

STATE AND LOCAL PRESERVATION SOLUTIONS

Massachusetts Chapter 40T

July 17, 2019

CHAPTER 40T BASICS

Enacted in late 2009

Covers 16 housing funding programs

Production programs: Sec 236, Sec. 202, Sec 515, LIHTC

All major project-based rental subsidy programs:

Sec 8 (PBV, PBRA), Sec 521, State Rental Vouchers

Housing programs not covered include HOME, CDBG

3 MAIN ASPECTS OF THE LAW

- **Notices of upcoming ‘termination’**
- **Right of Offer and Right of First Refusal**
- **Tenant protections**

40T NOTICES

2 Year Notice – “Notice of Future Termination”

1 Year Notice – “Notice to Complete Termination”

**Notice of Intent to Sell – Proposed sale w/o
affordability**

**Notices must be sent to tenants, any tenant
organization, municipality, state, CEDAC, local
legal services organization**

DESIGNATION

Upon receiving a Notice of Intent to Sell:

DHCD assigns its rights to prequalified preservation buyer - “designee”

- Statewide Designees
- Local Designees

RIGHT OF OFFER

For 90 days after Notice of Intent to Sell, designee can conduct due diligence and make an offer to purchase.

Owner cannot accept any offer except from designee but is not required to accept purchase offer from designee.

RIGHT OF FIRST REFUSAL

After RoO period, Owner can sign a P&S with 3rd party buyer

Designee can 'step into the shoes' of the 3rd party buyer

Limitations on P&S Terms:

- Deposit – No more than 2% of sales price or \$250,000
- Deposit must be refundable for at least 90 days
- Closing in no less than 240 days

SALES EXEMPT FROM RoO & ROFR

Sales that Preserve Affordability for at least 30 years are exempt from the Right of Offer and Right of First Refusal.

Other exempt transfers include foreclosure sales, affiliate transfers and sales of projects where the project has more than 15 years of remaining affordability



TENANT PROTECTIONS

Low income tenants who do not receive
Enhanced Vouchers are protected for 3 years
after termination.

Rents cannot be increased by more than the
CPI + 3% per year.

LIMITATIONS OF 40T

- **Acquisitions are at market rate**
- **Several important housing programs are not covered (mostly state and local programs)**
- **ROFR is not a Right to Purchase**

BENEFITS OF 40T

Preservation is the Default Option

In First 9 Years of 40T

- **14 Projects (1,640 units) Preserved with RoO or ROFR**
- **Almost 100 Projects (over 9,000 total units) were exempt sales that preserved affordability**

For More Information:

<https://cedac.org/housing/housing-preservation/>

<http://www.mass.gov/hed/economic/eohed/dhcd/legal/mgl-chapter-40t.html>

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