



## **HB23-1190 Affordable Housing Right of First Refusal**

### List of House Amendments

#### Amendments Related to CCI “Amend” Position

- **Shortened Timeline:** The original timeline in the bill was 14 days to notify, 90 days to make an offer, and 180 days to close. Amendments shortened the timeline to 14 calendar days to notify, 60 calendar days to make an offer, and 120 calendar days to close. Amendments have also clarified that all references to “days” are calendar days.
- **Electronic Notice:** Originally, notices were to be delivered by hand or mail. The bill was amended to make electronic mail delivery the default, unless there is no electronic mailing address, in which case it must be delivered by hand or mail. *Page 10, lines 9-14.*<sup>1</sup>

#### Other Amendments

- **Qualifying Property:** Clarified that a qualifying property consists of a rental property, and does not include mobile home parks. *Page 4, line 18.*
- **Reframing Collusion Prohibition:** Reframed collusion prohibition to provide greater clarity and remove some hard-to-define terms. This section now reads, “A residential seller shall not collude with a potential buyer for the primary purpose of inflating a sales price above the market price of a qualifying property.” *Page 7, lines 14-17.*
- **Assigning of Rights:** In addition to assigning its ROFR to the state, any political subdivision, or any housing authority in the state, the local government may also assign its rights to the Colorado Housing and Finance Authority (CHFA). *Page 7, line 21.*
- **Triggering Events:** Clarifies that a triggering event includes any action demonstrating an intent to sell the qualifying property, except that any action taken to engage with a political subdivision or a housing authority in the state to facilitate negotiations between the residential seller and a third-party to create or preserve long-term affordable housing for a qualifying property is not considered a triggering event until another action set forth occurs. The actions set forth including signing contracts/letters of intent, providing a signed property disclosure form to a potential buyer, listing the property for sale, and conditionally accepting an offer. *Page 9, lines 14-20.*
- **Title Insurance:** Adds that prior to sale, a residential seller shall execute and record in the county real property records an affidavit certifying that it has complied with the requirements in this bill. Additionally, any party that acquires an interest in the qualifying property and a title insurance entity shall have an absolute right to rely on the truth and accuracy of the affidavit and shall not be liable for damages related to a seller’s misrepresentation. *Page 12, lines 2-13.*
- **Current Residents:** Residents at the property at the time it is acquired may continue to reside at the qualifying property regardless of income level for at least duration of lease; only circumstance under which income may surpass income level requirements. Only in

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<sup>1</sup> Note: All page/line citations refer to the engrossed version of the bill.



accordance with this subsection may the local government decline to renew a resident's pre-existing tenancy agreement once it ends in order to bring the property into compliance with AMI requirements. *Page 16, lines 7-21.*

- **Requirements for Third-Party Agreements:** A qualifying property is exempt from the ROFR if there is a third-party buyer interested in making the same long-term affordable housing commitment, and that third party enters into an agreement with the local government to provide long-term affordable housing. Amendments have added the following guidelines for these agreements:
  - The third-party buyer shall certify its compliance at least once every two years by submitting documentation to the local government, as determined by the local government. *Page 18, line 26 – page 19, line 3.*
  - If a court finds that a seller or a third-party buyer that has entered into an agreement with a local government for the waiver of the local government's right of first refusal has materially violated the law with respect to the provisions of the right of first refusal, the court must award a statutory penalty of not less than \$50,000 or an amount equal to 30% of the purchase or listing price of the property, whichever amount is greater. *Page 20, line 23 – page 21, 3.*
  - The sponsors expect the latter penalty would deter third parties from willfully breaking the law and simply paying the statutory penalty as a cost of business for two reasons: (1) With the “whichever is greater” is language, the statutory penalty should be a meaningful amount, and (2) The bill allows the parties to seek injunctive relief, such as court orders compelling compliance under the threat of contempt, and parties are also allowed to seek actual damages above and beyond the statutory penalty.