

Colorado's Right of First Refusal (ROFR) Law

Understanding Intent & Implementation

In 2024, the Colorado Legislature passed, and Governor Polis signed into law, House Bill 24-1175.ⁱ The bill established two programs to facilitate the preservation of existing affordable housing: a right of first refusal (ROFR) and right of first offer (ROFO) that local governments interested in maintaining long-term affordability can exercise to acquire affordable multifamily properties and guarantee affordability for residents and communities for decades to come. This brief exclusively details ROFR.

Colorado's ROFR is an opportunity for interested local officials to hold on to affordability already in their communities while also not stymying investment in or development of new affordable housing, or the housing market writ large. ROFR seeks to extend the affordability of multifamily rental properties beyond the expiration of existing formal affordability covenants (or restrictions).

Legislative sponsors and proponents of this effort recognized the critical importance of preserving Colorado's existing affordable housing to alleviating the state's affordability crisis, as new development alone simply cannot meet the demand for affordable homes — particularly for lower income people.ⁱⁱ Moreover, preserving existing affordability and keeping residents in their homes and communities is essential to mitigating widespread displacement. And straightforward reporting requirements stand to enhance a statewide understanding of the affordable housing landscape and what is happening to those properties.



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What properties are subject to the new ROFR law?

Colorado's ROFR applies to multifamily rental properties with five units or more that meet the following conditions (1) previously received funding to support the creation, preservation or rehabilitation of affordable housing; and (2) as of July 1, 2024 are subject to a restricted use covenant or similar recorded agreement entered into as a condition of receiving that funding.

- ✓ **Such funding includes:** loans, grants, equity, bonds or tax credits to support the production, preservation, or rehabilitation of affordable housing and that conditions funding support on the developer/owner restricting rents to defined affordability levels. Such funding can come from any source and is not limited to public sources of funds.
- ✗ **Such funding does not include:** tenant-based vouchers, grants or donations for energy upgrades, physical improvements such as new furniture, appliances, or beautification; primarily market-rate properties with units required to be affordable solely under a local inclusionary housing ordinance.

If the property received funding with affordability conditions in the past, but those restrictions have all since expired and no affordability covenants remain in place as of July 1, 2024, the property is not subject to ROFR.¹

How much flexibility does a local government have within the ROFR structure?

Local governments choose whether they want to exercise their right of first refusal or assign it to a willing public partner and can work with a third party to manage the property if acquired. They can also establish local laws that better enable them to preserve existing affordable housing.

Local governments can assign their right of first refusal to a local or regional housing authority in the property's jurisdiction or to Colorado Housing and Finance Authority (CHFA), so long as the assignee or CHFA agrees. A local authority or CHFA can serve as the ROFR assignee for a single property transaction or for all opportunities in that local jurisdiction, provided this blanket assignment is conspicuously posted on the local government's public website.²

Conversely, a local government can choose to waive its ROFR for individual opportunities (for instance if adequate funding is not available at that time). A local government can provide a blanket waiver meaning that they never intend to exercise this right, provided this decision is and remains conspicuously posted on its public website. The local government must also send this notice of a blanket waiver to CHFA.

BLANKET ASSIGNMENT

A local government's blanket assignment of ROFR or blanket waiver of this right must remain in place for at least three months and note the date of its expiration, if any. After those three months, a local government may change course and rescind either a blanket assignment or waiver of ROFR.

1. The law's provision stating that properties with affordability restrictions that expired before June 1, 2024 is simply meant to further clarify that ROFR is not intended to apply to properties whose covenants expired before the law went into effect.

2. Throughout the remainder of this brief, rights and responsibilities of a "local government" in the ROFR process can also be read as those of a local government's ROFR assignee.

If a local government successfully acquires an existing affordable property through the ROFR process, the government owner may contract with a nonprofit, private, quasi-governmental, or other governmental entity to co-finance, lease, or manage the property as long as the local government retains ownership of the property either directly or through a special purpose authority or affiliate.

