



June 06, 2023

The Honorable Colorado State House of Representatives  
The 74th General Assembly  
First Regular Session  
State Capitol  
200 E. Colfax Ave.  
Denver, CO 80203

Dear Honorable Members of the Colorado State House of Representatives:

Today, I vetoed House Bill 23-1190, "Affordable Housing Right Of First Refusal" at 6:00 pm.

House Bill 23-1190 (HB 23-1190) created a right of first refusal for a local government to match an acceptable offer for the sale of a residential or mixed-use multifamily property with an economically substantially identical offer. The right to the purchase of the property by the local government is subject to the local government's commitment to using the property as long-term affordable housing.

I appreciate the sponsors' work to provide a tool to preserve naturally occurring, long term affordable housing in our State. Of course we should recognize that the type of purchase by a public entity contemplated in the bill can already occur now on the open market. While I support innovative approaches to our housing crisis, this tool in its current form should not be mandatory and could have larger and unanticipated impacts on the housing market and future real estate transactions in Colorado that increase housing costs for Coloradans.

I commend the sponsors for their work to alleviate concerns throughout the legislative process. I am deeply disappointed that some stakeholders chose not to engage with the General Assembly and instead only brought their concerns to me after the end of the legislative session. However, I take my responsibility to review all bills incredibly seriously during my thirty day period to review bills and cannot ignore concerns that are brought to me that raise serious policy and technical issues, as there were on this bill. We would expect that stakeholders raise their concerns and engage in the legislative process moving forward.

While I understand adopted amendments provided security around the transfer of a title, the final version could create issues for Colorado banks and lenders in securing full title protection. It is extremely difficult to execute a loan without adequate title insurance, and I am deeply concerned that many lenders will account for this additional risk on multi-family properties with higher interest rates for borrowers and increased costs. That translates to higher costs for renters. Additionally, with this liability, it is probable that underwriters could add certain exceptions to the policy should they decide to insure this type of transaction, meaning a policy will not be issued unless the conditions are resolved prior to closing. This could cause significant time delays and confusion.

In addition to the concerns around liability and insurance, the legislation also contains ambiguous language that would be difficult to interpret and implement. The bill allows for local governments to purchase properties using *economically substantially identical* offers to what would be available through the private market; however, that term is not defined in the legislation. The bill does spell out what cannot be factored into making that determination (e.g. no bias toward type of financing method and time period for closing), however, the current ambiguity leaves covered sellers exposed to challenge and could chill real estate transactions for these covered properties. In addition to the economically substantial language, there is a lack of clarity of when a notice of sale is triggered. This uncertainty and ambiguity of the language could cause confusion between the local government and the seller, which could discourage investment at a time when the market cannot bear much risk.

I support local governments' ability to buy these properties on the open market and preserve low-cost housing opportunities, but am not supportive of a required right of refusal that adds costs and time to transactions. Additional incentives or policy levers such as a notice requirement or financing mechanisms for cities could be used to further encourage local governments, and I would be supportive of this kind of approach.

However, I remain wary of placing more pressure on the market that could raise housing costs with this approach, given the uncertainty and risk associated with the lending and insurance and its impact on real estate transactions outlined in this letter. I remain committed to working with the General Assembly, stakeholders, local governments, and other partners on innovative housing solutions that will not lead to increased risk or market manipulation, but rather increased collaboration, less regulation, and more opportunities to create and preserve affordable housing in our State.

For the above reasons, HB 23-1190 is disapproved and vetoed.

Sincerely,

A handwritten signature in blue ink that reads "Jared Polis". The signature is written in a cursive, flowing style.

Jared Polis  
Governor  
State of Colorado