

Oregon Housing and Community Services

Publicly Supported Housing Contract Preservation Instruction Guide

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Affordable Rental Housing Division

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Introduction

Owners of affordable rental housing properties in Oregon are required by law to fulfill certain obligations before a property can be released from the affordability provisions associated with its investment restrictions. These obligations arise whenever the affordability provisions covering a rental property are set to expire, whether the expiration is a result of natural maturity or early withdrawal to the extent permitted by applicable contract. Failure to comply with the Oregon notice requirements could result in a mandatory extension of the affordability period. This instruction guide explains the steps owners must take before withdrawing a property from publicly supported housing programs. Oregon law requires specific notice periods and procedures to protect tenants and to give qualified purchasers an opportunity to preserve affordable housing, which is collectively referred to as Publicly Supported Housing Contract Preservation (PuSH-CP).

PuSH-CP statutory requirements are found in Oregon Revised Statutes (ORS) 456.250 through 456.267; and 456.559 (1)(b). Relevant administrative rules are found in Oregon Administrative Rules (OAR) 813-115. This guidance summarizes the requirements and process, but owners are advised to carefully review the applicable statutes and administrative rules to understand the obligations involved.

Program goals

The primary goals of PuSH-CP are to preserve affordable housing for Oregon families, provide adequate notice to tenants facing potential displacement, provide notice to new and prospective tenants, give qualified purchasers the opportunity to purchase properties and maintain affordability, and ensure property owners understand their legal obligations.

Applicability

PuSH-CP applies to owners of “publicly supported housing” which means:

- The property has 5 or more multifamily rental units, AND
- The property receives government assistance that includes affordability restrictions (income and or rent limits), such as:
 - HUD project-based rental assistance contracts other than Section 8 vouchers
 - USDA Rural Development Rental Assistance and Stand Alone Rental Assistance contracts
 - Oregon Housing and Community Services (OHCS) Department grants or loans
 - Other government assistance identified by OHCS rules

PuSH-CP does not apply for properties that **only** receive:

- Construction excise tax waiver
- System development charge waivers
- Fee waivers
- Property tax abatements
- Tenant-based Housing Choice Vouchers or USDA Rural Development vouchers
- Project-based Section 8 vouchers administered by a housing authority

PuSH-CP also does not apply for HUD Section 8(bb) Transfers:

- HUD allows owners with Section 8 Project-Based Assistance Contracts to pursue transfer of budget authority to another property (or properties) due to an “opt-out” of the renewal of the contract. Successful transfer of budget authority is deemed a preservation action and not a withdrawal of units from the inventory of publicly supported housing.

Owners may wish to consult with an attorney to determine whether their property is subject to PuSH-CP regulations. Please check the [Affordable Housing 10-year Expiration Forecast](#) to see if your property has an upcoming affordability expiration date.

Notice requirements

Summary

Owners who intend to withdraw from publicly supported housing programs upon expiration of the affordability restrictions must provide notice to state and local governments as well as to tenants, current and prospective, at specific intervals prior to the end of any affordability periods. This includes owners who wish to let a property’s affordability restrictions expire as well as those withdrawing early to the extent permitted by applicable contract.

Requirement	Timeline
First notice to government	36-30 months before expiration*
Second notice to government	30-24 months before expiration
Notice to tenants**	24-20 months before expiration***

*At least 30 months before expiration date, but no more than 36 months before

**Applicable only to properties that have an OHCS affordability restriction contract.

***For properties with an affordability expiration date on or after July 1, 2028, must provide tenant notice at least 30 months before expiration date, but no more than 36 months before.

Specific requirements

1. First notice to government

Owners must provide OHCS and all applicable local governments (city, county, public corporation (housing authority), and/or metropolitan service district (Metro) with a [Notice of the Expiration of Affordability Restrictions](#) specifying the owner's intended action at expiration, at least 30 months before expiration date but no more than 36 months before.