LOCAL ROFR VS. STATE ROFR

If a local government has enacted its own ROFR with terms that are more favorable to the government's ability to acquire affordable properties and preserve affordability long-term, then **the local government is exempt from the requirements of the state ROFR**. Put another way, future local or state policies may consider the current state ROFR law a floor from which to craft requirements and timelines that may better serve the larger purpose of preserving long-term affordability of rental units.

When a local government does not have to adhere to the state ROFR law, **that local government's voluntary compliance with the state's notice requirements, including enacting its own notice requirements from property owners/sellers to CHFA**, would help advance a statewide understanding of existing affordability and trends.

How will ROFR clarify trends in affordable multifamily housing in Colorado?

Owners of existing affordable properties must provide two straightforward notices to their local government(s) and to CHFA in advance of the final expiration of affordability covenants.

Owners of properties subject to ROFR must **notice their local government(s) and CHFA when the property's final affordability covenant is two years out from expiring**. This notice only needs to include the final date of the covenant's expiration and the owner's contact information.

Then, **six months ahead of the last applicable affordability covenant's expiration, the owner must inform applicable local government(s) and CHFA** whether they intend to recapitalize and maintain the property with equal or greater affordability; maintain the property without any affordability requirements or restrictions; or sell.

- These notices are intended to facilitate early communication between property owners and local governments, and provide interested local governments ample time to contemplate a ROFR acquisition and successfully maintain affordability in their community.
- These notices will also provide a greater understanding of the statewide landscape of affordable multifamily rental properties and where they exist on the affordability spectrum, ultimately better enabling affordable preservation statewide.

What are the timelines and requirements of the ROFR process?

A local government's opportunity to exercise its ROFR is triggered when the existing affordable property's owner takes decisive action to sell the property.

Triggering events include:

- ✓ Listing the property for sale;
- ✓ Signing a letter of intent, option to sell or buy, or other conditional written agreement with a potential buyer to sell or transfer the property;³ and
- ✓ Conditionally accepting an offer for the property's sale or transfer.

If after the affordability restrictions expire, the owner materially departs from a representation made in the 6-month notice in a manner that indicates an intent to sell the property, that property would then be subject to ROFR.

EXCEPTIONS

The law details exceptions when ROFR does not apply. Examples include: demonstrably being in the process of recapitalizing for long-term affordability; sale/transfer to a government entity, housing authority, or CHFA; a third-party buyer committing to equal or greater terms required by ROFR; sale or transfer within a closely held partnership or LLC; the property being foreclosed upon; and a nonprofit partner in a LIHTC partnership exercising the ROFR afforded them under federal IRS code. *Refer to CRS 29-4-1205 for a full list.*


Notably, if recapitalization was anticipated but does not go through, the property will be subject to ROFR.



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3. The letter of intent, option to sell or buy, or other conditional written agreement with a potential buyer to sell or transfer the property must include the estimated price, terms, and conditions of the proposed sale, even if they are subject to change.

To successfully exercise its ROFR and acquire an affordable property, a local government must adhere to defined timeframes and make an offer the owner is willing to accept.

 *Any of the timelines detailed here can be lengthened (or shortened), and any terms or conditions of a sale can be modified, if the seller and local government sign a written agreement to that effect. So, while there are strict timelines for exercising ROFR in state law, if the two parties have open communication and shared long-term affordability goals for the property, they can work through the process on their own terms.*

1. Following the first of any triggering event that occurs, **the seller has 14 calendar days to inform the local government** they intend to sell or transfer ownership. *See page 7 for detailed content of this notice.*
2. After receiving notice of a ROFR opportunity, **the local government has 14 calendar days to inform the seller** if the government intends to reserve or waive its right. Notices should be delivered by email and if an email address isn't available, by hand, USPS, or overnight delivery.

