501(c)(3) must be an eligible entity. These funds can be used for acquisition and can also be used in combination with all other programs.

New York State Housing Trust Fund Program

Description: The New York State Low-Income Housing Trust Fund Program (HTF) provides funding to rehabilitate vacant, distressed, or underutilized property or to construct new low-income housing. Occupancy is limited to tenants with incomes that do not exceed 80-90% AMI, dependent upon the area in the state.

Administration: This program is administered by the Housing Trust Fund Corporation, a public benefit corporation with a board chaired by the Commissioner of HCR. The program receives administrative support from HCR.

Population Served: Applicants are municipalities, counties, housing authorities, non-profit developers, or for-profit developers that limit their profits/returns. Eligible projects are found throughout the State of New York, and must be either new construction or the acquisition and/or rehabilitation of vacant, distressed, or under-occupied existing properties.

Key Features: HTF funding is limited to \$125,000 per unit and is typically combined with other financing sources. The program requires long-term affordability restrictions on the property, thus ensuring preservation of the resource. No more than 50% of an HTF award may be used for property acquisition. Also, no more than a third of the annual HTF funds can be awarded to private developers.

Practical Application: Buildings undergoing moderate rehabilitation often participate in this program, usually in conjunction with tax-credit financing. A developer partner would be necessary.



Housing Asset Renewal Program (HARP)

Description: HARP is an initiative to fund stalled and vacant market-rate developments provided that a significant number of the vacant units be converted to affordable homeownership and rental opportunities.

Administration: HPD and HDC administer this program.

Population Served: In order to be eligible for funding consideration, any proposed project must include a minimum 50% of its units as affordable. For homeownership projects, affordable units are defined as units that are affordable to households with incomes at or below 165% AMI. For rental projects, affordable units are defined as units that are affordable to households with incomes at or below 130% AMI, as adjusted for household size. All affordable units will be subject to a city regulatory agreement and on-going household income restrictions.

Key Features: The \$20 million program aims to turn unsold condominiums, unrented apartments, and stalled construction sites into affordable housing opportunities for moderate- and middle-income families. This program accommodates stalled projects in which owners are either unable to complete construction due to distressed construction conditions or unable to sell or rent a sufficient number of units to meet private lending requirements due to tough real estate markets. The program sets forth a three-part criterion for which projects are prioritized based on buildings' contributions to stabilizing communities, needs for the lowest amounts of financial assistance, and abilities to offer the largest discount below market rates. All rental and homeownership units subsidized through HARP are subject to a minimum 30-year HPD or HDC regulatory agreement. Rents and sales prices must remain affordable to the targeted income groups for at least the term of the HARP loan (even if the HARP loan is repaid).

Practical Application: This program targets market-rate buildings that are languishing with unoccupied units. It applies to neighborhoods with weak real estate markets in which there are still unoccupied new construction projects. Given that the program was created as a response to the 2008 financial crisis, it will be defunded in the future. The program is slated to end December 31, 2013.

Proactive Preservation Initiative

Description: The Proactive Preservation Initiative is New York City's effort to identify and address deteriorating physical conditions in multifamily buildings before they endanger the health and safety of residents and otherwise threaten the surrounding neighborhoods.

Administration: The program is led by HPD.

Population Served: There is no income targeting in this program.

Key Features: The Proactive Preservative Initiative seeks to identify at-risk buildings and, through a variety of intervention strategies and programs, to ensure that owners are both accountable and equipped to maintain their buildings in safe conditions. Buildings eligible for Proactive Preservation are those deemed to be actively declining and at risk of becoming blighted, based on data collected from various sources, including complaints registered through calls to 311; direct reports from elected officials and advocate groups; Housing Maintenance Code violation trends; and emergency repair, property tax, and water liens. Properties are identified monthly and then surveyed by HPD in order to confirm that data from those sources reflect the actual conditions of the building.

Based on the data and surveys, there are several possible outcomes: buildings that are surveyed which show severe distress and neglect may receive direct referrals to HPD's Housing Litigation Division for litigation in Housing Court; buildings that exhibit significant distress are referred for roof-to-cellar inspections where additional Housing Code violations may be added; and buildings exhibiting little or no demonstrations of physical distress will be monitored over time. If a building on the watchlist begins to trend negatively over the course of a year, HPD will re-inspect the building and determine whether it will be referred to other Proactive Preservation disposition strategies.

HPD conducts outreach efforts to building owners to understand the needs and issues of the buildings and to help the owners devise strategies to improve the overall health of the buildings with non-emergency distress. HPD devises appropriate, individualized strategies to help ensure that conditions improve. Strategies include the provision of low-cost repair loans, financial counseling and referrals, as well as more aggressive, punitive tactics involving Housing Maintenance Code enforcement and litigation, the movement of properties into receivership, and the transferal of ownership to more responsible, experienced owners.

Practical Application: This program is designed to catch properties before they go into foreclosure. To learn whether a building is a good fit for this program, residents should reach out to HPD and research housing code violations at the Department of Buildings' website.⁴

⁴ <http://www.nyc.gov/html/dob/html/home/home.shtml>



J-51 Property Tax Exemptions & Abatements

Description: The J-51 program provides real estate tax benefits to owners of residential real property who perform rehabilitation work on their properties. The program also grants tax benefits to owners of non-residential buildings who convert their buildings to residential use.

Administration: The program is administered by HPD.

Population Served: The program is not limited to serving certain income bands. The benefits offered are “as of right,” but units receiving J-51 benefits are subject to rent regulations for the duration of the benefits.

Key Features: J-51 grants two distinct benefits: tax exemption and tax abatement. The tax exemption benefit temporarily exempts property from the increase in assessed value, which would otherwise occur because of significant renovation work. The tax abatement reduces existing taxes by a percentage of the cost of the work performed. Most projects are eligible to receive both benefits for the same work. Benefits vary depending on the location of the property and the different types of improvements. There are two exceptions to the receipt of the exemption benefits: the Manhattan limitation and the Mitchell-Lama limitation. The Manhattan limitation places restrictions on buildings south of 110th Street with assessed values more than \$38,000 per dwelling unit after renovation work is completed. The Mitchell-Lama exception grants exemption to buildings only for work which is not financed with government loans or grants.

Practical Application: J-51 is well-suited for rent-stabilized properties, though subject to the two limitations described above.

420-c Property Tax Incentive Program

Description: The 420-c Property Tax Incentive Program is an as-of-right tax exemption for affordable housing projects (rehabilitation or new construction) using LIHTC with certain non-profit ownership participation.

Administration: HPD administers this program.

Population Served: A non-profit with housing purposes and 501(c)(3) or 501(c)(4) federal tax-exempt status must own at least 50% of the general partner/managing member.

Key Features: The program provides for a payment in-lieu of taxes (PILOT) that can be as low as \$0 based on HPD’s review of the project’s underwriting. For preservation projects with existing tax exemptions, HPD will consider the current level of exemption as a key factor in continuing tax abatement. Commercial space is not eligible for an exemption, and certain community facility spaces may qualify if they are less than 25% of the aggregate floor area and meet certain HPD criteria. The exemption term can be for a maximum period of 60 years and is typically coterminous with the tax credit regulatory agreement.

Practical Application: This program is available to any project that is partially owned by a non-profit corporation whose purposes include housing and has 501(c)(3) status. In order to qualify for the exemption under 420-c, the project must also be receiving LIHTC.

Article XI Property Tax Incentive Program

Description: The Article XI Property Tax Incentive Program provides a discretionary tax exemption for affordable housing projects (rehabilitation or new construction) owned by a housing development fund company formed pursuant to Article XI of the Private Housing Finance Law of the State of New York.

Administration: Projects must be approved by the New York City Council and the program is administered by HPD.

Population Served: No units can be above 165% AMI.

Key Features: The program provides for a payment in-lieu of taxes (PILOT) based on HPD's review of the project's underwriting. For preservation projects with existing tax exemptions, HPD will consider the current level of exemption as a key factor in continuing tax abatement. The exemption term can be for a maximum period of 40 years and is typically coterminous with the regulatory agreement.

Practical Application: This program is one way for a building not presently benefitting from any property tax relief to enter into a regulatory scheme to obtain tax benefits. Because Article XI requires approval by the New York City Council, though, knowledge of this process on the part of the applicant is necessary.

Inclusionary Housing

Description: The Inclusionary Housing Program provides developers a zoning bonus (with respect to total square footage) if they commit to preserving existing affordable housing units. This program applies in neighborhoods where zoning is designed to encourage development.

Administration: This program is administered by HPD.

Population Served: This program targets households at or below 80% AMI.

Key Features: The affordable units may be located in the building where the zoning bonus was granted or they may be located either within the same Community Board or anywhere within a half mile of where the zoning bonus was granted.

Practical Application: This program is only available in commercial zoning districts. A developer partner is essential for participation in this program. The affordable units can be new construction, substantial rehabilitation, or preservation. (See New York Appleseed's guide to the New York City Inclusionary Housing Program)



New York City Acquisition Fund

Description: The New York City Acquisition Fund is a collaboration between the City of New York, private foundations, and community banking groups. The fund provides acquisition and pre-development loans to developers intending to create and preserve affordable housing within the five boroughs of New York City by acquiring the property prior to arranging long-term financing.

