

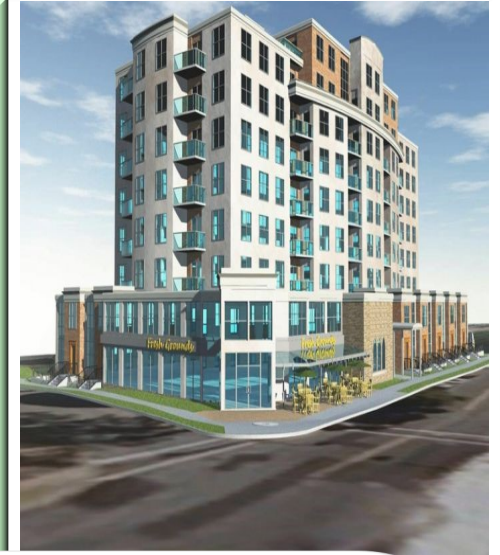


DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
Office of Landlord-Tenant Affairs
1401 Rockville Pike, 4th Floor,
Rockville, MD 20852

Phone: 240-777-0311 (within Montgomery County 311)
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Montgomery County, Maryland



Condominium Conversion/Tenant Displacement Handbook

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DEPARTMENT OF HOUSING AND COMMUNITY
AFFAIRS

VII. TENANT DISPLACEMENT—Chapter 53A Highlights

Copies of this handbook or excerpts can be printed from our website at: www.montgomerycountymd.gov/dhca



DISCLAIMER: Every reasonable effort has been made to assure the accuracy of this information. However, if there are any inconsistencies between this information and applicable law or regulation, the law and/or regulation, the law and/or regulation is controlling. This information does not constitute legal advice.

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Montgomery County Department of Housing and Community Affairs
Office of Landlord-Tenant Affairs

Chapter 53A of the Montgomery County Code contains the rights available to tenants when a property owner takes actions that cause what is known as a conversion. Under this Chapter, conversion means:

- (A) changing the use of rental housing to nonresidential use;
- (B) demolishing at least one-third of the units in rental housing in a 12-month period;
- (C) displacing tenants from at least one-third of the occupied units in rental housing in a 12-month period by:
 - (i) raising rents; or
 - (ii) preparing to rehabilitate the rental housing; or
- (D) any other act that ends the use of the property as rental housing.

Tenant Displacement is the potential result of conversion. An owner of property containing four or more units must offer the County, HOC, and any tenant organization the right to buy rental housing before selling the rental housing to another party, except for certain County approved provisions. If there is no certified tenant organization for the rental housing when the County receives the notice of sale, then a tenant organization may be formed to exercise the right of first refusal if the Department certifies the organization within 45 days after the owner provides notice to the tenants.

Refer to Section 53A-6 for Notice, termination of lease and relocation assistance requirements. Also, under Chapter 53A is the Right of First Refusal to buy rental housing (Section 53A-4). Chapter 53A, Tenant Displacement of the Montgomery County Code; and Chapter 53A, Tenant Displacement Regulations, of the Code of Montgomery County Regulations, are available via links at our website,

www.montgomerycountymd.gov/dhca

If you qualify for an extended lease, but do not want one, you are also entitled to both the moving expense reimbursement previously described, and the payment equal to 3 months rent. In order to receive this 3 month rent payment, you must complete and return the enclosed form within 60 days of the date of this notice or by _____ (date), but you should not execute the enclosed lease.

All application forms, executed leases, and moving expense requests should be addressed or delivered to:

Affirmation of developer. – A declaration may not be received for record unless there is attached thereto an affirmation of the developer in substantially the following form:

“I hereby affirm under penalty of perjury that the notice requirement of § 11-102.1 of the Real Property Article [and § 11A-5 of the Montgomery County Code], if applicable, have been fulfilled.

