



# MONTGOMERY COUNTY EXECUTIVE REGULATION

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

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

Department of Housing and Community Affairs  
Montgomery County Regulation on:

### TENANT DISPLACEMENT

Issued by: County Executive  
COMCOR 53A.00.01

Authority: Code Section 53A-4

Supersedes: Executive Regulation 2-02AM

Council Review Method (2) Under Code Section 2A-15

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Comment Deadline: 4/30/2024

Effective Date: \_\_\_\_\_

Sunset Date: None

**SUMMARY:** The regulation establishes the process for designating entities as qualified entities, selecting among designated qualified entities to receive an assignment of the County’s right of first refusal or a contract to purchase rental housing under Section 53A-4(g), allows for a County assignee to exercise the right of first refusal, and requires an owner of rental housing to sell its property to a County assignee that accepts an owner’s offer to purchase the rental housing in compliance with Chapter 53A and these regulations.

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**COMCOR 53A.00.01 Tenant Displacement**

**53A.00.01.01 Tenant Relocation Payments**



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

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

NOTICE – PURSUANT TO CHAPTER 53A OF THE MONTGOMERY COUNTY CODE AND EXECUTIVE REGULATIONS ENFORCING CHAPTER 53A, YOU ARE ELIGIBLE FOR RELOCATION ASSISTANCE



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FROM THE OWNER OF [[]]{INSERT NAME OF THE RENTAL HOUSING}{[]].

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

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

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

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

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

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

### 53A.00.01.02 Certificate of Tenant Organization

- 2.1 A tenant organization may be certified by making a written request for certification to the Department. The request must be filed within 45 days of receipt of the owner's offer to sell under Section 53A-3 of the Code.
- 2.2 The certification request must be accompanied by a list of the names, addresses and signatures of the members of the tenant organization and a notarized affidavit from the President of the tenant organization stating that the tenants are a bona fide tenant



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organization representing a minimum of 30% of the occupied rental units. Only leaseholders may be members of the tenant organization. Occupants are not eligible. [DHCA] Department staff will verify the information provided in the tenant organization’s certification request.

- 2.3 In the event that more than one tenant organization from the same rental housing applies for certification, the tenant organization with the highest percentage of representation of occupied rental units will be certified.

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

3.1 The owner’s first right of refusal offer must include the following information/documentation:

- (a) [A] a copy of any pending sales contract[.];
- (b) [Site] site plan, if available[.];
- (c) [Statement] statement of income and expenses for the three previous years of operation[.];
- (d) [Current] current rental schedule by apartment showing date of last rent increase, names of current tenants, addresses and telephone numbers[.];
- (e) [Expected] expected re-rent rates[.];
- (f) [Latest] latest tax assessment and tax rate[.];
- (g) [Names] names of mortgage holders, existing mortgage balances and terms, repayment terms, interest rates, loans for which rental units are used as collateral, liens, covenants, easements and any other documents recorded against the property[.];
- (h) [Security] security deposit schedule and identification of escrow accounts[.]; and
- (i) [Any] any other agreements the owner may have concerning the rental housing that may materially affect a decision to purchase the rental housing.

3.2 The offer is not complete until all of the information and documentation identified in 3.1 is provided to the Department, Housing Opportunities Commission (HOC), and/or a



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tenant organization. The timelines to exercise the right of first refusal in 3.9 and 3.10 do not begin to run until all of the information and documentation is provided.

- 3.3 Information and documentation submitted by the owner pursuant to Section 3.1 will not be disclosed by the County, HOC, [or] a tenant organization, or any qualified entity except as required by law.
- 3.4 In addition, if requested and available, the owner must provide the following information and documentation within five [5] business days of a request for the information or documentation:
  - (a) [Any] any architectural, engineering, mechanical, structural plans or specifications[.];
  - (b) [Lead] lead certification[.];
  - (c) Phase I environmental survey[.];
  - (d) [Information] information concerning underground storage tanks[.];
  - (e) [Copies] copies of all service contracts such as property management and maintenance contracts[.]; and
  - (f) [Existing] existing warranties on any major component of the rental housing, such as the roof, heating, air conditioning and hot water heater.
- 3.5 Any request for information or documentation identified in Section 3.4 extends the time period provided in Section 3.8 by any amount of time beyond five [5] business days of receiving the request.
- 3.6 The County, HOC, [and] any tenant organization, and any County assignee must pay the owner the reasonable cost of reproduction, or a reasonable and refundable deposit, for any requested information and documentation.
- 3.7 Within five [5] business days of receiving a request for inspection, an owner must provide access to the rental housing to the County, HOC, [or] a tenant organization, or any County Assignee. The owner may have a representative present at the time of the inspections.
- 3.8 Under the right of first refusal, the owner’s offer to sell the property to the County and HOC must remain open for 60 days after it is received by the County and HOC and must remain open for 90 days after it is received by the tenants. The offer must remain open one additional day for each day that documents requested under subsection 3.4 are received after the [5] five-day response time. If any material term or condition, including



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but not limited to, a change in price or financing in any pending contract is altered, or if an owner enters into another contract of sale subsequent to any initial or other offer from an owner to the County, HOC<sub>2</sub> or a tenant organization, the owner must make a new offer to the County, HOC<sub>2</sub> or a tenant organization reflecting the new material terms and conditions. Each new offer must remain open for 60 days following receipt by the County and HOC<sub>2</sub> and for 90 days following receipt by the tenants.

