



# Montgomery County Government

## AN EVALUATION OF COUNTY CODE CHAPTER 53A, TENANT DISPLACEMENT

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## EXECUTIVE SUMMARY

County Code Chapter 53A, Tenant Displacement, was enacted in 1981 as part of the County government's response to legislative findings of a rental housing shortage and tenant displacement caused largely by the purchase and conversion of multifamily rental facilities into condominiums. Although the conditions that led to the enactment of Chapter 53A have changed, this evaluation concludes that the continuing shortage of affordable rental housing, combined with the continuing commitment of the County government to a balanced housing mix, warrant the extension of this law beyond its currently designated sunset date of June 30, 1990.

The administration of Chapter 53A is divided among the Office of Consumer Affairs, the Department of Housing and Community Development, and the Housing Opportunities Commission. This division of responsibilities has not posed any major problems due largely to the high level of communication and cooperation among the staffs of the different agencies involved.

Chapter 53A has, in a number of specific instances, achieved its legislative goals to provide the public sector with opportunities to purchase rental facilities, to minimize tenant displacement, and to provide assistance to tenants who are displaced. In addition, although difficult to prove, the existence of tenant protection laws such as Chapter 53A may have also served to discourage owners of rental properties from taking actions (such as converting to condominiums or imposing exorbitant rent increases) that would have resulted in the displacement of low- and moderate-income tenants.

While recognizing the benefits of Chapter 53A, this evaluation recommends some specific legislative and administrative changes be considered to update and clarify certain provisions of Chapter 53A, to correct certain inequities, and to improve the effectiveness of Chapter 53A in meeting its legislative goals.

## I. AUTHORITY, SCOPE, AND METHODOLOGY

A. Authority. Council Resolution No. 1360, CY 1989 Work Program of the Office of Legislative Oversight, adopted April 4, 1989.

B. Scope and Organization of Report. This report evaluates the substance and administration of County Code Chapter 53A, Tenant Displacement. It is organized as follows:

Chapter II, Background, reviews the legislative history of Chapter 53A; and explains how Chapter 53A relates to other County and State laws;

Chapter III, Characteristics of the Rental Housing Market in Montgomery County, describes the legislative finding of a "public emergency" in 1981, and analyses changes in the rental market during the past eight years;

Chapter IV, Evaluation, describes and evaluates the administration of Chapter 53A;

Chapter V, Conclusions, summarizes OLO's findings;

Chapter VI, Recommendations, outlines OLO's recommendations for specific legislative and administrative changes; and

Chapter VII, Department/Agency Comments contains the written comments received on a draft of this report.

C. Methodology. This evaluation was conducted during May-July 1989 by Karen Orlansky, OLO Program Evaluator, with assistance from Ari Sky and Cathy Hamm, Public Administration Interns. It involved document and file reviews, interviews with staff from the County's Office of Consumer Affairs, Department of Housing and Community Development, and Office of the County Attorney; the Montgomery County Housing Opportunities Commission, and the Maryland-National Capital Park and Planning Commission. Interviews were also conducted with representatives from the Apartment and Office Building Association of Metropolitan Washington, the Montgomery County Board of Realtors, and the Suburban Maryland Home Builders Association. In addition, individual tenants, developers, landlords, and attorneys who have been involved with or affected by Chapter 53A were consulted. Throughout the evaluation process, the Office of Legislative Oversight received cooperation from all parties.

## II. BACKGROUND

### A. Legislative History of Chapter 53A, Tenant Displacement<sup>1</sup>

1. The Council declares a "public emergency" in the County's rental housing market. In 1979, the Council enacted a series of local laws in response to a legislative finding of a critical rental housing shortage caused largely by the purchase and conversion of multifamily rental facilities to condominiums. In November 1980, as a result of two legal challenges brought against the County by apartment building owners, the Court of Appeals struck down several sections of the County's 1979 actions that were found to be in conflict with the State Horizontal Property Act.<sup>2</sup>

A review of legislative files indicates that Emergency Bill 3-81, to create Chapter 53A, Tenant Displacement, was drafted to respond to the problems of a rental housing shortage and the displacement of tenants, and to address the concerns raised by the November 1980 Court of Appeals decision. In adopting Emergency Bill 3-81 in February 1981, the Council determined that:

" . . . there exists a public emergency caused by the increase in the sale of existing rental facilities for conversion to condominium projects, cooperative projects, or other forms of property ownership or use, and that these sales have the effect of displacing tenants from their dwelling units."

According to the Legislative Findings included as the first section of Emergency Bill 3-81, the Council also determined that:

" . . . the increase in these sales, together with the potential displacement of tenants, has caused great fear, confusion and anxiety among the persons who reside in rental facilities. Further, the County Council notes that there presently exists an inadequate number of rental units available, planned or under construction, to replace the rental units which are being converted to other uses, with detrimental effect, thus frustrating the County General Plan concepts of a balanced housing mix and adequate provisions for housing needs of all segments of this community."

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<sup>1</sup> Unless otherwise indicated, all code chapters and sections cited in this report are references to the Montgomery County Code, 1984, as amended.

<sup>2</sup> Rockville Grosvenor, Inc. v. Montgomery County, 289 Md. 74 (1980).

A review of the legislative debate over the passage of Emergency Bill 3-81 suggests that the purpose of Chapter 53A, as enacted in February 1981, was both to provide certain protections to tenants affected by conversions, and to provide a mechanism for preserving the County's supply of rental housing. Specifically, the Legislative Findings of Emergency Bill 3-81 stated that, ". . . the County Council finds it is in the best interest of the public, health, and general welfare to:

- "Establish a chapter of law providing for the protection of those tenants who may be displaced by the sale of a rental facility for conversion to a different use or form of ownership"; and
- "Provide certain organizations a reasonable right of first refusal to purchase a rental facility in order to provide a reasonable and fair mechanism for maintaining rental units on the market and minimizing the displacement of tenants."

2. Within five months after enactment, Chapter 53A is amended to exclude condominiums. Chapter 53A was originally enacted on February 3, 1981 to apply to rental facilities undergoing conversion, which was specifically defined to include the establishment of a condominium. However, in response to the passage of State legislation governing condominium conversion, on June 23, 1981, the Council adopted Emergency Bill 26-81 to conform local law to the new State law, and consolidate all local laws governing condominiums into Chapter 11A, Condominiums. Emergency Bill 26-81 also amended Chapter 53A by:

- Changing the definition of "conversion" in Chapter 53A to explicitly exclude the establishment of a condominium regime; and
- Revising the right of first refusal procedures in Chapter 53A to parallel certain aspects of the County's new condominium law.

In conforming Chapter 53A to the procedures established in the County's condominium law, Emergency Bill 26-81 added a provision to Section 53A-3 that provides an alternative to the owner's offering the right of first refusal. As amended by Bill 26-81, Chapter 53A allows the contract purchaser instead to enter into an agreement with the County to retain the property as a rental facility for a three-year period. This exemption from the offer of right of first refusal is permitted, but not required under the State condominium law<sup>1</sup>. In contrast to Chapter 11A, however, the procedures in Chapter 53A retain the requirement that the right of first refusal must be offered to any certified tenants association, as well as to the County and the Housing Opportunities Commission.

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<sup>1</sup> Maryland Real Property Code Annotated, Section 11-138(c)(1988).

Chapter 53A was amended again in 1983 as part of Emergency Bill 33-83. While the focus of this legislation was to amend the County's condominium law (Chapter 11A, Condominiums), Emergency Bill 33-83 included a minor technical correction to eliminate internally contradictory language within Section 53A concerning the length of time a contract purchaser must agree to keep a facility rental in order to prevent the County from exercising its right of first refusal to purchase. Specifically, the reference to a five-year rental agreement that had been in Section 53A-5(L) was amended to conform with the rest of Chapter 53A, which requires only a three-year rental agreement.

3. In January 1986, the Council votes down Bill 32-85, which would have amended Chapter 53A. As described earlier, Chapter 53A was amended in June 1981 to provide that an owner of a rental facility must offer that property to the County before selling to a private purchaser, unless that purchaser, at least 30 days prior to the sale, ". . . enters into an agreement with the County to retain the property as a rental facility for at least three (3) years after the date of transfer of the property."<sup>1</sup> In 1985, the Council introduced and considered legislation (Bill 32-85) to amend this section of Chapter 53A. On January 14, 1986, this legislation was defeated by a Council vote of four to three.

Bill 32-85 would have explicitly allowed the County, when a rental facility of ten or more units was up for sale or transfer, to choose between exercising the right of first refusal or entering into a three-year rental agreement, and would have established criteria to be considered in the County's decision to enter into three-year rental agreements. As stated in the bill's legislative request report: "By giving the County instead of the purchaser the option of whether or not to sign three-year rental agreements, this bill allows the County to fulfill the original intent of the law by helping to preserve scarce rental housing through County purchase of some rental facilities."

An amendment to Bill 32-85 would have added a provision to compensate a contract purchaser up to one-half of one percent of the purchase price of the property for costs associated with the intended purchase if the County decides to exercise its right of first refusal to purchase. The intent of this amendment was to address the concern that potential purchasers might be unwilling to invest the time and money in acquiring a rental property if the County was likely to purchase it.

4. The sunset provision of Chapter 53A has been extended four times since 1981. Chapter 53A was enacted with an initial sunset date of March 31, 1983 because, as stated in Section 53A-12:

"The County Council, in enacting this measure, takes cognizance of the fact that the emergency situation referred to in the legislative findings may ease at some point in the foreseeable future."

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<sup>1</sup> Section 53A-3(a)(1).

Emergency Bill 3-81 explicitly provided that the Council may extend the expiration date of Chapter 53A beyond March 31, 1983 for as many additional terms as it is deemed necessary, and directed the Office of Landlord-Tenant Affairs to report every six months to the Council on the status of the emergency situation.

The sunset provision of Chapter 53A has been extended by the Council four times. Chapter 53A was extended twice by Council Resolution, the first time from March 31, 1983 to March 31, 1985, and the second time from March 31, 1985 until March 31, 1987. In March 1987, in accordance with an amendment to Chapter 53A passed in October 1985 which inserted the sunset date of Chapter 53A into law, the Council enacted emergency legislation to extend Chapter 53A until March 31, 1989.

On March 21, 1989, the Council adopted Emergency Bill 9-89 to extend Chapter 53A until June 30, 1990. The sunset date of Chapter 53A was shifted from March 31 to June 30 to conform with the Council's recent practice of setting expiration dates on June 30 or December 31. In extending Chapter 53A for an additional 15-month period, the Council directed the Office of Legislative Oversight to conduct this evaluation of the substance and administration of Chapter 53A.

The legislative history of Chapter 53A, Tenant Displacement is outlined as Appendix A. The current version of Chapter 53A is attached as Appendix B.

## **B. Relationship of Chapter 53A to other County and State Laws**

1. Relationship of Chapter 53A-3 to Other Right of First Refusal Provisions in County Code. The right of first refusal provision in Chapter 53A is one of three right of first refusal provisions in the County Code. Chapter 11A, Condominiums (Section 11A-3) provides a right of first refusal to the County and the Housing Opportunities Commission (HOC) when a rental housing facility is being sold and converted to a condominium. Chapter 11C, Cooperatives (Section 11C-18) provides a right of first refusal to the County, HOC, and any certified tenants organizations when a rental housing facility is being sold and converted to a cooperative housing corporation.

The explicit exclusion of condominiums from the definition of "conversion" in Chapter 53A, as explained earlier, was a conscious decision by the Council to consolidate all local laws governing condominiums into a separate chapter following the passage of the State condominium law in 1981. In 1985, the County created Chapter 11C as a law focusing specifically on the conversion of rental facilities to cooperatives.

In practice, the administration of Chapter 53A is linked closely to the administration of both Chapters 11A and 11C. All three laws assign overall responsibility for administration to the Office of Consumer Affairs; and, although not identical, the tenant protection and right of first refusal procedures outlined in the three laws are similar.



An additional factor which causes the administration of Chapter 53A to be linked very closely with the administration of Chapter 11A is that both laws include a provision that all transfers of rental facilities of more than 10 units shall be deemed to be sales for the purpose of conversion unless the contract purchaser enters into a three year rental agreement with the County. Unless the future plans of a contract purchaser are revealed to the County, it can be difficult to determine whether a property is being offered to the County under the right of first refusal provisions of Chapter 11A, Condominiums, or Chapter 53A, Tenant Displacement.

2. Relationship of Chapter 53A to Chapter 56, Article VII, Tenant Aid Displacement Fund. The Tenant Displacement Aid Fund was established by law in 1980 as part of a package of legislation designed to address the problem of tenants being displaced by a large number of condominium conversions. The Tenant Displacement Aid Fund relates to Chapter 53A in that tenants displaced by certain types of "conversions" are eligible to apply for assistance from the Fund.

The purpose of the Tenant Displacement Aid Fund is to provide a one-time grant or loan to income-eligible persons who are displaced from their rental units. The Tenant Displacement Aid Fund, administered by the Department of Housing and Community Development, was originally funded out of the Condominium Transfer Tax Fund; in 1988, this fund was incorporated into the Montgomery County Housing Initiative.<sup>1</sup>

According to Executive Regulation 47-88, which outlines the administration of the Fund, tenants can apply for assistance if they are displaced by the conversion of their rental facility to condominiums, to cooperatives, to a commercial use, or to a sheltered housing project. In addition, tenants are eligible for assistance if their rental facility is going to be partially or completely demolished.

Income-eligible persons can apply for either rental assistance or down-payment assistance. Rental assistance is defined as the difference between the monthly rental and utility costs of the unit being converted and that of a replacement unit for a period of 24 months or \$3,500, whichever is less. Down-payment assistance consists of a loan of up to \$5,000 from the County, secured by a second mortgage or deed of trust.

3. Relationship of Chapter 53A to Chapter 25B, Housing Policy. Chapter 25B, Article 1, Housing Policy Implementation sets forth the County's goals of increasing the number and proportion of affordable housing in the County in order to provide a full range of housing choices, conveniently located throughout the County. Chapter 53A, Tenant Displacement is related to Article 1 of Chapter 25B, Housing Policy to the extent that the right of first refusal and tenant protection provisions contained in Chapter 53A are specific laws that can be used to implement the County's housing policy goals.

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<sup>1</sup> See below for description of Montgomery Housing Initiative.

Code Section 25B-3, Housing Policy Implementation, enumerates a number of activities that the County Executive shall do to implement the County's adopted housing policy. Specifically included is that the Executive shall, ". . . use available County resources and programs to encourage the retention, including the rehabilitation, of the County's stock of moderately and lower priced rental and owner-occupied units".<sup>1</sup>

In addition to serving as one of the tools available to achieve the goals of the County's Housing Policy, Chapter 53A, Tenant Displacement, is also related to the Montgomery Housing Initiative established in Chapter 25B, Article 2. The Montgomery Housing Initiative was created in May 1988 to promote a broad range of housing opportunities in the County for low- and moderate-income households. By law, funding for the Montgomery Housing Initiative Fund must be included in the County's annual capital improvement program. Allocations to the Montgomery Housing Initiative Fund may be spent to construct, buy and rehabilitate, or to acquire affordable sale or rental housing. The Montgomery Housing Initiative Fund, therefore, is a potential source of funding for the County to use if the decision is made to exercise a right of first refusal opportunity presented in accord with the provisions of Chapter 53A.

The law that created the Montgomery Housing Initiative also amended Section 52-21(f)(3) for the purpose of transferring the balance of the funds in the Condominium Transfer Tax Fund to the Montgomery Housing Initiative Fund. In addition, the law expanded the types of expenditures permitted by the transfer tax fund to include affordable sale as well as rental housing.

Emergency Executive Regulation 38-89E outlining the administration of the Montgomery Housing Initiative was issued July 18, 1989 by the Department of Housing and Community Development (DHCD). These regulations require that no less than 80 percent of the funds appropriated annually to the Montgomery Housing Initiative Fund be spent on activities which result in the construction of new affordable housing. Because the Montgomery Housing Initiative emphasizes the construction of new affordable housing, funds from the Montgomery Housing Initiative Fund available to purchase rental facilities under Chapter 53A come out of the remaining 20 percent. This fiscal year (FY90), the Montgomery Housing Initiative Fund is appropriated \$5 million in the County's capital budget.

4. Relationship of Chapter 53A to Chapter 29, Landlord-Tenant Relations. County Code Chapter 29, Landlord-Tenant Relations, establishes the County's Office of Landlord-Tenant Affairs (OLTA). Included among OLTA's responsibilities is the authority to establish annual "voluntary rent guidelines", and to monitor rent increases for all licensed rental housing

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<sup>1</sup> Section 25B-3(c)(6).

facilities containing at least 12 units. There is a provision that enables OLTA to obtain information about rent increases in excess of the guideline. However, landlords are not required to keep rent increases within the annual guideline established by OLTA.

The County's current policy of monitoring rents replaced the County's rent control program in 1981. The legislative findings made when the current system of voluntary rent increase guidelines was established are similar to those included in Chapter 53A. They differed to the extent that the "Rent Stabilization Act" focused on the problem of escalating rent rates, while Chapter 53A focused more on the problem of tenant displacement.

The only formal statutory link between Chapter 53A and Chapter 29 is that the Office of Landlord Tenant Affairs handles any complaints that arise out of the tenant relocation assistance provisions of Chapter 53A.<sup>1</sup> In addition, the semi-annual report that DHCD is required to submit to the Council on the "emergency situation regarding tenant displacement" has been delegated to the OLTA staff.

5. Relationship of Chapter 53A to the State Condominium Law. The State's condominium law (Real Property Act, Article 11-138) establishes parameters for the County's laws governing the right of first refusal to purchase, and tenant protections with respect to rental facilities that are being sold for the purpose of creating a condominium regime. This State law does not preempt the right of first refusal procedures and tenant protections established under Chapter 53A, which explicitly exclude rental facilities being sold for conversion to condominiums.

Even though Chapter 53A is not governed by the State condominium law, as mentioned earlier, in many respects the right of first refusal procedures in Chapter 53A parallel those contained in the County's condominium law (Chapter 11A), including the provision that permits a contract purchaser to sign a three-year rental agreement instead of offering the right of first refusal to purchase. In contrast to the County's condominium law, Chapter 53A requires that the right of first refusal to purchase a rental facility be offered to any certified tenants' associations as well as to the County and the Housing Opportunities Commission.

6. Relationship of Chapter 53A to the State's Assisted Housing Preservation Act. Enacted by the General Assembly earlier this year, the Assisted Housing Preservation Act (HB 1263) went into effect July 1, 1989. This major piece of housing legislation concerns the prepayment of federally subsidized mortgages and non-renewal of federally funded rent supplement contracts in privately owned multifamily housing projects. The relationship of the Assisted Housing Preservation Act to Chapter 53A is that rental properties covered by the new State law constitute a subset of the rental properties that also come under the provisions of Chapter 53A.

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<sup>1</sup> See page 28 for description of these tenant relocation provisions.

During the 1960's and 1970's, over 645,000 subsidized housing units were built nationwide by private and nonprofit developers under various federal subsidy programs. In return for receiving mortgage interest rate subsidies, rent subsidies, and/or tax incentives, developers agreed to rent all or a specified number of units to low income households for the duration of the agreements (usually 40 years). However, these agreements also allow a private developer to prepay the federal mortgage after 20 years, an action which frees the developers from any further restrictions on the use of the property.

Of the approximately 334,000 units eligible to prepay mortgages nationwide between 1989 and 2001, an estimated 17,150 are located in Maryland. In addition to the rental units that may be lost as a result of mortgage prepayments, assisted rental units may be lost as rent supplement contracts expire. In Montgomery County, according to DHCD staff estimates, 1,624 assisted federally insured units and 725 Section 8 units are eligible to prematurely discontinue federal assistance. (Note: Among these units, the County has already reached agreement with the owners of 526 assisted federally insured units and 21 Section 8 units to assure the continued provision of subsidy.)

The intent of the Assisted Housing Preservation Act is to prevent the immediate loss of low income housing units either through the prepayment of subsidized federal mortgages or the expiration of rent supplement contracts. Before taking what the law terms a "protective action", (which is defined to include selling, transferring, prepaying a mortgage, or discontinuing a rent supplement contract), HB 1263 requires the owner of a housing project that includes subsidized units to do certain things, including:

- Provide the State and local authorities with between one and two years notice of any "protected action";
- Offer a right of first purchase to the existing tenants, nonprofit agencies, local authorities, and any group experienced in the ownership of low income housing;
- Provide certain relocation assistance to displaced tenants; and,
- Offer lease extensions for one year to all households current in their rent payments, and three year lease extensions to certain other "designated households", who are current in their rent payments and have not violated any other material term of their lease.<sup>1</sup>

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<sup>1</sup> As defined in HB 1263 (Section 9-106), a designated household is an assisted household that includes a senior citizen (over 62 years old), a handicapped citizen, or a minor.

In addition, Section 9-107 of the Assisted Housing Preservation Act specifically provides that a local government may enact local legislation to further protect certain designated households living in rental facilities undergoing a "protected action". The State law requires before local legislation is enacted, a local government must first declare that a low- and moderate-income rental housing emergency exists because of "protected actions", as defined in the State law. Based upon this finding, a local government is then authorized to require that certain designated households be granted up to an additional three-year lease extension, provided that the owner is not required to set aside more than 20 percent of the total assisted units in the rental property.

While a thorough analysis of HB 1263 and its relationship to Chapter 53A is beyond the scope of this evaluation, it is important to note that the provisions of HB 1263 are not identical to those in Chapter 53A. As summarized in a comparison of the two laws (attached as Appendix C), Chapter 53A and the Assisted Housing Preservation Act differ on such issues as: who is offered a right of first refusal; the lengths of time established for tenant notification and response to an offer of right of first refusal; the amount of tenant relocation assistance provided; and, the inclusion of lease extension requirements (HB 1263) or a three-year rental agreement option (Chapter 53A).

The fact that the two laws differ is significant because a subset of federally assisted rental facilities located in the County currently fall within the purview of both laws, and the Assisted Housing Preservation Act does not explicitly preempt the County's law. In fact, as noted earlier, the State law includes specific language enabling the County to pass local legislation that provides some additional tenant protections to certain assisted households living in properties that are the subject of a "protected action."

