COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

By: Council President at the Request of the County Executive

AN EMERGENCY ACT to:

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

By amending
Montgomery County Code
Chapter 53A, Tenant Displacement

The County Council for Montgomery County, Maryland approves the following Act:
Section 1. Chapter 53A is amended as follows:

53A-1. Legislative findings.

The County Council finds that:
(a) there is a continuing, severe shortage of low and moderate-income rental housing in the County;
(b) the decline of rental housing units as a proportion of the County's total housing stock is likely to continue;
(c) tenants often experience significant hardship when they are displaced by conversion of rental housing; and
(d) it is in the best interests of public health, safety, and welfare to regulate the conversion of rental housing in the County.


(a) Convert and conversion mean[s]:
(1) (A) changing the use of rental housing to nonresidential use;
(2) (B) demolition of rental housing demolishing at least one-third of the units in rental housing in a 12-month period;
(3) (C) displacing tenants from at least one-third of the occupied units in rental housing within any 12-month period by:
   (i) raising rents; or
   (ii) preparing to rehabilitate the rental housing; or
any other act [which has the effect of ceasing the operation] that ends the use of the property as rental housing.

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

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

[[b]]

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

[[c]]

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

[[d]]

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

[[e]]

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

(A) transfer of title to rental housing;

[(2)]

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

[(3)]
(C) lease of rental housing for more than 7 years.

(2) These terms do not include entering into a contract for the sale of rental housing that gives the County, HOC, or a tenant organization a right of first refusal under this Chapter.

[(f)]

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

[(g)]

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

(1) represents tenants of [at least 5 units or 30 percent] [a majority] at least [40] 30 percent of the occupied [rental] units [of] in the rental housing, whichever is greater]; and

(2) is certified by the Department [of Housing and Community Affairs under] according to Executive regulations [adopted by the County Executive under method (2)].

[(h)]

(i) Title means:

(1) a legal or equitable ownership interest in rental housing; or[]

(2) a legal, equitable, or beneficial interest in a partnership, limited partnership, corporation, [or] trust, or other person who is not an individual, that has a legal or equitable ownership interest in rental housing.

(a) Notice required.

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

(A) to each tenant in the rental housing by first class mail;
(B) posted in the public areas of the rental housing; and
(C) to the Department with a list identifying each tenant and the tenant's address.

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

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

53A-3.1. Right of first refusal to buy rental housing.

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

(b) Requirements for offer. An offer required by subsection (a) must:

(1) be in writing;
be sent by certified mail, return receipt requested, within 5 business days after:

(A) the execution of a bona fide contract of sale, for the County, HOC, and any existing tenant organization; or

(B) the Department certifies a tenant organization, for a new tenant organization formed under Section 53A-3(b);

[(2)]

include substantially the same terms and conditions as a pending bona fide [pending] contract of sale from a third party to buy the rental housing; and

[(3)]

remain open for:

(A) 60 days after it is received [by], for the County[, and HOC[, and

(B) 90 days after it is received by any tenant organization, including a new tenant organization formed under Section 53A-3(b).

[(b)]

Information and inspection. The owner must give the County, HOC, and any tenant organization:

(1) any information about the rental housing relevant to [the exercise of] exercising the right of first refusal, [including] such as architectural and engineering plans and specifications, and operating data; and

(2) access to the rental housing [for] to inspect[ion] the property and conduct reasonable tests at reasonable times [and] after reasonable notice.
The County, HOC, and any tenant organization must pay the owner a reasonable deposit for any architectural and engineering plans that the owner provides. The owner must refund the deposit when the plans are returned to the owner. The County Executive must [adopt] issue regulations [under method (2)] to implement this subsection.

[(c)]

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

(1) The County, HOC, or a tenant organization may exercise the right of first refusal by accepting the offer [to buy the rental housing] within the applicable period under subsection (b)(4).

The County and HOC [must not] may accept an offer to buy rental housing [located] in a municipality [without the approval of] only if the [municipality's governing body] municipality approves.

(2) The owner must sell the rental housing under the right of first refusal if the acceptance includes[: (1)] substantially the same terms and conditions contained in the owner's [offer] bona fide contract of sale with the third party, including any contract term that provides for a bona fide real estate commission payable to an independent broker[;] [(and)] [(2) a 180-day] [(any financing contingency)], Notwithstanding this general requirement or any term of the contract, the County, HOC, or a tenant organization may condition its acceptance on obtaining financing at any time before the deadline in paragraph (3) for completing the sale.
(3) The owner and the County, HOC, or tenant organization must complete a sale under this subsection within 180 days after the County, HOC, or tenant organization receives the owner's offer unless the owner agrees to extend the 180-day period.

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

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

(A) the County has first priority and;

(B) HOC has second priority in the exercise of the right of first refusal. If more than one:

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

[[5]]

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

[[e] Tenant organization ownership interest. The Executive may issue regulations under method (2) to require a tenant organization that joins with a third party to purchase the rental housing to maintain a [[15-percent ownership]] certain property interest in the rental housing. If the Executive issues a regulation under this subsection, the regulation must specify:
(1) how long the organization must maintain the interest;
(2) the acceptable forms of ownership or other property interest; and
(3) the consequences of failing to maintain the property interest.]