Developer

By _____”

NOTE: *This “Notice” complies with the provisions of §11-102.1 of the Real Property Article, Annotated Code of Maryland and § 11A -5 of the Montgomery County Code.*



Title 11, Condominiums, Real Property Article, Annotated Code of Maryland; Chapter 11A, Condominiums of the Montgomery County Code; and Chapter 11A, Condominiums – Regulations, of the Code of Montgomery County Regulations, are available via links at our website,

www.montgomerycountymd.gov/dhca

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INTRODUCTION



When the owner of a multi-family rental facility of ten or more units decides to convert the rental facility to a condominium, they must notify the County, the Department of Housing and Community Affairs (DHCA), Montgomery County Housing Opportunities Commission (HOC) and affected tenants in apartment units, all of whom have certain rights under both Maryland State and Montgomery County law. There are specific rules that an owner must follow during this process. This pamphlet provides a basic outline of the owner's obligations and rights afforded to the County, the Housing Opportunities Commission (HOC) and tenants when an apartment building is converting to condominiums.

Procedures regarding condominium conversions are contained in Title 11, Maryland Condominium Act, Real Property Article, Annotated Code of Maryland (Real Property Article), Chapter 11A, Condominiums, of the Montgomery County Code (County Code), and Chapter 11A, Condominiums- Regulations of the Code of Montgomery County Regulations (COMCOR).

In addition to Condominium Conversion, the County has rules for landlords who decide to demolish at least one third of the units in a rental property, rehabilitate the rental housing or any other action that would displace at least one third of the tenants at a rental property. Chapter 53A, Tenant Displacement of the County Code and Chapter 53A, Tenant Displacement- Regulations of the Code of Montgomery County Regulations provides certain rights to tenants and tenant associations under these circumstances and the criteria by which they are used. The responsibilities of landlords and the rights of tenants are discussed briefly at the end of this pamphlet.

To review these laws and related regulations, visit the Montgomery County Department of Housing and Community Affairs' website at:

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(4) "Unreimbursed medical expenses" means the cost of medical expenses not otherwise paid for by insurance or some other third party, including medical and hospital insurance premiums, co-payments, and deductibles; Medicare A and B premiums; prescription medications; dental care; vision care; and nursing care provided at home or in a nursing home or home for the aged.

To qualify for an extended lease you must meet ALL of the following criteria:

- (1) A member of the household must be an individual with a disability or senior citizen and must be living in your unit as of the date of this notice, and must have been a member of your household for at least 12 months preceding the date of this notice; and
- (2) Annual income for all present members of your household must not have exceeded _____ (applicable income eligibility figure or figures for the appropriate area) for 20____; and
- (3) You must be current in your rental payments and otherwise in good standing under your existing lease.

If you meet all of these qualifications and desire an extended lease, then you must complete the enclosed form, execute the enclosed lease and return them. The completed form and executed lease must be received at the office listed below within 60 days of the date of this notice, or in other words, by _____ (date). If your completed form and executed lease are not received within that time, you will not be entitled to an extended lease.

If the number of qualified households requesting extended leases exceeds the 20 percent limitation, priority will be given to qualified households who have lived in the rental facility for the longest time.

Due to the 20 percent set aside limitation, your application for an extended lease must be processed prior to your lease becoming final. Your lease will become final if it is determined that your household is qualified and falls within the 20 percent set aside limitation.

If you return the enclosed form and lease by _____ (date) you will be notified within 75 days of the date of this notice, or in other words, by _____ (date), whether you are qualified for an extended lease and whether your household falls within the 20 percent limitation.

You may apply for an extended lease and, at the same time, choose to purchase your unit. If you apply for and receive an extended lease, your purchase contract will be void. If you do not receive an extended lease, your purchase contract will be effective and you will be obligated to buy your unit.

If you qualify for an extended lease, but due to the 20 percent limitation, your lease is not finalized, the developer must pay you an amount equal to 3 months rent within 15 days after you move. You are also entitled to up to \$750 reimbursement for your moving expenses, as described in Section 1 .

(4) If you want to move out of your residence before the end of the 180-day period or the end of your lease, you may cancel your lease without penalty by giving at least 30 days prior written notice. However, once you give notice of when you intend to move, you will not have the right to remain in your residence beyond that date.

Section II

Right to a lifetime lease extension, 3-year lease extension or 3-month rent payment for certain individuals with disabilities and senior citizens

The developer who converts this rental facility to a condominium must offer extended leases to qualified households for up to 20 percent of the units in the rental facility. Households which receive extended leases will have the right to continue renting their residences for at least 3 years from the date of this notice. A household may cancel an extended lease by giving three months' written notice if more than one year remains on the lease, and one month's written notice if less than one year remains on the lease.