Who to notify	When	How	What to include
OHCS Director c/o PuSH-CP Program Manager, and applicable local governments	At least 30 months before expiration date, but no more than 36 months before	To OHCS: via Smartsheet form or via certified email or registered or certified mail. To local governments: Certified email or registered or certified mail.	Whether you plan to withdraw from publicly supported housing, convert to non-participating use, or are negotiating contract extensions with government agencies and intend to sell, as applicable

2. Second notice to government

Owners must provide OHCS and local governments with a second [Notice of the Expiration of Affordability Restrictions](#) specifying the owner's intended action at expiration, at least 24 months before expiration date, but no more than 30 months before.

The second notice provides state and local governments an opportunity to offer to purchase the property to preserve affordability (see Right of First Refusal section below).

Who to notify	When	How	What to include
OHCS Director c/o PuSH-CP Program Manager, and applicable local governments	At least 24 months before expiration date, but no more than 30 months before	To OHCS: via Smartsheet form or via certified email or registered or certified mail. To local governments: Certified email or registered or certified mail.	Whether you plan to withdraw from publicly supported housing, convert to non-participating use, or are negotiating contract extensions with government agencies and intend to sell, as applicable

3. Notice to tenants

Owners of publicly supported housing properties in which OHCS is a party to the contract must also provide notice to tenants about the expiration of affordability restrictions. This requirement includes providing notice to current tenants as well as to any new and prospective tenants (before fees are collected or lease is signed) prior to expiration of the contract.

Who to notify	When	How	What to include
OHCS Director c/o PuSH-CP Program Manager, all current tenants at their mailing address, and post in common area of property	At least 20 months before expiration date, but no more than 24 months before <i>*For properties with an affordability expiration date on or after July 1, 2028, owner must provide tenant notice at least 30 months before expiration date, but no more than 36 months before.</i>	Print using OHCS template To OHCS Director via first class mail To current tenants: via first class mail at their mailing address Post in common area of property	Your intent to withdraw from publicly supported housing including an explanation and expiration date of safe harbor protections, and tenant resources information
New and prospective tenants	Before charging screening fees or signing leases	Provide a printed copy or email using OHCS template	Same information as above

Notice templates

OHCS requires owners to use agency-approved templates for each notice. Those templates are available on the [OHCS PuSH-CP Program web page](#).

Reminders and waivers

OHCS is not responsible for reminding owners about deadlines for notices. OHCS may, at its sole discretion, waive the Notice to Government requirements for property owners that are local governments or housing authorities.

Rights of First Refusal

Overview

OHCS and local governments are “Qualified Purchasers” under the opportunity to offer to purchase process. “Local government” means a city, county, public corporation (housing authority) or metropolitan service district. If the local government elects not to pursue the opportunity to offer to purchase, OHCS will select a designee to act on behalf of OHCS to preserve the property. The designee selection process is described below. Owners are not required to accept offers from qualified purchasers, except under the right of first refusal provision (detailed below).

Summary of process

Local governments, OHCS, or OHCS designees (“Qualified Purchasers”) have the ‘right of first refusal’ to buy a property to keep it affordable. Starting when a property provides its first government notice, a qualified purchaser may:

- Make purchase offers (up to 60 days before expiration)
- Record a “right of first refusal” on the property title (up to the expiration date)
- Match any third-party offers received

Qualified purchasers may request relevant documents from property owners after the first government notice; these documents are confidential and must be provided by the owner within 30 days of the request.

Owners who receive an offer from a third party other than a qualified purchaser and intend to accept that offer must:

- Send notice by registered mail with return receipt to any qualified purchaser who recorded a right of first refusal
- Include a copy of the third-party offer or complete terms

Qualified purchasers then have 45 days to:

- Submit a matching offer
- Commit to preserving affordability

Owners must accept the first matching offer from a qualified purchaser unless they no longer intend to sell. A matching offer has the same terms as the third-party offer, except it can set the earnest money deposit at 2% of sales price (up to \$250,000), have refundable earnest money for 90 days, schedule closing at least 240 days after execution of the Purchase and Sale Agreement, and include a commitment to maintain affordability. The owner may agree to waive other terms as well.