- 3.9 The County, [and] HOC<sub>2</sub> and any County assignee may exercise the right of first refusal by accepting the offer within 60 days of the County and HOC receiving the offer, plus any extension required by Section 3.8. In the event that either the County, [and/or] HOC<sub>2</sub> and/or any County assignee exercise the right of first refusal at any time during the 60-day period, the right of first refusal provided to a tenant organization is no longer enforceable.
- 3.10 Upon approval of a majority of tenants in the occupied units of the rental housing, a tenant organization may exercise the right of first refusal by accepting the offer within 90 days of receiving the offer, plus any extension required by Section 3.8.
- 3.11 An acceptance of an offer under the right of first refusal must include:
  - (a) substantially the same terms contained in the owner’s offer, including any bona fide real estate commission payable to an independent broker; and
    - (i) notwithstanding the general requirement in subparagraph (a) above or any term of the owner’s offer including the pending sale contract, the County, HOC, any tenant organization, or any County assignee shall not be required to pay to the owner a deposit of more than 5% of the contract price to accept the offer and exercise its right of first refusal. The deposit is refundable in the event of a good faith failure of the County, HOC, any tenant organization, or any County assignee to perform under the contract;
  - (b) a 180-day financing contingency.

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

- 3.12 The purchase of the rental housing by the County, HOC<sub>2</sub> [or] a tenant organization, or any County assignee must be completed within 180 days of receipt of the owner’s offer, unless a longer time is agreed to by the owner and the County, HOC<sub>2</sub> [or] the tenant organization, or any County assignee.
- 3.13 If the County, HOC<sub>2</sub> [or] a tenant organization, or any County assignee accepts an owner’s offer to purchase the rental housing in compliance with Chapter 53A and these



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regulations, the owner must sell the rental housing to the County, HOC<sub>1</sub> [or] the tenant organization, or any County assignee.

- 3.14 Any sale of rental housing in violation of Chapter 53A and these regulations is void.
- 3.15 If the sale of rental housing is void, the owner must offer the rental housing to the County, HOC<sub>2</sub> or any tenant organization in compliance with Chapter 53A and these regulations and under the same terms offered to the original purchaser.

#### 53A.00.01.04 Agreement Not to Convert

- 4.1 The County<sub>2</sub> in its sole discretion<sub>2</sub> may refuse to enter into an Agreement Not to Convert.
- 4.2 An Agreement Not to Convert may be approved or rejected by the Department after the Department considers, among other factors, the following:
  - (a) physical condition of the rental housing, including any rehabilitation necessary to correct dangerous defects;
  - (b) tenants' ability to afford rent increases; and
  - (c) need to preserve low- and moderate-income rental housing in the County.
- 4.3 Within 30 days of a purchaser entering into an Agreement Not to Convert, the owner of the rental housing must provide the Department:
  - (a) [A] a copy of each current lease[.]; and
  - (b) [A] a current rental schedule identifying each rental unit and showing the date and amount of the last rent increase, the name of the current tenant, and the tenant's telephone number.
- 4.4 Tenants who, under Section 53A-5(a)(1)(C)(ii) of the Code, are eligible for rents to be capped at the voluntary rental guidelines in years [4] four and [5] five of the Agreement Not to Convert, must provide certain information and documentation to the Department. This documentation and information will include, but will not be limited to, personal income information. A tenant who fails to provide the information requested by the Department will forfeit his or her right to receive the protections afforded him or her in the Agreement Not to Convert and in Section 53A-5 of the Code.



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- 4.5 Each year on the anniversary of the Agreement Not to Convert, the owner must submit a compliance report to the Department in a form acceptable to the Department containing at least the following information:
  - (a) [Current] current rent roll[.];
  - (b) [Copy] copy of any lease by a new tenant within the last 12 months[.];
  - (c) [List] list of tenants vacating the rental housing within the last 12 months[.]; and
  - (d) [Any] any rent increases within the last 12 months.
- 4.6 If the owner petitions the Department for a rental increase above the limits set forth in the Agreement Not to Convert, the owner must provide all necessary and reasonable information requested by the Department in support of the owner’s petition.
- 4.7 An owner must not increase the rent for any unit in the rental housing above the limits set forth in the Agreement Not to Convert without first obtaining prior written authorization from the Department.