Administration: Enterprise Community Investment, Inc. and National Equity Fund, Inc. are co-managers of the Fund, and Forsyth Street Advisors LLC runs operations as the fund manager. JPMorgan Chase Bank serves as the administrative agent.

Population Served: The fund lends to both for-profit and non-profit developers, with preferred financing terms for non-profit borrowers. Projects must be within the boundaries of New York City.

Key Features: The fund provides much-needed bridge financing with interest-only loans to be repaid from construction loan proceeds. Eligible costs include property acquisition, appraisal and environmental site assessment fees, title costs, zoning analyses, consultant fees, and other activities required to secure city or state subsidies. All loans must be for affordable housing in order to meet the fund's charitable purpose requirements.

Practical Application: This program targets buildings that are already in the realm of affordable housing. Non-profit or for-profit developers lacking sufficient liquidity can take advantage of this bridge financing to acquire property and conduct pre-construction activities while seeking long-term financing. This program requires a sophisticated party at the helm, however, since program underwriting is cautious. Not only must the fund financing be coordinated, the ultimate financing that is required to take out the fund financing must also be arranged.

SECTION 2 AFFORDABLE HOUSING TOOLS SPECIFIC TO EXISTING PROGRAMS

Section 8 of the United States Housing Act of 1937

The following overview of the Section 8 programs is offered by way of background, since Section 8 is so often a tool to be utilized in a preservation strategy. There is not new Section 8 project-based assistance currently available from the federal government, and new vouchers are only available in conjunction with the exit from another federal assistance program (see more below).

Description: Section 8 provides affordable housing subsidies through a variety of tenant-based rental assistance, project-based voucher, and project-based rental assistance programs. Tenant-based rental assistance is administered through a Housing Choice Voucher Program, a rental subsidy program which allows families to contribute a share (30%) of their net income to rent with the government making up the difference. The project-based voucher and rental assistance programs allow a landlord to receive financial subsidies in exchange for developing certain types of properties or allocating a portion of units in a specific housing development to Section 8 recipients.

Administration: Section 8 programs are administered on the national level by HUD. Section 8 programs are administered on the state level and directly in New York City by New York Homes and Community Renewal (HCR). Section 8 programs are also administered in New York City by the New York City Housing Authority (NYCHA) and the New York City Department of Housing, Preservation, and Development (HPD). HPD targets specific housing situations within New York City for relief through Section 8 assistance. NYCHA provides general Section 8 based assistance. For the purpose of this discussion all three agencies qualify as public housing agencies (PHAs).

Population Served: Eligibility for assistance under the program is limited primarily to U.S. citizens and is determined based on total annual gross income and family size. There are two income limits that are used to determine eligibility for the housing choice voucher program: the very low-income limit and the low-income limit. The very low-income limit, set at 50% AMI, is the income limit generally used to determine initial program eligibility. The low-income limit, set at 80% AMI, is used for families whose incomes fall above the very low-income limits but who are considered to be eligible for assistance because they qualify under a separate set of qualifications dependent on the families' incomes, assets, and compositions, as well as local policy. In addition, there is a third income standard that is used to ensure compliance with the targeted level of assistance for the neediest families in communities: the extremely low-income limit. The extremely low-income limit is set at 30% AMI, and 75% of all families that begin to receive Section 8 funding must have incomes at or below the extremely low-income limit.

Key Features: Under the tenant-based assistance program, the PHAs provide rent subsidies by paying the difference between 30% of families' combined income for rent and the actual rent. PHAs

provide portable vouchers to participating families, who provide these vouchers to landlord. The landlords redeem the vouchers with the PHAs, which pay the landlords directly. PHAs determine a payment standard that is used to calculate the amount of housing assistance families will receive, which is the amount typically required to rent a moderately priced dwelling unit in the local housing market. The maximum level of housing assistance available is generally the lesser of the payment standard minus 30% of the family's monthly adjusted income or the gross rent for the unit minus 30% of monthly adjusted income. The payment standard, however, does not limit the amount of rent a landlord may charge or the family may pay. A family that receives a housing voucher can select a unit with rent that is below or above the payment standard. If the unit rent is greater than the payment standard, the family is required to pay the additional amount. Whenever a family moves to a new unit where the rent exceeds the payment standard, the family may not pay more than 40% of its adjusted monthly income for rent.

Under the project-based voucher program, the PHAs enter into assistance contracts with the owners for specified units and for specified terms. The contracting government agency and the property owner execute an agreement to enter into a housing assistance payments (HAP) contract. Under this contract, the owner agrees to construct or rehabilitate housing units in exchange for governmental rent subsidies. Upon satisfactory completion, the contracting PHA and property owner execute a HAP contract for up to a fifteen year term that establishes the initial rent for the units, the contract term, and the responsibilities of the PHA and the owner. Because the subsidies under this program are tied to a specific unit or development, a family who moves from the unit receiving project-based assistance does not have any right to transfer this assistance.

HUD also administers several project-based assistance programs in addition to the tenant-based assistance and project-based voucher programs. The four principal project-based programs are the New Construction/Substantial Rehabilitation Program, Elderly/Disabled Program, Loan Management Set Aside Program, and Property Disposition Program. The New Construction/Substantial Rehabilitation program was designed to encourage developers to build or rehabilitate projects for lower-income families by providing rental assistance contracts for a negotiated number of units in a project for periods ranging from 15 to 40 years. The program was established in 1974 and repealed by the Congress in 1983.

After elimination of the program, funding for new project-based rental assistance contracts associated with newly constructed or rehabilitated properties has been limited to new contracts associated with housing for the elderly and disabled. The Elderly/Disabled Program has provided property development funding to sponsors of low-income housing through capital advances and project-based rental assistance contracts. The sponsors do not have to repay the advances as long as they continue to meet HUD's requirements for



keeping rent affordable. Thus, the rental assistance contracts need to subsidize only operating costs because no mortgages are associated with the properties. New contracts currently being issued for project-based assistance for properties for the elderly and disabled (Section 202 and 811) are considered Project Rental Assistance Contracts (PRAC) and operate largely along the same lines as the Section 8 program.

The Loan Management Set Aside Program was developed to provide Section 8 rental assistance to financially troubled projects. Section 8 contracts under this program were initially for 15 year terms. These contracts began expiring during the 1990s and required renewal funding. No new Loan Management Set Aside Section 8 contracts have been issued since fiscal year 1994.

The Multifamily Property Disposition Program facilitates the sale or transfer to new owners of properties acquired through foreclosures on defaulted loans insured by the Federal Housing Administration (FHA). Legislation enacted in 1988 required HUD to preserve some of the units in these properties as affordable housing for low- to moderate-income households. HUD satisfied this requirement by providing project-based rental assistance under 15 year Section 8 contracts with the new owners. In 1995, HUD stopped entering into new project-based contracts for property disposition.

Other Section 8 programs include the Housing Preservation Program and the Project-Based Tenant Protection Program. The Housing Preservation Program was operated by HUD as a means of providing incentives for owners to maintain lower rents for low-income families after an owner completes repayment of affordable housing mortgages and is no longer obligated to continue to charge special rents for low-income families. The Housing Preservation Program was discontinued by Congress in fiscal year 1998. The Project-Based Tenant Protection Program provided vouchers or certificates to eligible households facing displacement or rent increases for a variety of reasons. Under this program, HUD's Office of Housing receives appropriations but transfers the funding over to HUD's Office of Public and Indian Housing, which administers the program.

As a practical matter, Section 8 subsidies are generally utilized in one of two ways in a preservation transaction. For buildings with an existing project-based Section 8 contract, the owner or buyer will seek to extend the term of that contract for 20 years (albeit subject to annual appropriations) and use that contract as security for new financing. In some cases it is possible for owners or buyers to mark the rents up to a budget level, capped at market, or a market level in order to secure financing to repay outstanding indebtedness and finance rehabilitation of the property. In many preservation transactions, pre-payment of existing HUD debt (such as Section 236, discussed below) triggers voucher eligibility for income-eligible residents. These Tenant Protection vouchers

are commonly called “enhanced” or “sticky” vouchers. The “enhanced” feature is that the voucher can cover a rental payment up to a true market rent. The vouchers are portable, and residents can move from the property, but the voucher then converts to a non-enhanced payment standard and they must find a unit where the regular Section 8 voucher payment standard covers their rent obligation. At the very least these tenant protection vouchers will protect the residents in place. In certain cases, owners or buyers have pursued project-basing of these vouchers in order to secure financing.

Practical Application: Section 8 assistance is an asset for properties with existing contracts. The key for preservation transactions is in extending the term of an existing contract and seeking higher rents (meaning more income for the property owner without increasing the amount the tenant would pay). As mentioned above, there are certain opportunities to convert individual vouchers into project-based contracts to keep buildings affordable for the long term and provide comfort to potential lenders when crafting a preservation transaction

Rent Regulation Statutes & Proposed Enhancements

Description: New York's rent regulation statutes govern rent increases and seek to ensure certain protections for residents living in units covered by their provisions.

