

## Local Preservation Strategies

### Staff Activities

#### 1. Analyze inventory

Staff can review the inventory of federally assisted units by utilizing the Risk Assessment report published by the California Housing Partnership Corporation (CHPC). Projects designated “At-Risk” are within five years of the end date of the most valuable subsidy or rent restriction. For example, a property with a Section 8 contract that expires four years from the current date is considered “At-Risk”. CHPC also has additional information about individual projects, which is available upon request. For more information contact Nadia Shihab, Housing Preservation Specialist, 415-433-6804 x316, [nshihab@chpc.net](mailto:nshihab@chpc.net).

#### 2. Establish communications with local HUD office

Regular contact with the local HUD office can provide early warning about the status of opt-outs and prepayments. Notices of intent to opt-out and prepay are sent to the HUD offices. The HUD staff often has additional information regarding owners who are interested in selling. Contact with HUD also reinforces their focus on preservation.

#### 3. Register as a Qualified Entity

Register as a Qualified Preservation Entity with HCD so that you will receive notices from all owners intending to opt out of their Section 8 contracts and/or prepay their HUD insured mortgages. Pursuant to the State Preservation Notice Law (California Government Code Section 65863.11), owners of government-assisted projects cannot terminate subsidy contracts, prepay a federally-assisted mortgage, or discontinue use restrictions without first providing an exclusive Notice of Opportunity to Submit an Offer to Purchase. Owners proposing to sell or otherwise dispose of a property at any time during the five years prior to the expiration of restrictions must provide this Notice at least 12 months in advance unless such sale or disposition would result in preserving the restrictions. Qualified Entities are local governments, nonprofit or for profit organizations or individuals that agree to maintain the long-term affordability of projects. See HCD’s current list of Qualified Entities and/or register as a Qualified Entity at <http://www.hcd.ca.gov/hpd/hrc/tech/presrv/>

#### 4. Contact owners regarding Section 8 renewal plans or mortgage prepayments

In some jurisdictions, local staff has been able to obtain information from owners regarding their plans more readily than tenants or nonprofit organizations. In some cases, these contacts have led to discussions about potential sales, if the owners want to explore that option. This action is primarily applicable to projects owned by profit-motivated owners.

#### 5. Assist in tenant education

The Federal regulations concerning Section 8 renewals and prepayments are complicated. Regardless of the level of risk, there is a desire among many tenants to acquire more understanding of the law and policy issues involved. Most resident organizations look at ways to link with an existing nonprofit organization to assist in keeping the development affordable.

## **6. Identify potential buyers and potential acquisition funds**

Local jurisdictions can take an active role to identify potential purchasers who will preserve the housing at affordable rents for an extended period of time. After contacting owners, staff can help match interested sellers with potential buyers. In addition, staff can identify local funds to make the acquisition possible. Several cities have provided gap funding for nonprofit acquisition of at-risk developments.

## **7. Establish a preservation coordinator**

Some cities designate a staff person to coordinate all of the preservation activities within the jurisdiction. A coordinator can make sure that all of the jurisdiction's efforts work together. Having a coordinator is also a way of publicly recognizing the importance of the local jurisdiction's preservation efforts.

## **Regulatory Actions**

### **1. Require owners who want to opt-out or prepay to provide notice**

Federal and state law requires that notice be provided to tenants of an owner's desire to opt-out or prepay. Federal law requires that notice be provided from 5-9 months for prepayments and 12 months for opt-outs. State law requires 12 months notice for all situations. This notice must be provided to tenants, local jurisdictions, HCD, and HUD. Some cities have passed their own notice requirements, which have extended this time period even further and also require a public hearing about the impact on the tenants.

### **2. Require a Right of First Refusal from owners who sell assisted projects**

A Right of First Refusal provides an opportunity for the local jurisdiction or a qualified entity (typically a nonprofit organization) to purchase the assisted property.

### **3. Require owners to provide moving assistance for tenants**

Some cities have enacted ordinances requiring assistance to tenants who are displaced due to a prepayment or opt-out.

### **4. Prohibit discrimination against voucher holders**

Owners opting out or prepaying have sometimes refused to accept voucher holders or otherwise discriminating against the source of income of a tenant. While this is becoming clarified in federal and state law, some cities have enacted local ordinances prohibiting such discrimination.

## **Financial Assistance**

### **1. Provide funding for preservation purchases**

A key way to assist in preserving at-risk properties is to make local funds available for the purchase of these developments by a buyer who will preserve the housing at affordable rents for an extended period of time. Many cities have set-aside a portion of their HOME, CDBG or local Housing Trust Fund dollars for preservation, or established a priority for preservation in the allocation of such funds.

## **2. Require restrictions in return for financial assistance**

When allocating funds to the purchase of an at-risk project, a local jurisdiction should require restrictions in return to insure that the project is truly “preserved”. These restrictions should include the following:

- a. Require that the purchaser accept all renewals of any project-based subsidy.
- b. Require that the purchaser accept tenants who receive vouchers.
- c. Require that the period of affordability be extended for an additional 55 years.
- d. Require that the purchaser set up a reserve to subsidize tenant payments if Congress stops renewing Section 8 or stops appropriating funds for vouchers. A reserve of 2-3 years of operating expenses is a reasonable size.
- e. Require that rents paid by tenants, particularly in Section 236 projects without Section 8, not increase as a result of the acquisition.
- f. Require that a majority (50-80%) of the cash flow be used to repay the local loan. The purchaser may be receiving substantially higher rents than the pro forma indicates if they continue to receive Section 8 payments. This is because the pro forma shows the “underwriting rents”, i.e. what will be restricted locally or by TCAC or CDLAC. As Section 8 rents are often substantially higher, the actual cash flow may be very large. The local jurisdiction should share in that cash flow if it is providing funds to the project.

## **3. Provide guarantees against the Section 8 payments**

In the face of annual renewals by HUD, an effective local strategy to increase project feasibility without increasing the cost is to provide a guarantee against Section 8 payments for a long period of time (10-15 years or more). With such a guarantee, lenders will be willing to fund a loan based on the difference between the “underwriting” rents (generally 50%-60% of AMI) and the Section 8 rent. This enables the project to leverage substantially more debt and therefore reduces the project’s shortfall – and, in turn, reduces the need for more local subsidy. A guarantee does not require any out-of- pocket cash.