Rents under these extended leases may only be increased once a year and are limited by increases in the cost of living index. Read the enclosed lease to learn the additional rights and responsibilities of tenants under extended leases.

In determining whether your household qualified for an extended lease, the following definitions apply:

(1)(i) "Disability" means:

1. A physical or mental impairment that substantially limits one or more of an individual's major life activities; or
2. A record of having a physical or mental impairment that substantially limits one or more of an individual's major life activities.

(ii) "Disability" does not include the current illegal use of or addiction to:

1. A controlled dangerous substance as defined in § 5-101 of the Criminal Law Article; or
2. A controlled substance as defined in 21 U.S.C. § 802.

(2) "Senior citizen" means a person who is at least 62 years old on the date of this notice.

(3) "Annual income" means the total income from all sources for all present members of your household for the income tax year immediately preceding the year in which this notice is issued, but shall not include unreimbursed medical expenses if the tenant provides reasonable evidence of the unreimbursed medical expenses or consents in writing to authorize disclosure of relevant information regarding medical expense reimbursement at the time of applying for an extended lease. "Total income" means the same as "gross income" as defined in § 9-104 (a) (7) of the Tax-Property Article.

I. COUNTY'S RIGHT OF FIRST REFUSAL

If an apartment building containing ten or more dwelling units is being sold for the purpose of conversion to a condominium, the County and HOC have the right of first refusal to purchase the building. This means that the owner must first offer the apartment building to DHCA and HOC, to see if they are interested in purchasing the property. DHCA and HOC each has 60 days to match the contract and an additional 120 days to purchase the building. Chapter 11A, Condominiums- Regulations of COMCOR and other regulations regarding Condominium conversions can be found at:

www.montgomerycountymd.gov/dhca.

II. REGISTRATION AS A CONDOMINIUM WITH THE SECRETARY OF STATE

An owner of an apartment building who intends to convert it to a condominium must:



- ◆ File a Public Offering Statement (POS) with the Maryland Secretary of State. The POS must comply with the disclosure requirements of § 11-126 of the Real Property Article.
- ◆ File copies of the Public Offering Statement and a Montgomery County Consumer Guide with DHCA, in compliance with § 11A-7 of the Montgomery County Code. The Consumer Guide provides information regarding the condominium units that will be for sale.
- ◆ Notify the tenants in writing of the registration filing with the Secretary of State and DHCA and of their right to review these documents at DHCA at 1401 Rockville Pike, 4th floor, Rockville, Maryland.

Any amendments to the Public Offering Statement and the Consumer Guide must be filed with the Secretary of State and DHCA. If the Secretary of State determines that the application, along with any amendments, satisfies the requirements of state law, the Secretary of State will issue an order registering the condominium.

III. NOTICE OF INTENTION TO CREATE A CONDOMINIUM

After the Secretary of State registers the Condominium, the developer must create a Notice of Intention to Create a Condominium (NICC) and hand deliver it or send it by certified mail, return receipt requested/ postage prepaid, to each tenant. The developer must also file a copy of the NICC with DHCA. The Notice must comply with § 11-102.1 of the Real Property Article (see *Appendix 2*) and must notify tenants of the following rights:



- ◆ The right to remain in the unit for 180 days from the date of receiving the NICC, or the expiration of the tenant's lease, whichever is longer, except for breach of lease, nonpayment of rent, or if the tenant has given notice to vacate before receiving the NICC.
- ◆ The right to purchase the unit. A purchase offer must be included with the NICC.
- ◆ The right to receive moving expenses (see § V, *Moving Expenses*).
- ◆ The right to terminate a lease without penalty upon 30 days written notice to the owner after receiving the NICC.
- ◆ The right that certain tenants who fall into protected categories are eligible for extended leases of either three-years or life-time, depending on whether they meet certain eligibility requirements. The developer must set aside units for these tenants, up to a limit of 20 percent of the units in the rental facility.