Administration: HCR is charged with administering these statutes. Local bodies (rent guidelines boards) determine rent increases for many units. Courts have dual jurisdiction with HCR over complaints resulting from the administration of the laws.

Population Served: There is no income targeting in rent regulation, although families earning more than \$200,000 for two consecutive years, and living in units renting for more than \$2,500 per month, are subject to "luxury decontrol." Units renting for more than \$2,500 per month are subject to decontrol upon vacancy.

Key Features: New York's rent regulation statutes provide protection to over one million rental housing units in New York. Most of the units covered are in New York City. There are numerous other reports and studies which attempt to measure the impact of these statutes, the discussion here will be brief and focused on the role of these statutes in preservation. To the extent that the rent regulation statutes control the rate of increases in rents, keeping rents below market in many neighborhoods, they could be viewed as a preservation tool in and of themselves. In addition, for buildings which were occupied before 1974, but are exempt from rent regulation because their rents are governed by other programs, such as Mitchell-Lama or Section 236, the exception continues upon their exit from the other program. Some legislators and advocates have argued (and advanced legislation) that would impose rent regulation on many types of affordable properties upon their exit from their current regulatory environment – regardless of date of initial occupancy. Other legislative proposals have sought to repeal luxury and vacancy decontrol and to re-regulate units previously taken out of rent regulation under those provisions.

Practical Application: Tenants and community groups can research the rent regulation history of any given building using the resources listed in the preface to Part I of this manual. Many community organizations such as Tenants & Neighbors advocate for rent regulation enforcement. Another potential resource for rent regulation enforcement is a proposed tenant protection bureau to be created within HCR, as announced in Governor Cuomo's 2012 State of the State address.

Section 236 Decoupling Program

Description: The Section 236 program is an interest rate subsidy program designed to provide affordable rents for low-income households. Under the program, participating owners borrow funds from lenders at the market interest rate, and HUD makes subsidy payments to the lenders, called Interest Reduction Payments (IRPs), that provide the owners with an effective interest rate of 1% on their mortgages.

Administration: HUD administers the program on the national level.

Population Served: In exchange for Section 236 benefits, borrowers are required to maintain the project as affordable. Affordable is defined as tenancy eligibility being restricted to households with incomes at or below 80% AMI.

Key Features: The Section 236 program assists both private for-profit and non-profit owners of rental housing projects for low-income and moderate-income households by subsidizing the mortgage payments. Under the program, project owners borrow funds, typically from HDC, HFA, or the Urban Development Corporation (UDC, now known as the Empire State Development Corporation or ESDC) at the market interest rate, and the government then makes IRPs to the lender, so that owners effectively pay an interest rate of only 1% on their mortgages (typically for a 40 year term). By paying the 1% interest rate, owners are expected to be able to charge tenants affordable rents. The program stopped new commitments in 1973. The program, however, has continued to subsidize existing developments but does not provide interest or subsidies for new mortgage loans.

Under the Section 236 program, the initial IRP payment schedule is typically retained for the term of the Section 236 mortgage. In 1999, however, Congress authorized HUD to approve the retention of IRP authority upon prepayment of a project's original mortgage. Congress provided authorization for the use of IRP "decoupling," by which additional debt may be incurred to provide for refinancing of aging Section 236 projects while retaining the benefits of IRP. Subject to mortgagee and HUD approval, the owner may elect to reduce the monthly and annual payment and extend the IRP contract term. The decoupling program allows the IRP to be retained and continued after a project developer has elected to prepay the original Section 236 mortgage. Decoupling is conditioned on an extension of the same affordability restrictions imposed by the federal assistance related to the property for five years beyond the original Section 236 mortgage maturity date. This program has been very successful in preserving Section 236 buildings, but absent the IRP stream the model would not work for other properties.

Practical Application: Community groups should research whether a particular property was financed under the Section 236 program. The inventory of remaining 236 properties is dwindling and the vast majority of these properties have already refinanced or left the program altogether.



Section 202 Refinancing

Description: HUD promulgated certain guidelines to allow HUD buildings with Section 202 mortgages to prepay the loans and refinance existing debt with financing more advantageous to the project.

Administration: Most 202 refinancings have to be approved by HUD, some buildings can pre-pay “as of right” but HUD still must be notified. Both HFA and HDC have participated in refinancing Section 202 buildings.

Population Served: For most developments, participation in a refinancing does not change the nature of the tenancy; Section 202 buildings must be occupied by very low-income households comprised of at least one person who is at least 62 years old at the time of initial occupancy. For buildings with an “as-of-right” ability to prepay, they could leave the Section 202 occupancy restrictions, but new financing (such as tax-exempt bonds or LIHTC) would entail new occupancy restrictions. There will be no change to the rent that the residents pay as the Project Rental Assistance Contract (PRAC) will remain in place.

Key Features: The HUD guidelines allow refinancing through conventional means or FHA-insured loans, but the most advantageous method for refinancing involves restructuring the ownership of the building and raising new debt and equity through the issuance of tax-exempt bonds and the sale of LIHTC. The execution of this financing proposal involves a two-step process: restructuring the ownership of the buildings and securing new tax-exempt debt and equity financing to prepay the loans and pay for the costs of construction, professional fees, financing fees, bond issuance, and developer fees. The savings that result from such refinancing are required to be used in a manner that benefit the existing and future tenants by providing funds for capital improvements and social services. Again, this program has been very successful but is not applicable to buildings without 100% project-based rental assistance.

Practical Application: The Section 202 refinancing is a tool specific to only properties with existing Section 202 loans. This is a small pool of properties in the New York City region. Community groups must research the existing debt on the property. Even then, not all properties financed by the HUD Section 202 program are eligible. The Section 202 mortgage must be dated 1991 or prior.



Description: Both HDC and HFA offer programs aimed at preserving the Mitchell-Lama housing stock. Mitchell-Lamas were originally financed by either the city or state with low interest rate loans and were awarded real property tax abatements to keep their rents affordable to middle income renters or cooperators. Owners had to commit their buildings to remain affordable for at least 20 years. Many Mitchell-Lamas struggled financially in the early years of the program, and in many buildings HUD stepped in with Interest Reduction Payments (Section 236 “IRP”) and rental assistance.

Beginning in the 1980s, buildings started to leave the program as market rents rose and landlords paid off their outstanding indebtedness and left the program. Approximately 42,000 Mitchell-Lama units have been lost in New York City due to buyouts since 1985. For buildings originally occupied before 1974, the units go into rent stabilization upon buyout; for those with occupancy dates after 1974, they can go to free market rents. In some buildings where HUD provided assistance, income eligible residents can receive Section 8 tenant protection vouchers to guard against future rent increases.

HFA’s Mitchell-Lama Rehabilitation and Preservation (RAP) Program provides flexible, low-cost financing to lower debt service payments for owners of Mitchell-Lama properties. The HFA also offers second mortgage “Subsidy Loans” that provide subordinate, low interest rate subsidy loans to projects that are receiving construction and/or permanent financing from HFA that require further subsidy to maximize the number of affordable units and serve lower-income or special needs communities. The RAP Program’s aim is to generate resources for capital improvements and building renovations. In exchange for the benefits, owners are required to keep rents affordable for an additional 40 years.

HDC created its Mitchell-Lama Preservation Program in order to protect the tenants living in these developments and ensure long-term affordability. This program predates the HFA Mitchell-Lama RAP Program. The HDC Mitchell-Lama Program has two components: the Repair Loan Program and Mortgage Restructuring Program. The HDC Repair Loan Program aims to preserve Mitchell-Lama housing by providing loans to owners making capital improvements. HDC has put forth \$75 million of its corporate reserves to finance this program. Since 2004, under this program, over \$60 million in loans have been given to preserve 7,000 units. Through its Mortgage Restructuring Program, HDC is also offering owners who are covered by its insured Mitchell-Lama portfolio a chance to restructure the first and second mortgages at favorable terms. Owners may receive their savings in the form of payment reductions or as grants to repair the property.

Administration: New York State HFA and New York City HDC administer their respective programs.

Population Served: These programs target residents of Mitchell-Lama developments.

Key Features: These programs provide low interest rate financing to pay off existing indebtedness and make needed repairs, continuation of real property tax benefits, and commitment to extended affordability. Both the city and state have chosen to focus on the Mitchell-Lama portfolio as a precious resource that must be protected. They have dedicated significant resources to make preservation of these developments possible. Other buildings may have a difficult time trying to replicate the success of these refinancing programs.

Practical Application: This program is specific to properties that are in the Mitchell-Lama portfolio. A property owner of an existing Mitchell-Lama development should discuss the refinancing options with the government agencies offering these tools (HDC and HFA). Mitchell-Lama funds are often combined with other financing tools such as LIHTC and tax-exempt bonds.



Description: HPD’s Low Income Housing Tax Credit Preservation (“Year 15”) Program aims to maintain the long-term affordability of city-assisted tax credit properties that are arriving, or have arrived, at the end of the initial 15-year tax credit compliance period. As the mortgagee and regulator, the city must approve the proposed new ownership and related changes for these projects.