### III. CHARACTERISTICS OF THE RENTAL HOUSING MARKET IN MONTGOMERY COUNTY

#### A. Description of the Public Emergency Declared in 1981

A review of legislative files indicates that the following findings led the Council to declare a "public emergency" and take a number of remedial measures, which included passing Emergency Bill 3-81 to establish Chapter 53A, Tenant Displacement:

- A large number of condominium conversions. Between 1969 and 1981, 16,408 out of 67,000, or almost one-fourth, of the County's multifamily rental housing units were converted to condominiums. In 1981, the County's housing experts were predicting that economic conditions would continue to provide the incentive for additional condominium conversions in the foreseeable future. County government staff estimated that an additional 4,000 to 6,000 rental units would be converted to condominiums during the next several years.

- The displacement of elderly and economically disadvantaged tenants. Data collected by the County's 1979 Task Force on Condominium Conversion indicated that a significant number of elderly tenants were being adversely affected, both financially and emotionally, by the many condominium conversions. A survey initiated by the Task Force disclosed that many of the tenants being displaced by condominium conversions lived on fixed incomes, could not afford to purchase their apartments, had lived in their current apartments for many years, and were having serious difficulties coping with being forced to relocate.

- Potential for other actions that could result in additional rental units being removed from the rental stream. While a shortage of available units in the rental housing market was seen primarily as being caused by the large number of condominium conversions, it was also recognized that the rental stock could be further reduced and additional tenants displaced through demolition or conversion to other uses such as cooperatives or office buildings. The analysis of the Task Force on Condominium Conversion suggested that factors such as the 1972 Tax Reform Act that eliminated accelerated depreciation for old apartment buildings and increased local government regulation of rental properties (e.g., stepped up code enforcement activities, extensive reporting requirements under the rent stabilization program), would further discourage landlords from remaining in the rental business.

- Low Vacancy Rate. The rental housing vacancy rate is defined as the number of unoccupied rental units divided by the number of total available units. The 1980 Census reported a five percent rental housing vacancy rate in the County. It is generally recognized that in an area the size of Montgomery County, a vacancy rate below six percent indicates a tight rental market characterized by rental shortages.

- Market Conditions Unfavorable for Building New Rental Units. Increasing land and construction costs, a limited supply of appropriately zoned property, reductions in federal assistance for multifamily rental housing, and the existence of the County's rent stabilization program contributed to the prediction that few, if any, new rental units would be constructed in the near future. Added to this were demographic data that indicated the large "baby boom" market was showing preference for home ownership, with its accompanying federal and State income tax advantages.

A summary of the Council's basis for declaring a public emergency was included in the first section of Chapter 53A, Legislative Findings. This section has not been amended since Chapter 53A was first enacted in February 1981. (For reference, see copy of Chapter 53A attached as Appendix B.)

## B. Update on the Rental Housing Market Since 1981

This section reviews what has happened in the County's rental housing market since the Council's declaration of the "public emergency" in 1981. To the extent possible, it provides updated information on the same variables discussed by the Council at the time Chapter 53A was established.

1. Vacancy Rates. Table 1 (page 13a) shows the average County-wide rental housing vacancy rates from 1981-1989, as reported in the County's Office of Landlord-Tenant Affairs' (OLTA) annual survey of all rental properties in the County containing 12 or more units. The survey, which is conducted in April of each year, has tabulated separate data on the vacancy rate of non-subsidized units only since 1984. The data indicate that the average rental housing vacancy rate in the County for all units measured around five percent in 1980 and 1981, and dropped to even lower rates in the mid-1980's. Although the average vacancy rate has remained below five percent throughout the decade, it evidenced a gradual increase between 1984 and 1988. However, the preliminary estimate for 1989 shows a decline in the vacancy rate for all units.

OLTA also compiles vacancy rate data according to rent range, number of bedrooms, and market area. This data, summarized in Tables 2, 3, and 4, (pages 13a, 13b), show the following:

- Vacancy rates are not uniform across all rent ranges. Specifically, the data support the intuitive finding that it is generally more difficult to find available apartments in the lower rent ranges. For 1989, the vacancy rate for rental units under \$350 was reportedly "zero".

- Throughout the 1980's, the vacancy rates for three- and four-bedroom apartments have generally been at least one percentage point lower than the vacancy rate for one- and two-bedroom apartments.

- Vacancy rates in the Bethesda/Chevy Chase, and Silver Spring/Takoma Park market areas have been consistently lower (by 2 to 3 percentage points) than vacancy rates in up-County market areas. In 1989, the market area demonstrating the tightest rental market is Bethesda/Chevy Chase (2.5 percent vacancy rate); in contrast, both Gaithersburg/Germantown and Rockville still have vacancy rates above five percent.

2. Increases in the Rental Stock. Table 5 (page 13c) shows the numbers of rented housing units, owned housing units, households, and total population in the County in 1977, 1984, and 1987. The data indicate that the number of rental units has increased at a significantly lower rate than the number of owned housing units. Specifically, from 1977 to 1987, while the number of owned housing units increased 45.5 percent, the number of rented units increased only 13.6 percent. As a percent of all housing units in the County, rental units declined from 36 percent in 1977 to 30 percent in 1987. The 31.7 percent growth in the number of households during this same time period suggests that most of the households moving into the County during the past decade have been homeowners, not renters.

Table 1

Average Rental Vacancy Rates1981 - 1989

	1981	1982	1983	1984	1985	1986	1987	1988	1989*
All Units <sup>1</sup>	5.1	5.1	4.1	2.6	3.2	3.4	4.0	4.3	3.8
Non-Subsidized	(Data not available)			2.8	3.3	3.7	4.3	4.7	4.1

<sup>1</sup> All units includes units that are subsidized as well as non-subsidized, and includes units located in municipalities.

\* OLTA's preliminary estimate as of 7/27/89.

Source: Office of Landlord-Tenant Affairs' 1981-1989 Rental Vacancy Reports.

Table 2

Rental Vacancy Rates by Rent Range1984 - 1989

RENT RANGE	1984	1985	1986	1987	1988	1989*
0 - 349	3.7	2.0	1.3	3.3	2.7	-0-
350-449	3.6	4.3	4.8	1.8	1.8	2.3
450-549	2.9	4.2	4.5	4.4	5.2	4.8
550-649	3.8	5.2	6.9	5.8	7.0	4.1
650-749	2.7	3.0	8.3	5.7	5.0	4.0
750 and up	3.1	.5	7.1	10.1	12.0	5.4

\* OLTA's preliminary estimate as of 7/27/89.

Source: Office of Landlord-Tenant Affairs' 1984-1989 Rental Vacancy Reports.



Table 3

Rental Vacancy Rates by Number of Bedrooms1982 - 1989

BEDROOM SIZE	1982	1983	1984	1985	1986	1987	1988	1989
Efficiency	4.8	3.3	2.7	4.0	2.5	2.2	3.5	3.7
One Bedroom	5.8	4.4	2.6	3.2	3.3	4.3	4.7	4.5
Two Bedrooms	4.8	4.2	2.6	3.1	3.7	3.9	4.2	3.5
Three Bedrooms	3.9	3.3	3.0	2.7	3.7	4.5	3.9	2.8
Four Bedrooms	2.3	3.6	3.4	1.8	2.7	1.3	5.9	2.9

\* OLTA's preliminary estimate as of 7/27/89.

Source: Office of Landlord-Tenant Affairs' 1982-1989 Rental Vacancy Reports.

Table 4

Rental Vacancy Rates by Market Area1982 - 1989

MARKET AREA	1982	1983	1984	1985	1986	1987	1988	1989
Bethesda/ Chevy Chase	4.7	2.3	1.1	1.1	1.9	1.8	2.8	2.5
Colesville/ White Oak	6.5	6.8	3.6	5.6	5.0	5.9	6.5	3.4
Gaithersburg/ Germantown	8.0	5.7	2.1	5.0	4.9	6.1	6.5	5.2
Rockville	3.1	3.2	2.9	2.3	4.5	2.3	3.3	5.4
Silver Spring/ Takoma Park	4.5	4.1	2.8	2.6	2.6	3.9	3.5	3.5
Wheaton	4.4	3.1	4.1	3.1	3.6	4.4	4.5	3.9

\* OLTA's preliminary estimate as of 7/27/89.

Source: Office of Landlord-Tenant Affairs' 1982-1989 Rental Vacancy Reports.

Table 5

Number of Occupied Rented Housing Units, Occupied Owned Housing Units,  
Households, and Population

1977, 1984, and 1987

	<u>1977</u>	<u>1984</u>	<u>% Change 1977-1984</u>	<u>1987</u>	<u>% Change 1984-1987</u>	<u>Total % Change 1977-1987</u>
Rented Units	67,561	73,014	+ 8.1	76,765	+ 5.1	+13.6
Owned Units	123,762	153,302	+23.9	180,055	+17.5	+45.5
Households*	195,600	228,442	+16.8	257,558	+12.8	+31.7
Total Population	581,100	610,000	+ 5.0	680,000	+11.5	+17.0

\* In the 1984 survey update, M-NCPPC reported 2,126 households with "tenure unknown"; in the 1987 survey update, M-NCPPC reported 738 households with "tenure unknown".

Source: Maryland-National Capital Park & Planning Commission, MCPD,  
Census Update Surveys, 1977, 1984, and 1987.

Table 6

Number of Rental Units Converted to Condominiums<sup>1</sup>

1980 - 1988

	<u>1980</u>	<u>1981</u>	<u>1982</u>	<u>1983</u>	<u>1984</u>	<u>1985</u>	<u>1986</u>	<u>1987</u>	<u>1988</u>	<u>Total</u>
Condominium Conversions	1,810	1,663	-0-	420	355	300	180	-0-	-0-	4,728
Remained Rental	330	303	-0-	80	65	54	32	-0-	-0-	864
Net Conversions	1,480	1,360	-0-	340	290	246	148	-0-	-0-	3,864

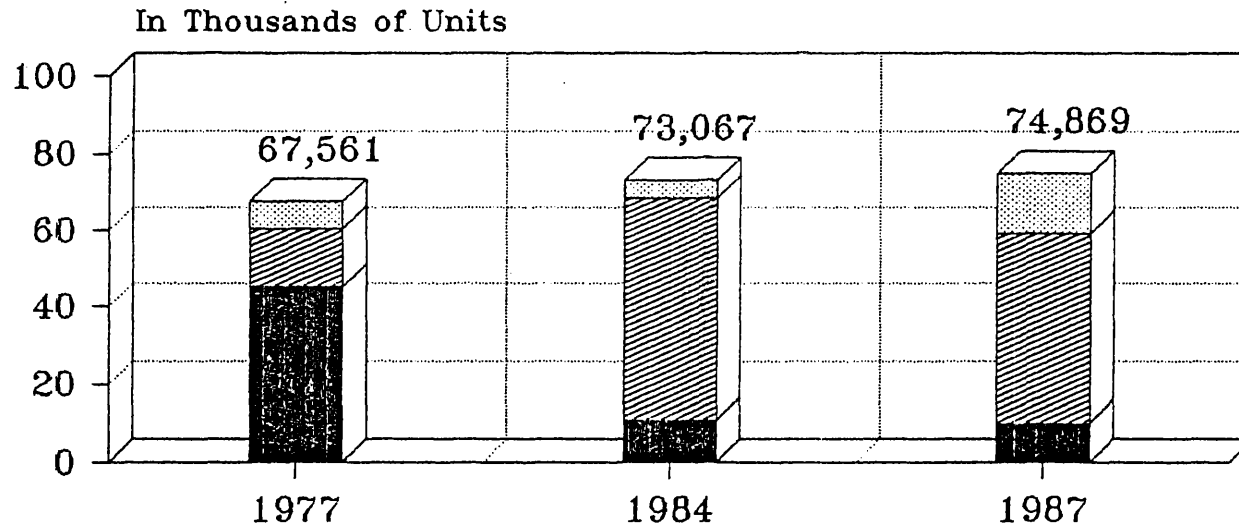
<sup>1</sup> Rental units are listed according to the year in which the official notice to convert was issued.

<sup>2</sup> The number of units that continue to be available for rent is an estimate based upon HUD surveys.

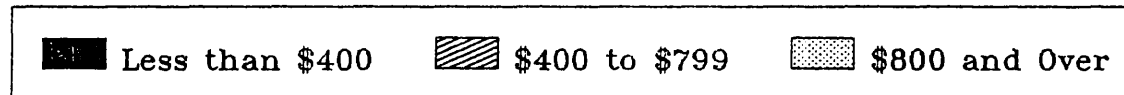
Source: Economic and Market Analysis Section, U.S. Housing and Urban Development.

Figure (A)

# Occupied Rental Stock by Average Monthly Payments, Adjusted for Inflation:<sup>\*</sup> 1977, 1984, and 1987



\$800 and Over	7,204	4,597	15,685
\$400 to \$799	15,102	57,876	49,176
Less than \$400	45,255	10,594	10,008



SOURCE: MNCPPC, *Census Update Survey*:  
1977, 1984, and 1987

<sup>\*</sup>All rent levels converted into 1989 dollars using BLS CPI index.

Figure (A) (page 13d) depicts the County's rental stock in 1977, 1984, and 1987 according to low, medium, and high rent ranges. To account for inflation during these years, all rent rates were converted into 1989 dollars using the Bureau of Labor Statistics' consumer price index for the Washington Metropolitan area. The data indicate that the overall increase in the rental stock between 1977 and 1987 can be attributed largely to increases in the number of medium and high-cost units; in contract, the number of low-cost units declined significantly during this time period. Specifically:

- Between 1977 and 1984, the low-cost (defined as rent levels of under \$400 per month in 1989 dollars) rental stock in the County declined significantly from 45,255 units in 1977 to 10,594 in 1984, a reduction of 76.6 percent; the low-cost rental stock declined an additional 5.6 percent between 1984-1987;

- During the 1977 - 1984 time period, the number of medium-cost (defined as rent levels between \$400-799 in 1989 dollars) rental units increased significantly from 15,102 units to 57,876 units, an increase of 283 percent; and

- The shift towards a higher percentage of high cost units continued between 1984 - 1987, during which time units renting for over \$800 a month (in 1989 dollars) increased 241 percent, from 4,597 units to 15,685 units.

3. Reductions in the Number of Rental Units due to Condominium Conversions. Although Chapter 53A no longer applies to condominium conversions, a review of condominium conversion activity is important to describing changes that have occurred in the County's rental housing market.

Table 6 (page 13c) lists the numbers of rental units converted to condominium according to the year in which the official notice to convert was issued. Although the data indicate the largest number of units being converted in 1980 and 1981, the actual change in these units from rental to condominium occurred more gradually throughout the first half of the 1980's. Many property owners issued their official notice of intent to convert during the first six months of 1981, in order to officially convert before the State's condominium law took effect. However, in many cases, the marketing and sale of the converted units with its resulting tenant displacement, occurred throughout the following three to five year time period.

The data clearly indicate a lower rate of new conversions during the mid-1980s and a halt to condominium conversions since 1987. This decline is partially explained by the fact that many of the most attractive (i.e., least cost to renovate, easiest to market) rental buildings were converted in the early 1980's. According to housing market analysts, however, the primary reasons that condominium conversions have declined are that more attractive investment opportunities have emerged, and lower interest rates have made other homeownership opportunities, such as townhouses, more affordable for first-time home buyers.

When a rental building is converted to a condominium, a number of units usually remain available for rent. According to OLTA records, the 1980's has seen an increase in the number of condominium units returning to the rental stock. In 1983, the County began licensing rented condominium and cooperative units.<sup>1</sup> Table 7 (page 15a) shows the number of condominium and cooperative units licensed as rental units since 1983. Although the major increase between 1983 and 1984 is probably explained by a lag time in compliance with the law, the data indicate a steady increase in the number of condominium and cooperative units licensed as rentals from 1983-1988. This trend does, however, show some signs of leveling off within the past year.

4. Reductions in the Rental Stock due to Conversions Other than Condominium. Table 8 (page 15a) summarizes data contained in six reports sent from DHCD to the Council between March 1983 and January 1989. According to DHCD's records, the County's rental housing stock has been reduced by 971 units since 1981 due to rental property being converted to a use, other than condominiums. Approximately one-third (304 units) of the rental housing units lost were converted to cooperatives, and another third (312 units) were changes from rental to owner-occupied dwellings, most of which were Moderately-Priced Dwelling Units (MPDUs) sold after the requisite time period for remaining rental had expired. Since 1981, DHCD reported that 128 rental units were converted to commercial use and 72 units were demolished.

This data indicate that since 1981, the County's rental housing stock has not been significantly reduced by the conversion of rental facilities to uses other than condominiums. Except for the growth since 1986 in the number of MPDUs being converted from rental to owner-occupied units, there is no evidence of a trend towards increasing numbers of rental units being lost from the rental stock. The relatively large number of units lost in 1983 and 1985 was due primarily to the conversion of two large rental facilities to cooperatives. Since 1985, the largest number of units lost at any one time was the demolition of a 34-unit apartment building in 1987.

5. Rent Increases Throughout the 1980's. Another measure of the balance between supply and demand in the rental market is the record of rent increases in recent years. In 1981, the County replaced its rent control law with the "Rent Stabilization Act", which requires OLTA to establish "voluntary rent guidelines". These guidelines are rent increase standards that OLTA establishes on an annual basis. OLTA monitors all rent increases in licensed rental facilities and identifies, and issues a quarterly report on which increases have exceeded the voluntary guidelines. The rent increase guidelines are, however, only voluntary and landlords are not penalized for exceeding them.

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<sup>1</sup> Chapter 29, Landlord Tenant Relations, requires all rented condominium and cooperative units located in multifamily properties be licensed except for units occupied by a person who has an ownership interest in the unit or by a person who is a relative of the owner.

Table 7

Condominium/Cooperative Units Licensed as RentalsFY83 - FY89

	<u>FY83</u>	<u>FY84</u>	<u>FY85</u>	<u>FY86</u>	<u>FY87</u>	<u>FY88</u>	<u>FY89</u>
Number of Units:	801	2,692	3,405	4,345	4,980	5,407	5,003

Source: Office Landlord-Tenant Affairs' records.

Table 8

Conversions of Rental Facilities to Uses Other Than Condominiums1981 - 1988

Building Converted From Rental to:	1981	1982	1983	1984	1985	1986	1987	1988	TOTAL
Cooperative	-	-	135	-	169	-	-	-	304
Owner Occupied Dwelling <sup>1</sup>	24	27	36	3	19	35	87	81	312
Commercial Use	-	40	-	25	29	8	14	6	128
Hotel	83	-	-	-	-	3	2	-	88
Demolished	-	-	-	25	3	6	2	36	72
Other <sup>2</sup>	-	2	2	17	6	10	26	4	77
Total Conversions:	107	69	173	76	226	62	131	127	971

<sup>1</sup> 232 of these units were MPDU units sold after remaining rental for the required time period.

<sup>2</sup> Loss of rental units due to foreclosure or license revocation.

Source: Reports from OLTA, DHCD to the Council received in March 1983, February 1985, February 1986, October 1986, November 1987, and January 1989.

For calendar years 1983-1988, Table 9 (page 16a) compares the voluntary guidelines to the Washington Metropolitan Area Residential Consumer Price Index (CPI) and to the actual average rent increases reported for holdover rents. Table 10 (page 16b) indicates the extent to which actual rent increases (for holdover rents only) have been within OLTA's guidelines.

The data indicate that actual average holdover rent increases between 1983 and 1988 ranged between 5.4 percent and 7.6 percent. Actual average holdover rent increases have been only marginally higher (between 0.3 and 1.6 percentage points) than OLTA's voluntary rent increase guidelines, and in several years actual average increases were even slightly below the increase marked by the Consumer Price Index. The data also indicate that each year, between 1983 and 1988, between two-thirds and three-fourths of all holdover rent increases were within the voluntary guidelines.

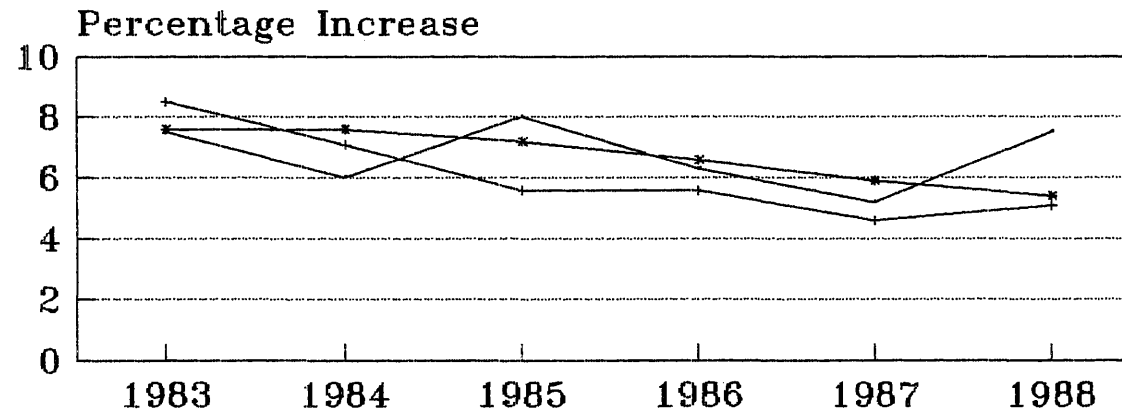
6. Predictions for Construction of Rental Facilities in the Future. In the early 1980's, it was predicted that there would be little growth in the number of multifamily facilities built in the foreseeable future and, in 1986, housing market observers seemed to agree that the effect of the 1986 federal tax reforms would cause a further decline in the construction of multifamily rental properties. According to the National Association of Homebuilders and the Bureau of National Affairs, the 1986 Tax Reform Act resulted in a lower rate of return on rental property investments due to the: (1) restrictions placed on tax deductions and tax credits that rental housing builders and investors are able to claim; and (2) the volume caps on multifamily tax-exempt bonds.

While it is true that multifamily starts nationwide declined during the 1980's, the construction of rental units did not come to an immediate halt. In particular, in strong market areas such as Montgomery County, there have continued to be additions to the rental stock. Data on the number of multifamily building permits issued in the County between 1981 and 1988 is contained in Table 11 (page 16c). As reviewed earlier, however, the recent additions to the County's rental stock have primarily been medium- and high-cost rental units.