Along with the NICC, the developer must deliver to the tenant:

- ◆ An application for an extended tenancy and an extended tenancy lease to be returned with the application.
- ◆ An offer to purchase the unit.
- ◆ A copy of the POS and Consumer Guide whose requirements comply with Chapter 11A, Condominiums- Regulations , § 11A.05.01 of COMCOR.

These requirements do not apply to a tenant who has given the landlord notice of their intention not to renew their lease before the NICC was issued.

Appendix 2

NOTICE OF INTENTION TO CREATE A CONDOMINIUM (NICC)

_____ (date)

This is to inform you that the rental facility known as _____ may be converted to a condominium regime in accordance with the Maryland Condominium Act. You may be required to move out of your residence after 180 days have passed from the date of this notice, or in other words, after _____ (date).

Section I

Rights that apply to all tenants

If you are a tenant in this rental facility and you have not already given notice that you intend to move, you have the following rights, provided you have previously paid your rent and continue to pay your rent and abide by the other conditions of your lease.

(1) You may remain in your residence on the same rent, terms, and conditions of your existing lease until either the end of your lease term or until _____ (date) (the end of the 180-day period, it will be extended on the same rent, terms, and conditions until _____ (date) (the end of the 180-day period). In addition, certain households may be entitled to extend their leases beyond the 180 days as described in § 2.

(2) You have the right to purchase your residence before it can be sold publicly. A purchase offer describing your right to purchase is required to be included with this notice. If a purchase offer is not included with this notice, the 180-day period that you may remain in your residence does not begin until you receive the purchase offer.

(3) If you do not choose to purchase your unit, and the annual income for all present members of your household did not exceed _____ (the applicable income eligibility figure or figures for the appropriate area) for 20 ____, you are entitled to receive \$375 when you move out of your residence. You are also entitled to be reimbursed for moving expenses as defined in the Maryland Condominium Act over \$375 up to \$750 which are actually and reasonably incurred. If the annual income for all present members of your household did exceed _____ (the applicable income eligibility figure or figures for the appropriate area) for 20 ____, you are entitled to be reimbursed up to \$750 for moving expenses as defined in the Maryland Condominium Act actually and reasonably incurred. To receive reimbursement for moving expenses, you must make a written request, accompanied by reasonable evidence of your expenses, within 30 days after you move. You are entitled to be reimbursed within 30 days after your request has been received.

Appendix 1
FREQUENTLY ASKED QUESTIONS—Condominium Conversion

1. If a building is demolished, what are the tenant's rights regarding extended leases and lifetime tenancies?



The tenant has the rights outlined in this pamphlet and DHCA works to ensure that tenants are able to find alternative housing

2. Aside from the requirements set by law regarding existing tenants, what does DHCA do for potential homebuyers?

DHCA established closing cost assistance programs for first time homebuyers with the Housing Opportunities Commission and with the State of Maryland. For further information, please visit HOC's Homeownership website at www.hocmc.org/homeownership, or, the Maryland Montgomery Homeownership Program at <https://mmp.maryland.gov/montgomery/Pages/default.aspx> or call 1-800-638-7781.

3. What are the penalties for a developer who does not follow the procedures set forth in the law?

Owners who do not follow the procedures outlined in State law can have their application rejected or revoked by the Secretary of State and will not reinstate the application until all procedures outlined and notices required are given to existing tenants.

4. Who monitors extended tenancies and long-term tenancies?

DHCA staff monitors condominium conversions for compliance with all requirements of Chapter 11A, including the requirements for extended and long-term tenancies.

IV. TENANT'S RIGHT TO PURCHASE AN INDIVIDUAL UNIT



At the time the tenant receives the NICC, the developer must offer the tenant the right to purchase their unit at a price and on terms and conditions at least as favorable as the price, terms, and conditions offered to the public for that unit during the 180 day period after the NICC was issued. The purchase offer must state that:

- ◆ The offer will remain open for 60 days after the NICC is issued;
- ◆ Acceptance of the offer to purchase by a tenant qualified for an extended lease is contingent upon the tenant's not receiving an extended lease. In other words, if the extended lease is accepted, then the purchase contract will be void; and
- ◆ Settlement cannot be required before 120 days after the offer is accepted.

