65863.13. (a) An owner shall not be required to provide a notice as required by Section 65863.10 or 65863.11 if all of the following conditions are contained in a regulatory agreement that has been or will be recorded against the property at the close of escrow of the sale of the property and the owner of the property complies with the requirements below during the escrow period:

(1) No low-income tenant whose rent was restricted and or subsidized and who resides in the development within 12 months of the date that the rent restrictions are, or subsidy is, scheduled to expire or terminate shall be involuntarily displaced on a permanent basis as a result of the action by the owner unless the tenant has breached the terms of the lease.

(2) The owner shall accept and fully utilize all renewals of project-based assistance under Section 8 of the United States Housing Act of 1937, if available, and if that assistance is at a level to maintain the project's fiscal viability. The property shall be deemed fiscally viable if the rents permitted under the terms of the assistance are not less than the regulated rent levels established pursuant to paragraph (7).

(3) The owner shall accept all enhanced Section 8 vouchers, if the tenants receive them, and all other Section 8 vouchers for future vacancies.

(4) The owner shall not terminate a tenancy of a low-income household at the end of a lease term without demonstrating a breach of the lease.

(5) The owner may, in selecting eligible applicants for admission, utilize criteria that permit consideration of the amount of income, as long as the owner adequately considers other factors relevant to an applicant's ability to pay rent.

(6) For assisted housing developments described in paragraph (3) of subdivision (a) of Section 65863.10, a new regulatory agreement, consistent with this section, is recorded that restricts the rents and incomes of the previously restricted units, except as provided in paragraph (7), (8), or (9), to an equal or greater level of affordability than previously required so that the units are affordable to households at the same or a lower percentage of area median income.

(7) For housing developments that have units with project-based rental assistance upon the effective date of prepayment and subsequently become unassisted by any form of rental assistance, rents shall not exceed 30 percent of 60 percent of the area median income. If any form of rental assistance is or becomes available, the owner shall apply for and accept, if awarded, the rental assistance. Rent and occupancy levels shall then be set in accordance with federal regulations for the rental assistance program.
(8) For units that do not have project-based rental assistance upon the effective date of prepayment of a federally insured, federally held, or formerly federally insured or held mortgage and subsequently remain unassisted or become unassisted by any form of rental assistance, rents shall not exceed the greater of (i) 30 percent of 50 percent of the area median income, or (ii) for projects insured under Section 241(f) of the National Housing Act, the regulated rents, expressed as a percentage of area median income. If any form of rental assistance is or becomes available, the owner shall apply for and accept, if awarded, the rental assistance. Rent and occupancy levels shall then be set in accordance with federal regulations governing the rental assistance program.

(9) If, upon the recordation of the new regulatory agreement, any unit governed by regulatory agreement is occupied by a household whose income exceeds the applicable limit, the rent for that household shall not exceed 30 percent of that household’s adjusted income, provided that household’s rent shall not be increased by more than 10 percent annually.

(b) As used in this section, “regulatory agreement” means an agreement with a governmental agency for the purposes of any governmental program, which agreement applies to the development that would be subject to the notice requirement in Section 65863.10 and which obligates the owner and any successors in interest to maintain the affordability of the assisted housing development for households of very low, low, or moderate income for the greater of the term of the existing federal, state, or local government assistance specified in subdivision (a) of Section 65863.10 or 30 years.

(c) Section 65863.11 shall not apply to any development for which the owner is exempt from the notice requirements of Section 65863.10 pursuant to this section.

(Amended by Stats. 2010, Ch. 308, Sec. 3. (SB 454) Effective January 1, 2011.)