

Emergency Bill No. 28-01
Concerning: Tenant Displacement -
Revisions
Revised: Dec. 4, 2001 Draft No. 7
Introduced: July 31, 2001
Enacted: December 4, 2001
Executive: December 13, 2001
Effective: January 15, 2002
Sunset Date: None
Ch. 32, Laws of Mont. Co. 2001

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Council President at the Request of the County Executive

AN EMERGENCY ACT to:

- (1) ~~[[extend the applicability of]]~~ apply the tenant displacement law to multi-family dwellings containing ~~[[a certain number of]]~~ fewer units;
- (2) clarify when the right of first refusal applies;
- (3) extend the time for a tenant organization to exercise the right of first refusal;
- (4) restrict a tenant organization's ability to exercise the right of first refusal under certain conditions;
- (5) change the relocation assistance and extend the notice ~~[[requirements provided]]~~ that an owner is required to provide to displaced tenants;
- (6) make conforming stylistic and technical changes; and
- (7) generally amend County law regarding tenant displacement.

By amending

Montgomery County Code
Chapter 53A, Tenant Displacement

Boldface	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

The County Council for Montgomery County, Maryland approves the following Act:

1 **Section 1. Chapter 53A is amended as follows:**

2 **53A-1. Legislative findings.**

3 The County Council finds that:

4 (a) there is a continuing, severe shortage of low and moderate-income
5 **rental housing** in the County;

6 [(b) the decline of **rental housing** units as a proportion of the County's total
7 housing stock is likely to continue;]

8 [(c)]

9 (b) **tenants** often experience significant hardship when they are displaced
10 by **conversion of rental housing**; and

11 [(d)]

12 (c) it is in the best interests of public health, safety, and welfare to regulate
13 the **conversion of rental housing** in the [county] County.

14 **53A-2. Definitions.**

15 (a) **Convert** and conversion mean[s]:

16 (1) (A) changing the use of **rental housing** to nonresidential use;

17 [(2)]

18 (B) [demolition of] demolishing at least one-third of the units
19 in rental housing in a 12-month period;

20 [(3)]

21 (C) displacing **tenants** from at least one-third of the occupied
22 units in **rental housing** [within any] in a 12-month period
23 by:

24 [(A)]

25 (i) raising rents; or

26 [(B)]

27 (ii) preparing to rehabilitate the **rental housing**; or

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[(4)]

(D) any other act [which has the effect of ceasing the operation] that ends the use of the property as **rental housing**.

(2) **Conversion** does not include establishing a condominium or cooperative.

(b) **Department** means the **Department of Housing and Community Affairs**.

[(b)]

(c) **HOC** means the Montgomery County Housing Opportunities Commission.

[(c)]

(d) **Owner** means a person holding **title to rental housing**.

[(d)]

(e) **Rental housing** means a multiple-family dwelling, or a group of multiple-family dwellings operated as one entity, with a total of at least [10] 4 rental units. **Rental housing** does not include a dwelling operated for a religious or charitable purpose.

[(e)]

(f) (1) **Sale, sell, or selling** mean[s]:

(A) transfer of **title to rental housing**;

[(2)]

(B) transfer in a 12-month period of [at least 51 percent of a partnership, limited partnership, corporation, or trust] a majority interest in the [that has **title to rental housing**] **owner**; or

[(3)]

55 (C) lease of **rental housing** for more than 7 years.
 56 (2) These terms do not include entering into a contract for the sale of
 57 rental housing that gives the County, HOC, or a tenant
 58 organization a right of first refusal under this Chapter.

59 [(f)]

60 (g) **Tenant** means [a person] an individual who lives in a **rental housing**
 61 unit with the **owner's** consent and is responsible for paying rent to the
 62 owner.

63 [(g)]

64 (h) **Tenant organization** means an association of **tenants of rental**
 65 **housing** that:

- 66 (1) represents **tenants** of [at least 5 units or 30 percent] ~~[[a majority]]~~
 67 at least ~~[[40]]~~ 30 percent of the occupied [rental] units [of] in the
 68 rental housing[, whichever is greater]; and
 69 (2) is certified by the **Department** [of Housing and Community
 70 Affairs under] according to Executive regulations [adopted by the
 71 County Executive under method (2)].

72 [(h)]

73 (i) **Title** means:

- 74 (1) a legal or equitable ownership interest in **rental housing**; or[;]
 75 (2) a legal, equitable, or beneficial interest in a partnership, limited
 76 partnership, corporation, [or] trust, or other person who is not an
 77 individual, that has a legal or equitable ownership interest in
 78 **rental housing**.

