



ROFO / ROFR Multi-family - Mixed Use Properties

This summary is provided for informational purposes only, and should not be considered legal advice - consult an attorney for questions on how this will work for specific scenarios. To keep this summary manageable, not all details are included. Please consult the [Colorado Assembly HB24-1175 page](#) for details. This bill is was amended multiple times throughout the session; efforts were made to preserve the timeline for 1031 exchanges.

Right of First Refusal (ROFR) / Right of First Offer (ROFO)

This legislation will give local governments right of first refusal on existing affordable properties and right of first offer on the sale of qualifying market rate properties before the properties can be sold on the private market. ROFO and ROFR process has as sunset date of Dec. 31, 2029, meaning this process automatically terminates on that date.

What Is the Difference Between Right of First Offer and Right of First Refusal? ROFR is when seller allows the local government the right to match an offer to purchase property that the seller would like to accept. ROFO is when a property owner decides to sell, the property owner must notify the local government of intent to sell and allow local government to make an offer.

ROFR

Qualifying Properties: applies to existing affordable housing multifamily and mixed used properties

- Has to be existing affordable housing that is subject to one or more restricted use covenants or similar recorded agreements to ensure the continuation of affordable housing on or after June 1, 2024
- Has to be 5 or more units

Process: at any point of the sale if the purchase price decreases by 5% or more or there is a material change in the terms and conditions the owner has grounds to reject offer and must restart ROFR process and give local governments another opportunity negotiate. The local government has to respond to indicate its intent of ROFR and then has 30 days to make a matched offer. If local government fails to respond, the owner may proceed with the sale to another buyer.

For a property that qualifies under ROFR, the owner has to send local government notification when –

- Two years before the expiration of the property’s final affordability restriction
- 6 months before the expiration of the property final affordability restriction
- Within 14-days of when the owner either:
 - o Departs from any representation made in the 6 month notice
 - o Signs letter of intent or conditional written agreement with a potential buyer that contains estimated price, terms and conditions of the proposed sale or transfer
 - o List property for sale
 - o Conditionally accepts an offer for the sale or transfer of the property

ROFO

Qualifying Properties: applies to the sale of any multifamily and mixed use

- Is 30 or more years old at the time the owner lists the property for sale
- Has between 15 and 100 units
- Has to be used by local government as long term affordable housing

Process:

- Seller must give notice to local government before entering into a listing agreement with broker or listing property on MLS.
- If local governments makes an offer on the property, the seller has 14 days to respond to either accept or reject. If seller doesn’t provide notice within 14 days, the offer is deemed rejected.
- If seller accepts offer the local government and seller have 30 days to execute a contract and the contract must request transaction to close within 60 days.

There are exceptions to this bill like if the property is made to a trust, part of a foreclosure, made to any political subdivision of the state, CHFA, or public housing authority and more.

To clarify on HOA ROFR’s and Government ROFR’s -

Under the exemptions of ROFO/ ROFR on page 24 of the signed act, the bill states -

“(1) THIS PART 12 DOES NOT APPLY TO ANY SALE, TRANSFER, OR CONVEYANCE OF AN APPLICABLE QUALIFYING PROPERTY BY A RESIDENTIAL SELLER:”

(e) IF, ON OR AFTER THE EFFECTIVE DATE OF THIS PART 12, THE APPLICABLE QUALIFYING PROPERTY HAS A PREEXISTING AGREEMENT THAT BESTOWS A RIGHT OF FIRST REFUSAL, RIGHT OF FIRST OFFER, OR OTHER CONTINGENT PROPERTY RIGHT REGARDING THE APPLICABLE QUALIFYING PROPERTY TO A THIRD PARTY; EXCEPT THAT, UPON EXPIRATION OF THE AGREEMENT, THE PROVISIONS OF THIS PART 12 APPLY TO ANY SALE, TRANSFER, OR CONVEYANCE OF THE APPLICABLE QUALIFYING PROPERTY BY THE RESIDENTIAL SELLER;”

Once this bill goes into effect, if there is a preexisting ROFO/ROFR agreement, the property should be exempt from state’s ROFO/ROFR bill until that agreement is expired. There are more exemptions that start on page 24 and end on 26.