

By: Alvarado

H.B. No. 3576

A BILL TO BE ENTITLED

1 AN ACT
2 relating to restrictions on the use, transfer, and sale of housing
3 developments that have received certain financial assistance
4 administered by the Texas Department of Housing and Community
5 Affairs.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

7 SECTION 1. Section 2306.185, Government Code, is amended by
8 adding Subsection (d-1) and amending Subsection (e) to read as
9 follows:

10 (d-1) The department shall adopt rules that provide for the
11 amendment of a land use restriction agreement, including rules that
12 give the owner of a development the right to amend any existing
13 restriction on the right of first refusal to conform with Section
14 2306.6726. Rules adopted under this subsection must require
15 reasonable notice to tenants, a public hearing, and board approval
16 for any material amendment to a land use restriction agreement.

17 (e) Subsections (c), ~~and~~ (d), and (d-1) and Section
18 2306.269 apply only to multifamily rental housing developments to
19 which the department is providing one or more of the following forms
20 of assistance:

21 (1) a loan or grant in an amount greater than 33
22 percent of the market value of the development on the date the
23 recipient completed the construction of the development;

24 (2) a loan guarantee for a loan in an amount greater

1 than 33 percent of the market value of the development on the date
2 the recipient took legal title to the development; or

3 (3) a low income housing tax credit.

4 SECTION 2. Section 2306.6713, Government Code, is amended
5 by amending Subsection (a) and adding Subsection (g) to read as
6 follows:

7 (a) An applicant may not transfer an allocation of housing
8 tax credits and a development owner may not transfer ~~or~~ ownership
9 of a development supported with an allocation of housing tax
10 credits to any person other than an affiliate unless the applicant
11 obtains the director's prior, written approval of the transfer.

12 (g) The transfer of ownership of a development supported
13 with an allocation of housing tax credits under this section does
14 not subject the development to a right of first refusal under
15 Section 2306.6726 if the transfer is made to:

16 (1) a newly formed entity:

17 (A) that is under common control with the
18 development owner; and

19 (B) the primary purpose of the formation of which
20 is to facilitate the financing of the rehabilitation of the
21 development using assistance administered through a state
22 financing program; or

23 (2) a qualified entity, as defined by Section
24 2306.6726(d)(3).

25 SECTION 3. Section 2306.6720, Government Code, is amended
26 to read as follows:

27 Sec. 2306.6720. ENFORCEABILITY OF APPLICANT

1 REPRESENTATIONS. Each material representation made by an applicant
2 to secure a housing tax credit allocation is enforceable by the
3 department and the tenants of the development supported with the
4 allocation. Subject to modification and enforcement as provided by
5 this chapter, a land use restriction agreement that is recorded
6 with respect to a development is considered to state the
7 development owner's ongoing obligations with regard to the matters
8 addressed in the agreement.

9 SECTION 4. Section 2306.6725(b), Government Code, is
10 amended to read as follows:

11 (b) The department shall provide appropriate incentives as
12 determined through the qualified allocation plan to reward
13 applicants who agree to:

14 (1) equip the development [~~property~~] that is the basis
15 of the application with energy saving devices that meet the
16 standards established by the state energy conservation office or to
17 provide [~~to a qualified nonprofit organization or tenant~~
18 ~~organization~~] a right of first refusal to purchase the development
19 in the manner provided by Section 2306.6726 [~~property at the~~
20 ~~minimum price provided in, and in accordance with the requirements~~
21 ~~of, Section 42(i)(7), Internal Revenue Code of 1986 (26 U.S.C.~~
22 ~~Section 42(i)(7))~~]; and

23 (2) locate the development in a census tract in which
24 there are no other existing developments supported by housing tax
25 credits.

26 SECTION 5. Section 2306.6726, Government Code, is amended
27 to read as follows:

1 Sec. 2306.6726. SALE OF CERTAIN LOW INCOME HOUSING TAX
2 CREDIT DEVELOPMENTS [~~PROPERTY~~]. (a) An owner of a development
3 subject to [~~Not later than two years before the expiration of the~~
4 ~~compliance period, a recipient of a low income housing tax credit~~
5 ~~who agreed to provide~~] a right of first refusal under Section
6 2306.6725 [~~and~~] who intends to sell the development at any time
7 after the expiration of the compliance period [~~property~~] shall
8 notify the department of the owner's [~~recipient's~~] intent to sell
9 and, if applicable, shall specifically identify to the department
10 any qualified entity that is the owner's intended recipient of the
11 right of first refusal in the land use restriction agreement.