79 **53A-3. Notice of sale.**80 (a) **Notice required.**

81 (1) **Within 5 days after an owner enters into a bona fide contract of**
 82 **sale to sell rental housing, the owner must provide written**
 83 **notice of the sale:**

84 (A) **to each tenant in the rental housing by first class mail;**

85 (B) **posted in the public areas of the rental housing; and**

86 (C) **to the Department with a list identifying each tenant and**
 87 **the tenant's address.**

88 (2) **The notice of sale must offer to sell the rental housing to any**
 89 **tenant organization under Section 53A-4, and include any other**
 90 **information required by Executive regulations.**

91 (b) **Tenant organization.** If there is no certified **tenant organization** for
 92 **the rental housing when the notice of the sale is due under subsection**
 93 **(a), then a tenant organization may be formed to exercise the right of**
 94 **first refusal if the Department certifies the organization within 45 days**
 95 **after the owner provides notice to the tenants under subsection (a).**

96 **53A-[3]4. Right of first refusal to buy rental housing.**

97 (a) **[Offer of right] Right of first refusal.** An owner must offer the County,
 98 **HOC, and any tenant organization [a] the right [of first refusal] to buy**
 99 **rental housing before selling the rental housing to another party,**
 100 **[unless the buyer signs a 3-year agreement not to convert the housing**
 101 **that the Department of Housing and Community Affairs approves]**
 102 **except as provided under [subsection (e)] Section 53A-5.**

103 (b) **Requirements for offer.** [The] **An offer required by subsection (a) must:**

104 (1) be in writing;

- 105 (2) be sent by certified mail, return receipt requested, within 5
 106 business days after:
- 107 (A) the execution of a bona fide contract of sale, for the
 108 County, HOC, and any existing tenant organization; or
- 109 (B) the Department certifies a tenant organization, for a new
 110 tenant organization formed under Section 53A-3(b);
- 111 [(2)]
- 112 (3) include substantially the same terms and conditions as a pending
 113 bona fide [pending] contract of sale from a third party to buy the
 114 **rental housing; and**
- 115 [(3)]
- 116 (4) remain open for:
- 117 (A) 60 days after it is received [by], for the County[,] and
 118 HOC[,] and
- 119 (B) 90 days after it is received by any tenant organization,
 120 including a new tenant organization formed under
 121 Section 53A-3(b).
- 122 [(b)]
- 123 (c) *Information and inspection.* The owner must give the County, HOC,
 124 and any **tenant organization:**
- 125 (1) any information about the **rental housing** relevant to [the
 126 exercise of] exercising the right of first refusal, [[including]] such
 127 as architectural and engineering plans and specifications, and
 128 operating data; and
- 129 (2) access to the **rental housing** [for] to inspect[ion] the property and
 130 conduct reasonable tests at reasonable times [and] after
 131 reasonable notice.

132 The County, **HOC**, and any **tenant organization** must pay the **owner**
 133 a reasonable deposit for any architectural and engineering plans
 134 that the owner provides. The **owner** must refund the deposit
 135 when the plans are returned to the **owner**. The County Executive
 136 must [adopt] issue regulations [under method (2)] to implement
 137 this subsection.

138 [(c)]

139 (d) *Exercise of right of first refusal.* [Within 60 days after receiving the
 140 offer, the]

- 141 (1) The County, **HOC** , or a **tenant organization** may exercise the
 142 right of first refusal by accepting the offer [to buy the **rental**
 143 **housing**] within the applicable period under subsection (b)(4).
 144 The County and **HOC** [must not] may accept an offer to buy
 145 **rental housing** [located] in a municipality [without the approval
 146 of] only if the [municipality's governing body] municipality
 147 approves.
- 148 (2) The **owner** must sell the **rental housing** under the right of first
 149 refusal if the acceptance includes[: (1)] substantially the same
 150 terms and conditions contained in the **owner's** [offer] bona fide
 151 contract of sale with the third party, including any contract term
 152 that provides for a bona fide real estate commission payable to an
 153 independent broker[;] [[and]] [(2) a 180-day] [[any financing
 154 contingency]], Notwithstanding this general requirement or any
 155 term of the contract, the County, **HOC**, or a **tenant organization**
 156 may condition its acceptance on obtaining financing at any time
 157 before the deadline in paragraph (3) for completing the sale.