If a tenant chooses not to purchase a unit, the tenant may remain in their unit for 180 days from the date of the NICC or the expiration of the tenant's lease, whichever is longer, except for breach of lease, nonpayment of rent, or if the tenant has given notice to vacate before receiving the NICC. A tenant can terminate their lease without penalty by giving a 30-day written notice. However, once the tenant gives notice, they do not have the right to remain at the property beyond the notice date.

_____ * * * _____

Under County law (Chapter 53A), a bona fide tenant organization has the first right of refusal to purchase rental housing before it is sold to another party with certain exceptions. A bona fide tenant organization is defined as an association of tenants of rental housing that: (1) represent tenants of at least 30 percent of the occupied units in the rental housing; and (2) is certified by DHCA according to Executive regulations. For more detailed information regarding 53A, go to our website at: www.montgomerycountymd.gov/dhca.

V. EXTENDED TENANCIES

A developer who converts a rental facility to condominiums must offer extended leases to qualified households. The total number of units to be set aside for extended tenancies is not required to exceed 20 percent of the units in the rental facility. Households that meet certain qualifications are eligible to receive either three-year or lifetime tenancies. The following definitions apply to extended tenancies:



- ◆ **Senior Citizen:** a person who is at least 62 years old on the date that the NICC is given.
- ◆ **Disability or Disabled Individual:** (1) an individual who has a physical or mental impairment that substantially limits one or more of the individual's major life activities; or (2) a record of having a physical or mental impairment that substantially limits one or more of an individual's major life activities.
- ◆ **Annual Income:** the total income from all sources for all members of the household for the income tax year immediately preceding the year in which the NICC was issued (see *Appendix 2, Section II*). "Total income" means the same as "gross income" as defined in § 9-104 (a)(8) of the Tax-Property Article. This does not include unreimbursed medical expenses. Gross income includes:
 - a. Any benefit under the Social Security Act or the Railroad Retirement Act;
 - b. The aggregate of gifts over \$300;
 - c. Alimony;
 - d. Support money;
 - e. Any nontaxable strike benefit;
 - f. Public assistance received in a cash grant;
 - g. A pension;
 - h. An annuity;
 - i. Any unemployment insurance benefit;
 - j. Any worker's compensation benefit;
 - k. The net income received from a business, rental, or other endeavor; and
 - l. Any rent on the dwelling, including the rent from a room or apartment.
- ◆ **Unreimbursed medical expenses:** the cost of medical expenses not paid for by insurance or other third party.
- ◆ **Annual Income Limit:** the percentage of the median household income for the metropolitan statistical area in which the County is located, as determined by the Secretary of State. This amount is determined annually and must be contained in the NICC.

APPENDICES

VI. MOVING EXPENSES

If a tenant's household's total income does not exceed the income eligibility limit, the tenant is eligible for \$375 in moving expenses prior to moving. If the tenant's moving expenses exceed the \$375 payment, the tenant may also be reimbursed up to \$375 more (for a total not to exceed \$750), for moving expenses that are actually and reasonably incurred, to:



- ◆ Hire contractors, labor, trucks, or equipment for the transportation of personal property;
- ◆ Pack and unpack personal property;
- ◆ Disconnect and install personal property;
- ◆ Insure personal property to be moved; and
- ◆ Disconnect and reconnect utilities such as telephone service, gas, water, and electricity.

If a tenant's annual income exceeds the income eligibility limit, a tenant can be reimbursed up to \$750 for moving expenses actually and reasonably incurred as outlined above.

The tenant must make a written request for payment of moving expenses with documentation of the expenses within 30 days after vacating the unit. Payment must be made by the developer within 30 days after the tenant's request is received.

If a household is eligible for an extended lease, but due to the 20 percent limitation, no unit is available, the developer **MUST** pay the tenant three months' rent within 15 days after vacating the rental facility. The tenant is also entitled to up to \$750 in moving expenses as outlined above.

The household must make a written request for payment of moving expenses with documentation of the expenses within 30 days after vacating the unit. Payment must be made by the developer within 30 days after the household's request is received.

If a tenant is eligible for an extended lease but chooses not to accept one, the tenant is also entitled to three months' rent within 15 days after vacating the rental facility. To receive the three month rent payment, the tenant must complete and return the [Application for Extended Tenancy](#) but NOT execute a lease. The tenant is also entitled to up to \$750 in moving expenses as outlined above.