As part of the Year 15 tax credit investor exit review, the program evaluates the needs of each project and develops a repositioning strategy to address projects’ financial and capital needs as well as physical conditions. If the evaluation shows that a project needs more subsidies, the Year 15 Program may provide a loan of up to \$15,000 per residential unit. Loans are given as 30-year repayable balloon mortgages with a 0% interest rate. All projects are expected to receive a full or partial 420-c tax exemption, and are required to have a tax benefit in place at time of repositioning. The Year 15 Program applies to a designated set of projects each year.

Administration: HPD administers this program.

Population Served: Residents of New York City-assisted tax credit properties.

Key Features: Projects must comply with all income, occupancy, and rent restrictions detailed in current HPD and any supplemental regulatory agreements, including restrictions for tax credit projects in IRS Section 42. Sponsors must agree to extend the affordability period through the later of (i) the term of any additional mortgage provided or (ii) 15 additional years from the current restriction period. Projects with pre-1990 tax credits must agree to extend the affordability levels required during the initial tax credit restriction period. Projects must maintain their initial homeless set aside requirement throughout program participation.

Practical Application: Properties that are arriving, or have arrived, at the end of the initial 15-year tax credit compliance period present an opportunity for a new owner, potentially community groups or property residents, to purchase the property or interests of the property owner. Potential purchasers should use the research tools described previously to identify these types of properties and thoroughly understand all restrictions on ownership transfers and use of the property.

Description: New York City Local Law 79, the Tenant Empowerment Act, was passed by the New York City Council in August 2005, allowing tenants in subsidized buildings certain rights to preserve the long-term affordability of their homes. This law was struck down by the courts which held that the City of New York could not regulate Mitchell-Lama and Section 8, because these programs are the domain of the state and federal governments respectively.

Administration: HPD had a role in implementation of this statute.

Population Served: This legislation would have served residents living in buildings with project-based Section 8 assistance; buildings financed under HUD Sections 202, 207, 221, 232, and 236; and in Mitchell-Lama properties which were initially occupied after 1974.

Key Features: The legislation required owners of such buildings to give 12 months’ notice to tenants before they took any action that would terminate a project’s participation in the applicable housing program. During the 12-month notice period, a “tenant-approved entity” must be afforded the first opportunity to purchase the building and/or a right of first refusal in response to a bona fide offer from another prospective purchaser. The legislation further provided that even if the tenants elected not to purchase the building, when a conversion occurs, the owner is required to allow the current tenants to remain in their respective dwelling units for the longer of (i) six months from the effective date of the conversion or (ii) until the tenant’s lease expires, and at the same terms and conditions as before such conversion.

Efforts have been made by tenant advocacy organizations and certain legislators to move the discussion of this type of legislation to the state or federal level, but thus far no statutes have been enacted at the state or federal levels which would provide this sort of tenant protection.

Practical Application: This tool is not currently applicable in New York City. While other locations such as Washington, D.C. have tenant right of first refusal statutes in place, the New York County Supreme Court found the 2005 NYC legislation void and preempted by federal and state law.

HUD Multifamily Preservation Loan Program

Description: HPD runs a HUD Multifamily Preservation Loan Program that targets projects with HUD subsidies and use restrictions that may be at risk of opting out of subsidy programs or converting to market-rate housing.

Administration: This program is administered by HPD.

Population Served: The program emphasizes maintaining affordability. Projects are subject to continuing HUD restrictions depending on the HUD program.

Key Features: The program is not a sole source of funding to preserve HUD-subsidized properties, but instead is a subsidy loan program to complement preservation transactions financed with bank construction loans or tax-exempt bond loans. HPD provides city capital funds or federal HOME funds in the form of 1% interest rate loans. Many projects combine this HPD subsidy with federal LIHTC as well. The maximum subsidy per unit is \$35,000.

Practical Application: This tool is available solely for existing HUD properties. Finding out if a property has HUD funding is the first step to knowing if this tool applies. The second step is to approach HPD or a knowledgeable developer, consultant, or attorney to craft a preservation financing strategy that could be pursued in conjunction with this tool.



PART II

PRESERVATION STRATEGIES OUTSIDE OF NEW YORK

SECTION 1 TENANT PROTECTION STRATEGIES OUTSIDE OF NEW YORK

California State Preservation Notice Law

Description: In an effort to prevent the loss of at-risk units, California enacted legislation to require certain notices to tenants and government officials.⁵ “At-risk” units are properties that were once designated for affordable housing, and are now at high risk of conversion to market-rate. In most cases, this occurs when property owners terminate the restrictions on their properties by prepaying their original subsidized mortgages or by opting-out of their rental subsidy contracts. Specifically, California’s State Preservation Notice Law requires that owners of at-risk properties with five or more units give two notices to all affected tenants and government agencies, including the mayor and the local public housing agency.⁶ Owners must give notice twelve months and six months prior to the conversion date.

The first notice must state the owner’s intention to discontinue subsidies or, alternatively, that the rent restrictions will expire, the anticipated date of that event, the program involved, and the effect of removing the restrictions.⁷ The second notice must provide additional specific information including:

1. Anticipated date of termination, prepayment, or expiration and identity of the program involved;
2. Current rents and anticipated new rents;
3. Statement that the notice is being sent to public agencies and that the owner may choose to keep the property restricted or not increase rents;

⁵ Tim Iglesias & Rochelle E. Lento, *The Legal Guide to Affordable Housing Development* 407 (ABA Publishing, 2005).

⁶ *Id.*

⁷ Matt Schwartz & James Grow, *California Notice Provisions for At-Risk Properties: An Update for 2005* (June 13, 2011, 2:05 p.m.), <http://www.chpc.net/preservation/local-strategies.html>.

4. Statement of the owner's intention to participate in any replacement subsidy program; and

5. Names and phone numbers of the local government, public housing authority, and legal services organizations for tenants to contact about their rights and options, as well as the owner's responsibilities.

Administering Agencies: If notice requirements are not properly administered by property owners pursuant to the provisions of California Government Code⁸, any affected public entity⁹ or tenant residing in the project at the time notice should have been provided may seek enforcement through a petition for injunctive relief.

Population Served: The State Notice Law has historically applied to apartments subsidized through the following federal programs: (i) project-based Section 8 and United States Department of Agriculture Section 521 rental assistance contracts; (ii) mortgages financed through Section 221(d)(3) BMIR (Below Market Interest Rate) mortgage insurance, Section 236 IRP (Interest Reduction Payment), and Section 515 loans; (iii) loans and capital grants through Sections 202 and 811 for housing the low income elderly and disabled; and (iv) the Low Income Housing Tax Credit Program (Section 42 of the Internal Revenue Code). Also, as of July 1, 2005, the State Notice Law's coverage includes various properties with rental restrictions imposed under the terms of most other federal, state and local subsidy programs including tax-exempt bond-financing, HOME, Community Development Block Grants (CDBG), McKinney homeless programs, grants or loans made by the California Department of Housing and Community Development (HCD), tax increment financing, housing trust funds, linkage funds, the sale or lease of public property at below market rates, or local land use incentives such as inclusionary zoning, parking variances, and density bonuses.

Key Features: The California State laws are intended to give tenants sufficient time to understand and prepare for potential rent increases, as well as to provide local governments and potential preservation buyers with an opportunity to develop a plan to preserve the property. Such preservation strategies usually entail convincing the current owner to retain the rental restrictions in exchange for additional financial incentives, or conversely having the owner sell the property to a preservation buyer at fair market value. The law also provides organizations willing to preserve assisted housing development with an opportunity to purchase prior to conversion. When an owner decides to sell, the submission of a bona fide offer by one of these qualified entities triggers a right of first refusal that provides these qualified entities with the right to match the terms of any other purchaser.

In New York: The right of first refusal that is part of the California State Preservation Notice Law was found unconstitutional by New York courts (See Tenant Right of First Refusal, page 23). We note that various notices are already required for preservation transactions for apartments subsidized through federal programs, including certain notices to local government officials in addition to notices to tenants. In contrast, when an owner is pre-paying a United States Department of Housing and Urban Development (HUD)-insured mortgage, the owner is required to provide a notice to the tenants of the property, the mayor of the locality, and the local HUD field office. HUD requires a 150 day notice to tenants. California's law imposes a longer notice period to tenants.

⁸ California Government Code Sections 65863.10 and 65863.11

⁹ Public entity includes the locality, local housing authority, or the California Department of Housing and Community Development (HCD).



Rhode Island Preservation of Federally Insured or Assisted Housing Act

Description: Rhode Island's 1998 Preservation of Federally Insured or Assisted Housing Act (PFIH) also contained provisions regarding notice and rights to purchase and of first refusal.¹⁰ The Act contains provisions concerning notice of termination of project-based Section 8 contracts, notice of discontinuance of the use of a property as affordable housing, the opportunity to purchase, and right of first refusal.

Administration: Owner must notify the Rhode Island Housing and Mortgage Finance Corporation and the Rhode Island Department of Administration.

Population Served: PFIH applies to tenants in federally insured or assisted properties.