### **53A.00.01.05 Process for Designating Qualified Entities and Assigning the Right of First Refusal**

- 5.1 The Department must conduct a rolling application process for designating qualified entities under Section 53A-4(g). A designated qualified entity remains qualified for a period of three years after which the entity must reapply under Section 53A-4(g).
- 5.2 To be designated as a qualified entity by the Department, the applicant must:
  - (a) certify in writing that for the past ten years the applicant, inclusive of its principals, members, managers and directors, has complied with all laws related to the acquisition, maintenance, and management of housing;
  - (b) commit in writing that it will not disclose any information or documentation it receives from the Department under 53A.00.01.01.03.1 unless required by law;
  - (c) demonstrate that it has expertise and experience acquiring, owning, operating, managing, and developing rental and affordable housing by providing the following information:





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- (1) a list of lenders and equity sources used in prior projects;
- (2) a comprehensive list of the applicant's prior residential developments with property addresses, numbers of units, project financing, and affordability covenants as applicable;
- (3) a complete certified list of code citations if any, for each property owned, managed, and operated by the applicant for the last five years;
- (4) a complete certified list of judgments issued against the applicant in a landlord/tenant or similar proceeding, if any, related to the applicant's ownership, management, or operation of any property for the last five years;
- (5) a description of property and asset management experience with a list of any management companies used at other properties;
- (6) a certification that the applicant has never been in financial default as either a borrower or guarantor, or if to the contrary, explaining in complete detail all the circumstances;
- (d) demonstrate a commitment to community engagement, such as working with neighborhood-based organizations or tenant counseling organizations on anti-displacement activities;
- (e) demonstrate such other criteria as may reasonably be determined by the Department or County from time to time; and
- (f) demonstrate that it is registered and licensed to do business in Maryland and otherwise in good standing under Maryland law.

5.3 The Department must require an assignee in the assignment agreement to implement the following restrictions:

- (a) evict tenants only for just cause;
- (b) provide existing tenants the right to return to their unit or an equivalent unit at the same rent levels after any rehabilitation or redevelopment that requires relocation; and



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(c) limit rent increases to no more than the Voluntary Rent Guidelines (VRG) for 15 years, unless the units are covered by other agreements that ensure long-term affordability of greater than 15 years or as otherwise required by law.

5.4 The Department must publish on its website, and make available upon request, a list of qualified entities.

5.5 Disqualification of qualified entities.

(a) The Department must promptly investigate any complaint alleging that a qualified entity has violated or is in violation of any provision of Section 53A. If, after providing the qualified entity with notice, the County Executive determines that a qualified entity has violated or is in violation of any provision of Section 53-A, the County Executive may suspend or revoke the designation as a qualified entity.

(b) If a qualified entity is chosen by the County Executive or designee and fails to complete the purchase of the rental housing using the right of first refusal for reasons other than the good faith failure to secure financing, the Department must promptly investigate the reasons for the failure to purchase and the County may suspend or revoke the designation as a qualified entity.

5.6 If the County Executive or designee decides to explore assigning the right of first refusal to purchase rental housing, the County Executive or designee must issue a request for submittals to all qualified entities.

(a) Each request for submittals must be disseminated via electronic mail or web link to all qualified entities.

(b) The request for submittals must include the following:

(1) all restrictions under 53A.04.00.01.4.3; and

(2) other information affecting the development of the housing accommodation, including:

(A) a copy of all materials provided to the County by the owner of rental housing under 53A.04.00.01.03.3.1 and 53A.04.00.01.03.3.4, if the County has previously requested and received the latter information



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- (B) the covenant template that will be placed on the rental housing;
- (C) the date when proposals are due;
- (D) the criteria the County Executive or the County Executive’s designee must use for selecting assignees from among qualified entities;
- (E) the procedure that will be used following acceptance of a proposal until execution of an assignment agreement; and
- (F) other information the Department determines appropriate to further the purposes of Section 53A-4.

5.7 Criteria for selecting a qualified entity as a County assignee. The County Executive must consider the following criteria for selecting among qualified entity applications to be the County assignee of a rental housing sales contract:

- (a) the commitment of the qualified entity to preserve the existing number of units affordable to households with incomes at or below 70 percent of the Area Median Income for the Washington Metropolitan Statistical Area and the relative levels of affordability of those units at the time the Department received the notice of sale under Section 53A-3;
- (b) the commitment of the qualified entity to the creation of more units affordable to households with incomes at 30 percent, 40 percent, 50 percent, 60 percent, and 70 percent of Area Median Income for the Washington Metropolitan Statistical Area than existed at the time the Department received the notice of sale under Section 53A-3;
- (c) tenant anti-displacement protections proposed by the qualified entity;
- (d) the cost per unit of funding requested from the County;
- (e) the availability of County funds;
- (f) the sufficiency of other funding sources proposed by the qualified entity.