OHCS designee process

A key aspect of PuSH-CP is OHCS's authority to make an offer to purchase the property through an approved entity known as an OHCS designee. OHCS may appoint a designee to act as a qualified purchaser on behalf of OHCS. Potential designees may contact OHCS about project-specific preservation opportunities through new ownership by submitting the [PuSH Designee Interest Form](#). Once approved by OHCS, a designee must:

- Agree to preserve the affordability of the participating property; and
- Assume all rights and responsibilities attributable to OHCS as a prospective purchaser of the participating property.

Successful appointment as a designee is not associated with OHCS funding opportunities or approvals. Designees that become owners are required to enter into an affordability restriction contract with OHCS, even if OHCS does not provide new funding. Local government agencies, including public housing authorities, do not need to apply to be an OHCS designee as they are already considered a qualified purchaser in PuSH-CP.

Safe Harbor after the contract ends

If affordability restrictions expire, owners have continuing obligations to existing tenants for three (3) years, including rent increase restrictions and eviction restrictions.

Rent increase restrictions for existing tenants:

- Must follow [OHCS Rent Increase Policy](#)
- Must follow ORS 90.323 (Oregon's rent increase law)
- May not increase rent more than once in a calendar year

Eviction restrictions:

- Tenancy cannot be terminated via no-cause eviction under ORS 90.427(3)(b), -(4)(b), or -(5)

These restrictions do not apply to:

- Tenants with Housing Choice Vouchers
- New tenants who move in after the expiration date
- For-cause evictions

Noncompliance actions

Owners of publicly supported housing must provide notice to OHCS and tenants as outlined in this instruction guide. Owners will receive a letter of noncompliance when they have missed a notice deadline and will be given a 10 day opportunity to cure. However, OHCS's delay or failure to provide a letter of noncompliance does not excuse an owner from timely compliance with PuSH-CP. If a property owner is late with notices, PuSH-CP prescribes the consequences listed below.

Extension of restrictions

- **Late government notice(s):** The expiration date automatically extends to the later of 30 months after first notice received or 24 months after second notice received.
- **Late tenant notices:** The expiration date extends to 20 months after proper tenant notice is given.

If proper and timely notice is not provided, OHCS has the authority to record in the real property records of the county in which the property is located, without the consent of the owner, a notice extending affordability restrictions.

OHCS will record an extension of affordability restrictions upon receiving the late notice, based on the automatic extensions described above. If no notices are received, OHCS will record the maximum allowed (up to 30 months) affordability restriction no less than 60 days before the property's affordability expires.

Civil penalties

OHCS reserves the right to fine owners up to \$5,000 for violations of Safe Harbor, including noncompliance with rent increase restrictions or eviction restrictions.

Anyone harmed by noncompliance can sue for:

- Actual damages
- Punitive damages (decided by court/jury)
- Injunctive relief
- Attorney fees and costs (if won)

Property liens

Unpaid civil penalties become liens on a property 90 days after the penalty order becomes final.

Affordable Housing 10-Year Expiration Forecast

The [Affordable Housing 10-Year Expiration Forecast](#) lists expiration dates of affordability restrictions coming up in the next ten years. It includes:

- The number of affordable units at each property
- The type and source of rental assistance provided (e.g., Section 8, LIHTC, etc.)
- The income eligibility requirements for tenants
- The status of preservation efforts, if any, to keep the property affordable

Oregon Affordable Housing Inventory

OHCS is required to maintain a database of properties and their affordability expiration dates called the [Oregon Affordable Housing Inventory \(OAHI\)](#). The information in this inventory comes from the following agencies and organizations: OHCS, HUD, USDA, Metro, all 20 of Oregon's Housing Authorities, and many county and city governments. OHCS cannot guarantee errors do not exist in this inventory. The OAHI is meant to be a comprehensive inventory of all affordable rental housing with income or rent restrictions in the state.

Additional information about PuSH processes, timelines, required notices and forms are available on the OHCS PuSH-CP web page at <https://www.oregon.gov/ohcs/compliance-monitoring/Pages/push.aspx>