Key Features: Under PFIH, the owner of a property which received payments under Section 8 must provide at least two years notice to the state housing and mortgage finance agency. Within twenty-four hours of this notice, the owner must notify the tenant association and post a copy of the notice in a common area of the development.¹¹ Also, if the owner of a property wishes to do anything resulting in a discontinuance of the use of the development as a federally insured or assisted housing development, or cause any use restrictions to terminate or record a declaration of condominium, the owner must notify each tenant, the tenant association, the state, the local housing authority, and the municipal council in which the development is located.¹² Furthermore, an owner is not permitted to dispose of a property, record a declaration of condominium, or terminate any contract under Section 8 unless it has provided the tenant association, the state, the local housing authority, and the municipal government in which the development is located an opportunity to purchase.¹³ Finally, any party to whom notice is required may waive their rights pursuant to a written waiver, terminating all of their rights under PFIH.¹⁴

In New York: As described in connection with the California State Preservation Notice Law, the right of first refusal was found unconstitutional by New York courts (See Tenant Right of First Refusal, page 23). Various notices are already required for preservation transactions for apartments subsidized through federal programs, including certain notices to local government officials in addition to notices to tenants. Under the Rhode Island Preservation of Federally Insured or Assisted Housing Act, also known as the Affordable Housing Preservation Act, an owner is required to give not less than two years notice prior to selling or pre-paying a federally-insured or assisted development that would result in the termination of use restrictions. This notice of discontinuance is required to be delivered to each resident of the development, the tenants' association of the development, the housing authority, the city or town counsel, the Rhode Island Department of Administration, and the Rhode Island Housing and Mortgage Finance Corporation.

10 R.I. Gen. Laws § 34-45 (2011).

11 R.I. Gen. Laws § 34-45-5 (2011).

12 R.I. Gen. Laws § 34-45-6 (2011).

13 R.I. Gen. Laws § 34-45-8 (2011).

14 R.I. Gen. Laws § 34-45-9 (2011).

Rhode Island Statutory Leases

Description: "Statutory lease" legislation requires tenants in units converted from affordable housing to market-rate housing to receive mandatory temporary lease renewals at roughly the same rent as previously charged for a given period of time.¹⁵ After a mandatory temporary lease renewal expires, the owner of a converted unit is prohibited from raising rents to market-rate. The purpose of this strategy is to protect tenants by regulating rents, and deter conversion by limiting an owner's potential income and profits.

The State of Rhode Island passed the Affordable Housing Preservation Act of 1988¹⁶, which requires an owner to offer a one year lease extension to any individual residing in affordable housing that is converted to market-rate housing.¹⁷ The assisted tenant's gross annual income must not exceed the "upper income limits" imposed by the government program providing the housing assistance. The one year lease extension begins on the date of prepayment or an owner's failure to renew a Section 8 assistance contract. However, if the assisted individual is also disabled, elderly, or supports a child under the age of ten, then a two year lease extension is required. During the first year of a lease extension, an owner is not permitted to increase rent. Further, the portion of out-of-pocket rent that the assisted tenant must pay shall not exceed 30% of the tenant's income.

Administration: Any assisted household may appeal the decision of an owner to deny the household an extended lease to the Rhode Island Housing and Mortgage Finance Corporation (the "Corporation") by requesting in writing an informal hearing before the Corporation within ten days of the owner's decision. The Corporation hears and resolves appeals by either upholding the owner's decision or ordering the owner to execute the appropriate extended lease with the household.¹⁸

Population Served: The statutory lease program protects only tenants in converted federally assisted or insured properties.

Key Features: This program seeks to address an absence of protection on the federal level for properties that leave HUD assistance programs. After the first year of the lease extension, an owner may increase the rent; however, any subsequent increase of rent may not exceed the lesser of: (i) any amount permitted by applicable laws and (ii) the amount contributed by the assisted household for rent for the preceding year increased by the applicable US consumer price index. These requirements only terminate upon eviction, voluntary rescission, or ninety days after the death of an assisted tenant.

In New York: While a statutory lease program provides a place to live very temporarily, the program in Rhode Island is limited to federally assisted or insured properties. This kind of program might be useful in New York State, and supporters may want to consider proposing protections that would apply to a broader set

15 <http://www.nhlp.org/node/205>

16 <http://www.rilin.state.ri.us/Statutes/TITLE34/34-45/34-45-4.HTM>

17 R.I. Gen. Laws § 34-45-11 (Deering, LEXIS through 2010 Sess.).

18 <http://www.rilin.state.ri.us/Statutes/TITLE34/34-45/34-45-4.HTM>

Rhode Island Costs to Owners

of tenants. In the meantime, conversions of federally assisted properties entail meeting various tenant notice requirements that are intended to prevent unforeseen displacement of affordable housing residents. We also note that, in general, New York tenants living in rent-stabilized apartments must be offered renewal leases.

Description: The State of Rhode Island, also through its Affordable Housing Preservation Act of 1988, imposes a “cost to owners” who prepay, opt-out, or otherwise terminate affordable housing as a preservation strategy.¹⁹ Typically, a “cost to owners” requirement reimburses displaced tenants for their relocation expenses. In Rhode Island and elsewhere, the “costs to owners” preservation strategy can be used in conjunction with the “statutory leases” strategy described previously.²⁰

Administration: The Rhode Island Department of Administration is responsible for rulemaking related to this State requirement.

Population Served: The payment only applies to tenants displaced as result of an owner’s decision to prepay, opt-out, or otherwise terminate affordable housing.

Key Features: The Rhode Island “costs to owners” program requires an owner to pay a displaced tenant the lesser of: (i) \$500 or (ii) a tenant’s security deposit and first month’s rent and any part of last month’s rent required to be paid in advance for the tenant’s new residence.²¹ This amount is required to be paid no later than the date on which the assisted household vacates its unit. In addition, the owner must reimburse up to \$450 of a displaced tenant’s relocation expenses, such as moving costs.

In New York: Neither New York City nor New York State has a policy like this for affordable housing programs. We note, however, that, in New York City, tenants are entitled to certain relocation benefits when rent stabilized or rent controlled buildings are to be demolished. For rent stabilized buildings, landlords must pay reasonable moving expenses and a relocation stipend if the New York State Department of Housing and Community Renewal (DHCR) approves the demolition of the property. For a rent controlled property, DHCR must approve the demolition but also must review relocation plans for tenants and conclude that assistance is being provided and adequate arrangements have been made for relocation. These benefits, however, are generally viewed as merely a band-aid for tenants.

¹⁹ <http://www.nhlp.org/node/205>

²⁰ R.I. Gen. Laws § 34-45-11 (Deering, LEXIS through 2010 Sess.); see also Md. Rev. Code § 7-212 (Deering, LEXIS through 2010 Sess.). Maryland requires a landowner to pay a displaced tenant a fixed amount of \$475 on the day an assisted tenant vacates the unit. Further, the owner must reimburse each displaced tenant “for relocation expenses exceeding \$475 and up to \$950.” Like Rhode Island, Maryland uses this “costs to owners” preservation strategy in conjunction with their “statutory leases” strategy.

²¹ R.I. Gen. Laws § 34-45-11 (Deering, LEXIS through 2010 Sess.).



California Housing Element Law

Description: Each governing body of a local government in California is required to adopt a comprehensive, long-term general plan for the physical development of the relevant city or county.²² The California Housing Element Law requires such local government entities to plan to meet the housing needs of the community through a detailed housing element (one of at least seven mandated elements) as part of its general plan, which is updated every five to six years.

Administering Agencies: The housing element process begins with the California Department of Housing and Community Development (HCD) allocating a region's share of the statewide housing need to the appropriate Councils of Governments (COG) based on regional population forecasts. Then, the COG develops a Regional Housing Need Plan (RHNP) which allocates the region's share of the statewide need to cities and counties within the region. Unlike other general plan elements, the housing element is subject to mandatory review by HCD²³ for compliance with State law and for a report of its findings to the local government entities.

Population Served: The housing element law is intended to protect and provide affordable alternatives for households overpaying for housing or living in overcrowded conditions, low income families, farm workers, persons with disabilities, and persons with special housing needs such as the elderly, large families, and the homeless.

Key Features: The California Housing Element Law recognizes that housing is of statewide importance, and therefore cooperation between government and the private sector is important to sustain affordable housing. Requiring local governments to submit housing elements as part of their general plans allow HCD to assess where there may be a need to preserve or expand affordable housing. In 1989, the Housing Element Law was amended to require a detailed analysis of at-risk apartments including: an inventory of at-risk apartments, assessment of conversion risk, cost of replacement versus preservation, list of entities qualified to preserve at-risk apartments, and financing and subsidy resources available for preservation. In addition, cities and counties must provide in their housing elements a program for preserving at-risk properties.

In New York: This kind of law might be useful in New York State. While New York has seen the development of Regional Economic Development Councils in the past year with a goal of creating regionally-specific strategic plans for job investment, this type of housing-specific detailed inventory of at-risk resources and development of regional housing plans has not been mandated in the state.

Massachusetts Regulating Opt-Out Rents

Description: In 1999, the State of Massachusetts proposed a bill to permit municipalities to regulate rents in any governmentally "involved" housing.²⁴ The statute would have applied to any units that terminated their government "involvement" as of July 1, 1994 through terminating either insurance, interest subsidy, or rental assistance. The bill sought to preserve affordable housing and avert displacement of individuals and families whose annual incomes were 80% AMI or less. The bill did not pass.