According to data from the County's Department of Housing and Community Development (DHCD) and the Housing Opportunities Commission (HOC) staff, the continued increases in the number of newly constructed rental units during the 1980's can be attributed largely to HOC's tax-exempt bond financing for multifamily facilities. As shown on Table 12, (page 16b) between 1982 and 1987, HOC issued \$336.1 million in tax-exempt bonds to finance the construction of 6,378 rental units. The notable increase in 1985 was due to the final group of bonds issued before the volume cap imposed by the 1986 Federal Tax Reform Act took effect. The ultimate impact of the 1986 Tax Reform Act is expected to be fully felt in the coming years; as shown on Table 12 (page 16d), only 14.1 million in tax-exempt bonds were issued in 1986 and 1987, which financed the construction of only 300 units.

Table 9

CPI, Voluntary Rent Guidelines, and  
Actual Holdover Rent Increases  
1983-1988



Metro Area CPI	7.5	6	8	6.3	5.2	7.5
OLTA Guidelines	8.5	7.1	5.6	5.6	4.6	5.1
Holdover Increases	7.6	7.6	7.2	6.6	5.9	5.4

— Metro Area CPI	—+ OLTA Guidelines
—* Holdover Increases	

Source: Office of Landlord-Tenant  
Affairs 1983-1988 Quarterly Rent  
Increase Reports



Table 10

Holdover Rent Increases  
Within OLTAs Voluntary Guidelines

	<u>1984 - 1988</u>				
	<u>1984</u>	<u>1985</u>	<u>1986</u>	<u>1987</u>	<u>1988</u>
Licensed Rental Units	47,484	49,046	46,582	48,549	50,566
Number of Holdover Rent Increases Within the Guideline <sup>1</sup>	37,938	32,551	35,083	31,399	34,715
Percent of Holdover Rent Increases <sup>2</sup> Within the Guideline	79.8	66.3	75.3	64.7	68.7

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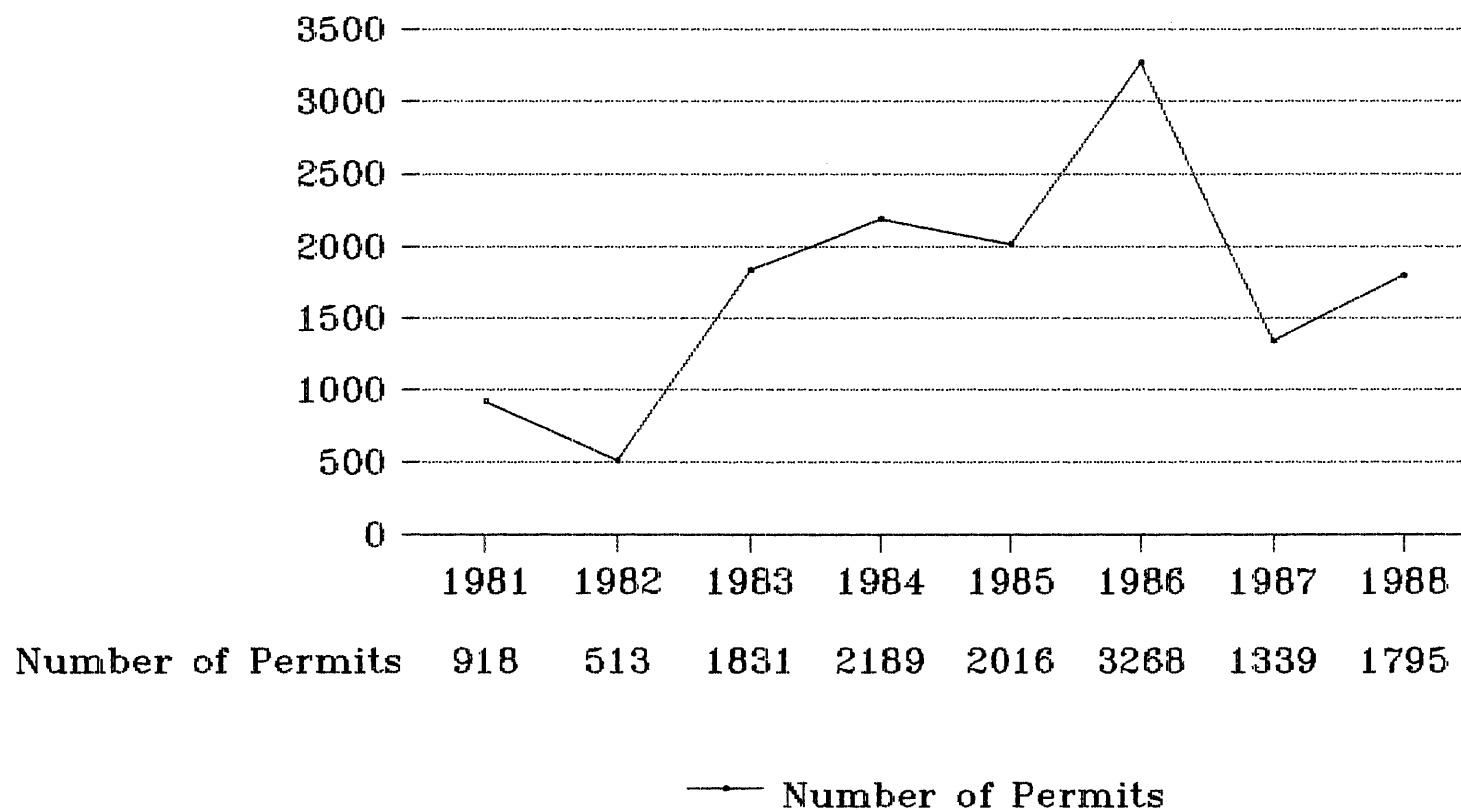
<sup>1</sup> Includes units with holdover rent increases within the guideline and units with no rent increases.

<sup>2</sup> April 1984 the guideline was set at 7.1%.  
 April 1985 the guideline was set at 5.6%.  
 April 1987 the guideline was set at 4.6%.  
 April 1988 the guideline was set at 5.1%.

Source: Office of Landlord Tenant Affairs' Quarterly Rent Increase Reports.

Table 11

County Building Permits Issued for  
Multifamily Housing Units  
1981-1988



Source: Maryland-National Capital Park  
and Planning Commission, Research  
Division, February 15, 1989 update.

Table 12

Number of Newly Constructed Rental Units Financed by  
Tax-Exempt Bonds Issued by the Housing Opportunities Commission

1982 - 1988

<u>Year</u>	<u>Tax-Exempt Bonds Financed (in millions of \$)</u>	<u>Number of Projects Financed</u>	<u>Total Number of Rental Units Constructed</u>
1982	7.3	1	149
1983	19.8	2	496
1984	56.9	6	1,200
1985	238.0	14	4,233
1986	-0-	-0-	-0-
1987	14.1	1	300
1988	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
Total:	336.1	24	6,378

Source: Housing Opportunities Commission records.

### C. Discussion

The County's rental housing market is not characterized in 1989 by the identical set of problems that led to the legislative finding of a "public emergency" in 1981. Whether this fact is due only to changing market conditions, or to market conditions combined with the effect of tenant protection laws passed in the early 1980's at the State and local levels, there is no evidence that large numbers of tenants have been threatened in recent years with displacement as a result of existing rental housing units being removed from the rental stock.

The 1981 legislative finding of "major displacements of large numbers of tenants from their dwelling units" as a result of "conversions" does not accurately portray the County's 1989 rental housing market. However, the 1981 legislative finding of a "scarcity of low- and moderate-income dwelling units on the market" is as true today as it was eight years ago.

The following facts support the finding that the need for affordable rental housing continues to exist:

- The average rental housing vacancy rate in the County is lower today than it was in the early 1980's; although the vacancy rates for higher priced units have eased somewhat in recent years, it remains difficult to find an available lower-priced rental unit, especially a multi-bedroom one, and especially a unit located in the down-County areas of dense development;

- Although the total rental stock in the County has continued to increase gradually, the increases have primarily been in the higher-priced rental units; in addition, rental units have declined as a percent of the County's total housing stock;

- Although there have been no dramatic examples within the past four years of large low-cost rental facilities either being demolished or converted to another use or form of ownership, the data show fewer low-cost rental units in the County today than there were ten years ago, moreover, tax laws and/or market conditions in the future may make certain rental properties attractive for conversion;

- The full impact of the 1986 changes to the federal tax law are expected to be reflected in even lower levels of low- and moderately-priced rental housing construction in the foreseeable future. Because of the "pipeline" of rental housing projects financed with tax-exempt bonds issued in 1985 by the Housing Opportunities Commission, the predicted negative effective of the 1986 federal tax changes are not yet evident; and,

- According to the Housing Opportunities Commission (HOC), there are more than 73,000 families living in the County below the minimum standard of need. As of June 30, 1989, HOC's waiting list for housing assistance contained more than 5,000 eligible applicants.

Market conditions more than anything else probably explain the discontinuation of the wave of condominium conversions evidenced in the late 1970's and early 1980's. However, during the course of gathering information for this study, it was suggested that laws (such as Chapter 53A) that impose certain restrictions and requirements on owners who intend to take actions that may result in the displacement of existing tenants may have contributed to the small numbers of tenants being displaced.

This observation is supported by at least three known examples of tenant displacement in the past several years from rental facilities located in a municipality where Chapter 53A was not in effect. In all cases (one in Rockville and two in Gaithersburg that took place before Gaithersburg adopted Chapter 53A in April 1989), a large percentage of the existing tenant population was involuntarily forced to relocate, not specifically because their rental facilities were being converted to condominiums or office buildings, but because their rental facilities, under new ownership, were being rehabilitated and upgraded with resulting higher rent levels that existing tenants could not afford to pay. According to County and HOC staff, if Chapter 53A had been in effect and the right of first refusal offered, then at least in one of the three cases, the County or HOC would have purchased the property and maintained it so that tenant displacement could have been minimized.

#### IV. EVALUATION

##### A. Overview

This chapter, which evaluates the administration of Chapter 53A, Tenant Displacement, is organized as follows:

- Section B describes how the responsibilities for administering Chapter 53A are divided among the County's Office of Consumer Affairs, the County's Department of Housing and Community Development, and the Montgomery County Housing Opportunities Commission;
- Section C evaluates the record of experience with the right of first refusal and three-year rental agreement provisions of Chapter 53A;
- Section D evaluates the record of experience with the tenant relocation assistance provisions of Chapter 53A; and
- Section E reviews the applicability of Chapter 53A in the County's municipalities, the penalty sections of Chapter 53A, and the record of reports to the Council required by Chapter 53A.

**B. Description of Statutory Responsibilities for Administering Chapter 53A**

Chapter 53A and associated executive regulations assign specific responsibilities for administering different aspects of Chapter 53A, to the following County departments and/or agencies:

- The County's Office of Consumer Affairs (OCA) is assigned overall responsibility for administering Chapter 53A for certifying tenants' organizations, for investigating any complaints filed pursuant to Chapter 53A, and for taking certain enforcement actions (Sections 53A-9 and 53A-10);
- The County's Department of Housing and Community Development (DHCD) is directed to send a report to the Council every six months on the status of the emergency situation regarding tenant displacement (Section 53A-12);
- The Director of the DHCD is also listed as the representative of the County government for receiving information that must be provided by the owner of a rental facility when offering a right of first refusal to purchase (Executive Regulation 41-88);
- The County's Office of Landlord-Tenant Affairs (OLTA) is authorized to handle any complaints arising out of the application of the provisions of Chapter 53A that concern the notice to tenants of intention to convert and the owner's liability for the payment of tenant relocation costs (Section 53A-8); and,
- The Housing Opportunities Commission (HOC) is involved as the County's designated housing authority, which must be offered the right of first refusal to purchase a rental facility, in addition to the County government and any tenant association certified by the Office of Consumer Affairs (Section 53A-3).

Section 53A-10 authorizes the County Executive to issue method (2) executive regulations to administer the provisions of Chapter 53A. In addition, Chapter 53A authorizes the County Executive to issue method (3) executive regulations to detail a number of other procedures. Although the OCA has, to date, not issued any method (2) executive regulations governing the overall administration of Chapter 53A, the following regulations have been issued, pursuant to authority delegated in Chapter 53A:

- Executive Regulation 41-88 describes the information which must be provided by the owner of a rental facility when offering the right of first refusal to the County, HOC, and any tenants association certified by OCA;
- Executive Regulation 66-88 provides the OCA procedure for certifying tenant organizations; and
- Executive Regulation 58-81 describes the criteria for granting relocation assistance to tenants displaced by rental facilities converted under the definitions of Chapter 53A.

Executive Regulations 66-88 and 41-88 were most recently reviewed and re-promulgated in November 1988 under the quadrennial regulations review procedure outlined in Section 2A-15. Executive Regulation 58-81 was issued in 1981 by OLTA and has never been formally reviewed and promulgated under Section 2A-15.

**C. The Record of Experience with the Right of First Refusal and Three-Year Rental Agreement Provisions of Chapter 53A**

1. What the law requires. Figure (B) (page 20a) outlines the right of first refusal to purchase requirements of Chapter 53A. According to current law, these requirements apply to the sale or transfer of all rental facilities of 10 or more units, unless:

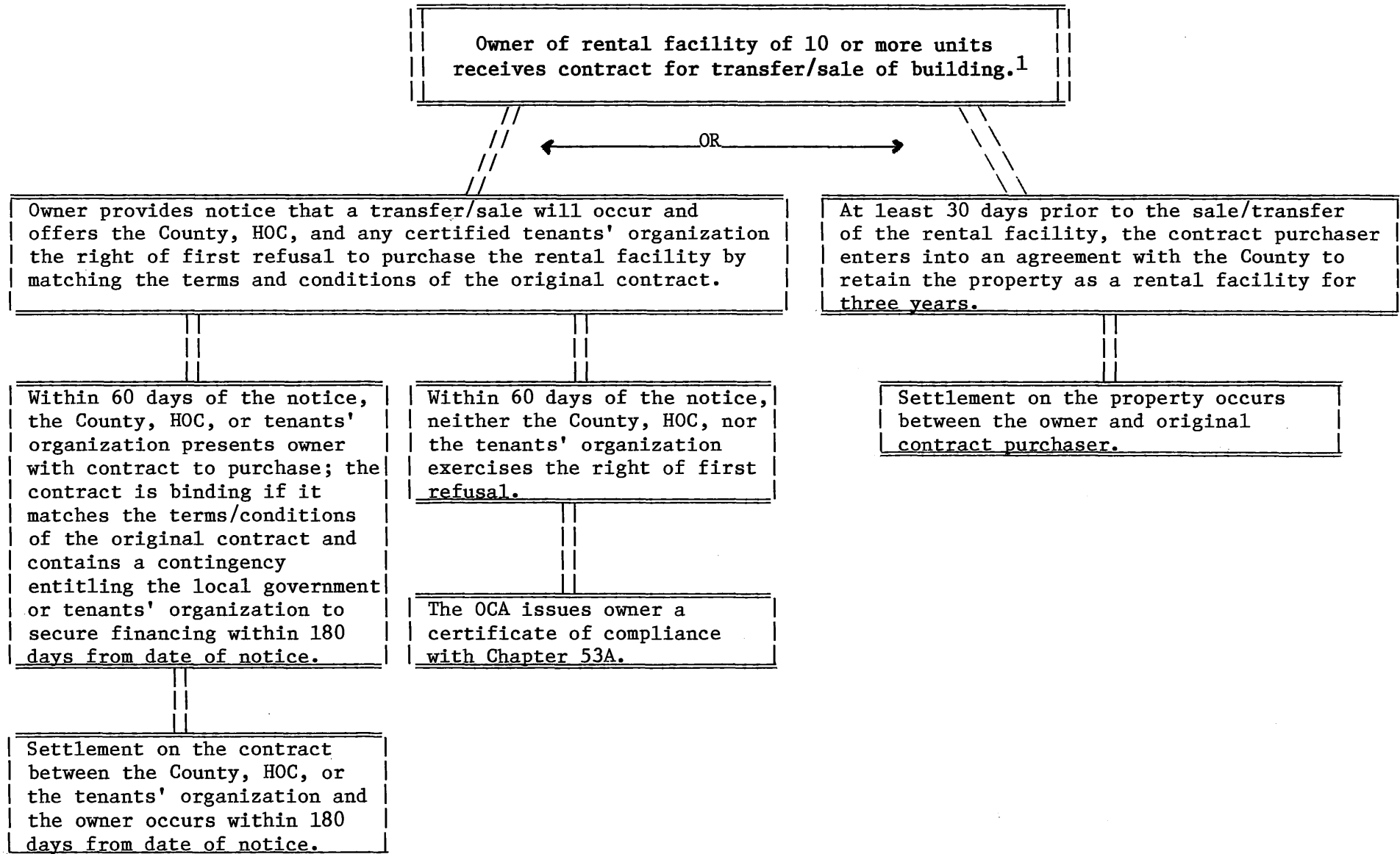
- The rental facility is being sold or transferred for the purpose of conversion to condominium;<sup>1</sup>
- The contract purchaser enters into an agreement with the County to retain the property as a rental facility for at least three years; or
- The transfer of the rental facility falls under one of the specific exemptions listed in Section 53A-5, which include: the transfer of a rental facility constructed with a building permit issued after the effective date of Chapter 53A (February 5, 1981); the transfer of a rental facility to any municipal, state, or county government or government agency; or a transfer made by will, pursuant to any judicial proceeding, bankruptcy proceeding, or arrangement in lieu of bankruptcy, or deed in lieu of foreclosure.

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<sup>1</sup> Condominium conversions are covered by Chapter 11A, Condominiums, and are explicitly excluded from Chapter 53A. Chapter 11A assumes that all transfers are for purposes of condominium conversions, although a purchaser may rebut that assumption by informing the OCA in writing that the transfer is covered by Chapter 53A.

Figure (B)

Right of First Refusal/Three-Year Rental Agreement Process under Chapter 53A



<sup>1</sup> According to Chapter 53A-3(a)(1) and (2), all sales/transfers are assumed to be for purposes of conversion and are therefore subject to requirements of Chapter 53A except that transfers for purposes of condominium conversion are subject to Chapter 11A.



Chapter 53A requires the owner of any rental facility of ten or more units to give written notice of the terms and conditions under which the owner will agree to sell the rental facility, before selling or transferring the property. Section 53A-3 specifically requires an owner to provide this notice to the County, HOC, and all tenants of the rental facility. This notice establishes the terms and conditions under which the parties may exercise their right of first refusal to purchase the property.

Executive Regulation 41-88, Administrative Guidelines for Compliance with Right of First Refusal on Rental Facilities, details additional information that the owner of a rental facility must provide to the County and HOC with the notice. The owner must supply architectural and mechanical drawings, a site plan, a statement of income and expenses for the past three years, a current rent schedule, expected re-rental rates, and other information with which the County and HOC can determine the feasibility of a government purchase of the rental facility.

The County, HOC, or any tenants' association certified by OCA has 60 days from the date notice is given to exercise their right of first refusal to purchase. In order to do so, the County, HOC, or the tenants' organization must offer to the owner a binding contract containing "substantially the same terms and conditions contained in the owner's notice". The contract becomes binding if it contains a clause entitling the local government, HOC or the tenants organization to secure financing within 180 days from the date notice was given.

If the County, HOC, or the tenants' organization fails to exercise their right of first refusal within 60 days, the owner may proceed with the original contract and the purchaser may proceed with any "conversion" of the rental facility. Section 53A-6 directs the Director of the Office of Consumer Affairs, upon receipt of satisfactory proof of compliance, to furnish a "certificate of compliance" in a form appropriate for recordation among the land records of the County.

2. Compliance with the requirements of Chapter 53A. As Table 13 (page 22a) shows, between January 1, 1982, and December 31, 1988, the owners and contract purchasers of 63 rental facilities complied with the requirements of Chapter 53A as follows:

- In six cases, the property owners offered the County, HOC, and certified tenants' organizations the right of first refusal to purchase;<sup>1</sup> and

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<sup>1</sup> As explained in the footnote to Table 13, because of the wording contained in Chapters 53A and 11A, it is difficult to determine whether the owner of a rental facility makes a right of first refusal offer under the provisions of Chapter 53A or Chapter 11A.

- In the other 57 cases, the contract purchasers entered into an agreement with the County to retain the property as a rental facility for three years.

In addition, the sale of one rental facility was exempt from Chapter 53A because the purchaser was a government agency (HOC).

According to the Office of Landlord-Tenant Affairs (OLTA) multifamily licensing records, during this same time period, 86 rental facilities of 10 or more units were sold or transferred. A comparison of OCA files and OLTA licensing records identified 23 sales of licensed rental facilities of 10 or more units that occurred between 1982-1988 without either an offer of right of first refusal to purchase or a three-year rental agreement.<sup>1</sup> These 23 properties (containing an estimated 1,650 units) represent approximately one-fourth of the rental properties required to comply with the provisions of Chapter 53A.

Under current procedures, there is no process for monitoring all sales of rental facilities to ensure compliance with the requirements of Chapter 53A. In practice, the OCA staff only becomes aware of a pending sale of a rental facility at the initiative of either the owner of a property being sold or the contract purchaser; typically, OCA is informed either by phone or in writing by the attorney who is handling the sale. Because no process has been established to prevent a sale that has not complied with Chapter 53A from being completed, compliance depends largely upon actions of the individual attorneys who are handling the sales.

3. Experience with the Right of First Refusal Provisions of Chapter 53A. The right of first refusal to purchase a rental facility has been offered six times since Chapter 53A became effective; in three out of the six times, either the County or HOC exercised their right of first refusal to purchase. To date, there are no examples of a certified tenants organization exercising its right of first refusal.

There are no written criteria governing the County or HOC's decision whether to exercise any given right of first refusal offer. According to DHCD and HOC staff, decisions have been made based upon a case by case evaluation of each offer and consultation among all affected agencies. In the opinion of County and HOC staff, the three properties that the public sector has purchased in response to right of first refusal offers would have, in the absence of Chapter 53A, been either converted to condominiums or upgraded, with resulting rent increases that would have forced many of the existing tenants to relocate.

