



MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

Subject Tenant Displacement	Number 16-23
Originating Department Department of Housing and Community Affairs	Effective Date

Department of Housing and Community Affairs
Montgomery County Regulation on:

TENANT DISPLACEMENT

Issued by: County Executive
COMCOR 53A.00.01

Authority: Code Section 53A-4

Supersedes: Executive Regulation 2-02AM
Council Review Method (3) Under Code Section 2A-15

Register Vol. 40, No. 9

Comment Deadline: September 30, 2023

Effective Date: _____

Sunset Date: None

SUMMARY:

The regulation establishes the procedures for generally incorporating qualified entities into the right of first refusal schematic. Specifically, the regulation requires an owner of rental housing to send a copy of its first right of refusal offer to qualified entities, and provides qualified entities the right to request an inspection of the rental housing upon prior notice to the owner. The regulation further provides a qualified entity that receives an assignment under 53A-4(g) the right to exercise the right of first refusal, and requires an owner of rental housing to sell its property to such a qualified entity. The regulation also limits the deposit that the County, HOC, any tenant organization, or any qualified entity that receives an assignment under Section 53A-4(g) has to pay to the owner in order to accept the offer to 5% of the contract price.

ADDRESS:

Director, Department of Housing and Community Affairs
1401 Rockville Pike
4th Floor
Rockville, Maryland 20852

STAFF CONTACTS:

Scott Bruton, Director
scott.bruton@montgomerycountymd.gov



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COMCOR 53A.00.01 Tenant Displacement

53A.00.01.01 Tenant Relocation Payments

1.1 (a) Giving of notice.

- (1) An owner must give tenants 120 days' written notice before converting the rental housing in which the tenants live. The notice of the owner's intention to convert the rental housing must also include a notice to the tenants that relocation assistance is available.
 - (2) An owner must provide the Department of Housing and Community Affairs ("Department") a copy of the notice of conversion, a list of all of the tenants, the address of each tenant, and proof that the notice was given to each tenant.
- (b) Method of delivery. The notice will be considered to have been given to each tenant if mailed, first class, postage prepaid, to the tenant's last known address. When mailed, the owner must obtain a certificate of mailing from the United States Postal Service. For purposes of these notice requirements, the third day after the postmark date is the date of delivery. In addition, the notice must be posted in the public areas of the rental housing.
- (c) Termination of lease by tenant. After receiving a notice of conversion, a tenant may terminate a lease without penalty by giving the owner at least [thirty (30)] days' written notice.
- (d) The owner must pay relocation assistance equal to twice the monthly rent that the tenant was paying at the time of the notice. Payment must be made to the tenant not more than ten days after the owner receives a tenant's notice of termination under Section 1.1(c) if the tenant:
- (1) agrees to move out of the rental housing within 180 days after the tenant receives the notice of conversion; and
 - (2) is current with rent at the time that the relocation is due to the tenant.
- (e) Payment of this relocation assistance does not relieve the tenant of his/her obligation to make any rent payment that comes due for the period of time he/she continues to occupy the rental housing.



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1.2 Form of notice. The following language must be in a conspicuous location on the notice:

NOTICE – PURSUANT TO CHAPTER 53A OF THE MONTGOMERY COUNTY CODE AND EXECUTIVE REGULATIONS ENFORCING CHAPTER 53A, YOU ARE ELIGIBLE FOR RELOCATION ASSISTANCE FROM THE OWNER OF [{}INSERT NAME OF THE RENTAL HOUSING{}].

You are entitled to a payment by the owner in an amount equal to [2 (two)] months' rent if:

- (a) you agree to move out of your rental housing with 180 days after you receive this notice; and
- (b) you are current with rent at the time the relocation assistance is paid to you.

To receive the relocation assistance, give your landlord at least [thirty (30)] days' written notice that you intend to terminate your lease and provide the landlord with the date that you will leave your rental housing. The date that you vacate your rental housing must be no later than 180 days from your receipt of this notice.

The landlord must pay you the relocation assistance within ten [(10)] days of receiving your notice to terminate the lease if you are current on your rent. You must continue to pay rent to the landlord from the time you receive this notice until the time that you vacate the rental housing.

For more information, please refer to the Montgomery County regulations attached to this notice.

- 1.3 The owner must issue the payment directly to a tenant unless the owner notifies the Department in writing that the tenant is not current with rent. The notice to the Department must include the tenant's name, address and rental account information and a copy must also be forwarded to the tenant at the tenant's last known address.
- 1.4 Any dispute concerning the payment or non-payment of relocation assistance to a tenant must first be referred to the Department. After an investigation, the Department will determine the amount of the relocation payment that is to be paid. The Department's determination is binding on the tenant and the owner.