- This notice is nonbinding on the local government; providing notice of intent does not require the local government to ultimately make an offer or any other specific action.
- This notice must also be sent to CHFA. This is intended to centralize information regarding affordable housing preservation opportunities and challenges over time.
- That same notice must also be provided to a public housing authority or CHFA, if the government seeks to assign its right to them. That potential assignee can use the information to decide whether to serve in this role.

CERTIFICATE OF COMPLIANCE

If a government body **does not respond to the seller in those 14 days, its ROFR will be waived**, and the property owner can move ahead with any buyer. However, **in these 14 days, the local government must complete a certificate of compliance** within the property records of the county where the property is located.

- This certificate must include a legal description of the qualifying property and state that the seller complied with the notice requirements between seller and local government described above.
- In the future, this certificate can then be taken as proof of the owner's compliance with ROFR law for purposes of selling the property, obtaining title insurance, and any relevant uses by the seller or a third-party claiming future interest in the property.

3. After informing the seller and CHFA of its intent to exercise its ROFR, **the local government has 30 calendar days to make a matched offer on the property**. If the offer is not made in this timeframe or otherwise does not match what the property owner's terms in the initial notice following a triggering event, the ROFR is waived and the owner can move ahead with any buyer.

4. Once the seller receives an offer from the local government:

- If the seller accepts the offer, the two parties then have **60 calendar days to close on the property and finalize the sale.**
 - If an owner receives an **all-cash offer from a third-party buyer**, the local government must be able to close and finalize the sale of the property on the same timeline as that third-party buyer's offer.
- If the seller rejects the offer, the seller must **inform the local government why the offer was rejected and invite them to make one subsequent offer.** This notice must detail terms and conditions that would have to be included in an acceptable subsequent offer.

5. After receiving this rejection notice, the local government has **14 calendar days to make a subsequent offer** if they so choose.

- If the seller accepts this subsequent offer, the two parties have **60 calendar days to close and finalize the sale.**
- If the seller rejects the subsequent offer, they must again explain why, in writing. **A second rejection marks the end of the ROFR process** unless the asking price drops by more than 5% or any terms and conditions that the owner originally identified as non-negotiables or “must-haves” change. These events would once again trigger notice from the seller to the local government and a local government's ROFR.

The local government also has **14 calendar days from when the seller either accepts or rejects its offer to complete the certificate of compliance** described above, providing a legal description of the property and stating the seller abided by the legal requirements of the ROFR process up to that point for the local county clerk to maintain in property records.



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Colorado's law provides greater detail on what must be in the property owner's first notice to a local government following a triggering event, and responsibilities of both parties to begin and the ROFR process.

As explained above, following the first of any triggering event that occurs, **the owner has 14 calendar days to inform the local government they intend to sell or transfer ownership.** The required components for this notice should parallel information the owner would already have prepared and are intended to give a local government enough information to make an informed decision on whether to pursue the acquisition.

This information must at minimum include:

- ✓ General description of the property, with any details on file with the county assessor
- ✓ Owner's address and email
- ✓ Price, terms, and conditions of an offer the owner deems "acceptable" or for which the owner intends to sell the property
- ✓ Any specific terms or conditions that are non-negotiables for the owner and if not met would make them reject an offer
- ✓ A copy of any contingent purchase and sale agreement the seller has already entered into with a third-party buyer

The price, terms, and conditions provided must be applicable to any buyer, to protect against disadvantaging the local government or inhibiting the ROFR process.

1. Notices get delivered to the clerk of a local government's governing body and if applicable, to CHFA's identified contact, by email. If an email address isn't available, notices should be delivered by hand, USPS, or overnight delivery.
 - **All notices required to be provided to CHFA** per CRS 29-4-1202 and CRS 29-4-1203 may be emailed to the attention of CHFA's Preservation Officer at **notice@chfainfo.com**
2. After receiving this notice, a representative of the local government must **sign a nondisclosure agreement (NDA)** before information in that notice is shared with staff and/or any of its officers more broadly. Potential partners of the local government and assignees must also sign an NDA in order to receive this information. The local government, partners and any assignee may share the information with their financing partners and any advisors as long as they are covered under the NDA or similar contractual, legal or fiduciary obligation of confidentiality.
3. If the asking price goes down by 5% or more, or if any of the specific terms or conditions the seller deemed "non-negotiable" change, **the seller must inform the local government within 7 calendar days.**

The local government may then exercise its ROFR, either for the first time or by noticing the seller of intent to re-exercise the ROFR if a first offer by the local government under the original price and non-negotiable conditions was not accepted.