Table 14 (page 22a) shows the total cost, number of rental units, unit cost, and date each of the three buildings was purchased by either the County or HOC in response to a right of first refusal offer. All three of

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<sup>1</sup> Three of these properties were trailer parks, which are considered to be licensed rental facilities of ten or more units.

Table 13

Right of First Refusal Offers and Three-Year Rental Agreements1982 - 1988

	1982	1983	1984	1985	1986	1987	1988	TOTAL
Number of Right of First Refusal Offers*	0	0	1	1	4	0	0	6
Number of Three-Year Rental Agreements Entered Into	6	11	17	4	9	4	6	57
Number of Rental Agreements Accompanied by a Letter of Intent From Purchaser Regarding Rent Levels and Rehab Activity	1	0	3	3	7	4	3	21
Sales/Transfers of Rental Facilities of ten or More Units	11	11	18	10	17	13	7	86

\* Whether a property is offered to the County under the right of first refusal provisions in Chapter 53A, Tenant Displacement, or Chapter 11A, Condominiums, is difficult to determine because both laws are triggered by the sale or transfer of a rental facility. Therefore, unless the future plans of a contract purchaser are known, it is unclear under which statute the right of first refusal to purchase is offered. Another data collection problem is that there have been a number of times that a right of first refusal was offered and then retracted. For purposes of this analysis, the number of right of first refusal offers counted are only those cases where either the owner received a certificate of compliance with Chapter 53A from OCA, or the end result was the purchase of the property by the County or HOC.

Source: Office of Landlord-Tenant Affairs' records and Office of Consumer Affairs' files.

Table 14

Purchases Under Right of First Refusal Provision

<u>Property</u>	<u>Purchased By</u>	<u>Year Purchased</u>	<u>Number of Units</u>	<u>Cost (in millions of \$)</u>	<u>Avg. Cost Per Unit</u>
Chevy Chase Lake	County	1986	67	\$3.8	\$57,435
Spring Gardens E.*	HOC	1986	83	\$4.1	\$49,581
Fairfax Court	County	1986	18	\$1.0	\$55,556
Total			168	\$8.9	\$53,353 (Avg.)

\* The 83 units purchased at Spring Gardens East constituted only a portion of the 169-unit Spring Gardens Apartments complex.

Source: Housing Opportunities Commission, and Department of Housing and Community Development.

these purchases, totalling \$8.9 million, took place in 1986. The County and HOC purchased a total of 168 rental units, at a cost that averaged approximately \$53,350 per unit. The Fairfax Court apartments are located in Bethesda, the Chevy Chase Lake apartments are located in Chevy Chase, and the Spring Gardens East apartments are located near downtown Silver Spring.

Interviews with a number of tenants who were living in the Spring Gardens or Chevy Chase Lake apartments in 1986 indicated that the residents of these properties were very grateful that the County/HOC was able to purchase these apartments. Almost all of the tenants interviewed stated that they would have probably been forced to relocate had the original contract purchasers bought the properties, and either raised the rents or converted the apartments from rental to condominiums.

In 1986, the County used funds from the Condominium Transfer Tax Fund to purchase Fairfax Court and Chevy Chase Lake, and HOC used monies from various HOC revolving funds to purchase a portion of the Spring Gardens Apartments. In June 1989, the Council approved a general obligation revenue bond issue by HOC to finance the acquisition of Fairfax Court, Chevy Chase Lake, and Spring Gardens East. The County's proceeds from these sales will then be returned to the Montgomery Housing Initiative Fund to be used to further increase the affordable housing stock in the County.

A review of files indicates that while one of the three purchases was apparently simple and straightforward, the other two were complex transactions. One purchase was the subject of litigation and the other came very close to ending up in court. Table 15 (page 23a) outlines three specific provisions in the law that the record of experience suggests need to be examined and clarified.

#### 4. The Record of Three-year Rental Agreements

a. Overview. Compliance with Chapter 53A has, in most cases, been achieved by contract purchasers of rental facilities entering into an agreement with the County to retain the property as a rental facility for three years. If a contract purchaser enters into a three-year rental agreement, the owner is not required to offer a right of first refusal to purchase to the County, HOC, and any certified tenants' organizations. As listed on Table 13 (page 22a), the County entered into 57 three-year agreements between January 1, 1982 and December 31, 1988; the number of agreements signed in any one year ranged from four (1985, 1987) to 17 (1984).

Chapter 53A was amended in June 1981 to give contract purchasers the alternative of signing a three-year rent agreement. This provision parallels the language in the County's condominium law (Chapter 11A). State legislation enables, but does not require, the County to include the three-year rental agreement option in local laws governing condominium conversions.

Table 15

Right of First Refusal Provisions of  
Chapter 53A in Need of Clarification

Section	Issue Needing Clarification	Problem
53A-3(a) and (a)(1)	Once an owner of a rental facility has formally offered the right of first refusal to purchase, is the contract purchaser then precluded from entering into a three-year rental agreement with the County?	On several occasions, contract purchasers have attempted to enter into a three-year rental agreement after the right of first refusal had already been offered by the property owners. In these cases, the contract purchasers' have argued that the law does not explicitly state that the right of first refusal offer precludes entering into a three-year rental agreement.
53A-3(a)(1)	When exactly does a "sale" occur?	There has been disagreement between the County and certain contract purchasers over when the signing of a three-year rental agreement is required.
53A-3(b)(2)a	In agreeing to match the "terms and conditions" of the original offer, are there certain transaction costs that should be excluded from the calculation of total cost?	In one case, there was disagreement between the owner and the County over the inclusion in the contract of several hundred thousand dollars of real estate commissions/brokers fees as part of the "terms and conditions" that the County had to match.

A review of OCA's files on the 57 three-year rental agreements signed indicates that in every case, the County entered into a formal contract in which the purchaser agreed to maintain the property as a rental facility for the three years following the sale/transfer of the rental facility. In 21 (37%) of the 57 cases, the County also obtained a letter from the contract purchaser that outlined the purchaser's commitment to limit rent increases and rehabilitation activity for the three-year period of the rental agreement. Table 13 shows that the number and percent of rental agreements accompanied by such letters has varied from year to year.

Based upon interviews with OCA staff and affected property owners, and a review of OCA's files, it is apparent that in these 21 cases, the submission of these letters were required by OCA staff as a condition of the County's signing the three-year rental agreement. These 21 letters concerning intended rent increases and/or rehabilitation activity were addressed to the OCA staff from either the contract purchaser or the contract purchaser's attorney. The letters vary in length and in the degree of detail; in most cases, the contract purchaser simply stated that rehabilitation activity will not displace any tenants, and that rent increases will be kept below a certain percentage for each of the coming three years; in a number of cases, the rents for each unit in the facility were projected. In several instances, the purchaser's letter regarding rent increases was formally incorporated into the three-year rental agreement, and in one case, the letter was entered into the land records. In all others, it appears that the letter regarding intended rents and rehabilitation activity was retained in the OCA files.

The OCA staff has administered the three-year rental agreement provision of Chapter 53A under the interpretation that a contract purchaser, in entering into a three-year rental agreement, agrees not only to maintain the facility as a rental property, but also agrees not to "convert" the property during the term of the rental agreement. In OCA's opinion, Chapter 53A defines "conversion" to include any actions during the three-year period, including raising rents and/or undertaking substantial rehabilitation activity, that would likely result in the displacement of more than one-third of the tenants within any twelve-month period.<sup>1</sup> According to OCA staff, letters were obtained from contract purchasers regarding limits on rents and rehabilitation activity only in those cases where the staff had "reasonable cause" to believe that tenants might be displaced as a result of rent increases and/or rehabilitation activity undertaken by the new owner of the property.

Interviews with landlords and attorneys who have been involved with sales of rental facilities in the County indicate some frustration with the way the County administers the three-year rental agreement provision of Chapter 53A. Although landlords appear willing to formally commit to maintaining a newly purchased rental facility as a rental property for three years, there is disagreement with the County's practice in selected cases of obtaining a written commitment from the contract purchaser regarding intended rent increases for the three-year period covered by the rental agreement.

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<sup>1</sup> See further discussion of the definition of "conversion" starting on page 25.

It is the opinion of the majority of landlords and attorneys interviewed that the law [Section 53A-3(a)(1)] requires that a contract purchaser "...at least 30 days prior to the sale enters into an agreement with the County to retain the property as a rental facility for three years..." It is, therefore, argued that the three-year rental agreement option in Chapter 53A was not intended to require a new owner to agree to anything more than to maintain the property as a rental facility for the three-year period of the agreement; and it is perceived to be inappropriate for a negotiation over the rental agreement to include any discussion of rent levels. Another concern voiced by representatives of the private sector was the perception that the County's administration of the three-year rental agreement is inconsistent since not all new owners are required to submit a letter that outlines their plans for rent increases and rehabilitation activity. In addition, the County has no written standards outlining the degree of rent increases to be evaluated by County staff as likely to cause the displacement of more than one-third of the tenants within a twelve-month time period.

When asked why they had not formally challenged the County on this issue, almost all of the landlords and attorneys interviewed stated that it was considered not worth the expense. In most cases, the purchaser had already decided to keep the property rental, and the rent increases that were considered reasonable by the County were generally in a range that the purchaser was willing to accept. In addition, litigation is costly and would likely delay the purchase of the rental property in question for an extended time period.

b. The definition of "conversion". One of the factors contributing to the differing points of view on the County's administration of the three-year rental agreements is the definition of "conversion" in Chapter 53A, which in its current version reads as follows:

**"Conversion** means subjecting a rental facility to a change in status or use, including but not limited to the establishment of a commercial use of the facility, or partial or complete demolition. Additionally, 'conversion' shall mean any other alteration in the status of use of the rental facility which has the effect of displacing tenants from thirty-three (33) percent or more of the occupied rental units within any twelve-month period or any other act which has the effect of ceasing the operation of the property as a rental facility.

For the purposes of this chapter, conversion shall not include the establishment of a condominium regime."<sup>1</sup>

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<sup>1</sup> Section 53A-2, Definitions.

The language in the current definition of conversion is written such that what constitutes a "conversion" is debatable. The record shows that the term "conversion" has been interpreted differently by the various County departments involved in the administration of Chapter 53A.

As explained above, OCA staff maintain that in order to achieve the legislative intent of minimizing tenant displacement, a contract purchaser entering into a three-year rental agreement must agree not to "convert" the rental facility during the three-year period. OCA has required written commitments from contract purchasers regarding rent levels and rehabilitation activity because OCA interprets the phrase "any other alteration in the status or use" in the definition of conversion to include rent increases or rehabilitation activity that would likely displace tenants from more than one-third of the occupied rental units in any twelve-month period.

The County has not, however, consistently interpreted the term "conversion" in Chapter 53A to include rent increases that may result in tenant displacement. For example, in administering the section of Chapter 53A regarding relocation assistance to tenants displaced by "conversion" (Section 53A-8), Office of Landlord-Tenant Affairs staff has never interpreted the law to entitle a tenant to reimbursement by the owner for moving expenses when the tenant vacates a rental unit because they cannot afford a rent increase. In addition, the "conversion report" sent periodically to the Council (as required by Section 53A-12) from the Department of Housing and Community Development, has never included a category of "conversion" defined as rental properties in which tenants were displaced by rent increases. Finally, in administering the Tenant Aid Displacement Fund, eligibility has been limited to tenants who are displaced from "conversions", which is defined to include only those situations where tenants are being displaced because their living units are being removed from the rental stock.

Although nothing in the law explicitly excludes rent increases or rehabilitation activity as a type of "conversion", it can be argued that the phrase "change in status or use" only applies to an action that, as the following phrase in the definition states, "has the effect of ceasing the operation of the property as a rental facility." In other words, although rent increases could result in tenants having to leave because they cannot afford to pay a higher rent, the property has not ceased to operate as a rental facility, and has, therefore, not "converted".

A review of the legislative files on Chapter 53A shows that at the time Chapter 53A was enacted and on the occasions it was either extended or otherwise amended, Chapter 53A has been consistently described to the Council as the law that applies to situations where a rental facility is being sold or transferred to a new owner who intends to remove the rental facility from the rental stream. The fact that rent increases and rehabilitation activity can also cause tenant displacement does not appear to have been contemplated at the time Chapter 53A was enacted, and has apparently not been raised as an issue with the Council when amendments to Chapter 53A have been considered.



For example, during the legislative debate over amendments to Chapter 53A in 1985, the legislative request report for Bill 32-85 described Chapter 53A as the law that, "pertains to transfers for cooperative conversion, commercial use, demolition, or other disposition which results in its removal from the rental stream".<sup>1</sup> Specifically, Executive branch staff described the three-year rental agreement as being: "...solely designed to insure that the rental facilities remain in rental status for the required three year period. The agreements do not contain any provisions which address the rent levels which may be imposed during this period."<sup>1</sup>

The interpretation by Executive branch agencies that, under certain conditions, rent increases can be considered a form of "conversion" seems to have evolved as it became evident that certain rental facilities were purchased by owners who intended to retain the property as a rental facility, but who intended to upgrade the property and raise rents accordingly, with the end result being that rents would rise beyond the ability of the existing tenants to pay. Although this type of activity was not evident at the time Chapter 53A was established, it has been argued that the end result can be the same as in condominium conversions or conversions to commercial use, which is the displacement of low- and moderate income tenants, and an overall reduction in the number of affordable rental units.

c. Follow-up on Three-year Rental Agreements. There is no formal process established by the County for tracking what actually happens with rental facilities that are covered by three-year rental agreements. As noted earlier, the three-year rental agreements and any accompanying letters that outline an owner's intended rent increases and rehabilitation activity are kept on file at the OCA. Because of the good working relationship between OCA and OLTA staff, the OLTA staff is generally aware of which rental facilities are covered by three-year rental agreements. However, OLTA's files on each licensed rental facility do not indicate whether a building is covered by a three-year rental agreement, or what (if any) commitment the contract purchaser has made in writing to the County regarding rent increases for the three-year term of the rental agreement.

In 1981, during the legislative debate on Bill 26-81, there was some concern voiced that at the end of the three-year period of the rental agreement, owners would remove their rental properties from the rental housing stream by converting them to some other use or form of ownership such as condominiums, cooperatives, or office buildings. The record indicates that this has not been the case. In fact, OLO's review of OCA and OLTA files indicates that every building that was the subject of a three-year rental agreement signed since 1981 remains in use today as a rental housing facility. This includes the 19 buildings that are still covered by three-year rental agreements, and the 38 buildings that were covered by rental agreements signed more than three years ago.

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<sup>1</sup> Legislative file for Bill 32-85.

According to property owners who signed three-year rental agreements, market conditions, are the chief reason their properties have remained rental. The rental housing market in the County is currently profitable for the operation of most rental facilities, and the financial incentives for converting rental properties to other uses have not played an important role in recent years. Of course, at some point in the future, interest rates and/or tax laws may be such that properties that are rental today will present themselves as opportunities for profitable conversion to alternative uses.

Actual rent increases in newly purchased rental facilities are not tracked separately from OLTA's general function of monitoring all rent increases in the County. As a result there was no formal oversight of the degree to which actual rent increases conformed to the owners' intended increases, as outlined in the 21 cases where a letter was submitted to the County.

A thorough investigation of actual rent increases in the 21 rental facilities that were subjects of a letter from the owner regarding rent levels was beyond the scope of this study. However, a sample examined by OLO showed that, as a group, actual rent increases in these facilities did not appear to vary significantly from rent increases in other rental facilities covered by three-year rental agreements. What would have happened to rent levels in these properties in the absence of the written commitments from the contract purchaser is impossible to determine. According to OCA staff, the rent increases in these properties would probably have been significantly higher.

OLO's sample review also showed that in approximately one-fourth of the cases, actual rent increases were higher than those specifically agreed to in writing by the contract purchaser as part of the three-year rental agreement. A more complete investigation of this observation is currently being conducted by OCA and OLTA staff.

#### **D. The Record of Experience with the Tenant Relocation Provisions of Chapter 53A**

1. Overview. The requirements for notice and tenant relocation assistance are the only provisions of Chapter 53A that apply whenever a rental facility of 10 or more units "converts", regardless of whether a transfer or sale of the rental facility occurs. In contrast to the right of first refusal provisions of Chapter 53A, the law requires that tenant relocation assistance be provided even in situations where a "conversion" is being undertaken by an existing owner.

Section 53A-8 requires that an owner provide each tenant with at least 60-days notice of the owner's intent to, "convert a rental facility or portions thereof from rental status to a different status or use, other than condominium". The law requires that notice be provided in writing and sent by certified mail.

Within 180 days after receiving a notice of intention to "convert", any tenant who gives written notice of his/her intent to move to the owner is entitled to be reimbursed by the owner for the "reasonable costs of relocation", up to \$750. The law authorizes the County Executive to issue a method (3) executive regulation to detail what constitutes "reasonable costs of relocation," and authorizes the Office of Landlord Tenant Affairs to handle any complaints.

Executive Regulation 58-81, issued in December 1981,<sup>1</sup> titled, "Criteria for Granting Relocation Assistance to Tenants Displaced by Status Conversions", specifies that actual out-of-pocket expenditures for the following relocation costs are eligible for reimbursement:

- Transportation of personal property;
- Packing and unpacking of personal property;
- Moving insurance;
- Disconnecting, and reconnecting appliance;
- Disconnecting and reconnecting utilities; and,
- Replacement of lost, stolen, or damaged merchandise.

2. Record of Experience. OLTA staff report that the tenant relocation assistance provisions of Chapter 53A have been used three times since becoming effective in 1981. One case, (in 1985) involved a rental housing facility being converted into a cooperative regime, another case (in 1986) involved a rental housing facility that was going to be demolished and replaced with an office building, and a third case (in 1986) involved a rental housing facility that was going to be demolished and replaced with another rental housing facility of higher density. As mentioned earlier in this report, the term "conversion" in the administration of the tenant relocation assistance section of Chapter 53A has never been interpreted by OLTA staff as applying to rent increases that would likely have the effect of displacing more than one-third of the tenants within a twelve-month time period.

There is no record of any notable problems encountered with the tenant relocation assistance provisions of Chapter 53A. In each of the three cases where tenant relocation assistance has been provided, the notice provision was complied with, the \$750 maximum appeared to be adequate, and no complaints were filed with OLTA from either tenants or owners.

3. Comparison to other Tenant Relocation Assistance Requirements. By law, the amount of relocation assistance to which a displaced tenant is entitled varies, depending upon the cause of displacement. Appendix D compares the major tenant relocation provisions of Chapter 53A with those contained in the County's law governing rental facilities being converted to cooperatives, the State law governing rental facilities being converted to condominiums, and the State's recently enacted law governing assisted rental facilities that are undergoing a "protected action".

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<sup>1</sup> This executive regulation has never been promulgated through the regulations process outlined in Section 2A-15.

The \$750 cap on the amount of relocation assistance that can be collected by an individual tenant in Chapter 53A is equal to the cap established in the State condominium conversion law and the County's cooperative conversion law. It is less, however, than the \$950 cap contained in the Assisted Housing Preservation Act, enacted by the 1989 Maryland General Assembly.<sup>1</sup> The \$750 maximum in Chapter 53A was established in 1981 and has never been amended. Based upon the Bureau of Labor Statistics' consumer price index, \$750 in 1981 would be equivalent to approximately \$1,060 in 1989.

In contrast to the other three laws, the tenant relocation assistance provisions in Chapter 53A do not require the owner of a rental facility to provide certain qualifying households with a portion of financial assistance before the tenant vacates the property and without proof of actual expenditures. The rationale for this upfront payment is that, even if reimbursement is guaranteed, a low-income tenant may not be able to afford the cash outlay.

The four laws examined also vary somewhat in terms of the types of expenses which are considered eligible for reimbursement. While all four specify that reasonable relocation expenses include costs for movers and moving equipment, packing and unpacking of personal property, disconnecting and reconnecting utilities, and moving insurance, Chapter 53A also provides for reimbursement for lost, stolen, or damaged property. HB 1263 is the only one of these four laws that includes rental application fees and security deposits as costs eligible for reimbursement.

An informal survey conducted by OLO of moving companies operating in the County indicated that \$750 would probably be sufficient to cover actual moving expenses (i.e., the employment of a crew to load and unload tenants belongings) for a one- or two-bedroom apartment. However, it is unlikely that \$750 would also cover additional costs for packing and utility connections, and would almost certainly be inadequate for covering the payment of a security deposit, which typically equals one or two months' rent.

## E. Other Issues

1. The Applicability of Chapter 53A in Municipalities. As outlined in Table 16 (page 30a), the applicability of Chapter 53A varies among the County's 17 municipalities. The City of Rockville is the only municipality with a significant number of rental facilities that has not adopted Chapter 53A. The City of Gaithersburg adopted Chapter 53A earlier this year after a rental housing facility containing more than 100 units was sold to a person who plans to upgrade the property and raise rents which are anticipated to result in the displacement of a large number of tenants.

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<sup>1</sup> For more details about the Assisted Housing Preservation Act, see pages 9-11 and Appendix C.

Table 16

Applicability of Chapters 11, 29 and 53A  
in the Municipalities

<u>Municipality</u>	<u>Chapter 11, Consumer Protection Applies</u>	<u>Chapter 29, Landlord-Tenant Relations Applies</u>	<u>Chapter 53A, Tenant Displacement Applies</u>
Barnesville	Yes	No	Yes
Brookville	Yes	Yes	Yes
Chevy Chase Village	Yes	No	No
Chevy Chase, Sec. 3	Yes	Yes	Yes
Town of Chevy Chase	Yes	Yes	No
Chevy Chase Sec. 5	Yes	Yes	Yes
Gaithersburg	No	No	Yes
Garrett Park	Yes	No	No
Glen Echo	Yes	Yes	Yes
Kensington	Yes	Yes	Yes
Laytonsville	No	No	No
Martin's Addition	Yes	Yes	Yes
Poolesville	Yes	No	No
Rockville	Yes	No	No
Somerset	Yes	Yes	No
Takoma Park	Yes	No	Yes
Washington Grove	Yes	No	No

Source: Montgomery County Municipal League chart indicating application of County laws in municipalities, June 5, 1989.