A. Lifetime Tenancies

In Montgomery County, a household is eligible for a lifetime tenancy if the household meets ALL of the criteria listed below:

- ◆ Includes a senior citizen (62 years old) or an individual with a disability on the date the NICC is given;
- ◆ The qualifying person(s) has lived in the apartment for a period of at least 12 months preceding the NICC;
- ◆ The annual income for all members of the household does not exceed the income eligibility limit; and
- ◆ The household is current with its rent and has not violated any other material term of the lease.

B. Three-year Tenancies

A household is eligible for a three-year extended lease (subject to the twenty percent set aside) if it meets any of the following criteria:

- ◆ The household includes a senior citizen or disabled individual, who has lived in the household less than twelve months prior to the issuance of the NICC and meets the annual income limit; or
- ◆ The household meets the annual income limit regardless of family composition; or
- ◆ The household includes a senior citizen or disabled individual, and exceeds the annual income limit, regardless of how long the senior citizen or disabled individual has been a member of the household prior to the issuance of the NICC.

If a household meets all of the qualifications for life tenancy or any of the qualifications for a three-year tenancy and the tenant wants an extended lease, the extended lease forms must be returned to the developer within 60 days after receipt of the NICC.

Within 75 days after the NICC was given (15 days beyond the 60 day notice), the developer must notify each household that has submitted an application for extended tenancy whether the household qualifies for an extended tenancy, and if not, must provide the household with an explanation of which criteria have not been met.

Within 75 days of filing the NICC, a developer must also provide to the following information to the Department of Housing and Community Affairs:

- ◆ A notice indicating the number of units being made available to qualified households;
- ◆ A list of the households that were offered extended tenancies;
- ◆ A list of the households that did not meet the criteria for extended tenancies, along with copies of the notices that were sent to these households; and
- ◆ A list of the households that applied and qualified for three year or life tenancies.

C. Extended Tenancy Leases

An extended lease must set forth the provisions for termination of the lease. A household may cancel an extended lease by giving:

- ◆ Three months' written notice if more than one year remains on the lease; or
- ◆ One month's written notice if less than one year remains on the lease.

Rents under extended leases may only be increased once a year. The amount of the rent increase cannot exceed the percentage increase for the rent component of the U.S. Consumer Price Index for Urban Wage Earners and Clerical Workers as published by the U.S. Department of Labor, for the most recent 12-month period.

The extended lease must contain the same terms and conditions as the lease in effect on the day preceding the date the NICC was given; however, the extended lease must contain specific termination provisions as listed below. The extended tenancy shall cease:

- ◆ 90 days after the death of the last surviving senior citizen or disabled individual residing in the unit or after the senior citizen or disabled individual has moved from the unit;
- ◆ If the household is evicted for failure to pay rent in a timely fashion or violation of a material term of the lease; or
- ◆ If the household voluntarily terminates the lease.

D. Priority for Extended Leases

If the total number of households eligible for extended leases exceeds the 20 percent limitation contained in the Real Property Article, the units are allocated on a priority basis as follows:



1. Households eligible for life tenancies;
2. Households eligible for three year tenancies with a senior citizen or disabled individual;
3. Households eligible for three year tenancies that meet the annual income limit; and
4. Households with a senior citizen or disabled individual who does not meet the income criteria.

If after allocating extended leases to all households in any of the four categories listed above, the number of eligible households exceeds the 20 percent limit established by the Real Property Article, priority within the category must be based on household annual income, with the lowest income household receiving the highest priority.

E. Relocation of Extended Tenancy Households

If rehabilitation or reconstruction of the buildings to be converted presents a danger to the tenant's health and safety, the developer may require the household to vacate the unit no earlier than the expiration of the 180 day period and relocate to a comparable unit at your expense, until renovations are complete. The NICC must contain the tenant's rights regarding moving expenses. If there is no comparable unit available, then a developer may require the household to vacate the rental facility, at the developer's expense. The developer must notify the household at the completion of the reconstruction and they have 30 days from the date of that notice to return to their original or a comparable rental unit at the condominium. The term of the extended lease of the household will begin on the household's return to the rental unit.