A local government (or its assignee) has successfully acquired a property through ROFR. Now what?

Colorado's ROFR law offers clarity on what "long-term affordability" means and specific rights for people living in that property.

The local government owner may contract with a nonprofit, private, quasi-governmental, or other governmental entity to co-finance, lease, or manage the property.

Once the local government closes on the property, the government has **7 calendar days to notify each resident by mail of the sale** and change of ownership, and to visibly post the notice in a common area.

- Resident notices must be provided in English, Spanish, and any other language known to be spoken by residents.
- They must also include contact information for a representative of the local government so that residents can ask questions and provide input to the new owner.

AFFORDABILITY REQUIREMENTS

The local government must maintain affordability that is, on average, at least equal to existing restrictions — if not providing deeper affordability to serve people living at lower incomes. **This equal or greater affordability must be maintained for at least 40 years.**

At a minimum, at least the same number of units must be leased and rent restricted to households at the same AMI levels, or lower, on average as compared to the property's average AMI at the time of acquisition.

- For instance, if a property had 100 units and 50 of the units are rent-restricted and reserved for tenants who earn 60% AMI or less, the local government could, at a minimum, choose and maintain that same affordability.⁴
- It could also choose a different affordability mix that achieves the same property-wide average affordability. For example, it could rent-restrict and reserve 25 units for tenants earning 40% AMI or less, and 25 units for tenants earning 80% AMI or less, averaging out to a property-wide affordability restriction of 60% AMI across half its units.
- The local government could also choose to lease all 100 units only to households at 60% AMI or below; half of all units to households at 80% AMI and half for those at 40% AMI and below; 25 units at 140% AMI and 75 units at 30% AMI,; or any other grouping that averages out to the 60% AMI baseline or lower.⁵

4. The incomes and rental amounts associated with AMIs are adjusted each year in accordance with the annually recalibrated limits set by the U.S. Department of Housing and Urban Development and further detailed by statewide organizations including CHFA and the Division of Housing.

5. Affordability levels and restrictions on residents' income levels must also comply with any requirements of funding sources utilized to fund the property's acquisition.

No matter their income, residents living in the property when its ownership changes to the local government are entitled to remain in their homes until at least the end of their lease agreement.

At the end of a pre-existing lease term, a tenant may only have their lease terminated or not renewed if their income or rent is too high to enable the local government to meet “equal or greater” affordability requirements of the ROFR law and of any funding sources utilized to acquire the building. In order for the tenant to remain in the unit, they must income qualify for the new affordability restrictions.

ROFR is intended to help keep particularly lower-income people in their homes and communities. If a local government maintains the same levels of affordability in a ROFR property, there would be no reason for any current residents to not have their leases renewed solely because of ROFR.⁶

- It is possible that residents with higher incomes will have to move if the building becomes more deeply affordable. In these instances, the resident has the right to stay through the end of their current lease term, and the hope is that a local government seeking to mitigate displacement through ROFR would inform residents of those changes and provide sufficient time to find and move into a new home.
- It is also likely that if the property has become funded through public financing or becomes owned by a public housing authority, that relocation assistance and other resident considerations may be available or required.

Will Colorado’s ROFR law exist in perpetuity?

No. As enacted, ROFR will sunset after five years, on December 31, 2029.

Starting January 1, 2030, owners of properties subject to ROFR are no longer required to provide notices to local governments or CHFA, and a local government cannot newly exercise its ROFR.