The City of Takoma Park is the only municipality that has adopted its own right of first refusal law in addition to adopting the County's Chapter 53A. Under Takoma Park's law, the owner of any rental facility must offer the existing tenants the right of first refusal to purchase; the tenants are given 180 days within which to decide. After this period, the right of first refusal and three-year rental agreement provisions of Chapter 53A take effect.

It is also important to consider where Chapter 11, Consumer Protection and Chapter 29, Landlord-Tenant Affairs apply in the municipalities. Specifically, the adoption of Chapter 11 is important because the penalty section of Chapter 53A authorizes the Office of Consumer Affairs to take action "as it is deemed necessary pursuant to the authority vested in that office by Chapter 11." The adoption of Chapter 29 is important because the Office of Landlord-Tenant Affairs collects data needed to monitor the status of rental properties covered by three-year rental agreements.

As shown on Table 16, of the nine municipalities where Chapter 53A is in effect, six have also adopted Chapter 29 and eight have adopted Chapter 11. Gaithersburg has not adopted Chapters 29 or Chapter 11, and operates its own office that handles landlord-tenant matters. Takoma Park, which has adopted Chapter 53A and Chapter 11, but not Chapter 29, has its own city department of housing.

2. Penalty provisions of Chapter 53A. As outlined in Section 53A-9, "Complaints, penalties, enforcement", any person who violates any provision of Chapter 53A, or fails to fulfill an obligation imposed by Chapter 53A, is liable for a civil penalty of up to \$500 for each such violation. Section 53A-7, "Penalties for violation of chapter", also states that, "any person who violates any provision of Chapter 53A shall be liable for a civil penalty; and references Section 53A-9 for the amount. The penalty provision of Chapter 53A was apparently omitted from the omnibus bill enacted in 1982 that outlined the County's process of enforcing civil penalties, classified violations of the Code as either class A, B, or C civil penalties.

Section 53A-9 also authorizes the Office of Consumer Affairs to receive any complaints filed pursuant to Chapter 53A, and "to conduct such investigations and hearings as it deems necessary pursuant to the authority vested in that office by Chapter 11." The OCA is specifically authorized to :

- Attempt to conciliate the matter by conference;
- Seek a written assurance of discontinuances;
- Issue appropriate cease and desist orders; or
- Refer the matter to the County Attorney for injunction or other appropriate legal action.

To date, no civil penalties have been imposed for violations of Chapter 53A. Although the OCA staff has informally followed-up on a number of specific complaints received from tenants in rental facilities affected by the law, there is no record of any formal actions taken against a property owner for violation of any provision of Chapter 53A.

3. Reports to the Council Required by Chapter 53A. Chapter 53A has always required that some type of report be made to the Council every six months. The original requirement that a report on "the status of the emergency situation" come from the Office of Landlord Tenant Affairs every six months was amended in 1985 (Bill 36-85) to require that, "every six months, the Department of Housing and Community Development must send a report to the Council on the status of the emergency situation regarding tenant displacement".

A review of Council and DHCD records indicates that status reports have not been submitted every six months per se. However, there have been periodic updates to the Council from the Executive Branch documenting the reductions in the County's rental housing stock from conversions to uses other than condominium. Reports were received by the Council in March 1983, February 1985, February 1986, October 1986, November 1987, and January 1989.

## **V. CONCLUSIONS**

### **A. General**

Chapter 53A, Tenant Displacement, was established in 1981 as part of the County government's response to legislative findings of a rental housing shortage and tenant displacement caused largely by the purchase and conversion of multifamily rental facilities into condominiums. The characteristics of the rental housing market have changed since 1981, but there continues to be a shortage of affordable rental housing in the County.

Chapter 53A has, in a number of specific instances, achieved its legislative goals to provide the public sector with opportunities to purchase rental facilities, to minimize tenant displacement, and to provide assistance to tenants who are displaced. Although difficult to prove, the existence of Chapter 53A may have also served to discourage owners of rental properties from taking actions that would have resulted in the displacement of tenants. However, the effectiveness in achieving the legislative goals of Chapter 53 has also been limited in certain respects. In addition, the administration of Chapter 53A during the past eight years raises questions about how several provisions of the law should be interpreted.

Although the administration of Chapter 53A is divided among the Office of Consumer Affairs, the Department of Housing and Community Development, and the Housing Opportunities Commission, this division of responsibilities has not posed any major problems due largely to the high level of communication and cooperation among the staffs of the different offices involved. There are, however, several examples of where even greater coordination could have improved the consistency and effectiveness of implementing certain provisions of Chapter 53A.

Finally, as detailed in Chapter II of this report, Chapter 53A is related to a number of other County and State laws. In reviewing the following conclusions, it is important to keep in mind that the scope of this study was to evaluate the substance and administration of Chapter 53A; and did not extend to comprehensively evaluating the entire scheme of laws and programs established to help achieve the County's housing policy goals.

### **B. Characteristics of the Rental Housing Market**

1. The County's rental housing market is not characterized by the identical set of problems that led to the legislative finding of a "public emergency" in 1981. However, there continues to be a shortage of low- and moderate-income rental housing, and an ongoing need for public policies aimed at increasing the supply of affordable housing.

2. There is no evidence that large numbers of tenants have been threatened in recent years with displacement as a result of existing rental facilities being removed from the rental stock and either demolished or



converted to condominiums, cooperative, or commercial use. According to a number of housing experts interviewed, changing market conditions account for the reduced numbers of rental properties being removed from the affordable rental stock in recent years due to conversions. However, although difficult to prove, tenant protection laws (such as Chapter 53A) passed at the State and local levels in the early 1980's may have also discouraged owners of rental properties from taking actions (such as converting to condominiums or imposing exorbitant rent increases) that would have resulted in the displacement of low- and moderate-income tenants.

3. Contrary to the predictions of 1981, the total rental stock in the County continued to increase gradually throughout the 1980's. However, the increases have been primarily higher-priced rental units. In addition, rental units have declined as a percent of the County's total housing stock. The 1986 federal tax law changes are expected to result in lower rates of new rental housing construction in the future.

4. As evidenced by the length of the Housing Opportunities Commission's waiting list, the demand for affordable housing continues. Despite some growth in the total number of rental housing units, there are fewer low-cost rental units in the County today than there were ten years ago. The large numbers of low-cost units removed from the rental housing market as a result of condominium conversions in the early 1980's have not been replaced. In addition, some rental facilities, while remaining rental have been upgraded with resulting higher rent levels that have forced existing tenants to relocate.

#### C. Achievement of the Legislative Goals of Chapter 53A

##### 1. Goal #1: To maintain rental units on the market and minimize tenant displacement.

One of the specific goals of Chapter 53A, as stated in the legislative findings of Emergency Bill 3-81, was to, "... provide certain organizations a reasonable right of first refusal to purchase a rental facility in order to provide a reasonable and fair mechanism for maintaining rental units on the market and minimizing the displacement of tenants". The record shows that although this goal was achieved in three specific instances, allowing contract purchasers the option of entering into three-year rental agreements has limited the public sector's opportunities to exercise the right of first refusal.

Since Chapter 53A has been in effect, three out of the six times that the right of first refusal to purchase offer was presented, the County or HOC purchased the rental facility. In these three cases, the right of first refusal provision of Chapter 53A, and the County and HOC's actions preserved low- and moderate-cost rental housing at existing locations, and thereby minimized tenant displacement. Although it cannot be proved, it is likely that, in the absence of the public sector's intervention under Chapter 53A, these rental properties would have been either converted into condominiums, or upgraded with resulting rent increases that would have forced many of the existing tenants to relocate.

Since Chapter 53A has been in effect, the County has also entered into 57 three-year rental agreements with contract purchasers of rental facilities containing 10 or more units. The assertion that Chapter 53A minimized tenant displacement by requiring that these 57 newly purchased rental facilities remain as rental properties for the three years following their sale/transfer cannot be proven. The fact that every rental facility that has been the subject of a three-year rental agreement is still a rental housing property suggests that at least during the past eight years, three-year rental agreements may not even have been necessary to maintain newly purchased rental facilities as rental properties.

Although three-year rental agreements may not have altered owners' decisions to retain newly purchased rental facilities as rental properties, it can be argued that Chapter 53A helped to minimize tenant displacement in the 21 cases where the County obtained a written agreement from the contract purchaser to limit rent increases and rehabilitation activity during the term of the three-year rental agreement. Although this aspect of administering Chapter 53A raises some issues (see further discussion of page 36-37 of Conclusions), the staff of the Office of Consumer Affairs (OCA) maintains that obtaining these written commitments to limit rent increases and rehabilitation activity had the intended result of minimizing tenant displacement during the three years covered by the rental agreement. The OCA staff believes that without these written agreements, rent increases and/or rehabilitation activity undertaken by the new property owners would likely have displaced a significant proportion of existing tenants.

2. Goal #2: To protect tenants who may be displaced by the sale of a rental facility for conversion to a different use or form of ownership.

In addition to providing possible protection through either the right of first refusal or a three-year rental agreement, Chapter 53A requires owners to provide adequate notice and certain financial assistance to displaced tenants. Requiring an owner to provide 60-days notice and tenant relocation assistance (up to \$750 per tenant) are the only provisions of Chapter 53A that apply whenever a rental facility of 10 or more units converts, regardless of whether a sale or transfer of the property occurs.

The tenant relocation assistance requirements of Chapter 53A have undoubtedly helped ease the financial burden of tenants forced to relocate in a number of specific instances. OLTA staff report that the tenant notice and relocation assistance provisions of Chapter 53A have been used three times since becoming effective in 1981; once when a rental housing facility was being converted to a cooperative, and twice when a rental facility was going to be demolished. There is no record of any notable problems encountered with the application of these tenant relocation assistance provisions.

A comparison of Chapter 53A with other County and State laws indicates that the amount of financial assistance and how that assistance is provided to displaced tenants varies depending upon the reason the tenant is being displaced. For example, in contrast to Chapter 53A, in cases of condominium and cooperative conversion, low-income tenants can receive financial assistance before they vacate their units and without prior proof of expenses; the newly enacted State Assisted Housing Preservation Act provides displaced tenants with up to \$950 in relocation assistance.

The tenant relocation provisions of Chapter 53A have been interpreted as applying only to situations where a tenant is displaced because the tenant's rental facility is being converted to a use that is removing the property from the rental stock. This limitation means that equally situated tenants, one displaced from a building that is being converted from rental housing to offices, and one displaced from a building that is remaining rental but experiencing major rent increases that the tenant cannot afford, are not accorded the same assistance under current law.

#### **D. Issues Raised in the Administration of Chapter 53A**

1. The number of right of first refusal opportunities has been limited by the three-year rental agreement option.

As reviewed in Chapter II of this report, Chapter 53A was amended in June 1981 to allow the contract purchaser to enter into a three-year rental agreement as an alternative to the owner offering the right of first refusal. Providing this exemption has significantly limited the number of right of first refusal purchase opportunities offered to the County, HOC, and certified tenants' organizations. In 57 out of 63 cases, contract purchasers chose the option of entering into a three-year rental agreement, which precluded the County from the opportunity to purchase the property.

2. The definition of "conversion" and its relationship to three-year rental agreements needs to be clarified.

The relationship in Chapter 53A between three-year rental agreements and the term "conversion", as well as the definition of "conversion", can reasonably be interpreted different ways. This ambiguity has caused some disagreement between property owners and County administrators. This disagreement is likely to continue until the legislative language in Chapter 53A is amended.

The Office of Consumer Affairs has administered the three-year rental agreement provision of Chapter 53A under the interpretation that a contract purchaser, in entering into a three-year rental agreement, agrees not only to maintain the facility as a rental property, but also agrees not to "convert" the property during the term of the rental agreement. In OCA's opinion, Chapter 53A defines "conversion" to include any actions during the three-year period, including raising rents or undertaking substantial

rehabilitation activity, that would likely result in the displacement of more than one-third of the tenants within any twelve-month time period. Based upon this interpretation, letters regarding a contract purchaser's intended rent increases/rehabilitation activity were obtained in the selected cases where, in the OCA staff's opinion, there was reasonable cause to believe the new owner might take actions that would result in the displacement of tenants.

Approximately 40 percent of the three year rental agreements signed between 1982-1988 were accompanied by a letter from the contract purchaser outlining intended rent increases and rehabilitation activity for the three-year period covered by the rental agreement. These letters were apparently obtained as a condition of the County's agreeing to enter into the three-year rental agreement.

Interviews with landlords and their attorneys who have been affected by Chapter 53A indicated disagreement with the County's administration of the three-year rental agreements. According to representatives of the private sector interviewed, the law [Section 53A-3(a)(1)] only requires that a contract purchaser "...at least 30 days prior to the sale enters into an agreement with the County to retain the property as a rental facility for at least three years...". It is therefore perceived as inappropriate to also, in selected cases, require the contract purchaser to commit in writing to limit rent increases and rehabilitation activity during the term of the rental agreement.

The legislative history of Chapter 53A indicates that rent increases and rehabilitation activity were not specifically discussed as constituting a "change in status or use" at the time Chapter 53A was enacted. The legislative history also shows that this issue has not been discussed with the Council at the various times Chapter 53A has been amended or extended.

In sum, it is debatable whether the three-year rental provision of Chapter 53A can be used to require a contract purchaser not to "convert" the rental facility for three years. Furthermore, even if Chapter 53A could be interpreted this way, it is unclear whether the definition of "conversion" was intended to apply not only to rental facilities being removed from the rental stock, but also to rent increases and/or substantial rehabilitation activity that is likely to cause more than one-third of the tenants to be displaced within a twelve-month period.

### **3. There are inadequate mechanisms in place to enforce Chapter 53A.**

There are no mechanisms established to alert the OCA or OLTA staff that the sale of a rental facility that comes under the provisions of Chapter 53A is proceeding without complying with the law. As a result, approximately one-fourth of all rental facilities of 10 or more units sold between 1982-1988 were sold without complying with the provisions of Chapter 53A. Specifically, a comparison of OLTA and OCA records identified 23 rental facilities of ten or more units that were sold/transferred between 1982-1988 without either the owner offering the right of first refusal to the County, HOC, and tenants organization, or the contract purchaser entering into a three-year agreement with the County.

There is also no formal process established by either OCA or OLTA to: (1) follow-up on the status of rental facilities that are the subject of three-year rental agreements; or (2) ensure that rents are increased in accord with a contract purchaser's written agreement. A sample of rent increases conducted by OLO indicated that in some cases, rents have increased somewhat more than what the purchasers had agreed to. This suggests that, if the County is going to make certain limits on rent increases a condition of entering into a three-year rental agreement, then an enforcement procedure is needed.

4. The County's experience with the right of first refusal provisions of Chapter 53A indicates several other sections of the law need to be clarified.

The record of experience with the right of first refusal provisions indicate that if the three-year rental agreement option continues, the law needs to be clarified to answer a number of basic questions: (1) Is an offer of right of first refusal no longer valid if the contract purchaser subsequent to the offer of the right of first refusal offers to enter into a three-year rental agreement with the County? (2) When matching the terms and conditions of an original offer to purchase, are there certain transaction costs that should be excluded from the calculation of total cost? and (3) When the law states that a three-year rental agreement must be signed within 30 days of the "sale", when exactly is a sale deemed to have occurred?

E. Other Issues

1. The applicability of Chapter 53A in municipalities. Chapter 53A applies in nine of the 17 municipalities in the County; however, Rockville is the only municipality that contains a significant number of rental facilities in which Chapter 53A does not apply. The County-wide effectiveness of Chapter 53A is impaired by the fact that some municipalities have not also adopted Chapter 11, Consumer Protection and Chapter 29, Landlord-Tenant Affairs. Whether Chapter 11 applies alongside Chapter 53A is important to the extent that the penalty section of Chapter 53A authorizes the OCA to take "action as it is deemed necessary pursuant to the authority vested in that office by Chapter 11". Where Chapter 29 does not apply alongside Chapter 53A, the County OLTA cannot collect the data needed for monitoring the status of rental properties that should be complying with Chapter 53A, and those that are covered by three-year rental agreements.

2. The penalty section of Chapter 53A. The penalty provision of Chapter 53A was omitted from the omnibus bill enacted in 1982 that outlined the County's process of enforcing civil penalties, and classified violations of the Code as either A, B, or C civil penalties.

3. The record of reports required by Chapter 53A. The law requires the County's Department of Housing and Community Development to submit a semiannual report to the Council on the status of the tenant displacement situation. The record indicates that DHCD has not submitted a report to the Council every six months as required, but has submitted periodic reports that have had the same result of keeping the Council informed.

4. Relationship between Chapter 53A and the State's Assisted Housing Preservation Act. Assisted rental housing facilities covered by the recently enacted State law concerning "protected actions" (defined in State law to include the prepayment of a federally subsidized mortgage and the non-renewal of federally funded rent supplement contracts), constitute a subset of the rental facilities that come under the provisions of Chapter 53A. Because these two laws are not identical, exactly how an owner would comply with the provisions of both laws is unclear. In addition, the Assisted Housing Preservation Act enables local jurisdictions, after declaring that a low- and moderate-income rental housing emergency exists because of "protected actions", may enact local legislation to provide some limited additional protections to certain designated households.

5. Executive regulation on tenant relocation assistance. The executive regulation that details the tenant relocation assistance provisions of Chapter 53A was issued in 1981. It has never been promulgated through the County's procedure for issuing executive regulations as established in Section 2A-15 of the Code.

## VI. RECOMMENDATIONS

### General

Although the conditions that led to the enactment of Chapter 53A, Tenant Displacement have changed, the continuing shortage of affordable rental housing, combined with the continuing commitment of the County government to a balanced housing mix, warrant the extension of this law beyond its currently designated sunset date of June 30, 1990. However, a number of legislative and administrative changes are recommended to update and clarify certain provisions of Chapter 53A, to address certain inequities, and to improve the effectiveness of Chapter 53A in meeting its legislative goals.

### Recommendations for Legislative Changes to Chapter 53A

#### 1. Extend or eliminate the sunset date of Chapter 53A.

The basic legislative intent of Chapter 53A is to provide certain protections to tenants faced with involuntary displacement, and to provide the public sector and tenant organizations a reasonable right of first refusal to purchase rental facilities in order to minimize tenant displacement and maintain affordable rental housing on the market. Because one of the County's housing policy goals continues to be a balanced housing mix and because the County's housing market continues to be characterized by a scarcity of affordable rental housing units, the basic legislative intent of Chapter 53A is still valid. Although the current scarcity of affordable rental units is no longer directly attributable to a wave of conversions (see recommendation #2 below), an affordability housing crisis exists in the County and is expected to continue for the foreseeable future.

Given that a basis for Chapter 53A continues to exist, the law should be extended beyond its legally mandated sunset date of June 30, 1990. Because the shortage of affordable rental housing units is expected to continue indefinitely, the sunset on Chapter 53A could be removed altogether. However, if it is determined that the law should continue to include a sunset date, it should be set no earlier than June 30, 1995. A five-year extension is recommended because this would provide a reasonable interval of time for any changes to the law to be implemented and evaluated.

#### 2. Rewrite the legislative findings of Chapter 53A to more accurately reflect today's rental housing market conditions.

As discussed in Chapter III of this report, the County's rental housing market is no longer characterized by the identical set of problems that led to the establishment of Chapter 53A in 1981. To reflect current conditions, Section 53A-1, Legislative Findings, should be revised and updated to describe the general housing affordability crisis, and specifically the critical shortage of affordable rental housing options that is expected to continue for the foreseeable future.

3. Amend Chapter 53A to eliminate the three-year rental agreement option.

The option of allowing the contract purchaser to enter into a three-year rental agreement should be eliminated from Chapter 53A. This recommendation is made for the following reasons:

- Allowing contract purchasers to enter into three-year rental agreements has limited the County's ability to achieve one of the major legislative goals of Chapter 53A, that is, to provide the public sector a reasonable opportunity to purchase rental facilities in order to preserve low- and moderate-income rental housing units. As documented in this report, in 57 out of 63 cases where the sale of a rental facility complied with Chapter 53A, the County was precluded from the opportunity to purchase because the contract purchaser chose to enter into a three-year rental agreement.

- The three-year rental agreement option was added to Chapter 53A in July 1981 to parallel the provisions of the County's law governing condominium conversions. The State's condominium conversion law permits, but does not require a local government to provide for a three-year rental agreement option in local law.

- The benefits of the three-year rental agreement are only short-term in that at the end of the three-year period, all restrictions on the use of the rental property are removed. While it is true that few rental properties have converted in recent years, tax laws and/or market conditions in the future may once again make rental properties financially attractive for conversion. If a landlord intends to remove the rental facility from the rental stock, the three-year rental agreement potentially provides a three-year transition period. However, after three years, if market conditions favor conversion, the end result can still be a reduction in the rental stock and the displacement of tenants.

- A three-year rental agreement in which a contract purchaser agrees only to retain the property as a rental facility does not prohibit a new owner from upgrading the property and raising rents accordingly such that a sizable portion of the existing tenant population is forced, for financial reasons, to relocate. This means that, in order to effectively minimize the displacement of tenants, three-year rental agreements should be accompanied by the type of rent limitation agreements that the County required in 21 out of the 57 rental agreements entered into between 1982-1988. However, this approach has practical difficulties in projecting whether an intended rent increase will result in the displacement of more than one-third of the tenants within a twelve-month period. In addition, such rent limitations conflict with the County's basic posture that the government does not establish legal limits on rent increases. Finally, imposing legally binding rent increase limits as part of three-year rental agreements is inequitable because that landlords of newly purchased rental housing properties are required to limit rents while landlords of other rental housing properties are not.



In sum, eliminating the three-year rental option will increase the County's opportunities to purchase rental facilities and maintain them as part of the affordable rental stock. Eliminating the rental agreement option will also end the disagreement between the County and property owners over how the three-year rental agreement should be administered, and avoid the practical difficulties and inequities of establishing legal limits on rent increases for certain property owners and not for others.