12 (a-1) After receiving notice under Subsection (a), the
13 department [~~The recipient~~] shall provide to any qualified entity
14 specifically identified under Subsection (a) notice regarding the
15 owner's intent to sell the development at not less than the minimum
16 purchase price.

17 (a-2) In the absence of a specifically identified,
18 qualified entity under Subsection (a-1), or if the specifically
19 identified, qualified entity no longer exists, notice that the
20 development is available for [~~notify qualified nonprofit~~
21 ~~organizations and tenant organizations of the opportunity to~~]
22 purchase by qualified entities at not less than the minimum
23 purchase price shall be:

24 (1) provided to the tenants of the development by the
25 owner of the development; and

26 (2) posted on the department's Internet website [~~the~~
27 ~~property~~].

1 (a-3) Not later than the 180th day after the date notice is
2 provided or posted under Subsection (a-1) or (a-2), whichever date
3 is later, a qualified entity seeking to purchase a development
4 pursuant to the right of first refusal must submit to the department
5 the terms of the entity's offer along with evidence of its financial
6 plan to enable the purchase.

7 (a-4) The department shall review for reasonableness the
8 terms of an offer and financial plan submitted under Subsection
9 (a-3).

10 (b) Beginning on the 181st day after the date the owner
11 provides notice under Subsection (a-2) or the department posts
12 notice under that subsection, whichever date is later, an owner of a
13 development subject to a right of first refusal [~~The recipient may:~~

14 [~~(1) during the first six-month period after notifying~~
15 ~~the department, negotiate or enter into a purchase agreement only~~
16 ~~with a qualified nonprofit organization that is also a community~~
17 ~~housing development organization as defined by the federal home~~
18 ~~investment partnership program;~~

19 [~~(2) during the second six-month period after~~
20 ~~notifying the department, negotiate or enter into a purchase~~
21 ~~agreement with any qualified nonprofit organization or tenant~~
22 ~~organization; and~~

23 [~~(3) during the year before the expiration of the~~
24 ~~compliance period, negotiate or enter into a purchase agreement~~
25 ~~with the department or any qualified nonprofit organization or~~
26 ~~tenant organization approved by the department.~~

27 [~~(c) Notwithstanding an agreement~~] under Section

1 2306.6725 [~~, a recipient of a low income housing tax credit~~] may sell
2 to any purchaser a development [~~property~~] to which the right of
3 first refusal [~~tax credit~~] applies [~~to any purchaser after the~~
4 ~~expiration of the compliance period~~] if:

5 (1) a qualified entity [~~nonprofit organization or~~
6 ~~tenant organization~~] does not offer to purchase the development for
7 a price that is at least equivalent to [~~property at~~] the minimum
8 purchase price; or

9 (2) a qualified entity offers to purchase the
10 development for a price described by Subdivision (1) but does not
11 complete the purchase [~~provided by Section 42(i)(7), Internal~~
12 ~~Revenue Code of 1986 (26 U.S.C. Section 42(i)(7)), and the~~
13 ~~department declines to purchase the property~~].

14 (c) The department shall adopt rules and procedures to give
15 effect to the right of first refusal granted by any land use
16 restriction agreement.

17 (d) In this section:

18 (1) [~~7~~] "Compliance [~~compliance~~] period" has the
19 meaning assigned by Section 42(i)(1), Internal Revenue Code of 1986
20 (26 U.S.C. Section 42(i)(1)).

21 (2) "Minimum purchase price" has the meaning assigned
22 by Section 42(i)(7)(B), Internal Revenue Code of 1986 (26 U.S.C.
23 Section 42(i)(7)(B)).

24 (3) "Qualified entity" means an entity described by,
25 or an entity controlled by an entity described by, Section
26 42(i)(7)(A), Internal Revenue Code of 1986 (26 U.S.C. Section
27 42(i)(7)(A)).

1 SECTION 6. Sections 2306.6713, 2306.6725, and 2306.6726,
2 Government Code, as amended by this Act, apply to the transfer or
3 sale of a development supported with an allocation of low income
4 housing tax credits issued before, on, or after the effective date
5 of this Act.

6 SECTION 7. This Act takes effect September 1, 2015.