Administration: Different versions of the legislation proposed various oversight roles for municipalities ranging from providing subsidy to establishing administrative boards to setting rents in properties that opt-out of federal assistance to having the power to require renewal of Section 8 contracts.

Population Served: Tenants in existing government-regulated properties.

Key Features: Rent levels directly affect the market-value of a property. As such, if rent levels for converted properties are regulated, then the sale value of the property would fall below that of a similar market-rate property. Therefore, affordable housing owners would be deterred from conversion because of a loss of potential income or profits from conversion. In addition, the "regulating opt-out rents" strategy could avert prepayment of federally subsidized mortgages. Typically, prepayment requires an owner to offset higher mortgage rates by charging tenants market-rate rents. Thus, by limiting a project owner's ability to raise rents to market-rates, prepayment becomes unaffordable to the owner and the owner is deterred from conversion. The greatest advantage of the "regulating opt-out rents" strategy is complete protection for tenants and affordability of the housing.²⁵ So long as the property was governmentally involved as of July 1, 1994, the owner would not have been able to raise rents to market-rates. The proposed legislation, however, could not garner enough political support for passage.

In New York: This kind of law might be useful in New York State. We are not aware of any efforts to impose this type of "regulating opt-out rents" strategy.

²² <http://www.hcd.ca.gov/hpd/hrc/plan/he/>

²³ Mandatory review is required pursuant to California Government Code Article 10.6.

²⁴ S. 1946, 1999 Leg., 181st Sess. (Mass. 1999).

²⁵ <http://www.nhlp.org/node/205>

Description: In the fall of 2009, the Governor of Massachusetts signed into law an Act Preserving Publicly Assisted Housing that has amended the Massachusetts General Laws by inserting Chapter 40T: Publicly Assisted Affordable Housing. The law applies to “publicly assisted housing,” which is defined as a housing unit or development that receives government assistance under a number of programs. The law requires the owner of a publicly assisted affordable housing development to:

1. Provide written notice to: (i) all tenants, and the tenant organization, if any; (ii) the chief executive officer of the affected municipality; (iii) the Community Economic Development Assistance Corporation (CEDAC); and (iv) the Department of Housing and Community Development (DHCD) not less than two years before the termination of the property’s affordability restrictions;
2. Give DHCD or its designee (a housing authority, not-for-profit, or for-profit developer) a right of first offer before the owner of a publicly assisted property enters into a contract to sell such property; and
3. Grant a right of first refusal to DHCD or its designee upon the execution of a third-party purchase-and-sale agreement regarding such publicly assisted housing.

Administration: Owners are required to provide notice to the Massachusetts Department of Housing and Community Development as well as the Community Economic Development Assistance Corporation.

Population Served: The Act Preserving Publicly Assisted Housing applies to Project-based Section 8 new construction, substantial rehabilitation, moderate rehabilitation, property disposition, and loan management set-aside programs (but does not include units occupied by mobile voucher holders); the Federal Low-Income Housing Tax Credit Program; Section 101 of the Housing and Urban Development Act of 1965; Section 202 of the Housing Act of 1959; Section 221 of the National Housing Act; Section 236 of the National Housing Act; Section 521 of the Housing Act of 1949; the Urban Development Action Grant; Section 13A of Chapter 708 of the Acts of 1966; the Massachusetts voucher program under the General Appropriation Act; the Massachusetts low-income housing tax credit program; the State Housing Assistance for Rental Production; and Chapter 121A.

Key Features: Regarding those low-income tenants residing in publicly assisted housing on the date of termination of the affordability restrictions who do not receive enhanced Section 8 vouchers, for three years after the termination of the affordability restriction, owners will be prohibited from increasing rent more than once annually by the increase in the Consumer Price Index (CPI) during the preceding year, plus 3%. Additionally, during that three-year period, such protected low-income tenant shall not be evicted or involuntarily displaced from his or her dwelling unit except for good cause related to tenant fault.

In New York: Right of first refusal was found unconstitutional by New York courts (See Tenant Right of First Refusal, page 23 and Rhode Island Preservation of Federally Insured or Assisted Housing Act, page 27). We note that various notices are already required for preservation transactions for apartments subsidized through federal programs, including certain notices to local government officials in addition to notices to tenants. As noted above, when an owner is pre-paying a HUD-insured mortgage, the owner is required to provide a notice to the tenants of the property, the mayor of the locality, and the local HUD field office. This notice period is 150 days, shorter than the notice period under Chapter 40T.



Washington, D.C. Tenant Opportunity to Purchase Act

Description: In 1980, as a part of the Rental Housing Conversion and Sale Act, the District of Columbia passed the Tenant Opportunity to Purchase Act (TOPA), which requires that owners give tenants an opportunity to purchase their accommodations at a price and with terms that represent a bona fide offer of sale before the owner may sell the accommodation or issue a notice of intent to recover possession, or notice to vacate, for purposes of demolition or discontinuance of housing use.²⁶ The statute includes an extensive list of owner actions that are indicative of a sale, including an assignment of all rights and interests in all contracts related to the property.²⁷ TOPA also requires that, in the event of a sale, the owner provide the Mayor and each tenant with a copy of the sales contract as well as post a copy of the sales contract in a conspicuous place in the property.²⁸

Administration: TOPA is overseen by the Department of Consumer and Regulatory Affairs.

Population Served: All tenants and tenant associations where the owner intends to transfer ownership or otherwise trigger TOPA.

Key Features: In addition, TOPA provides for the presumption that third parties act with full knowledge of tenant rights with respect to the opportunity to purchase.²⁹ Furthermore, tenants are granted a right of first refusal within fifteen days of receipt of a valid sales contract with a third party.³⁰ Finally, owners are prohibited from requesting, and tenants are prohibited from granting, a waiver of the right to receive an offer of sale, unless the waiver is granted in exchange for some consideration to which the tenants agree.³¹

In New York: Right of first refusal was found unconstitutional by New York courts (See Tenant Right of First Refusal, page 23).

Minnesota Tenant Impact Statements

Description: Minnesota's "tenant impact statement" legislation was enacted in 1998, but subsequently found by the United States Court of Appeals for the Eighth Circuit to be preempted by federal law. The legislation required procedural processes to be satisfied before an owner could convert an affordable housing unit to market-rate housing.³² The law required that, at least twelve months before termination of participation in a federally assisted rental housing program, an owner submit a tenant impact statement to the tenants and local government that: (i) identified the number of units that would no longer be subject to rent restrictions; (ii) compared pre-conversion rent levels to estimated post-conversion rent levels; and (iii) described actions an owner would take to assist displaced tenants in obtaining other housing.³³ When a tenant sought an injunction to prevent conversion of a property under this statute in *Forest Park II v. Hadley*³⁴ after the owner violated Minnesota's tenant impact statement statute, however, the court agreed with the owner that federal law conflicted and preempted Minnesota's statute and held that the conversion could proceed despite the violation.

Administration: A copy of the impact statement must be provided to each resident of the affected building, the Minnesota Housing Finance Agency, and, if the property is located in the metropolitan area under Minnesota law, the Metropolitan Council.³⁵

Population Served: Tenants living in federally assisted rental housing when the owner seeks to terminate the federal assistance.

Key Features: Tenant impact statements seek to preserve affordable housing in a number of ways. First, affordable housing preservation agencies and non-profits have more time to propose alternatives to conversion, such as finding a purchaser of the property who will preserve the affordable housing status. Second, exceptionally long notice requirements, such as five years, could deter some owners from conversion. Finally, requiring an owner to provide overly detailed information to the proper authorities may deter an owner from conversion.

In New York: New York law does not have anything analogous to Minnesota's tenant impact statement since the tenant right of first refusal was ruled unconstitutional (See Tenant Right of First Refusal, page 23).

26 D.C. Code Ann. § 42-3404.02(a) (2011).

27 D.C. Code Ann. § 42-3404.02(b) (2011).

28 D.C. Code Ann. § 42-3404.03 (2011).

29 D.C. Code Ann. § 42-3404.04 (2011).

30 D.C. Code Ann. § 42-3404.08 (2011).

31 D.C. Code Ann. § 42-3404.07 (2011).

32 <http://www.nhlp.org/node/205>

33 Minn. Stat. Ann § 471.9997 (Deering, LEXIS through 2010 Spec. Sess.)

34 *Forest Park II v. Hadley*, 408 F.3d 1052 (8th Cir. 2005)

35 As defined in Section 473.121, Subdivision 2 of Minnesota State Law.

City of Los Angeles Affordable Housing Preservation Program³⁶

Description: The City of Los Angeles' Affordable Housing Preservation Program, established in 2004, enforces notice requirements, facilitates affordable preservation transactions, as well as monitors the city's affordable housing inventory of roughly 69,000 units in 1,900 local developments.