**3A. If the three-year rental agreement option is not eliminated, then Chapter 53A should be amended to clarify what is expected from a contract purchaser who chooses to enter into a three-year rental agreement with the County.**

If the three-year rental agreement option is not eliminated, then Chapter 53A should be amended to make the three-year rental agreement as effective as possible, and to minimize any future disagreements between property owners and County administrators. If the intent of the three-year rental agreement is to provide a three-year transition period to tenants who, as the result of actions taken by the new owner of a rental facility, are involuntarily forced to relocate, then the statute should be amended. Specifically, it should be amended to clarify that a contract purchaser entering into a three-year rental agreement with the County agrees to keep a property rental and also agrees to refrain from any action during the term of the three-year rental agreement, including increasing rents or undertaking rehabilitation activity, that would likely result in the displacement of more than one-third of the existing tenants within a twelve-month period.

This clarification could be accomplished by amending the definition of "conversion" in Chapter 53A so that it clearly includes situations where an owner intends to increase rent levels and/or undertake rehabilitation activity that would likely result in tenant displacement. At the same time, the language outlining the three-year rental agreement alternative should be amended to specify that in entering into a three-year rental agreement, a contract purchaser agrees not to "convert" the rental property during the term of the rental agreement.

If the three-year rental agreement option is not eliminated, then it is also recommended that the law require the County Executive to develop method (2) executive regulations to detail the administration of the three-year rental agreement provision of Chapter 53A. These regulations should include general criteria that the County will use in determining whether a contract purchaser's intended rent increases would likely result in the displacement of more than one-third of the tenants in any twelve-month period.

**4. Amend Chapter 53A to revise basic eligibility standards for tenant relocation assistance.**

To make the tenant relocation assistance provisions more equitable, Section 53A-10 should be amended to require that tenant relocation assistance be provided by the owner to any tenant who is displaced from a rental unit because of a conversion, rehabilitation activity, or a rent increase that the tenant demonstrates the tenant cannot afford.

If the legislative intent of requiring owners to provide relocation assistance is to ease the financial burden of tenants being displaced for reasons beyond their control, then the current law's limit of such assistance to situations where a rental facility is being removed from the rental stock should be changed. Under current law, equally situated tenants are not treated equally. A tenant displaced from a rental facility being converted to commercial use and another tenant displaced from a building that is remaining rental but experiencing major rent increases that the tenant cannot afford, are not accorded the same type of financial assistance from the property owner. Under the provisions of Chapter 53A, the tenant being displaced from the building being converted to commercial use is entitled to reimbursement for up to \$750 in relocation expenses. The tenant being displaced due to a rent increase that the tenant cannot afford receives nothing beyond a notice from the landlord that the rent is going to increase.

If eligibility standards are revised as recommended, then the law should also require the County Executive to develop method (3) regulations by a certain date to detail how these provisions are administered. Regulations should include a specific definition of the circumstances of eligibility, as well as the income and rent burden standards for determining whether a tenant is displaced because of a rent increase.

**5. Revise the tenant relocation assistance provisions of Chapter 53A to lengthen the notice period, increase the amount available, and restructure the payment of tenant relocation assistance.**

The cap on the amount of tenant relocation assistance provided in Section 53A-8 to displaced tenants should be increased to \$950 and a provision should be added to allow low income tenants to receive a certain portion (e.g., \$475) of the relocation payment before the tenant vacates the rental unit and without prior proof of expenditures. This change would bring Chapter 53A's relocation benefits into greater conformity with the recently enacted State law that includes provisions for relocation assistance to tenants displaced from a "protected action" (defined in State law to include the prepayment of federally subsidized mortgages and the non-renewal of federally funded rent supplement contracts).

The notice period to tenants should be increased from the current requirement of 60 days. (Increasing this notice period may require a change in State law.) Given the low rental housing vacancy rates in the County's, it is reasonable to provide tenants who are forced to relocate with a more realistic period to find another place to live. HB 1263 requires that tenants be provided with a one-year notice of a "protected action", and the State condominium law requires that tenants be provided with a 180-day notice of conversion.

**6. Amend penalty sections of Chapter 53A.**

Sections 53A-7 and 53A-9 should be revised to consolidate the penalty provisions into one section. In addition, the law should be amended to conform with the County's standard procedures for enforcing civil penalties as outlined in Section 1-18 and Section 1-19 of the Code. Violations of Chapter 53A should be classified as class "A" violations.

7. Amend Chapter 53A to clarify details of the right of refusal process.

Chapter 53A should be amended to clarify specific types of commissions and fees that should be included in determining the "terms and conditions" of a contract that the County or HOC must match in exercising their right of first refusal to purchase. In addition, if the three-year rental option is retained, then Chapter 53A should be amended to clarify that an offer of right of first refusal is not voided by a subsequent offer by the contract purchaser to enter into a three-year rental agreement; in other words, the law should clearly provide that once a right of first refusal offer has been made, it remains valid for the 60 days that the County and HOC have to decide whether to purchase the property.

8. Amend the reporting requirement of Section 53A-12.

Section 53A-12 should be amended to require that DHCD submit a report to the Council regarding the status of tenant displacements in the County only once a year, instead of the current requirement of twice a year. An annual report is sufficient to keep the Council informed about the tenant displacement situation in the County. Of course, the requirement of an annual report does not preclude DHCD from submitting information more frequently if it is deemed appropriate.

9. Amend Chapter 53A to ensure compatibility with State law governing assisted housing rental properties undertaking a "protected action".

The Council should request that the County Executive in consultation with the HOC and State Department of Housing and Community Development, recommend what legislative changes to Chapter 53A are appropriate to best coordinate the provisions of County law with those in the Assisted Housing Preservation Act (HB 1263).

As explained in Chapter II of this report, assisted rental housing facilities covered by the recently enacted State law concerning "protected actions" (defined in State law to include the prepayment of federally subsidized mortgages and the non-renewal of federally funded rent supplement contracts) constitute a subset of the rental facilities that come under the provisions of Chapter 53A. Because these two laws are not identical, exactly how an owner would comply with the provisions of both laws is unclear. In addition, the Assisted Housing Preservation Act enables local jurisdictions, after declaring that a low- and moderate-income rental housing emergency exists because of "protected actions", may enact local legislation to provide some limited additional protections to certain designated households.

## Recommendations for Administrative Changes

### 10. Establish procedures to ensure compliance with the requirements of Chapter 53A.

As reviewed in Chapter IV of this report, there were at least 23 sales/transfers of rental facilities of 10 or more units between 1982-1988 that were completed without compliance with Chapter 53A. The County and the land records' office of the Circuit Court need to establish a process that ensures the sale of any rental facility of 10 or more units cannot be completed until the owner/contract purchaser provides evidence of compliance with the requirements of Chapter 53A.

### 11. Develop executive regulations outlining general criteria that the County will use in deciding whether to exercise the right of first refusal.

Evaluating whether the County exercised good judgment in purchasing Fairfax Court, Chevy Chase Lake, and Spring Gardens was beyond the scope of this study. However, it became apparent in the course of this evaluation that there are no written criteria governing the County's decision whether to exercise its right of first refusal when the opportunity is presented. Especially if the three-year rental agreement option is eliminated, the County will be presented with a greater number of opportunities to exercise the right of first refusal to purchase rental facilities. While recognizing the County needs to retain the flexibility to decide on a case-by-case basis whether to exercise the right of first refusal, it is appropriate that general criteria for making such major public expenditure decisions be developed in the form of method (2) executive regulations.

### 12. Issue tenant relocation assistance regulation as a method (3) executive regulation.

The regulation governing tenant relocation assistance were originally issued in December 1981 and has never gone through the executive regulations process as established in Section 2A-15 of the Code. This regulation should be formally promulgated as a method (3) executive regulation.

### 13. If the decision is made to retain the three-year rental agreement option, then a process should be established to monitor and enforce the conditions of the agreements entered into.

If Chapter 53A continues to allow contract purchasers to enter into three-year rental agreements, and especially if the law is clarified to require that entering into a three-year rental agreement involves agreeing to certain rent increase limitations, then a formal tracking process should be established to ensure compliance with the conditions of these agreements are adhered to. No such process exists today as documented in Chapter IV of this report.

At a minimum, a master list should be kept by the Office of Consumer Affairs that records all properties that are covered by a three-year rental agreement, the date of the agreement, and the date on which the agreement expires. If as part of entering into a three-year rental agreement, a contract purchaser also agrees to limit rent increases or rehabilitation activity, then these commitments should also be recorded and tracked.

The Office of Landlord-Tenant Affairs, which already keeps records on all licensed rental facilities and collects data annually on holdover rent increases could monitor relatively easily the status of rental facilities located in the County or in municipalities that have adopted both Chapter 53A and Chapter 29. The Office of Consumer Affairs could work cooperatively with the cities of Gaithersburg and Takoma Park to monitor the status of rental facilities located in these municipalities that have adopted Chapter 53A but not Chapter 29.

#### Other Recommendations

14. The Council should consider encouraging all municipalities in the County, and especially the City of Rockville, to adopt Chapter 53A, and where necessary, also to adopt Chapter 11, Consumer Affairs, and Chapter 29, Landlord-Tenant Affairs.
15. The Council should consider removing the current exemption from Chapter 53A for rental properties for which the building permit was issued after the initial effective date of Chapter 53A, which was February 5, 1981. The Council should also consider whether an exemption from Chapter 53A should be added for trailer parks.
16. The Council should consider imposing a tax on all rental properties that are converted to uses that will remove the properties from the rental stock. Under current law, there is a four percent transfer tax on properties converted from rental to condominium status, but no tax on transfers of rental properties being removed from the rental stream for other reasons. The proceeds from such as tax should be deposited, like funds collected from the condominium transfer tax, in the Montgomery Housing Initiative.
17. After making decisions regarding amendments to Chapter 53A, the Council should consider making appropriate changes to other County laws so that the provisions of Chapter 53A are consistent with those in other relevant laws, e.g., Chapter 56, Article VII, Tenant Displacement Aid Fund, Chapter 11A, Condominiums, and Chapter 11C, Cooperatives.

## VII. DEPARTMENT/AGENCY COMMENTS ON DRAFT REPORT

On August 8, 1989, OLO circulated a draft of this report to the Chief Administrative Officer, the Executive Director of the Housing Opportunities Commission, and the Council Staff Director. All technical comments received either orally or in writing are incorporated into this final report.

Written comments on the draft report received from the Chief Administrative Officer are included in their entirety starting on page 48. As stated in the memorandum, the written comments are a result of a joint consideration of this OLO report by the County agencies (in conjunction with HOC) charged with administering Chapter 53A.



# Montgomery County Government

ROCKVILLE, MARYLAND 20850

## MEMORANDUM

September 13, 1989

TO: Andrew Mansinne, Jr. Director  
Office of Legislative Oversight

FROM: Lewis T. Roberts  
Chief Administrative Officer

SUBJECT: Draft OLO Report No. 89-2  
An Evaluation of County Code Chapter 53A Tenant Displacement

Thank you for the opportunity to comment on the above-mentioned report. As always with your reports, it is very thorough and thoughtfully prepared.

You have received under separate cover from the County Attorney's Office a legal analysis of the issues related to your evaluation. You have also received technical comments from OMB. Copies of the legal analysis\* and OMB memorandum are attached for reference. The comments contained in this memorandum are the result of the joint consideration of your report by the County agencies (in conjunction with HOC) charged with administering Chapter 53A. At this time, the position of the Executive Branch regarding each of the report's recommendations, which begin on Page 40, are as follows:

1. Extend or eliminate the sunset date of Chapter 53A

The Executive Branch is in agreement with OLO that Chapter 53A should be extended beyond its current expiration date of June 30, 1990. Furthermore, as stated in the County Attorney's memorandum to OLO on this issue, it is our position that the setting of a specific sunset date for Chapter 53A is not necessary. However, if one were to be established, it should not be prior to June 30, 1995.

2. Rewrite the legislative findings of Chapter 53A to more accurately reflect today's rental housing market conditions.

The Executive Branch agrees that the premise underlying Chapter 53A should be rewritten to accurately reflect the present situation facing the County in the area of affordable housing.

\* The legal analysis from the Office of the County Attorney is attached as Appendix E of this report.

3. Amend Chapter 53A to eliminate the three-year rental agreement option.

The Executive Branch strongly disagrees with OLO's recommendation that the three year rental option currently in Chapter 53A be eliminated. It has been our experience that this rental option has resulted in purchasers of rental property maintaining these facilities in the rental stock for time periods beyond that which they would have in the absence of Chapter 53A. The County is not in a financial position to purchase under the first right of refusal provisions in a great many rental facilities. The three year rental option offers a realistic alternative by which rental housing can be maintained for, at least, an additional three year period.

The Executive Branch is quite comfortable with the manner in which this provision of the Chapter has been administered. The only change that we would be seeking would be a clarification that it is entirely within the discretion of the County to either sign such a rental agreement or exercise the right of first refusal.

- 3a. If the three-year rental agreement option is not eliminated, then Chapter 53A should be amended to improve its effectiveness in minimizing tenant displacement and to clarify what is expected from a contract purchaser who chooses to enter into a three year rental agreement with the County.

The Executive Branch is in general agreement with OLO regarding this recommendation. However, it is our position that the clarification being sought can best be achieved through Executive Regulations rather than statutory changes.

4. Amend Chapter 53A to revise basic eligibility standards for tenant relocation assistance.

The Executive Branch does not see the necessity of revising the criteria for relocation eligibility. The manner in which we have interpreted Section 53A-10 has included all tenants displaced as a result of a conversion of a rental facility covered by Chapter 53A.



5. Revise the tenant relocation assistance provisions of Chapter 53A to lengthen the notice period, increase the amount available, and restructure the payment of tenant relocation assistance.

The Executive Branch is in agreement that the amount of relocation assistance should be increased to \$950 and that one-half of this amount should be paid to low income tenants before they vacate the rental facility and without prior proof of expenditures. While we agree, as recommended by OLO, that the notice period of sixty (60) days should be extended the County may be pre-empted from doing this by applicable state law. This issue will need to be researched further before any action could be taken regarding this recommendation.

6. Amend penalty sections of Chapter 53A.

The Executive Branch is in agreement with this OLO recommendation.

7. Amend Chapter 53A to clarify details of the right of refusal process.

The Executive Branch is in agreement with this OLO recommendation. However, we feel this recommendation can be accomplished through Executive Regulations rather than amendments to the statute.

8. Amend the reporting requirement of section 53A-12.

The Executive Branch is in agreement with this OLO recommendation.

9. Amend Chapter 53A to ensure compatibility with state law governing assisted housing rental properties undertaking a protected action.

The Executive Branch is not prepared to consider recommending such amendments until after the other recommendations contained in the evaluation are considered. In the meantime, if there are any contradictions between Chapter 53A and applicable state law, the state law is controlling.

10. Establish procedures to ensure compliance with the requirements of Chapter 53A.

The Executive Branch is in agreement with OLO that a more "fail safe" system needs to be designed to ensure that the sale of all rental facilities of ten or more units is done in compliance with the provisions of Chapter 53A. In addition to the approaches recommended by OLO, the Executive Branch is of the position that such a reporting requirement could be incorporated as part of the licensing process administered by OLTA.

11. Develop executive regulations outlining general criteria that the County will use in deciding whether to exercise the right of first refusal.

The Executive Branch is in agreement with this OLO recommendation.

12. Issue tenant relocation assistance regulation as a method (3) Executive Regulation.

The Executive Branch is in agreement with this OLO recommendation.

13. If the decision is made to retain the three-year rental agreement option, then a process should be established to monitor and enforce the conditions of the agreement entered into.

The Executive Branch is in agreement with this OLO recommendation.

14. The Council should consider encouraging all municipalities in the County, and especially the City of Rockville, to adopt Chapter 53A, and where necessary, also to adopt Chapter 11, Consumer Affairs, and Chapter 23, Landlord-Tenant Affairs.

It is the policy of the Executive Branch that such decisions are entirely within and rightfully left to the discretion of the local jurisdiction.

15. The Council should consider removing the current exemption from Chapter 53A for rental properties for which the building permit was issued after the initial effective date of Chapter 53A, which was February 5, 1981.

While not in agreement with this OLO recommendation, the Executive Branch is also not strongly opposed and would support some modification of the current blanket exemption granted to all new construction since February 5, 1981. The wording of such a modified exemption will depend, to a large extent, on how the legislative findings for Chapter 53A are re-written.

16. The Council should consider imposing a tax on all rental properties that are converted to uses that will remove the properties from the rental stock.

The Executive Branch is not prepared to take a position on this matter at this time.

17. After making decisions regarding amendments to Chapter 53A, the Council should consider making appropriate changes to other County laws.

The Executive Branch is in agreement with this OLO recommendation.

The Executive Branch looks forward to a discussion of the recommendations with you and the County Council. Thank you again for the opportunity to comment.


JG:ek

M E M O R A N D U M

1989 SEP 11 AM 9:59

September 6, 1989

TO: Andrew Mansinne, Jr., Director  
Office of Legislative Oversight

FROM: Robert K. Kendal, Director   
Office of Management and Budget

SUBJECT: Comments on DRAFT OLO Report 89-2, An Evaluation of  
County Code Chapter 53A, Tenant Displacement

OMB has reviewed the above-named DRAFT report and appreciates the opportunity to comment. OMB is not opposed to any of the recommendations discussed on Pages 40 through 46. I note, however, that OLO included a contingency under Recommendation 3 regarding an amendment to Chapter 53A to eliminate the three-year rental agreement option. A Fiscal Impact Statement would be appropriate prior to Council's consideration of this issue.

As is indicated on Page 41, "eliminating the three-year rental option will increase the County's opportunity to purchase rental facilities and maintain them as part of the affordable rental stock." Thus, changes in the legislation that would expand the County's right of first refusal would have fiscal impacts which should be analyzed in order that the Council can be better informed in considering the legislative change, and to ensure that the County is prepared for the fiscal impacts that might result from the change. OMB will work with Council staff and appropriate departmental staff in considering the potential fiscal impacts of this and other legislative changes.

On a related issue, Recommendation 11 proposed the development of Executive Regulations outlining criteria to be used in deciding whether to exercise the right of first refusal. Development of these regulations should be delayed until the legislation has been amended, in order to avoid potential conflicts between the legislation and the Executive Regulation.

On page 8, I suggest distinguishing the difference between the Montgomery Housing Initiative (project), established May 3, 1988 (Bill #22-88), and the Montgomery Housing Initiative Fund, a funding account established May 15, 1988. The Montgomery Housing Initiative (project), as mandated, must be included in the annual CIP with funds appropriated for the purpose of promoting a broad range of housing opportunities for low and moderate income residents. The balance of the Condominium Transfer Tax Fund has been transferred to the Montgomery Housing Initiative Fund which acts as a funding source for the Montgomery Housing Initiative CIP project.

RKK/DJB/ms

Legislative History of Chapter 53A - Tenant Displacement

- February 3, 1981: Council declares a "public emergency" and passes Emergency Bill #3-81 to create Chapter 53A, Tenant Displacement. Chapter 53A establishes a procedure to permit tenant associations and the County to exercise the right of first refusal to purchase rental facilities of 10 or more units. It also establishes certain tenant protections for tenants who may be displaced by the "conversion" of a rental facility to a different use or form of ownership, including conversion to condominium, cooperative or commercial use or demolition. Chapter 53A is enacted with an initial sunset date of March 31, 1983.
- 1981 State  
Legislative Session: General Assembly passes SB 1028 to amend Chapter 11-136, Property Rights, Annotated Code of Maryland. SB 1028 gives the right to local governments, but not to tenant associations, to exercise the right of first refusal to purchase rental facilities that are converting to condominiums.
- June 23, 1981: Council passes Emergency Bill #26-81 to conform County law to recently enacted SB 1028 and to consolidate all laws governing condominium conversions into Chapter 11A, Condominiums. Bill #26-81 amends the definition of "conversion" in Chapter 53A to explicitly exclude condominiums, and also makes some changes to the right of first refusal provisions in Chapter 53A.
- March 22, 1983: Council passes Resolution #10-107 to extend Chapter 53A from March 31, 1983 to March 31, 1985.
- June 21, 1983: Council passes Emergency Bill #33-83 to amend Chapters 11A and 53A. Bill #33-83 makes technical corrections, and eliminates certain internally contradictory language.
- February 5, 1985: Council passes Emergency Bill #3-84, to conform the tenant protections established in Chapter 11C, Cooperatives, with those established in Chapter 11A, Condominiums. Bill #3-84 also amends the definition of conversion in Chapter 53A to delete "the establishment of a cooperative housing facility", as a specific example of conversion activity.
- March 19, 1985: Council passes Resolution #10-1212 to extend Chapter 53A to March 31, 1987.

- October 15, 1985: Council passes Bill #36-85 to amend Chapter 53A. Bill #36-85 inserts into law the March 31, 1987 sunset date passed by Council Resolution, and amends the requirement of a semi-annual report due to the Council regarding tenant displacement to read that it is due from DHCD instead of OLTA.
- January 14, 1986: Council votes down Bill #32-85 which proposed amending the right of first refusal procedures in Chapters 11A and 53A. Under present law, an owner of a rental facility must offer that property to the County before selling to a private purchaser unless the contract purchaser enters into an agreement with the County to retain the property as a rental facility for three years. Bill #32-85 would have explicitly given the County, instead of the purchaser, the option of exercising its right of first refusal or entering into a three-year rental agreement.
- March 3, 1987: Council passes Emergency Bill #5-87 to extend Chapter 53A to March 32, 1989.
- March 21, 1989: Council passes Emergency Bill #9-89 to extend Chapter 53A to June 30, 1990. The Council requests the Office of Legislative Oversight to evaluate the substance and administration of Chapter 53A, and to report back to the Council by October 1, 1989.

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## Chapter 53A.

### TENANT DISPLACEMENT.\*

- § 53A-1. Legislative findings.
- § 53A-2. Definitions.
- § 53A-3. Right of first refusal to purchase rental facilities.
- § 53A-4. Reserved.
- § 53A-5. Exemptions.
- § 53A-6. Certification of compliance.
- § 53A-7. Penalties for violation of chapter.
- § 53A-8. Notice to tenants of status conversion; right of tenant to terminate lease; liability for relocation costs.
- § 53A-9. Complaints; penalties; enforcement.
- § 53A-10. Administration of chapter.
- § 53A-11. Reserved.
- § 53A-12. Semiannual reports to the council.
- § 53A-13. Sunset date.