158 (3) [[A]] The owner and the County, HOC, or tenant organization
 159 must complete a sale under this subsection [[must be completed]]
 160 within 180 days after [receipt of] the County, HOC, or tenant
 161 organization receives the owner's offer unless the [parties agree]
 162 owner agrees to extend [this] the 180-day period.

163 (4) Before a tenant organization completes a sale under paragraph
 164 (3), a majority of all of the tenants must ratify the purchase.

165 (5) The right of first refusal applies in the following order of priority:

166 (A) the County [has first priority and];

167 (B) HOC [has second priority in the exercise of the right of
 168 first refusal. If more than one] ; and

169 (C) any tenant organization [exercises the right of first
 170 refusal, a priority among the tenant organizations must be
 171 established by lottery. The County Executive must adopt
 172 criteria in regulations under method (2) for County
 173 exercise of the right of first refusal which will preserve
 174 economically viable low and moderate-income rental
 175 housing in the County].

176 [[5]]

177 (6) The Executive must issue regulations that establish procedures
 178 and guidelines for exercising the County's right of first refusal.

179 [[e) Tenant organization ownership interest. [[If]] The Executive may
 180 issue regulations under method (2) to require a tenant organization that
 181 joins with a third party to purchase the rental housing [, the tenant
 182 organization must]] to maintain [[at least]] a [[15-percent ownership]]
 183 certain property interest in the rental housing. If the Executive issues a
 184 regulation under this subsection, the regulation must specify:

- 185 (1) how long the **organization** must maintain the interest;
 186 (2) the acceptable forms of ownership or other property interest; and
 187 (3) the consequences of failing to maintain the property interest.]]

188 [(d)]

189 [[(f)]]

190 (e) *Expiration of right of first refusal.* If the County, **HOC**, and any **tenant**
 191 **organization** do not exercise their [right] rights of first refusal within
 192 [60 days after receiving the offer, the offer expires. After the offer
 193 expires] [[within]] the applicable period under subsection (b)(4), the
 194 **owner** may sell the **rental housing** to [any other purchaser] the third
 195 party buyer under substantially the same terms and conditions offered to
 196 the County, **HOC**, and [each] any tenant organization.

197 [[(g)]]

198 (f) *Immunity.* The County, **HOC**, and any **tenant organization** are not
 199 liable for any [damage caused by their] damages incurred by the owner,
 200 a third-party buyer, a tenant, or any other person in connection with a
 201 decision [not] to exercise [their] or not exercise a right of first refusal
 202 under this Section.

203 53A-5. Sales not requiring right of first refusal.

204 [(e)]

205 (a) [*Three-year agreement*] Agreement not to convert.

206 (1) An **owner** may sell **rental housing** without [offering the]
 207 providing any right of first refusal [required by subsection (a)]
 208 under Section 53A-4 if [: (1)] the Department approves a written
 209 agreement that:

- 210 (A) prohibits the buyer [(A) agrees in writing not to convert]
 211 from converting the rental housing for [3] at least 5 years
 212 after the sale; [[and]]
- 213 (B) [submits the agreement to] the **Department** [of Housing
 214 and Community Affairs] received from the prospective
 215 buyer at least 30 days before the sale; and
- 216 (C) except as provided in [[subsection (c)]] paragraph (2)(B),
 217 requires the buyer to follow the voluntary rent increase
 218 guidelines published annually under Section 29-53 [[for]]
 219 during:
- 220 (i) [[all tenants who resided in the rental housing
 221 when the Department approved the agreement,
 222 during]] the first 3 years of the agreement, for all
 223 tenants who resided in the rental housing when the
 224 Department approved the agreement; and
- 225 (ii) [[at least]] the last 2 years, for [[up to 20 percent]]
 226 each of these tenants [[who qualify]] [[, if the
 227 tenant]] who qualifies as a low- or moderate-
 228 income tenant[[s]] under Department regulations
 229 [[, during the last 2 years of the agreement]].
- 230 (2) [the Department approves the agreement, including any
 231 proposed rent increases and rehabilitation of the housing.] The
 232 Department [must consider] may:
- 233 (A) approve or reject an agreement with the buyer under this
 234 subsection only after considering the:
- 235 [(A)]

236 (i) physical condition of the **rental housing**, including
 237 any rehabilitation necessary to correct dangerous
 238 defects;

239 [(B)]

240 (ii) **tenants'** ability to afford rent increases; and

241 [(C)]

242 (iii) need to preserve low- and moderate-income **rental**
 243 **housing** in the County[.];

244 [The County Executive must adopt regulations under method (2) to
 245 implement this Section, including criteria for evaluation of 3-year
 246 agreements and that limit any **tenant** displacement resulting from rent
 247 increases and rehabilitation during the term of the agreement to less than
 248 one-third of the **tenants** in any 12-month period.]