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

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

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

[(e)]

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

(1) An owner may sell rental housing without [offering the]
providing any right of first refusal [required by subsection (a)]

under Section 53A-4 if [: (1)] the Department approves a written agreement that:
(A) prohibits the buyer [(A) agrees in writing not to convert] from converting the rental housing for [3] at least 5 years after the sale; [[and]]

(B) [submits the agreement to] the Department [of Housing and Community Affairs] received from the prospective buyer at least 30 days before the sale; and

(C) except as provided in [[subsection (c)] paragraph (2)(B), requires the buyer to follow the voluntary rent increase guidelines published annually under Section 29-53 [[for]] during:

(i) [[all tenants who resided in the rental housing when the Department approved the agreement, during]] the first 3 years of the agreement, for all tenants who resided in the rental housing when the Department approved the agreement; and

(ii) [[at least]] the last 2 years, for [[up to 20 percent]] each of these tenants [[who qualify]] [[, if the tenant]] who qualifies as a low- or moderate-income tenant[[s]] under Department regulations [[, during the last 2 years of the agreement]].

(2) [the Department approves the agreement, including any proposed rent increases and rehabilitation of the housing.] The Department [must consider] may:

(A) approve or reject an agreement with the buyer under this subsection only after considering the:

[(A)]
physical condition of the rental housing, including any rehabilitation necessary to correct dangerous defects;

[(B)]

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

[(C)]

(iii) need to preserve low- and moderate-income rental housing in the County;

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

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

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

(ii) necessary rehabilitation to the rental housing.

(3) The Department annually must verify the buyer's compliance with the rent increase limits required by this subsection.

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

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

(2) to a mortgagee in lieu of foreclosure;

(3) under a court order.
from one co-tenant to another co-tenant by operation of law;
under a will or intestate distribution;
to the State or a local government;
of a minority title interest;
of a mobile home park; or
of rental housing for which the initial building permit was issued after February 5, 1981.

Conversion of rental housing.

(a) Notice of conversion. An owner must [give a] not convert rental housing unless the owner notified each tenant in the rental housing [60] at least 120 days [written notice] before converting the building [in which the tenant lives]. [During the] Before renting to a prospective tenant during this 120-day period, the owner must [not rent to a new tenant unless the owner has notified] notify the prospective tenant about the conversion.

(b) Termination of lease. [After receiving] A tenant who receives a notice of conversion [, a tenant] may terminate a lease without penalty [by giving] at least 30 days after notifying the owner [30 days written notice] in writing.

(c) Tenant relocation assistance. The owner must [reimburse] pay a tenant [for reasonable moving expenses by paying the tenant a maximum of $950 in] relocation assistance equal to [two] 2 months' rent if the tenant moves out of the rental housing within 180 days after receiving a] the tenant received the notice of conversion required by subsection (a), [because:

(1) the housing is changing to a nonresidential use;
(2) at least one-third of the housing is being demolished in a 12-month period.

(3) the tenant determines they cannot afford a proposed rent increase; or

(4) the tenant must leave a unit during rehabilitation and no comparable unit in the housing is available for the tenant's use.

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

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

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

[S3A-5. Exemptions.]

[This Chapter does not apply to a sale:

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

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


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

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


(a) The Department may enforce this Chapter by:

(1) investigating any alleged violation;
(2) issuing a summons or subpoena to compel the attendance of a person or the production of documents or other evidence;
(3) enjoining a violation;
(4) revoking a rental license issued under Chapter 29;
(5) reporting a violation to any other appropriate government agency;

[[5]]
informal conciliation between a complainant and an alleged violator;

(6) dismissing a complaint when the Director of the Department determines that there is insufficient evidence of a violation;

(7) obtaining injunctive or other appropriate judicial relief, such as an order to:

(A) require compliance with a summons or a subpoena;

(B) require an alleged violator or witness to attend a Department meeting or other proceeding concerning the alleged violation;

(C) require production of documents or other evidence;

(D) require transfer of documents or other evidence to the Court; or

(E) prohibit the destruction of documents or other evidence;

(8) recovering costs and fees of an investigation or a lawsuit if the Department finds a violation occurred, and prevails in any appeal;

(9) ordering any appropriate financial, legal, or equitable relief to a tenant or tenant organization injured by a violation of this Chapter;

(10) any other applicable enforcement action that the Department could take to enforce a violation of Chapter 11 (Consumer
Protection) or Chapter 29 (Landlord-Tenant Relations), under the
procedure provided in the respective Chapter:
(12) developing, conducting, or assisting in educational and
information programs concerning the requirements of this
Chapter; and

(13) adopting regulations to implement this Chapter.

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

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


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


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

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

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

(c) conversion of rental housing in the County.

[53A-10. Sunset date.]

[Sections 53A-1 through 53A-9 are not effective after June 30, 2002.]
Sec. 2. **Emergency Effective Date.**

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

Approved:

Steven A. Silverman, President, County Council 12/07/01

Douglas M. Duncan, County Executive 12/13/01

This is a correct copy of Council action.

Mary A. Edgar, CMC, Clerk of the Council 12/17/01