

ILLINOIS REGISTER

ILLINOIS HOUSING DEVELOPMENT AUTHORITY

NOTICE OF ADOPTED RULES

TITLE 47: HOUSING AND COMMUNITY DEVELOPMENT
CHAPTER II: ILLINOIS HOUSING DEVELOPMENT AUTHORITY

PART 375

NOTICE PROCEDURES UNDER THE FEDERALLY
ASSISTED HOUSING PRESERVATION ACT

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AUTHORITY: Authorized by Section 7.19 of the Illinois Housing Development Act [20 ILCS 3805/7.19] and the Federally Assisted Housing Preservation Act [310 ILCS 60].

SOURCE: Adopted at 29 Ill. Reg. 33, effective 8/12/2005.

SUBPART A: GENERAL RULES

Section 375.101 Authority

This Part is authorized by and adopted pursuant to Section 7.19 of the Illinois Housing Development Act [20 ILCS 3805/7.19] and the Federally Assisted Housing Preservation Act [310 ILCS 60] and shall govern the provision of notices required by the Federally Assisted Housing Preservation Act.

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Section 375.102 Purposes and Objectives

This Part is established to implement the notice requirements under the Federally Assisted Housing Preservation Act. The purpose of this Part is to create a uniform procedure for producing and delivering notices under the Federally Assisted Housing Preservation Act.

Section 375.103 Definitions

As used in this Part, the following words or terms mean:

"Act": The Illinois Housing Development Act [20 ILCS 3805].

"Affected Public Entities": The mayor of the city or village in which the Assisted Housing Development is located or, if the Assisted Housing Development is located in an unincorporated area, the chairperson of the county board; the public housing authority in whose jurisdiction the Assisted Housing Development is located, if any; the local director of the federal housing agency that has insured, provided financing for or provided subsidies for the Assisted Housing Development; and IHDA.

"Affordability Restrictions": The limits on rents that owners may charge for occupancy of a rental unit in Assisted Housing and the limits on tenant income for persons or families seeking to qualify as tenants in Assisted Housing.

"Assisted Housing" or "Assisted Housing Development": A rental housing development, or mixed use development that includes rental housing, that receives government assistance under any of the following programs:

New construction, substantial rehabilitation, moderate rehabilitation, property disposition and loan management set-aside programs, or any other program providing project-based rental assistance under Section 8 of the United States Housing Act of 1937, as amended (42 USC 1437).

The Below-Market-Interest-Rate Program under Section 221(d)(3) of the National Housing Act (12 USC 1701).

Section 236 of the National Housing Act (12 USC 1715z-1).

Section 202 of the National Housing Act (12 USC 1701q).

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Programs for rent supplement assistance under Section 101 of the Housing and Urban Development Act of 1965, as amended (12 USC 1701s).

Programs under Section 514 or 515 of the Housing Act of 1949 (12 USC 1441 and 14 USC 1485).

Section 42 of the Internal Revenue Code (26 USC 42).

"IHDA": The Illinois Housing Development Authority.

"Members": The members of IHDA.

"Notice": The notice that an owner of an Assisted Housing Development must provide if that owner intends to sell or otherwise dispose of the Assisted Housing Development, complete a prepayment, or complete a termination of affordability restrictions.

"Owner": The person, partnership or corporation that holds title to an Assisted Housing Development.

"Prepayment": The payment in full or refinancing of the federally insured or federally held mortgage indebtedness prior to its original maturity date, or the voluntary cancellation of mortgage insurance, on an Assisted Housing Development under Section 221(d)(3), 236 or 202 of the National Housing Act that would have the effect of removing affordability restrictions applicable to the Assisted Housing Development under the programs described in those Sections.

"Preservation Act": Federally Assisted Housing Preservation Act [310 ILCS 60].

"Property": A property or development that contains Assisted Housing.

"Tenant": The tenant, subtenant, lessee, sublessee or other person entitled to possession, occupancy or benefits of a rental unit within an Assisted Housing Development.

"Termination": The:

expiration or early termination of an Assisted Housing Development's participation in a federal subsidy program for Assisted Housing under Section 8 of the United States Housing Act of 1937.

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expiration or early termination of an Assisted Housing Development's affordability restrictions described in Section 42(g) of the Internal Revenue Code, when that event results in an increase in tenant rents, a change in the form of subsidy from project-based to tenant-based, or a change in use of the Assisted Housing Development to a use other than rental housing.

Section 375.104 Amendment

This Part may be amended or repealed by the members from time to time in accordance with the Illinois Administrative Procedure Act and in such manner as the members may determine consistent with the Act, the purposes of the Preservation Act, and other applicable provisions of law. This Part shall not constitute or create any contractual rights.

Section 375.105 Severability

If any clause, sentence, subsection, Section or Subpart of this Part shall be adjudged by any court of competent jurisdiction to be invalid, that judgment shall not affect, impair or invalidate the remainder of this Part, but shall be confined in its operation to the clause, sentence, subsection, Section and Subpart to which the judgment is rendered.