However, if the ROFR process has begun but not yet ended as of December 31, 2029, it is to continue in compliance with the process outlined in state law through its conclusion, whatever that may be. This includes instances when a property’s owner has provided a six-month notice of impending affordability expirations and intent or notice of intent to sell following a triggering event, as well as a local government or assignee indicating intent to exercise ROFR, regardless of where parties are in the process.⁷

6. All other federal, state, and local landlord-renter laws apply, including all relevant fair housing laws.

7. The state legislature may revisit and amend the ROFR law in the next five years, including to re-assess this “sunset” provision.

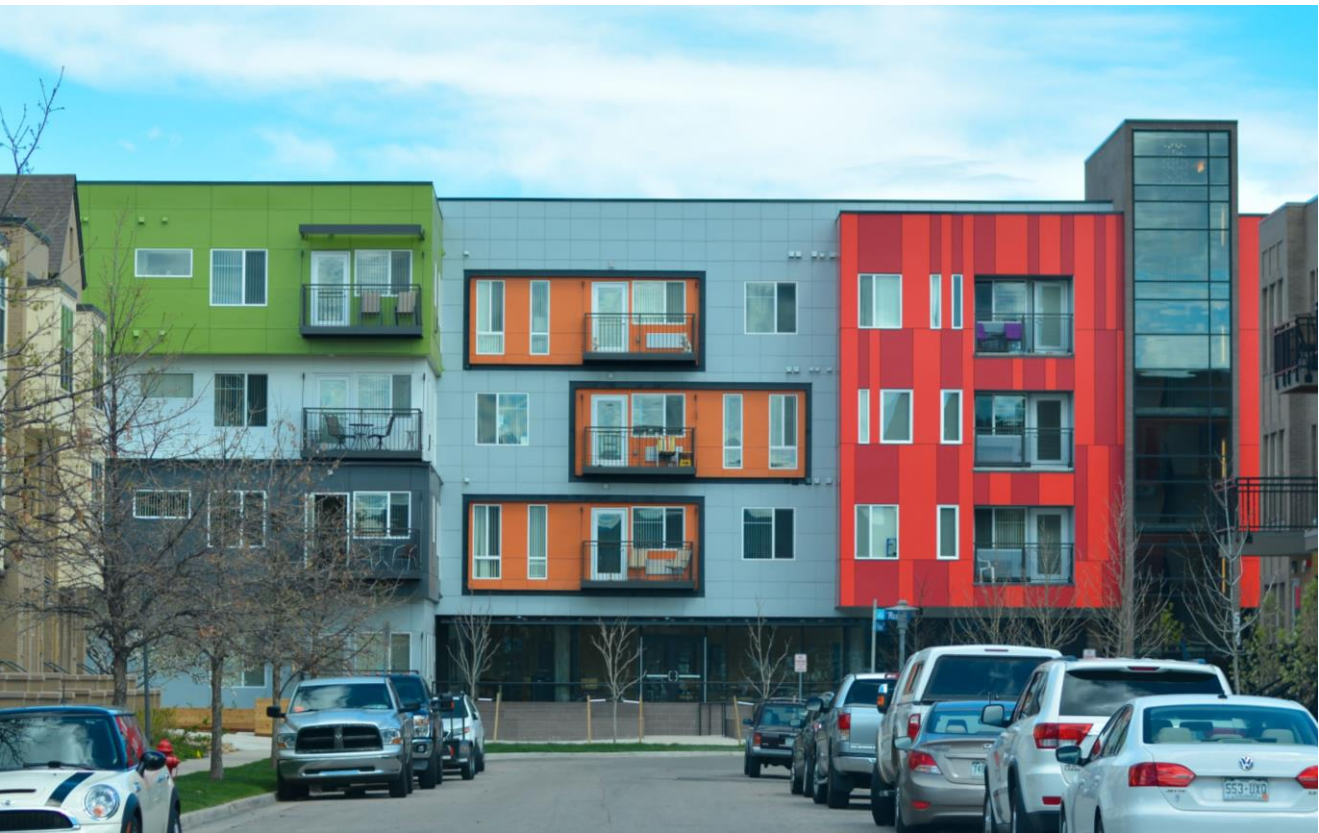


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Have unanswered questions, or ideas?