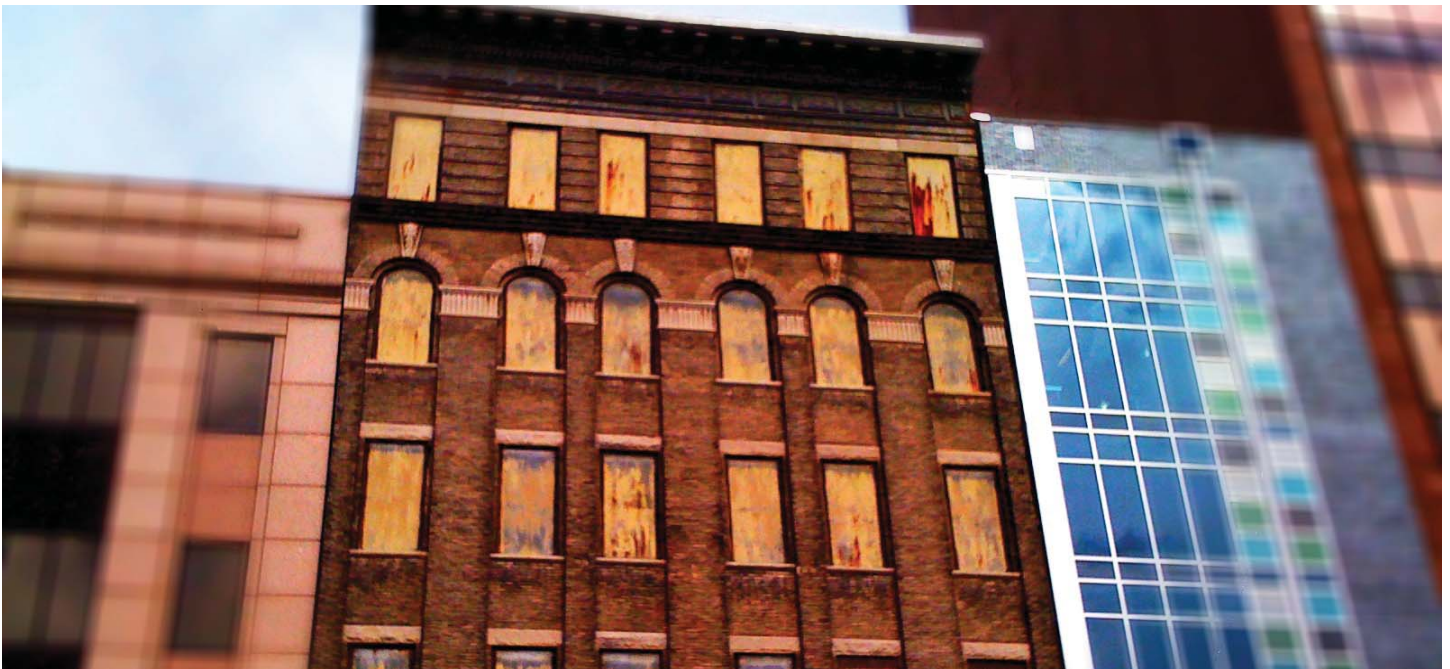
Administering Agencies: The Affordable Housing Preservation Program is overseen primarily by the Los Angeles Housing Department's Policy and Planning Unit with support from the Mayor's Office and the City Council.

Population Served: Generally, properties under the program's auspices are assisted or rent-restricted pursuant to federal, state, and local funding arrangements or land-use concessions. The program mainly serves Los Angeles' very low-, low-, and moderate-income households.

Key Features: Program organizers are tasked to enforce the California Notice Ordinance, Rent Stabilization Ordinance, and Systematic Code Enforcement Programs; provide outreach and

education to area property owners and developers, management companies, and tenants; manage Los Angeles' affordable housing database; oversee the implementation of pertinent financing guidelines; encourage property ownership; and generally monitor federal, state, and local affordable housing preservation legislation. Additionally, the program's administrators are expected to monitor the status of area affordability-restricted properties and assist property owners and developers, management companies, and tenants to renew or terminate their subsidies, disseminate or retrieve information, and conduct or find local trainings.

In New York: In New York City, this monitoring role is not played by a governmental entity. The closest equivalent to a monitoring role is that of the New York University Furman Center with its housing inventories and policy papers. In New York there is not a similar entity that facilitates the preservation of affordable housing and enforces notice requirements in the way the Los Angeles program does. This is a vacuum that affordable housing advocates and not-for-profit organizations might attempt to fill.



³⁶ <http://lahd.lacity.org/lahdinternet/AHPPHomepage/tabid/462/language/en-US/Default.aspx>



SECTION 2 FINANCING TOOLS OUTSIDE OF NEW YORK

California Practitioner Fund³⁷

Description: California's Practitioner Fund seeks to provide acquisition financing to pre-qualified developers for the development or preservation of affordable housing for low- to moderate-income households. \$25,000,000 is set aside for the program, and funds will be lent to practitioners at the rate of 2% per year and a term of five years. Applicants must be 501(c)(3) nonprofits; must have California housing development experience, substantial affordable housing development experience, and at least \$200,000,000 in assets; and must be able to provide funds from resources that are "non-state funds" to leverage the fund resources three to one. Equity from the anticipated sale of either federal or state low-income housing tax credits shall not be considered non-state funds. Five practitioners will be selected for financing from the fund; each will be the recipient of approximately \$4,750,000 in financing.

Administering Agencies: Loans for developers are administered directly by the California Department of Housing and Community Development (HCD).

Population Served: Eligible projects must be affordable housing located in the State of California. Mixed-use projects (commercial and residential occupancies on the same site) are eligible and may use the combination of Practitioner Funds and leveraged capital to cover all acquisition costs if no less than 75% of the total square footage is to be developed as affordable housing or no less than 75% of the number of proposed residential units are affordable to low-income households. If more than 25% of the proposed residential units are neither units sold at an affordable housing cost nor restricted to affordable rents, the percentage of the acquisition cost eligible to be paid with the combination of Practitioner Fund proceeds and required leveraged capital is reduced to an amount equal to the percentage of the project that is affordable. Within the mixed projects, at least 65% of the funds will be committed to property acquisitions of rental projects. At least 50% of rental units developed shall be affordable to and occupied by households earning 50% AMI or less. At least 25% of the funds will be committed to property acquisitions of homeownership projects, and at least 70% of the homeownership units shall be affordable to low-income households. Targets for funding will include a minimum of 45% of total funds loaned in Southern California, a minimum of 30% of funds loaned in Northern California, and a minimum 10% of funds committed in rural areas.

Key Features: The key preservation feature of the fund is the use of a group of experienced nonprofit housing developers (practitioners) with organizational capacity and track records representing many years of successful affordable housing development. This funding source allows the selected practitioners ready access to capital for acquisition of properties to quickly purchase attractive sites for future affordable housing development and preservation.

In New York: In New York, the New York City Acquisition Fund provides bridge loan financing to fund acquisition and pre-development costs (See New York City Acquisition Fund, page 17). The Fund lends to both for-profit and not-for-profit developers, but only for affordable housing purposes, in keeping with their charitable missions. The two primary differences between these programs are that the California program only funds not-for-profit developers and only funds five practitioners. The New York City Acquisition Fund, in contrast, funds both for-profit and not-for-profit developers and routinely works with the New York City Housing Development Corporation (HDC) and the New York City Department of Housing Preservation and Development (HPD) in order to structure transactions.

³⁷ For additional information about the Practitioner Fund see <http://www.hcd.ca.gov/fa/ahif/ahip-p.html>.

Description: The California Preservation Interim Reposition Program (PIRP) preserves assisted rental housing at risk of conversion to market-rate use in the form of short term acquisition loans offered as a package with other subordinate financing.

Administering Agencies: It is administered by the California Department of Housing and Community Development (HCD) which, will enter into a five year contract with the successful applicant and will disburse funds as the applicant identifies eligible projects.

Population Served: Projects across California are eligible. Funds will be allocated to a single nonprofit corporation for the purpose of preserving affordable rental housing developments at risk of conversion to market-rate use for low-income households.

Key Features: The key preservation feature is that PIRP proceeds will be used to finance the acquisition of at-risk rental housing for the purpose of preserving affordability. This is meant to counter California's failure to produce the new housing units needed to house California's population in recent years. Affordable housing organizations that wish to purchase properties at risk of converting to market-rate housing often do not have access to the short-term capital needed to purchase the properties quickly. This lack of short-term capital greatly reduces the likelihood that these properties will remain affordable. As of the end of 2011, HCD committed all available funds. New applications are not being accepted.

In New York: The scope of the New York City Acquisition Fund is much greater – it funds a variety of developers while the California program funds only one. At present this California program has been defunded. See the description of the New York City Acquisition Fund on page 17.

Description: California's Golden State Acquisition Fund (GSAF) is intended to provide acquisition financing to developers for the construction or preservation of affordable housing. The state has published guidelines for the Acquisition Fund and, on January 17, 2012, awarded the loan to a consortium of four non-profit community development financial institutions.

Administering Agencies: The California Department of Housing and Community Development (HCD) selected a consortium of nonprofits as the fund manager that originates and administers all loans to developers. The fund manager could have consisted of a single nonprofit entity, consortium, or group of nonprofit entities. The consortium currently consists of four community development finance institutions: Enterprise, the Low Income Investment Fund, Century Housing, and the Rural Communities Assistance Corporation. The fund manager is responsible for determining the members of a committee to decide on project selection, and all committee members will have no financial interest in the projects under consideration.