#### Sec. 53A-1. Legislative findings.

The county council for Montgomery County, Maryland, hereby finds that there exists a public emergency caused by the increase in the sale of existing rental facilities for conversion to condominium projects, cooperative projects, or other forms of property ownership or use, and that these sales have the effect of displacing tenants from their dwelling units. The county council also determines that the increase in these sales, together with the potential displacement of tenants, has caused great fear, confusion and anxiety among the persons who reside in rental facilities. Further, the county council notes that there presently exists and inadequate number of rental units available, planned or under construction, to replace the rental units which are being converted to other uses, with detrimental effect, thus frustrating the county general plan concepts for a balanced housing mix and adequate provisions for housing needs of all segments of this community. Accordingly, the county council finds that it is in the

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\*Cross references—Condominiums, ch. 11A; cooperative housing, ch. 11C; group residential care facilities, ch. 23A; moderately priced housing, ch. 25A; landlord-tenant relations, ch. 29; rent supplement and assistance program, ch. 41A; transient lodging facilities, ch. 54.

best interest of the public health, safety and general welfare to establish a chapter of law providing for the protection of those tenants who may be displaced by the sale of a rental facility for conversion to a different use or form of ownership. The county also finds that the problems created by or resulting from these sales are many and include major displacement of large numbers of tenants from their dwelling units, scarcity of low- and moderate-income dwelling units on the market when demand for such units is increasing, and inadequate numbers of rental dwellings available to replace the rental units being sold. Accordingly, the county council finds that it is in the best interest of the public health, safety and general welfare to provide certain organizations a reasonable right of first refusal to purchase a rental facility in order to provide a reasonable and fair mechanism for maintaining rental units on the market and minimizing the displacement of tenants. New construction has been exempted because the conversion of newly constructed rental facilities to nonrental status has in no way contributed to the current emergency situation. (1981 L.M.C., ch. 32, § 1.)

#### **Sec. 53A-2. Definitions.**

(a) *Conversion* means subjecting a rental facility to a change in status or use, including but not limited to the establishment of a commercial use of the facility, or partial or complete demolition. Additionally, "conversion" shall mean any other alteration in the status or use of the rental facility which has the effect of displacing tenants from thirty-three (33) percent or more of the occupied rental units within any twelve-month period or any other act which has the effect of ceasing the operation of the property as a rental facility.

For the purposes of this chapter, conversion shall not include the establishment of a condominium regime.

(b) *Owner* means any person holding title to a rental facility.

(c) *Rental facility* means any structure or combination of related structures and appurtenances, operated as a single entity in which the owner thereof provides for a consideration ten (10) or more rental residential dwelling units, regardless of the legal status of the property, but shall not be construed to mean any



transient facilities and any facilities operated for religious or eleemosynary purposes.

(d) *Tenant* means any person having a leasehold right to occupy a dwelling unit in a rental facility.

(e) *Title* means legal or equitable ownership of a rental facility or the legal, equitable or beneficial ownership of partnerships, limited partnership, corporations or trusts holding title to a rental facility.

(f) *Transfer* and *transfer of title* mean (1) the transfer of the legal title to a rental facility, or (2) transfer of substantial ownership or beneficial interests or both, in a general or limited partnerships, corporations, trusts or any combination thereof which hold the legal title to a rental facility. The transfer of substantial ownership or beneficial interests means the transfer within a one-year period of a total of fifty-one (51) percent or more of the ownership of said partnerships, stock in said corporations, beneficial interests in the trust or any combination thereof. (1981 L.M.C., ch. 32, § 1; 1982 L.M.C., ch. 2, § 2; 1985 L.M.C., ch. 39, § 2.)

**Sec. 53A-3. Right of first refusal to purchase rental facilities.**

(a) *Sale of rental facilities.* Prior to the sale or transfer of a rental facility of more than ten (10) rental units to any person for the purpose of conversion, the owner shall provide a right of first refusal to purchase the rental facility to the county, its designated housing agency and tenants' organizations certified by the office of consumer affairs pursuant to executive regulations adopted by the county executive under method (3) of section 2A-15 of this Code.

(1) All sales or transfers of rental facilities of more than ten (10) units shall be deemed to be sales for the purpose of conversion and subject to the requirements of this section unless the contract purchaser at least thirty (30) days prior to the sale enters into an agreement with the county to retain the property as a rental facility for at least three (3) years after the date of transfer of the property.

(2) Notwithstanding the above, transfers of rental facilities for the purpose of conversion to condominium are subject to

the requirements of chapter 11A, of this Code and shall be exempt from the requirements of this chapter.

(3) For purposes of this section, the Montgomery County Housing Opportunities Commission is the designated housing agency.

(4) All contracts for the purchase or transfer of title to a rental facility, and title obtained pursuant thereto, shall be contingent upon and subject to full compliance with the requirements of this section.

(b) *Notice required; exercise of right of first refusal.*

(1) Prior to the transfer of any rental facility under this section, the owner shall give written notice to the county, its designated housing agency, and all tenants of the rental facility of the terms and conditions under which the owner would agree to sell the rental facility. Notice shall be deemed given on the latest date this notice is actually received by Montgomery County, its designated housing agency, and tenants in the facility. This notice shall constitute the terms and conditions of the right of first refusal exercisable by the county, its designated housing agency, or a certified tenants' organization hereunder. For the purposes of this section, "tenant organization" means a bona fide association of resident tenants of a rental facility, certified by the office of consumer affairs as representing at least thirty (30) percent, or five (5) units, whichever is the greater number of units occupied by tenants of the rental facility.

(2) The county, its designated housing agency, or the certified tenants' organization may exercise the right of first refusal by compliance with the following:

a. The county, its designated housing agency, or the certified tenants' organization shall, within sixty (60) days of the date notice is given, offer to the owner a binding contract containing substantially the same terms and conditions contained in the owner's notice, which contract shall be binding on the owner if the contract contains a contingency entitling the local government or the certified tenants' organization to secure financing within one hundred eighty (180) days from the date notice was given;

b. Thereafter, the county, its designated housing agency or the certified tenants' organization shall satisfy or waive the

c. The settlement on the contract shall occur within one hundred eighty (180) days from the date notice was given.

(3) Notwithstanding the above, the owner and the county, its designated housing agency, or the certified tenants' organization may agree by the terms of the contract to extend the date within which the county or the designated housing agency shall secure financing, and within which settlement shall occur.

(4) The county executive may require the owner, by executive regulations adopted under method (3) of section 2A-15 of this Code, to make available to the county, its designated housing agency, and certified tenants' organization information, regarding the characteristics and condition of the facility deemed relevant to the exercise of the right of first refusal, including but not limited to architectural and engineering plans and specifications and facility operating data. In addition, the county executive by regulation, adopted under method (3) of Section 2A-15 of this Code, may require the owner to provide access to the facility for purposes of inspection by the county, its designated housing agency, and certified tenants' organization; provided, the county, its designated housing agency, and certified tenants' organization, and their agents shall be responsible for any damage to the property caused by such inspection.

*(c) Owner's right to proceed; liability of county, its designated housing agency, and the certified tenants' organization.*

(1) If the county, its designated housing agency, and the certified tenants' organization fail to exercise their right of first refusal, the owner shall have the right to enter into a contract and make settlement on that contract with any other purchaser under substantially the same terms and conditions as contained in the notice to the county, its designated housing agency, and the certified tenants' organization.

(2) If the county, its designated housing agency, and the certified tenants' organization fail to exercise their right of first refusal, the purchaser may proceed with conversion of the rental facility.

(3) The county, its designated housing agency, and the certified tenants' organization shall be under no obligation to exercise their right of first refusal and shall have no liability for failure to exercise the right of first refusal created hereunder.

financing contingency clause within the one-hundred-eighty-day period; and

(d) *Certificate of compliance or exemption.* Within ten (10) days following the written application of any interested person, and upon receipt of satisfactory proof, the director of the office of consumer affairs shall deliver to that person a written certificate in recordable form on, or incorporating by specific reference, any instrument made to evidence the transfer of a rental facility stating, as the circumstances may require, that either:

(1) As to that transfer, the requirements of this section have been fully complied with and the rights of the county, its designated housing agency, and any certified tenants' organization pursuant to this section have terminated; or

(2) That transfer is exempt from the requirements of this section.

The certificate of the director shall be conclusive as to the county, its designated housing agency, any certified tenants' organization, the parties of the instrument, and all persons claiming under or through any of them. The director may require the payment of a reasonable fee for the certificate.

If the director fails or refuses to deliver the certificate within the time specified, the director shall so notify the applicant in writing within the time specified and shall state, in reasonable detail, the reason or reasons for such failure or refusal. (1981 L.M.C., ch. 32, § 1; 1982 L.M.C., ch. 2, § 3; 1984 L.M.C., ch. 24, § 52; 1984 L.M.C., ch. 27, § 35.)

#### **Sec. 53A-4. Reserved.**

**Editor's note**—Section 53A-4 was reserved by 1981 L.M.C., ch. 32, § 1; 1982 L.M.C., ch. 2, § 3.

#### **Sec. 53A-5. Exemptions.**

Unless the method of disposition is adopted for purposes of evasion of this chapter, the provisions of this chapter shall not apply to any contracts relating to the following:

(a) Any transfer made pursuant to the terms of a bona fide mortgage or deed of trust agreement.

(b) Any transfer to a mortgagee in lieu of foreclosure or any transfer pursuant to any bankruptcy proceeding or arrangement in lieu of bankruptcy, or deed in lieu of foreclosure.

(c) Any transfer made pursuant to a judicial sale or other judicial proceeding brought to a secure payment of a debt or for the purpose of securing the performance of an obligation.

(d) Any transfer of the interest of one cotenant to another cotenant by operation of law.

(e) Any transfer made by will, or intestate distribution.

(f) Any transfer made to any municipal, county or state government or to any agencies, instrumentalities or political subdivisions.

(g) Any transfer of a minority interest of title.

(h) Any transfer of a rental facility which is the subject of an enforceable restrictive covenant, recorded among the land records of the county, prohibiting any use of the structure other than as a rental facility for a minimum of three (3) years from the date of transfer. The covenant may include an exemption for commercial uses in existence at the time of its recordation.

(i) Any transfer of a rental facility for which the initial building permit was issued after the effective date of this chapter. (1981 L.M.C., ch. 32, § 1; 1983 L.M.C., ch. 55, § 3.)

#### **Sec. 53A-6. Certificate of compliance.**

The director of the office of consumer affairs, upon receipt of satisfactory proof of compliance, shall furnish to the parties of the contract certificate in a form appropriate for recordation among the land records of Montgomery County, Maryland, certifying that the requirements of this chapter have been satisfied as of the date of the certificate with respect to the rental facility identified in the certificate. The director of the office of consumer affairs may require the payment of a reasonable fee for the certificate. (1981 L.M.C., ch. 32, § 1.)

#### **Sec. 53A-7. Penalties for violation of chapter.**

(a) It shall be unlawful for any person to transfer title, substantially amend, assign or enter into a contract for the sale of title to any rental facility subject to the provisions of this chapter except upon compliance with the requirements of this chapter.

(b) Any person who violates any provision of this chapter shall be liable for the payment of the county of a civil penalty

specified in section 53A-9. Each transfer of title to any rental facility in violation of the requirements of this chapter shall constitute a separate offense.

(c) The penalties and remedies provided in section 53A-9 shall be applicable to violations of the requirements of this section. (1981 L.M.C., ch. 32, § 1.)

**Sec. 53A-8. Notice to tenants of status conversion; right of tenant to terminate lease; liability for relocation costs.**

(a) At least sixty (60) days prior to converting a rental facility or portions thereof from rental status to a different status or use, other than condominium, the owner shall give to each tenant written notice of his intention to convert the status or use of the rental facility. The notice shall be given by certified mail.

(b) Any tenant entitled to receive a notice of intention to convert the status or use of the rental facility, under this chapter, shall at any time after receipt of the notice have the right to terminate his lease and extensions created by law, by providing at least thirty (30) days' notice to the owner, without penalty or other termination charge to the tenant.

(c) Any tenant who, within one hundred eighty (180) days after receipt of a notice of intention to convert the status or use of the rental facility, under this chapter, gives written notice of intent to move to the owner shall be entitled to reimbursement by the owner for the reasonable costs of relocation assistance as determined by executive regulation, adopted by the county executive under method (3) of section 2A-15 of this Code, up to seven hundred fifty dollars (\$750.00); provided that complaints regarding the application of this subsection may be filed with the office of landlord-tenant affairs. (1981 L.M.C., ch. 32, § 1; 1982 L.M.C., ch. 2, § 3; 1984 L.M.C., ch. 24, § 52; 1984 L.M.C., ch. 27, § 35.)

**Sec. 53A-9. Complaints; penalties; enforcement.**

(a) Any person subjected to any unlawful practice as set forth in this chapter may file a complaint in writing with the Montgomery County Office of Consumer Affairs pursuant to the provisions for filing such complaints as set forth in chapter 11.

## TENANT DISPLACEMENT

§ 53A-10

(b) The office of consumer affairs is hereby authorized and directed to receive complaints filed pursuant to this chapter and to conduct such investigations and hearings as it deems necessary pursuant to the authority vested in that office by chapter 11.

(c) Whenever it is determined by the office of consumer affairs that there has been a violation of this chapter or any duly adopted rule or regulation of the county, that office is authorized, at its discretion, to take one or more of the following actions:

(1) Attempt to conciliate the matter by conference or otherwise and secure a written conciliation agreement; or

(2) Seek a written assurance of discontinuance, which shall be signed by the owner and the director of the office of consumer affairs; or

(3) Issue appropriate cease and desist orders; or

(4) Refer the matter to the county attorney for injunctive or other appropriate legal action.

(d) Any person who violates any provision of this chapter, or fails to fulfill an obligation imposed by this chapter, shall be liable for the payment to the county of a civil penalty, recoverable in a civil action, in the sum of not more than five hundred dollars (\$500.00) for each such violation.

(e) In addition to any other penalty herein provided, injunctive or other appropriate action or proceeding to correct a violation of this chapter may be instituted by the county attorney's office, including appropriate enforcement of restrictive covenants contemplated by section 53A-5(h); and any court of competent jurisdiction may issue restraining orders, temporary or permanent injunctions or other appropriate forms of relief.

(f) Nothing herein shall prevent any person from exercising any right or seeking any remedy under this chapter or exercising any right or seeking any remedy to which such person might otherwise be entitled or from filing an appropriate complaint with a court of law or equity. (1981 L.M.C., ch. 32, § 1.)

**Sec. 53A-10. Administration of chapter.**

The office of consumer affairs shall be responsible for administration of this chapter; and the county executive shall, from time to time, issue such written regulations, adopted under method (2) of section 2A-15 of this Code, as may be necessary to put into

effect and to administer the provisions of this chapter. (1981 L.M.C., ch. 32, § 1; 1984 L.M.C., ch. 24, § 52.)

**Sec. 53A-11. Reserved.**

**Editor's note**—Section 33 of 1985 L.M.C., ch. 31, repealed § 53A-11, specifying the applicability of this chapter, derived from 1981 L.M.C., ch. 32, § 1.

**Sec. 53A-12. Semiannual reports to the council.**

The county council, in enacting this measure, takes cognizance of the fact that the emergency situation referred to in the legislative findings may ease at some time in the foreseeable future. Every six (6) months, the department of housing and community development must send a report to the council on the status of the emergency situation regarding tenant displacement. (1981 L.M.C., ch. 32, § 1; 1986 L.M.C., ch. 20, § 1.)

**Editor's note**—Section 53A-12 was formerly entitled "Termination" and provided for extension of the chapter by resolution. Extensions were effected by the following resolutions: 10-107, 10-1212. See § 53A-13 for sunset date.

**Sec. 53A-13. Sunset date. \***

Sections 53A-1 through 53A-13 are no longer effective after March 31, 1989. (1986 L.M.C., ch. 20, § 2; 1987 L.M.C., ch. 41, § 1.)

\* Emergency Bill 9-89, enacted by the Council on March 21, 1989, extended the sunset date of Chapter 53A from March 31, 1989, to June 30, 1990.



Major Provisions of County Code Chapter 53A and House Bill 1263

	<u>CHAPTER 53A, Tenant Displacement Effective 2/5/81</u>	<u>HOUSE BILL 1263, Assisted Housing Preservation Act Effective 7/1/89</u>
<u>Premise of Law</u>	Legislative findings declares the existence of a "public emergency" brought about by the conversion of rental facilities into condominiums and other uses, resulting in tenant displacement and a severe shortage of rental units.	Preamble declares an anticipated reduction in "affordable" rental units for low- and middle-income households "due to the prepayment of subsidized mortgages and the termination of rental subsidy agreements".
<u>Properties Affected by Law</u>	Rental facilities of ten or more units under sale or transfer for the purposes of "conversion", except for conversion to condominiums.	Assisted housing projects (e.g., Sec. 221(d)(3), Section 8) with ten or more units in which the owner undertakes a "protected action", defined as any sale, transfer, prepayment, termination, or failure to renew.
<u>Provision Allowing Rental Agreement in Lieu of Right of Refusal</u>	Section 53A-3(a)(1): Provides that the contract purchaser can prevent the County and tenants' organization from exercising the right of first refusal by entering into a contract with the County to retain the property as a rental facility for at least three years from the date of sale.	None.
<u>Other Exemptions From Law</u>	Sec. 53A-5: <ul style="list-style-type: none"> <li>• Transfer made pursuant to mortgage, foreclosure, or will;</li> <li>• Purchase by government; or</li> <li>• Buildings with building permits issued after February 5, 1981.</li> </ul>	Sec. 9-102: <ul style="list-style-type: none"> <li>• If owner records a covenant which continues existing low income rental restrictions; or</li> <li>• If Title II of the Housing and Community Development Act of 1987 continues, is amended, or extended, or if a successor federal law is enacted.</li> </ul>

Right of First Refusal  
Prior to Sale of  
Property Offered to:

Sec. 53A-3(a):

- County government;
- Designated housing agency (Housing Opportunities Commission); and
- Tenants' organizations certified by the County Office of Consumer Affairs.

Sec. 9-104(B):

- Head of jurisdiction (County Executive);
- Local housing authority;
- Tenants' organizations registered with the Secretary of Housing and Community Development; and
- Developers of low-income housing registered with the Secretary of Housing and Community Development.

Extended Lease  
Requirements for  
"Designated" Households

None.

Sec. 9-106: Prohibits owners from prepaying without offering "designated households" with lease extensions of at least three years, from on the date of the notice of intent to undertake a protected action.

Required Notice to  
Tenants

Sec. 53A-8(a): 60 days prior to conversion of property.

Sec. 9-103(A)(1): One-two years notice prior to "protected action".

Time Limits on  
Responding to Right of  
First Refusal

Sec. 53A-3(b)(2): Parties entitled to right of first refusal have 60 days from date of notice to offer contract to purchase, and 180 days from date of notice to go to settlement.

Section 9-104: Parties entitled to right of first purchase have 120 days from date of notice to offer contract to purchase. The final date for settlement may not be earlier than one year from the date of the owner's offer.

Tenant Relocation  
Assistance

Sec. 53A-8(c): Owner must reimburse any tenant up to \$750 for reasonable costs of relocation if tenant notifies the owner of intent to move within 180 days from receiving notice to convert.

Sec. 9-105(A)(1): Owner must provide assisted households with \$475 before the household actually vacates the unit, plus reimbursement for relocation expenses in excess of \$475 up to \$950.

Penalties

Sec. 53A-9(d): Authorizes civil penalties of up to \$500 for each violation of the statute.

Sec. 9-111(c): Authorizes civil penalties up to \$1,000,000 for violation of statute.

Sunset Date of Law

June 30, 1990

None.

Comparison of Tenant Relocation Assistance Provisions

<u>Reason for Tenant Displacement</u>	<u>Applicable Law/Regulation</u>	<u>Tenant Relocation Assistance Provisions</u>
Rental facility being "converted" to a use other than a condominium.	County Code, Chapter 53A, <u>Tenant Displacement</u> , and Executive Regulation #58-89.	<p>Within 180 days after receiving an owner's notice of intent to convert, any tenant who gives written notice of his/her intent to move is entitled to a reimbursement of documented relocation expenses by the owner for up to \$750.</p> <p>Activities eligible for reimbursement are:</p> <ul style="list-style-type: none"> <li>• Transportation of personal property;</li> <li>• Packing or unpacking of personal property;</li> <li>• Moving insurance;</li> <li>• Relocation and installment of appliances;</li> <li>• Disconnection and reconnection charges for utilities; and</li> <li>• "Reasonable replacement value" of lost, stolen, or damaged property.</li> </ul>
Rental facility being converted for use as a cooperative.	County Code, Chapter 11C, <u>Cooperatives</u> .	<p>The developer must pay tenants for relocation whether the tenant leaves voluntarily, or at the request of the developer as follows:</p> <ul style="list-style-type: none"> <li>• Tenants with household incomes below 80% of the County median receive \$375 before vacating, and can be reimbursed for documented moving costs in excess of \$375 up to \$750.</li> <li>• All other tenants are eligible to receive reimbursements for documented moving expenses up to \$750 within 30 days after submitting a written request to the developer. The law does not specify what activities are eligible for reimbursement.</li> </ul>

Reason for Tenant Displacement	Applicable Law/Regulation	Tenant Relocation Assistance Provisions
Rental facility being converted to a condominium.	Maryland Real Property Code Annotated, Section 11-136 (1988).*	<p>The developer must pay tenants for relocation whether the tenant leaves voluntarily, or at the request of the developer as follows:</p> <ul style="list-style-type: none"> <li>• Tenants with household incomes below 80% of the County median receive \$375 before vacating, and can be reimbursed for documented moving costs in excess of \$375 up to \$750.</li> <li>• All other tenants are eligible to receive reimbursements for documented moving expenses up to \$750 within 30 days after submitting a written request to the developer.</li> </ul> <p>Activities eligible for reimbursement are:</p> <ul style="list-style-type: none"> <li>• Mover costs and moving equipment;</li> <li>• Packing and unpacking personal property;</li> <li>• Disconnecting and installing personal property;</li> <li>• Moving insurance, and;</li> <li>• Disconnecting and reconnecting utilities.</li> </ul>
Owner of federally assisted rental housing project is undertaking a "protected action", (e.g., prepaying mortgage or not renewing rental assistance contract).	1989 Maryland Laws Chapter 96, Assisted Housing Preservation Act (HB 1263).	<p>The developer is required to pay "assisted households" \$475 for relocation before vacating, and must reimburse documented moving costs in excess of \$475 up to \$950. Households have 12 months from the developer's notification of intent, and the owner is prohibited from raising rent levels during that period.</p> <p>Activities eligible for reimbursement are:</p> <ul style="list-style-type: none"> <li>• Mover costs and moving equipment;</li> <li>• Packing and unpacking personal property;</li> <li>• Disconnecting and reconnecting utilities;</li> <li>• Moving insurance; and</li> <li>• Rental application fees and security deposits.</li> </ul>

\* County Code Chapter 11A, Condominiums, makes no specific mention of tenant relocation assistance in rental units being converted to condominiums.