249 (B) allow the buyer to increase rents above the limits in
 250 paragraph (1)(C) only when the **Department** decides that
 251 a greater increase is justified by:

252 (i) unforeseen circumstances beyond the buyer's
 253 control; or

254 (ii) necessary rehabilitation to the **rental housing**.

255 (3) The **Department** annually must verify the buyer's compliance
 256 with the rent increase limits required by this [[Section]]
 257 subsection.

258 (b) Other exceptions. An **owner** also does not have to provide a right of
 259 first refusal for a sale:

260 (1) under the terms of a bona fide mortgage or deed of trust;

261 (2) to a mortgagee in lieu of foreclosure;

262 (3) under a court order;

- 263 (4) from one co-tenant to another co-tenant by operation of law;
 264 (5) under a will or intestate distribution;
 265 (6) to the State or a local government;
 266 (7) of a minority title interest;
 267 (8) of a mobile home park; or
 268 (9) of rental housing for which the initial building permit was issued
 269 after February 5, 1981.

270 **53A-[4]6. Conversion of rental housing.**

- 271 (a) *Notice of conversion.* An owner must [give a] not convert rental
 272 housing unless the owner notified each tenant in the rental housing
 273 [60] at least 120 days [written notice] before converting the building [in
 274 which the tenant lives]. [[During the]] Before renting to a prospective
 275 tenant during this 120-day period, the owner must [[not rent to a new
 276 tenant unless the owner has notified]] notify the prospective tenant
 277 about the conversion.
- 278 (b) *Termination of lease.* [After receiving] A tenant who receives a notice
 279 of conversion [, a tenant] may terminate a lease without penalty [by
 280 giving] at least 30 days after notifying the owner [30 days written
 281 notice] in writing.
- 282 (c) *Tenant relocation assistance.* The owner must [reimburse] pay a
 283 tenant [for reasonable moving expenses by paying the tenant a
 284 maximum of \$950 in] relocation assistance equal to [[two]] 2 months'
 285 rent if the tenant moves out of the rental housing within 180 days after
 286 [receiving a] the tenant received the notice of conversion required by
 287 subsection (a). [because:
 288 (1) the housing is changing to a nonresidential use;

- 289 (2) at least one-third of the **housing** is being demolished in a
 290 12-month period.
- 291 (3) the **tenant** determines they cannot afford a proposed rent
 292 increase; or
- 293 (4) the **tenant** must leave a unit during rehabilitation and no
 294 comparable unit in the **housing** is available for the **tenant's** use.

295 The **tenant** must give the **owner** reasonable proof of moving expenses
 296 paid by the **tenant** before receiving relocation assistance, except that the
 297 **owner** must pay a low-income **tenant** \$475 before the **tenant** moves as
 298 an advance against the **tenant's** relocation assistance.]

299 The **owner** must pay the relocation assistance not more than 10 days
 300 after the **owner** received the **tenant's** notice of termination under
 301 subsection (b).

302 [(d) The County Executive must adopt regulations under method (2) to
 303 implement this Section.]

304 **[53A-5. Exemptions.]**

305 [This Chapter does not apply to a **sale**:

- 306 (a) made under the terms of a bona fide mortgage or deed of trust;
- 307 (b) to a mortgagee in lieu of foreclosure;
- 308 (c) under a court order;
- 309 (d) from one cotenant to another cotenant by operation of law;
- 310 (e) under a will or intestate distribution;
- 311 (f) to a municipal, county, or state government;
- 312 (g) of a minority **title** interest;
- 313 (h) of a mobile home park; or
- 314 (i) of **rental housing** for which the initial building permit was issued after
 315 February 5, 1981.]

316 **53A-[6]7. Certificate of compliance.**

317 [On receipt of satisfactory proof of compliance, the] The Department [of
 318 Housing and Community Affairs] must issue a certificate of compliance for rental
 319 housing to the owner, the buyer, or any other interested party, in a form appropriate
 320 for recordation in the land records, [certifying] when the Department determines
 321 that the requirements of this Chapter [are] have been satisfied [with respect to the
 322 **rental housing**]. [A] The certificate [of compliance] is conclusive evidence [that the
 323 requirements of] of compliance with this Chapter [have been satisfied].