Colorado's statewide ROFR law is the first of its kind across the country, even as other states and local governments have or are working toward their own similar policies to preserve affordability.

This means implementation will be worked out collaboratively as stakeholders move through the process, with ongoing opportunities for clarification and improvement.

Please feel free to contact the following individuals and entities:

- **Representative Andrew Boesenecker**
HB24-1175 lead sponsor (HD 53)
andrew.boesenecker.house@coleg.gov
- **Kinsey Hasstedt**, Enterprise Community Partners
khasstedt@enterprisecommunity.org
- **Cathy Alderman**, Colorado Coalition for the Homeless
calderman@coloradocoalition.org

For information regarding CHFA Notice Requirements or assignments, please contact notices@chfainfo.com.

i. Local Governments Rights to Property for Affordable Housing, HB24-1175, 74th General Assembly (2024).
<https://leg.colorado.gov/bills/hb24-1175>

ii. Four Ways to Preserve Affordability While Increasing Colorado's Home Supply, Enterprise Community Partners (2024).
<https://www.enterprisecommunity.org/blog/four-ways-preserve-affordability-while-increasing-colorados-home-supply>

Colorado's Right Of First Refusal (ROFR)

PROCESS & TIMELINE

○ Process continues ● Process ends

OWNER/SELLER

Issue Notice of ROFR Opportunity

Following the first of any triggering event that occurs, the seller has 14 calendar days to inform the local government they intend to sell or transfer ownership.



LOCAL GOVERNMENT OR ASSIGNEE

Send Notice of Intent to Exercise ROFR

After receiving notice of a ROFR opportunity, the local government has 14 calendar days to inform the seller if the government intends to reserve or waive its right.



LOCAL GOVERNMENT OR ASSIGNEE

Make a Matched Offer

After informing the seller and CHFA of its intent to exercise its ROFR, the local government has 30 calendar days to make a matched offer on the property.



If the local government does not respond or waives its ROFR in these 14 days, the process ends and the owner can move ahead with any buyer.

If the local government does not make a matched offer in these 30 days, the process ends and the owner can move ahead with any buyer.

OWNER/SELLER

Accept Offer, Close & Finalize the Sale — OR — Reject Initial Offer

If the seller accepts the offer, the two parties then have 60 calendar days to close on the property and finalize the sale.

If the seller rejects the offer, the seller must inform the local government why the offer was rejected and invite them to make one subsequent offer.



LOCAL GOVERNMENT OR ASSIGNEE

Make Subsequent Offer

After receiving this rejection notice, the local government has 14 calendar days to make a subsequent offer if they so choose.

If the seller rejects this subsequent offer with legal rationale, the process ends and the owner can move ahead with any buyer.

Triggering Events

Events that would **initially trigger ROFR** include:

- Listing the property for sale;
- Signing a letter of intent, option to sell or buy, or other conditional written agreement; and
- Conditionally accepting an offer for the property's sale or transfer

Events that would **re-trigger ROFR** are if the initially listed price goes down by more than 5% or if the seller decides to change terms and conditions they had initially said were non-negotiable.



Any of these timelines can be lengthened (or shortened), and any terms or conditions of a sale can be modified, if the seller and local government sign a written agreement to that effect.

Certificate of Compliance

No matter how the ROFR process ends, once the local government receives notice of a ROFR opportunity, the local must at some point complete a certificate of compliance that provides a legal description of the property and state the seller adhered to the legal requirements of the ROFR process. The local county clerk is to maintain this certificate in the property's records.

The local must file the certificate within 14 calendar days of:

- Receiving notice of a ROFR opportunity, if the local will not be pursuing its ROFR; or
- The final acceptance or rejection of a matched offer.