# Montgomery County Government

## MEMORANDUM

June 5, 1989

TO: Clyde H. Sorrell, County Attorney

VIA: Andrew Mansinne, Jr., Director  
Office of Legislative Oversight

A handwritten signature in cursive script, reading "Andrew Mansinne, Jr.", written in dark ink.

FROM: Karen Orlansky, <sup>yo</sup>Program Evaluator  
Office of Legislative Oversight

SUBJECT: Request for Legal Analysis of Issues Related to Evaluation of County Code Chapter 53A, Tenant Displacement

As you know, at the request of the Council, the Office of Legislative Oversight is in the process of conducting an evaluation of the substance and administration of County Code Chapter 53A, Tenant Displacement. I appreciate the time that Assistant County Attorney Diane Kramer already spent talking with me about the County's exercise of right of first refusal authority under both Chapters 11A and 53A.

During the course of my examination of Chapter 53A, the following questions have surfaced that require a written legal analysis:

1. If the Council is interested in continuing Chapter 53A beyond its current sunset date of June 30, 1990, what are the legal arguments for continuing to justify Chapter 53A on the basis of a "public emergency", and/or to continue to include a designated expiration date? If the premise of the law must continue to be a "public emergency", could the nature of that emergency be simply a shortage of low- and moderate-income dwelling units?

2. Can "conversion" [as defined in Section 53A-3(a)] be interpreted to apply to buildings that are being retained as rental properties, but upon sale or transfer, are going to be subject to rent increases which, in the County's judgment, are likely to result in the displacement of more than one-third of the tenants within a 12 month period? Could such a rent increase be considered a "change in status or use"?

3. What authority does the County have to negotiate with a contract purchaser over the signing of a three year rental agreement, as outlined in Section 53A(a)(1)? Specifically, can the County refuse to sign a three year rental agreement if, in the County's judgment, the contract purchaser's plans for building renovation and/or rent increases are likely to result in the displacement of more than one-third of the tenants within a 12 month period?

Office of Legislative Oversight

100 Maryland Avenue, Rockville, Maryland 20850, 301/217-7990

4. What is the legal significance of a signed three-year rental agreement? What legal action is the County capable of taking if a contract purchaser violates the terms of the agreement?

5. Once the seller of a rental property provides the County with a right of first refusal offer [pursuant to Section 53A-3(a)], is the contract purchaser of that property then precluded from offering to enter into a three-year rental agreement with the County [pursuant to Section 53A-3(a)(1)]? If you find the law to be ambiguous on this issue, how would you recommend clarifying the timing of a right of first refusal offer from the seller vs. an offer from the contract purchaser to enter into a three-year rental agreement?

Finally, I would be interested in your thoughts about how HB 1263, the Assisted Housing Preservation Act (copy attached), recently enacted by the General Assembly with an effective date of July 1, 1989, relates to the County's exercise of authority under County Code Chapter 53A.

If it is at all possible, I would appreciate a response on these issues by July 3, 1989. Thank you for your attention to this matter.

KO/cca  
191/35

Attachment

cc: Richard Ferrara, Director, DHCD  
Barbara Gregg, Director, OCA  
Diane Kramer, Assistant County Attorney

M E M O R A N D U M

September 5, 1989

TO: Karen Orlansky, Program Evaluator  
Office of Legislative Oversight

FROM: Diane R. Kramer *Diane R. Kramer*  
Associate County Attorney

RE: Request for Legal Analysis of Issues  
Related to Evaluation of County Code  
Chapter 53A Tenant Displacement

In your memorandum dated June 5, 1989, you have raised several issues with respect to Chapter 53A. This memorandum will attempt to provide you with responses to the issues. In particular, you have asked the following:

1. "If the Council is interested in continuing Chapter 53A beyond its current sunset date of June 30, 1990, what are the legal arguments for continuing to justify Chapter 53A on the basis of a 'public emergency', and/or to continue to include a designated expiration date? If the premise of the law must continue to be a 'public emergency', could the nature of that emergency be simply a shortage of low-and moderate-dwelling units?"

Answer: If the Council is interested in continuing Chapter 53A beyond its current sunset date of June 30, 1990, there is no requirement that the basis of Chapter 53A be a "public emergency". The basis of the law can simply be the public need and welfare which would be consistent with the police powers of the County. Whether the Council chooses to characterize this law as a public emergency or as public need, there are numerous bases to sustain the continuation of Chapter 53A. These bases can be more properly addressed by the appropriate officials and agencies which administer or work with Chapter 53A and the County housing needs (i.e., Department of Housing and Community Development, the Office of Consumer Affairs and the Housing Opportunities Commission). However, to name some of the reasons that would substantiate the continued validity of Chapter 53A, they are as follows:

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- (1) There is a scarcity of affordable housing in Montgomery County;
- (2) There are indications that the private sector is not participating actively in providing affordable rental housing;
- (3) As land prices increase and construction costs increase, the incentive for the private sector to provide affordable rental housing continues to decrease;
- (4) The general prognosis for the affordable rental market based on previous trends and present economic indicators (as provided in your draft report) indicates that the affordable rental housing market is not likely to increase in any significant way or in any manner sufficient to, in the foreseeable future, replenish the terribly depleted existing affordable rental housing market.
- (5) You can also look to the preamble of HB1263 which specifies additional reasons sustaining the continued validity of Chapter 53A.

Notwithstanding the foregoing, I see no reason why the premise for<sup>1</sup> the law must continue to be justified as a "public emergency". The reasons which could justify a "public emergency" could also justify the basic need for the legislation. Similarly, I find no requirement that this legislation have a sunset date; however, that is a matter which would be at the Council's discretion. The Council may determine

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<sup>1</sup>Note the answer to issue 6 below. If the County adopts legislation for extended tenancies and relocation assistance pursuant to Article 83B, Section 9-107 (HB1263) of the Maryland Annotated Code, that legislation must, pursuant to State law, include a declaration of a low and moderate income rental housing emergency.



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that it feels it would be appropriate to examine the housing market on a regular basis in order to determine whether or not the legislation should be re-enacted. On the other hand, the legislation requires reports to the County Council on a regular basis and, even in the absence of an expiration date which would force the re-examination of the legislation, the County Council can on its own at any time reassess the continued need for the legislation.

2. "Can 'conversion' [as defined in Section 53A-3(a)] be interpreted to apply to buildings that are being retained as rental properties, but upon sale or transfer, are going to be subject to rent increases which, in the County's judgment, are likely to result in the displacement of more than one-third of the tenants within a twelve month period? Could such a rent increase be considered a 'change in status or use'?"

Answer: Section 53A-3(a) can and should be interpreted to apply to buildings that are being retained as rental properties, but upon sale or transfer, are going to result in the displacement of tenants from 33% or more of the occupied rental units within any twelve month period. The term conversion is defined as follows:

"Conversion means subjecting a rental facility to a change in status or use, including but not limited to the establishment of a commercial use of the facility, or a partial or complete demolition. Additionally, 'conversion' shall mean any other alteration in the status or use of the rental facility which has the effect of displacing tenants from 33% or more of the occupied rental units within any twelve-month period or any other act which has the effect of ceasing the operation of the property as a rental facility." (Emphasis added).

Your particular inquiry focuses on the words "change in status or use". While a change in use is a more readily definable concept, a change in status is not. Therefore, you need to look at the rest of the sentence which relates to the "effect of displacing tenants from 33% or more of the occupied rental units within any twelve-month period." Webster's Ninth New Collegiate Dictionary defines the word status as:

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"1: The condition of a person or thing in the eyes of the law. 2.a: position or rank in relation to others. b: relative rank in a hierarchy of prestige; esp: high prestige. 3: state of affairs."

Webster's New World Thesaurus defines the following as synonyms to "status":

"Situation, standing, station; see **Rank** 3."

What these definitions and synonyms show is that a change in status is legitimately to be considered a change in situation of the rental facility. This is particularly true when you look at what the effect of the action is, which, legislatively is the displacement of tenants from 33% or more of the occupied rental units within any twelve-month period. The action causing such a major tenant displacement is a change of situation or state of affairs. Likewise, a change in status may be construed as a change in condition "in the eyes of the law". The status of a rental facility may change from providing rental units for low- and moderate-income persons to providing rental units for higher income persons.

Further, you cannot look at Section 53A-2 or any other provision of Chapter 53A in a vacuum. You must also consider Section 53A-1 which expresses the legislative findings and intent. In enacting Chapter 53A, the County Council found it necessary to enact Chapter 53A to provide for "the protection of those tenants who may be displaced by the sale of a rental facility for conversion to a different use or form of ownership." The County Council also found that:

"The problems created by or resulting from these sales are many and include major displacement of large numbers of tenants from their dwelling units, scarcity of low-and moderate-dwelling units [a status] on the market when demand for such units is increasing and inadequate numbers of rental dwellings available to replace the rental units being sold." (Emphasis and editorial comment added).

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The County Council was clearly mindful of its intention when it defined conversion as meaning any other alteration in the status or use of the rental facility which has the effect of displacing tenants from 33% or more of the occupied rental units within any twelve-month period. It is precisely this major displacement of large numbers of tenants which is to be remedied by this legislation. Thus, Section 53A-3(a) should be interpreted as applying to buildings that are being retained as rental properties, but, upon sale or transfer, are going to result in the proscribed displacement of tenants. Notwithstanding the foregoing, in consideration of the lack of definition of the term "status", it might be appropriate to clarify this term.

The subtlety to your question which I haven't addressed in my response is whether or not the "conversion" will likely result in the displacement of more than one-third of the tenants within a twelve-month period in the County's judgment. The Office of Consumer Affairs is charged with administering Chapter 53A. See, Section 53A-10. Therefore, they are charged with examining any conversion to determine whether or not it has the effect of displacing tenants from 33% or more of the occupied rental units within any twelve-month period. It is incumbent upon the administrators of this Chapter to procure the necessary information in order to determine whether a "conversion" has occurred. They are charged with this responsibility. Of course, the Office of Consumer Affairs must operate within the parameters of administrative law and cannot act arbitrarily or capriciously in the exercise of its administrative discretion. It would be appropriate to adopt regulations which set forth what information is sought in order to evaluate the effect of a change in status or use of the rental facility.

3. "What authority does the County have to negotiate with a contract purchaser over the signing of a three year rental agreement, as outlined in Section 53A(a)(1)? Specifically, can the County refuse to sign a three year rental agreement if, in the County's judgment, the contract purchaser's plans for building renovation and/or rent increases are likely to result in the displacement of more than one-third of the tenants within a twelve-month period?"

Answer: The County can refuse to sign a three year rental agreement if the contract purchaser's plans for building

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renovation and/or rent increases are likely to result in the displacement of more than one-third of the tenants within a twelve-month period.

Section 53A-3(a)(1) creates a presumption that:

"All sales or transfers of rental facilities of more than ten (10) units shall be deemed to be sales for the purpose of conversion and subject to the requirements of this section unless the contract purchaser at least thirty (30) days prior to the sale enters into an agreement with the County to retain the property as a rental facility for at least three (3) years after the date of transfer of the property."

As with other sections of this chapter, this provision cannot be looked at in a vacuum. The mandate of this chapter is the establishment of remedies for tenant displacement and events which contribute to the scarcity of low-and moderate-income housing. In order to rebut the presumption of conversion (which, by its own definition, includes any other alteration in the status or use of the rental facility which has the effect of displacing tenants from 33% or more of the occupied rental units within any twelve-month period), Section 53A-3(a)(1) permits the contract purchaser to enter into an agreement with the County to retain the property as a rental facility for at least three years following the date of transfer. Inherent in this provision is that the agreement contain such terms as which will specifically obviate the defined evil in the term "conversion" (i.e., the displacement of tenants from 33% or more of the occupied rental units within any twelve-month period). It is simply not plausible that the very evil sought to be remedied and identified by the County Council in its legislative findings in Section 53A-1 and the definition of conversion in Section 53A-2(a) could be frustrated by the contract purchaser simply by proffering an agreement indicating that the property will be retained rental for three years. The power to ensure that the agreement will not result in the displacement sought to be remedied is inherent in the provisions of Section 53A-1 through 53A-3.

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4. "What is the legal significance of a signed three-year rental agreement? What legal action is the County capable of taking if a contract purchaser violates the terms of the agreement?

Answer: If a contract purchaser violates the terms of the agreement, there are several remedies available pursuant to Chapter 53A. If the agreement is violated and the property is converted contrary to the requirements of Chapter 53A, the County may avail itself of the remedies set forth in Section 53A-9. In addition to the imposition of civil penalties pursuant to Section 53A-9(d), the County may seek pursuant to Section 53A-9(e) appropriate injunctive relief. Injunctive relief may also be sought in order to remedy the violation of the three-year rental agreement.

5. "Once the seller of a rental property provides the County with a right of first refusal offer [pursuant to Section 53A-3(a)], is the contract purchaser of that property then precluded from offering to enter into a three-year rental agreement with the County [pursuant to Section 53A-3(a)(1)]? If you find the law to be ambiguous on this issue, how would you recommend clarifying the timing of a right of first refusal offer from the seller versus the offer from the contract purchaser to enter into a three-year rental agreement?"

Answer: I will begin my response by advising you that I find the law to be ambiguous on this issue. There are really two scenarios under which the issue which you raise becomes a problem. The first scenario is one in which the County is offered the property and while it is contemplating whether or not it will exercise the right of first refusal, the prospective purchaser (or the contract purchaser, as referred to in Chapter 53A) proffers a three-year rental agreement to the County. The second scenario, which is slightly less ambiguous, is one in which the County exercises its right of first refusal and subsequent to exercising the right of first refusal is provided with a three-year rental agreement. In the second scenario, a binding contract between the County and the seller has been established and would take precedence over the original contract between the seller and the contract purchaser. By law, the original contract between the seller and the contract purchaser was made expressly contingent upon and subject to full compliance with the requirements of Section 53A-3.

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The first scenario is more troubling. The law provides that the contract purchaser, in order to rebut the presumption that the sale is presumed to be a conversion, must at least thirty days prior to the "sale" proffer the three-year rental agreement to the County to retain the property as a rental facility for at least three-years after the date of "transfer" of the property. A most glaring problem is readily apparent in this Section 53A-3(a)(1). The problem is definitional. Although the term "transfer" is defined, the term "sale" is not defined. Thus, at what point must the "contract purchaser," which is also not defined, enter into the three-year rental agreement. Section 53A-3(a)(1) embodies the essence of the ambiguity. It provides that:

"All sales or transfers [which is a defined term] of rental facilities of more than ten units shall be deemed to be sales for the purpose of conversion and subject to the requirements of this section unless the contract purchaser at least thirty (30) days prior to the sale enters into an agreement with the County to retain the property as a rental facility for at least three (3) years after the date of transfer of the property."  
(Editorial comment added).

The term "contract purchaser" connotes that a contract has already been executed between the seller and the prospective purchaser. Thus, it can be inferred that the term "sale" is not the point at which the contract for the sale of the property is executed, but the time at which the property is conveyed to the contract purchaser. However, looking at the totality of this provision, there is specific reference to both the term "transfer" and the term "sale". "Transfer" is defined in Section 53A-2(f) as the point at which legal title to a rental facility is transferred or the point at which the substantial ownership or beneficial interests or both in an entity have been transferred. The definition of "transfer" does not include any reference to "sale". Indeed, when you look at the first line of Section 53A-3(a)(1) the words, "all sales or transfers of rental facilities" are used which implies that there is a difference between the term "sales" and "transfers".

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If it was the County Council's intention that the three-year rental agreement be entered into thirty days prior to the date of contracting, the law should be amended to make this clear. Likewise, if the intention is that the three-year rental agreement must be entered into at least thirty days prior to the date of transfer, the law should be clarified to reflect that as well. If there is some third time period envisioned, this should be made clear.

The clearest way to redress the ambiguity contained in this section would be to provide something in the nature of the following:

"All transfers of rental facilities of more than ten (10) units shall be deemed to be transfers for the purpose of conversion and subject to the requirements of this section unless the contract purchaser or proposed transferee within thirty (30) days after the date of contracting for the purchase or transfer of the property, enters into an agreement with the County to retain the property as a rental facility for at least three (3) years after date of transfer of the property."

You will note that I have deleted any reference to "sale". That is not necessary if the term is defined. The salient feature of my recommendation is that the contract purchaser or proposed transferee must act within thirty days following execution of the contract between the contract purchaser or proposed transferee and the seller.

The second problem which you raise is whether or not the County must accept a three-year rental agreement after the property has been proffered to it, but before it exercises its right of first refusal. The law is ambiguous as to whether the County would be compelled to accept a three-year rental agreement which would satisfy it that tenants would not be displaced. There is nothing in the chapter which requires that the County enter into the three-year agreement. Hence, the County has taken the position in the past that once it has been offered the property, it does not have to enter into a

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three-year rental agreement. There is clearly ambiguity here which could support an argument on either side of the issue.

If the Council's intention is that the County not be able to exercise its right of first refusal if a suitable three-year rental agreement has been proffered, then perhaps the legislation should be amended. Tying it into the thirty-day timeframe which I have referenced above, would certainly help. For example, the requirement could be that the contract purchaser or proposed transferee must enter into a suitable three-year rental agreement within thirty days from the date of execution of its contract for the property. Upon expiration of that thirty-day period and failing to enter into a suitable three-year rental agreement, the County's right of first refusal would, upon appropriate notice from the seller of the proposed sale or transferee, be triggered.

Alternatively, if it is the Council's intention that the rental agreement is at the County's option, the legislation should be amended to reflect that the County may, in its discretion, enter into a three-year rental agreement containing suitable terms.

6. Your final issue is that you have asked how House Bill 1263, the Assisted Housing Preservation Act, relates to the County's exercise of authority under County Code Chapter 53A.

Answer: House Bill No. 1263 deals with certain "Protected Actions". Specifically, it pertains to any "sale, conveyance, transfer, prepayment, termination, failure to renew, or expiration as described in Section 9-102(B) of this title." The sale, conveyance, transfer, prepayment, termination, failure to renew, or expiration described in Section 9-102(B) is as follows:

"Every owner of an assisted project located in the State, who takes or intends to take any of the following Protected Actions, shall be subject to the provisions of this title:

(1) The prepayment in full before the maturity date of any mortgage financing which is:



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(I) Insured under § 221(D)(3) of the National Housing Act, and assisted:

1. Under § 101 of the Housing and Urban Development Act of 1965; or
2. Under § 8 of the United States Housing Act of 1937;

(II) Insured under § 221(D)(3) of the National Housing Act, and bears interest at a rate determined under the provisions of § 221(D)(5) of the National Housing Act;

(III) Insured or assisted under § 202 or § 236(A) or (B) of the National Housing Act;

(IV) Insured or assisted under § 515 of the Housing Act of 1949; or

(V) Held by the United States Department of Housing and Urban Development and insured or assisted, or formerly insured or assisted, under a program referred to in subparagraph (I), (II), (III), or (IV) of this paragraph;

- (2) (I) The termination before expiration of or failure to exercise any stated renewal option under any agreement providing for project-based § 8 rental assistance to any units in an assisted project; or

(II) The expiration, including any failure to extend following the expiration, of any agreement providing for a project-based § 8 rental assistance to any units in an assisted project; or

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(3) The sale or conveyance of an assisted project by the owner in conjunction with or within one year following the effective date of any of the events described in paragraph (1) or paragraph (2) of this subsection."

To the extent that Chapter 53A of the Montgomery County Code covers actions which pursuant to HB1263 would be classified as "Protected Actions," HB1263 prevails. However, it should be noted that the Protected Actions referenced in HB1263 are a subset of the conversions that can occur pursuant to Chapter 53A. Chapter 53A should be amended to clarify that it is subject to the requirements of HB1263 for "Protected Actions".

Additionally, Section 9-107 of the Assisted Housing Preservation Act (HB1263) provides that a local government can, after appropriate notice and public hearing, by legislative finding, recognize and declare that a low and moderate income rental housing emergency exists in all or part of its jurisdiction and that the emergency has been caused by the taking of "Protected Actions". After considering certain factors and making findings as specified in Section 9-107, the local government may enact laws, ordinances and regulations: (1) granting to a designated household as defined in Section 9-106 of the Act a right to an extended lease; (2) extend any of the provisions in Section 9-106 subject to certain limitations; and (3) require that the notice of intent required pursuant to Section 9-106(C) be altered to disclose the effects of any actions taken under Section 9-107.

The County if it enacted local legislation pursuant to Section 9-107 would be required, within ten days of the enactment, to forward a copy of the law, ordinance or regulation to the Secretary of State and the Secretary of the Department of Housing and Community Development.

In summary, with respect to the Protected Actions set forth in HB1263, the House Bill preempts Chapter 53A of the Montgomery County Code on that class of actions. Chapter 53A should be amended to clarify this point. Further, if it is the County's desire to adopt legislation with respect to "Protected Actions" in accordance with Section 9-107 of HB1263, the County should do so. It would be beneficial to coordinate with the

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Maryland Department of Housing and Community Development in order to ascertain exactly what local legislation is permitted pursuant to Section 9-107.

I appreciate your patience in waiting for this Opinion. I hope that I have addressed the issues as you have raised them. If I can be of further assistance to you, please feel free to call upon me.

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89.02411

cc: Richard J. Ferrara, Director, DHCD  
Barbara Gregg, Director, OCA  
Clyde H. Sorrell, County Attorney  
Marc P. Hansen, Senior Assistant County Attorney  
Bernard Tetreault, Chairman, Housing Opportunities  
Commission