324 **53A-[7]8. Complaints.**

325 [(a) Complaints to **Department** of Housing and Community Affairs]. Any
 326 person [subjected to a practice made unlawful in] harmed by an owner, buyer,
 327 tenant organization, or any other person who violates this Chapter may file a
 328 written complaint with the **Department**, [of Housing and Community Affairs. The
 329 **Department** has all of the powers and duties granted it in Chapter 11 to respond to a
 330 complaint filed under this Chapter.]

331 [(b) Other legal rights. This Chapter does not limit a person from exercising
 332 any other legal right available to that person.]

333 **53A-9. Enforcement.**

334 (a) The Department may enforce this Chapter by:

- 335 (1) investigating any alleged violation;
 336 (2) issuing a summons or subpoena to compel the attendance of a
 337 person or the production of documents or other evidence;
 338 (3) enjoining a violation;
 339 (4) revoking a rental license issued under Chapter 29;
 340 (5) reporting a violation to any other appropriate government agency;
 341 [(5)]

- 342 (6) informal conciliation between a complainant and an alleged
343 violator;
- 344 [(6)]
- 345 (7) dismissing a complaint when the Director of the Department
346 determines that there is insufficient evidence of a violation;
- 347 [(7)]
- 348 (8) obtaining injunctive or other appropriate judicial relief, such as an
349 order to:
- 350 (A) require compliance with a summons or a subpoena;
351 (B) require an alleged violator or witness to attend a
352 Department meeting or other proceeding concerning the
353 alleged violation;
- 354 (C) require production of documents or other evidence;
355 (D) require transfer of documents or other evidence to the
356 Court; or
- 357 (E) prohibit the destruction of documents or other evidence;
- 358 [(8)]
- 359 (9) recovering costs and fees of an investigation or a lawsuit if the
360 Department finds a violation occurred, and prevails in any
361 appeal;
- 362 [(9)]
- 363 (10) ordering any appropriate financial, legal, or equitable relief to a
364 tenant or tenant organization injured by a violation of this
365 Chapter;
- 366 (11) any other applicable enforcement action that the Department
367 could take to enforce a violation of Chapter 11 (Consumer

368 Protection) or Chapter 29 (Landlord-Tenant Relations), under the
 369 procedure provided in the respective Chapter;

370 (12) developing, conducting, or assisting in educational and
 371 information programs concerning the requirements of this
 372 Chapter; and

373 [(10)]

374 (13) adopting regulations to implement this Chapter.

375 (b) Any sale of rental housing in violation of this Chapter is void.

376 (c) This Chapter does not limit any other legal right available to a person.

377 **53A-[8]10. [Penalty for violation] Penalties.**

378 [Any] A violation of this Chapter or a regulation adopted under this Chapter is
 379 a class A violation. [Any sale of in violation of this Chapter is void. The County
 380 Attorney may seek injunctive or other appropriate court orders to enforce this
 381 Chapter.] A violation may be punished as a separate violation for each unit in the
 382 rental housing affected by the violation for each day the violation exists.

383 **53A-[9]11. Annual reports to the Council.**

384 By February 1 of each year, the County Executive must report to the Council
 385 on activities under this Chapter for the prior calendar year, including:

386 (a) [offers] any offer of a right of first refusal received by the County;

387 (b) [3-year agreements] any agreement not to **convert** that the Department
 388 approved; and

389 (c) **conversion of rental housing** in the County.

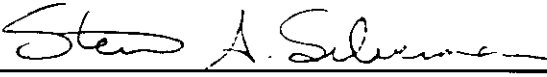
390 **[53A-10. Sunset date.]**

391 [Sections 53A-1 through 53A-9 are not effective after June 30, 2002.]

392 Sec. 2. Emergency Effective Date.


393 The Council declares that an emergency exists and that this legislation is
394 necessary for the immediate protection of the public health and safety. This Act
395 takes effect on January 15, 2002.

396 *Approved:*

397  12/07/01

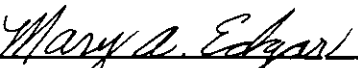
Steven A. Silverman, President, County Council Date

398 *Approved:*

399  12/13/01

Douglas M. Duncan, County Executive Date

400 *This is a correct copy of Council action.*

401  12/17/01

Mary A. Edgar, CMC, Clerk of the Council Date