Section 375.106 Gender and Number

All terms used in any one gender or number shall be construed to include any other gender or number as the context may require.

SUBPART B: NOTICE PROCEDURES

Section 375.201 Content of Notice of Intent to Terminate Subsidy

For owners required to provide notice to tenants of an Assisted Housing Development and to affected public entities under the Preservation Act, the notice shall include the following information:

- a) the address of each building included in the property;
- b) the number of occupied units in the property on the date of the notice;

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- c) a description of the property, including the number of units, commercial space, garage, etc.;
- d) the date on which the owner intends to sell or otherwise dispose of the property, complete prepayment or complete a termination of affordability restrictions at the property;
- e) a detailed description of the affordability restrictions presently in place at the property;
- f) the name, address and contact information for the owner of the property; and
- g) a statement notifying the tenant that he/she has certain rights under the Preservation Act.

Section 375.202 Form of Notice

Where a provision of the Preservation Act requires that notice be given to the tenants of an Assisted Housing Development and to affected public entities, the format of the notice shall be as specified in Appendix A.

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Section 375.APPENDIX A Notice of Intent to Terminate Subsidy

Where a provision of the Preservation Act requires that notice be given to the tenants of an assisted housing development and to affected public entities, the format of the notice shall be as follows:

NOTICE OF INTENT TO TERMINATE SUBSIDY

Name of Property:

Address of Each Building Included in Property:

Owner:

Property Description:

Number of Occupied Units:

Anticipated Date of Sale or Other Action:

Affordability Restrictions:

Owner/Contact Information:

THIS IS NOT AN EVICTION NOTICE. It is a notice to advise all tenants in the property identified above that one of the following actions with respect to the above property will take place on the date referenced above:

- (i) the sale or other disposition of the property;
- (ii) the prepayment or refinancing of a federally insured or federally held mortgage secured by the property;
- (iii) the termination of the property's participation in a federal subsidy program for assisted housing.

One or all of these actions may have the effect of terminating the affordability restrictions noted above.

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This notice is to advise you that the Federally Assisted Housing Preservation Act [310 ILCS 60] gives you certain rights. Tenants living on the property may form a tenants association and negotiate with the owner to purchase the property, subject to certain restrictions. Tenants may also enter into an agreement with a not-for-profit corporation or other entity to represent them in negotiations with the owner. If the negotiations are successful, the tenants association can buy the property. A more detailed discussion of the provisions of the law is attached to this notice as Exhibit A.

If you have any questions with regard to this notice, please contact the following individual at the number listed:

Dated: _____

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Section 375.EXHIBIT A Delivery of Notice to Tenants and Affected Public Entities

- a) Where a provision of the Preservation Act requires that notice be given to tenants of the Assisted Housing Development and affected public entities, the requirements may be met by transmitting the notice described in subsection (b) by one of the following methods:
 - 1) delivering the notice, by certified mail or registered mail, return receipt requested, postmarked at least 12 months prior to the anticipated date of the action covered by the notice, to the following public persons or entities:
 - A) the mayor of the city or village in which the Assisted Housing Development is located or, if in an unincorporated area, the chairperson of the county board;
 - B) the public housing agency in whose jurisdiction the Assisted Housing Development is located, if any;
 - C) the Executive Director of IHDA; and
 - D) the federal agency providing mortgage loan insurance, subsidies or financing for the property, if any;
 - 2) delivering the notice to all affected tenants by certified or registered mail, return receipt requested, postmarked at least 12 months prior to the anticipated date of the covered action;
 - 3) posting, at least 12 months prior to the anticipated date of the covered action, a copy of the notice in a readily accessible location within each affected building; and
 - 4) publication of the notice in a newspaper for the locality in which the property is located.
- b) The text of the notice shall read as follows:

NOTICE TO TENANTS AND AFFECTED PUBLIC ENTITIES

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The federally Assisted Housing Preservation Act (the Act) affects rental housing developments that have received subsidies from the federal government under various federal housing programs. Generally, these programs limit the amount of rent that owners can charge tenants. The Act refers to these limits as "affordability restrictions."

The Act requires owners of these developments to give tenants notice at least 12 months in advance of any of the following events:

- The sale or other disposition of the development, which has the effect of removing the affordability restrictions on the development;
- The prepayment of the existing mortgage, on the development, or the termination of the mortgage insurance on the mortgage, if either of those actions would result in removing the affordability restrictions on the development; or
- The termination of the development's participation in the federal program. One example is the termination of rental subsidies under the so-called Section 8 program.

You have received this notice because the owner of your development may take one of these actions. The Act gives tenants in your development certain rights:

- You and the other tenants have the right to form a tenants association for the purpose of buying the development.
- Within 60 days from the date of the owner's notice, you must notify the owner that you have formed an association and the names of the individuals who represent the association.
- The owner will then have 60 days to present the association or its representative with a bona fide offer to sell the development. The association then has 90 days to notify the owner whether it intends to buy the development.
- If the association is interested in buying the development, it has 90 additional days to present the owner with a purchase contract and negotiate the final sales price. Once the sales price is agreed to, the sale must close within 90 days.