Population Served: Eligible projects must be affordable housing located in the State of California. A minimum of 45% of total program funds are to be loaned to projects in Southern California, with a minimum of 30% of program funds for projects in Northern California, a minimum 10% of program funds for projects in rural areas, a minimum of 15% of program funds for foreclosed properties, and a minimum 20% of residential units are to be restricted to households at or below 50% AMI. Mixed-use projects (commercial and residential occupancies on the same site) would be eligible for project loans provided that no less than 75% of the total square footage is or no less than 75% of the proposed residential units are developed for affordable housing. If less than 75% of the proposed residential units are developed for affordable housing, the percentage of the acquisition cost eligible to be paid with project loan proceeds would be reduced to an amount equal to the percentage of the project that is affordable.

Key Features: The Acquisition Fund offers developers the opportunity to move quickly to purchase property before other sources of project financing are solidified. This is especially important where there is limited land supply and/or a competitive market for development sites. Because these conditions are common in centrally-located neighborhoods near transit, a property acquisition fund is particularly well suited for promoting equitable transit-oriented development.

In New York: As discussed in comparison to other California programs, the New York City Acquisition Fund is broader in scope. This California program, furthermore, has only recently been put into effect. See the description of the New York City Acquisition Fund on page 17.

38 For additional information about the Preservation Interim Reposition Program see <http://www.hcd.ca.gov/fa/pirp/>.

39 For additional information about the Golden State Acquisition Fund see <http://www.hcd.ca.gov/fa/ahif/ahip-1.html>.



(D) California Local Housing Trust Fund Program⁴⁰

Description: California's Local Housing Trust Fund Program (LHTF) sets aside \$5,400,000 for matching grants to new local housing trusts created on or after September 30, 2006. The purpose of the program is to finance local housing trust funds that are dedicated to the creation or preservation of affordable housing. Applicants must match (dollar-for-dollar) local housing trust funds that are funded on an ongoing basis from private contributions or public sources that are not otherwise restricted in use of housing programs. Eligible applicants are cities and/or counties, or 501(c)(3) non-profit organizations. The maximum allocation is \$2,000,000 and the minimum allocation is \$1,000,000. Funds restricted for housing use by state or federal law (such as funds from the HOME program or CDBG) shall not be considered matching funds. A local housing trust fund that is exclusively funded by any combination of HOME, CDBG, or other state or federal funds restricted for housing shall not be eligible to receive program funds.

Administering Agencies: The program is administered by the California Department of Housing and Community Development (HCD), and projects throughout California are eligible.

Population Served: At least 30% of program funds and match funds are reserved for projects that are affordable to and restricted for extremely low-income households. No more than 20% of program funds and match funds can be used for projects that are affordable to and restricted for moderate-income households whose incomes do not exceed 120% AMI. All assisted rental units shall be restricted for not less than 55 years.

Key Features: The key preservation characteristic of the local housing trust fund is that it receives ongoing revenues from dedicated sources of funding sufficient to permit the fund to participate in the LHTF program.

In New York: The New York State Housing Trust Fund, though it does not require matching funds, has a \$125,000 per unit funding cap. As a result, it is commonly used in combination with other forms of financing, functioning similarly to the LHTF.

(E) California Multifamily Housing Program⁴¹

Description: The California Multifamily Housing Program (MHP) assists in the new construction, rehabilitation, and preservation of permanent and transitional rental housing for lower-income households with deferred payment loans. The loan term is 55 years with 3% simple interest on the unpaid principal balance and 0.42% payment due annually with the balance of principal and interest due and payable upon completion of the loan term. HCD expects MHP funds to be leveraged with other resources, including local government funds, federal Continuum of Care programs, 4% low-income housing tax credits, tax-exempt bond financing, and private debt financing. Projects that use 9% tax credits are ineligible. The maximum loan per project is \$10,000,000.

Administering Agencies: MHP is administered by HCD along with eligible sponsors and borrowing entities such as local public entities, for-profit and nonprofit corporations, limited-equity housing cooperatives, individuals, Indian reservations, and limited partnerships in which an eligible applicant or an affiliate of an applicant is a general partner.

Population Served: The program requires a reasonable geographic distribution of funds. A minimum of 45% of the total funds are to be awarded to projects in Southern California, a minimum of 30% of funds are to be awarded to projects in Northern California, and a minimum 10% of funds are to be awarded to projects in rural areas. MHP-assisted unit rent and tenant incomes are not to exceed 30% of the applicable income limit.

Key Features: The key preservation feature of MHP is that it provides low interest loans to developers of affordable housing. HCD expects MHP funds to be leveraged with other resources including local government funds, federal Continuum of Care Programs, 4% low-income housing tax credits, tax-exempt bond financing, and private debt financing.

In New York: In New York City, the Preservation Participation Loan Program (PLP), described on page 11, also provides low interest loans, though without the focus on income targeting and geographic distribution adopted by MHP. Also, while MHP is used for new construction in addition to rehabilitation, the New York City equivalent PLP lends to projects requiring moderate or substantial rehabilitation.

⁴⁰ For additional information about the Local Housing Trust Fund Program see <http://www.hcd.ca.gov/fa/ahif/lhtf.html>.

⁴¹ For additional information about the Multifamily Family Program see <http://www.hcd.ca.gov/fa/mhp/>.

(F) California Predevelopment Loan Program⁴²

Description: The California Predevelopment Loan Program (PDLP) provides predevelopment capital to finance the start of low-income housing projects which includes costs to construct, rehabilitate, convert, or preserve assisted housing including manufactured housing and mobile home parks. These are short term loans with 3% simple annual interest rates for up to two years. The maximum loan amount is \$100,000.

Administering Agencies: The PDLP is administered by the California Department of Housing and Community Development (HCD).

Population Served: Eligible applicants are local government agencies, nonprofit corporations, cooperative housing corporations, and limited partnerships or limited liability companies where all the general partners are nonprofit mutual or public benefit corporations. Priority will be given to projects which are rural, are located in public transit corridors, or preserve and acquire existing government-assisted rental housing at risk of conversion to market-rate. HCD shall give priority to applications that include matching finance from local or federal sources for preservation and acquisition projects. At least 51% of housing assisted by the predevelopment loan fund must be designated for persons of low-income.

Key Features: The key preservation feature of this program is that funds are targeted in part for the preservation and acquisition of existing government-assisted rental housing at risk of conversion to market-rate rents. Short-term predevelopment loans allow non-profit sponsors to acquire site control, conduct pre-development due diligence, and act quickly while they are in the process of securing financing for construction or rehabilitation of housing. The applicants must demonstrate ownership control by a non-profit, and no joint ventures between for-profit developers and non-profits are eligible for this source of funding.

In New York: In the past, the State of New York administered a Housing Development Fund (HDF) as a revolving loan fund to provide predevelopment funding to projects throughout the state with residents that were low-income. Presently, however, HDF does not provide predevelopment funding. Were the practice of funding pre-development to be reactivated, projects and developers would have an additional option for pre-development costs.



⁴² For additional information about the Predevelopment Loan Program see <http://www.hcd.ca.gov/fa/pdlp/>.



A Guide to Abbreviations

AMI	Area Median Income	MHP	California Multifamily Housing Program
CDBG	Federal Community Development Block Grant Program	NYCHA	New York City Housing Authority
CEDAC	Massachusetts's Community Economic Development Assistance Corporation	PDLP	California Predevelopment Loan Program
COG	Councils of Governments	PFIH	Rhode Island's 1998 Preservation of Federally Insured or Assisted Housing Act
CPI	Consumer Price Index	PHA	Public Housing Agency
DHCD	Massachusetts's Department of Housing and Community Development	PIRP	California Preservation Interim Reposition Program
DHCR	New York State Division of Housing and Community Renewal	PLP	New York City's Preservation Participation Loan Program
HDF	New York's Housing Development Fund	PRAC	HUD Project Rental Assistance Contract
FHA	Federal Housing Administration	QAP	Qualified Allocation Plan
HAP	Housing Assistance Payments	RAP	Mitchell-Lama Rehabilitation and Preservation Program
HARP	Housing Asset Renewal Program	RAP (HUD)	Rental Assistance Payment
HCD	California Department of Housing and Community Development	RHNP	Regional Housing Need Plan
HDC	New York City's Housing Development Corporation	TOPA	Washington DC's Tenant Opportunity to Purchase Act
HFA	New York State Housing Finance Agency		
HPD	New York City Department of Housing Preservation and Development		
HTF	New York State's Low-Income Housing Trust Fund Program		
HUD	United States Department of Housing and Urban Development		
IRP	Interest Reduction Payment		
IRS	United States Internal Revenue Service		
LAMP	New York City's Low-Income Affordable Marketplace Program		
LHTF	California's Local Housing Trust Fund Program		
LIHTC	Low-Income Housing Tax Credits		

For more information about New York Appleseed,
please visit ny.appleseednetwork.org.



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