53A.00.01.02 Certificate of Tenant Organization



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- 2.1 A tenant organization may be certified by making a written request for certification to the Department. The request must be filed within 45 days of receipt of the owner's offer to sell under Section 53A-3 of the Code.
- 2.2 The certification request must be accompanied by a list of the names, addresses and signatures of the members of the tenant organization and a notarized affidavit from the President of the tenant organization stating that the tenants are a bona fide tenant organization representing a minimum of 30% of the occupied rental units. Only leaseholders may be members of the tenant organization. Occupants are not eligible. [DHCA] Department staff will verify the information provided in the tenant organization's certification request.
- 2.3 In the event that more than one tenant organization from the same rental housing applies for certification, the tenant organization with the highest percentage of representation of occupied rental units will be certified.

53A.00.01.03 Required Offer, Supporting Documents and Inspection Under Right of First Refusal

- 3.1 The owner's first right of refusal offer must include the following information/documentation:
 - (a) [A] a copy of any pending sales contract[.];
 - (b) [Site] site plan, if available[.];
 - (c) [Statement] statement of income and expenses for the three previous years of operation[.];
 - (d) [Current] current rental schedule by apartment showing date of last rent increase, names of current tenants, addresses and telephone numbers[.];
 - (e) [Expected] expected re-rent rates[.];
 - (f) [Latest] latest tax assessment and tax rate[.];
 - (g) [Names] names of mortgage holders, existing mortgage balances and terms, repayment terms, interest rates, loans for which rental units are used as collateral, liens, covenants, easements and any other documents recorded against the property[.];
 - (h) [Security] security deposit schedule and identification of escrow accounts[.]; and



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(i) [Any] any other agreements the owner may have concerning the rental housing that may materially affect a decision to purchase the rental housing.

3.2 The offer is not complete until all of the information and documentation identified in 3.1 is provided to the Department, Housing Opportunities Commission (HOC), and/or a tenant organization, with a copy sent to all qualified entities. The timelines to exercise the right of first refusal in 3.9 and 3.10 do not begin to run until all of the information and documentation is provided.

3.3 Information and documentation submitted by the owner pursuant to Section 3.1 will not be disclosed by the County, HOC, [or] a tenant organization, or any qualified entity except as required by law.

3.4 In addition, if requested and available, the owner must provide the following information and documentation within five [5] business days of a request for the information or documentation:

(a) [Any] any architectural, engineering, mechanical, structural plans or specifications[.];

(b) [Lead] lead certification[.];

(c) Phase I environmental survey[.];

(d) [Information] information concerning underground storage tanks[.];

(e) [Copies] copies of all service contracts such as property management and maintenance contracts[.]; and

(f) [Existing] existing warranties on any major component of the rental housing, such as the roof, heating, air conditioning and hot water heater.

3.5 Any request for information or documentation identified in Section 3.4 extends the time period provided in Section 3.8 by any amount of time beyond five [5] business days of receiving the request.

3.6 The County, HOC, [and] any tenant organization, and any qualified entity must pay the owner the reasonable cost of reproduction, or a reasonable and refundable deposit, for any requested information and documentation.

3.7 Within five [5] business days of receiving a request for inspection, an owner must provide access to the rental housing to the County, HOC, [or] a tenant organization, or any



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qualified entity. The owner may have a representative present at the time of the inspections.

- 3.8 Under the right of first refusal, the owner's offer to sell the property to the County, [and] HOC, and any qualified entity that receives an assignment under Section 53A-4(g) must remain open for 60 days after it is received by the County and HOC and must remain open for 90 days after it is received by the tenants. The offer must remain open one additional day for each day that documents requested under subsection 3.4 are received after the [5] five-day response time. If any material term or condition, including but not limited to, a change in price or financing in any pending contract is altered, or if an owner enters into another contract of sale subsequent to any initial or other offer from an owner to the County, HOC, or a tenant organization, the owner must make a new offer to the County, HOC, or a tenant organization, with a copy sent to all qualified entities, reflecting the new material terms and conditions. Each new offer must remain open for 60 days following receipt by the County, [and] HOC, and any qualified entity that receives an assignment under Section 53A-4(g), and for 90 days following receipt by the tenants.
- 3.9 The County, [and] HOC, and any qualified entity that receives an assignment under Section 53A-4(g) may exercise the right of first refusal by accepting the offer within 60 days of receiving the offer, plus any extension required by Section 3.8. In the event that either the County, [and/or] HOC, and/or any qualified entity that receives an assignment under Section 53A-4(g) exercise the right of first refusal at any time during the 60-day period, the right of first refusal provided to a tenant organization is no longer enforceable.
- 3.10 Upon approval of a majority of tenants in the occupied units of the rental housing, a tenant organization may exercise the right of first refusal by accepting the offer within 90 days of receiving the offer, plus any extension required by Section 3.8.
- 3.11 An acceptance of an offer under the right of first refusal must include:
- (a) substantially the same terms contained in the owner's offer, including any bona fide real estate commission payable to an independent broker; and
 - (i) notwithstanding the general requirement in subparagraph (a) above or any term of the owner's offer including the pending sale contract, the County, HOC, any tenant organization, or any qualified entity that receives an assignment under Section 53A-4(g) shall not be required to pay to the owner a deposit of more than 5% of the contract price to accept the offer and exercise its right of first refusal. The deposit is refundable in the event of a good faith failure of the County, HOC, any tenant organization, or any qualified entity to perform under the contract;



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(b) a 180-day financing contingency.

The time periods specified in [Section] Sections 3.9 and 3.10 are included in the 180-day period.

- 3.12 The purchase of the rental housing by the County, HOC₂ [or] a tenant organization₂ or any qualified entity that receives an assignment under Section 53A-4(g) must be completed within 180 days of receipt of the owner's offer, unless a longer time is agreed to by the owner and the County, HOC₂ [or] the tenant organization₂ or any qualified entity.
- 3.13 If the County, HOC₂ [or] a tenant organization₂ or any qualified entity that receives an assignment under Section 53A-4(g) accepts an owner's offer to purchase the rental housing in compliance with Chapter 53A and these regulations, the owner must sell the rental housing to the County, HOC₂ [or] the tenant organization₂ or any qualified entity.
- 3.14 Any sale of rental housing in violation of Chapter 53A and these regulations is void.
- 3.15 If the sale of rental housing is void, the owner must offer the rental housing to the County, HOC₂ or any tenant organization in compliance with Chapter 53A and these regulations and under the same terms offered to the original purchaser.

53A.00.01.04 Agreement Not to Convert

- 4.1 The County₂ in its sole discretion₂ may refuse to enter into an Agreement Not to Convert.
- 4.2 An Agreement Not to Convert may be approved or rejected by the Department after the Department considers, among other factors, the following:
- (a) physical condition of the rental housing, including any rehabilitation necessary to correct dangerous defects;
 - (b) tenants' ability to afford rent increases; and
 - (c) need to preserve low and moderate income rental housing in the County.
- 4.3 Within 30 days of a purchaser entering into an Agreement Not to Convert, the owner of the rental housing must provide the Department:
- (a) [A] a copy of each current lease[.]; and
 - (b) [A] a current rental schedule identifying each rental unit and showing the date and amount of the last rent increase, the name of the current tenant, and the tenant's telephone number.



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- 4.4 Tenants who, under Section 53A-5(a)(1)(C)(ii) of the Code, are eligible for rents to be capped at the voluntary rental guidelines in years [4] four and [5] five of the Agreement Not to Convert, must provide certain information and documentation to the Department. This documentation and information will include, but will not be limited to, personal income information. A tenant who fails to provide the information requested by the Department will forfeit his or her right to receive the protections afforded him or her in the Agreement Not to Convert and in Section 53A-5 of the Code.
- 4.5 Each year on the anniversary of the Agreement Not to Convert, the owner must submit a compliance report to the Department in a form acceptable to the Department containing at least the following information:
- (a) [Current] current rent roll[.];
 - (b) [Copy] copy of any lease by a new tenant within the last 12 months[.];
 - (c) [List] list of tenants vacating the rental housing within the last 12 months[.]; and
 - (d) [Any] any rent increases within the last 12 months.
- 4.6 If the owner petitions the Department for a rental increase above the limits set forth in the Agreement Not to Convert, the owner must provide all necessary and reasonable information requested by the Department in support of the owner's petition.
- 4.7 An owner must not increase the rent for any unit in the rental housing above the limits set forth in the Agreement Not to Convert without first obtaining prior written authorization from the Department.

53A.00.01.05 Severability

- 5.1 The provisions of this regulation are severable and if any provision, clause, sentence, section, word, or part is held illegal, unconstitutional, or inapplicable to any person or circumstance such as illegality, invalidity, unconstitutionality, or inapplicability will not affect or impair any of the remaining provisions, clauses, sentences, sections, words, or parts of this regulation or its application to other persons or circumstances.



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Approved:

Marc Elrich, County Executive

Date

APPROVED AS TO FORM AND LEGALITY
OFFICE OF THE COUNTY ATTORNEY

Neal Anker

Neal Anker
Associate County Attorney

8/7/2023
Date