

Expedited Bill No. 38-23
Concerning: Tenant Displacement –
Right of First Refusal to Buy Rental
Housing - Amendments
Revised: 2/13/24 Draft No. 4
Introduced: September 21, 2023
Enacted: February 13, 2024
Executive: _____
Effective: _____
Sunset Date: _____
Ch. , Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Council President at the Request of the County Executive

AN EXPEDITED ACT to:

- (1) allow the County Executive to designate a qualified entity that may exercise the right of first refusal; and
- (2) generally amend the law regarding the right of first refusal.

By amending

Montgomery County Code
Chapter 53A, Tenant Displacement
Sections 53A-2, ~~[[and]]~~ 53A-4, and 53A-5

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

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

27 (2) These terms do not include entering into a contract for the sale of
28 rental housing that gives the County, HOC, [or] a tenant
29 organization, or a [[qualified entity]] County assignee a right of
30 first refusal under this Chapter.

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

33 [(h)] (i) *Tenant organization* means an association of tenants of rental housing
34 that:

35 (1) represents tenants of at least 30 percent ~~[[30%]]~~ of the occupied
36 units in the rental housing; and

37 (2) is certified by the Department according to Executive regulations.

38 [(i)] (j) *Title* means:

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

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

44 * * *

45 **53A-4. Right of first refusal to buy rental housing.**

46 (a) *Right of first refusal.* An owner must offer the County, HOC, and any
47 tenant organization the right to buy rental housing before selling the rental
48 housing to another party, except as provided under Section 53A-5.

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

50 (1) be in writing;

51 (2) be sent electronically to the Department or, at the discretion of the
52 Director, be sent by an alternative delivery method to the
53 Department if electronic delivery would cause an undue burden to

54 the owner ~~[[by certified mail, return receipt requested]]~~, within 5
55 business days after:

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

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

60 (3) include substantially the same terms and conditions as a pending
61 bona fide contract of sale from a third party to buy the rental
62 housing; ~~[and]~~ and

63 (4) remain open for:

64 (A) 60 days after it is received~~[[, for]]~~ by the County and HOC~~[[,~~
65 and any qualified entity that receives an assignment under
66 53A-4(g)]]; and

67 (B) 90 days after it is received by any tenant organization,
68 including a new tenant organization formed under Section
69 53A-3(b)~~[[; and]]~~.

70 (5) ~~[an owner]~~ The County must send an electronic copy of the offer
71 to all qualified entities ~~[[contemporaneously with providing the~~
72 offer to the County, HOC, and any tenant organization]].

73 (c) *Information and inspection.* The owner must give the County, HOC,
74 ~~[and]~~ any tenant organization, and ~~[[any qualified entity]]~~ any County
75 assignee:

76 (1) any information about the rental housing relevant to exercising the
77 right of first refusal, such as architectural and engineering plans
78 and specifications, and operating data; and

79 (2) access to the rental housing to inspect the property and conduct
80 reasonable tests at reasonable times after reasonable notice.

81 The County, HOC, [and] any tenant organization, and [[any qualified
 82 entity]] any County assignee must pay the owner a reasonable deposit for
 83 any architectural and engineering plans that the owner provides. The
 84 owner must refund the deposit when the plans are returned to the owner.
 85 The County Executive must issue regulations to implement this
 86 subsection.

87 (d) *Exercise of right of first refusal.*

88 (1) The County, HOC, [or a] any tenant organization, or any
 89 [[qualified entity that receives an assignment under 53A-4(g)]]
 90 County assignee may exercise the right of first refusal by accepting
 91 the offer within the applicable period under subsection (b)(4). The
 92 County, County assignee, and HOC may accept an offer to buy
 93 rental housing in a municipality only if the municipality approves.

94 (2) The owner must sell the rental housing under the right of first
 95 refusal if the acceptance includes substantially the same terms and
 96 conditions contained in the owner's bona fide contract of sale with
 97 the third party, including any contract term that provides for a bona
 98 fide real estate commission payable to an independent broker.
 99 Notwithstanding this general requirement or any term of the
 100 contract, the County, HOC, [or] [[a]] any tenant organization, or
 101 any [[qualified entity]] County assignee may condition its
 102 acceptance on obtaining financing at any time before the deadline
 103 in paragraph [[3]] (4) for completing the sale.

104 (3) The County, HOC, any tenant organization, or any [[qualified
 105 entity]] County assignee must not be required to pay to the owner
 106 a deposit of more than [[five]] 5 percent [[5%]] of the contract
 107 price to accept the offer and exercise its right of first refusal. The

108 deposit is refundable in the event of a good faith failure of the
 109 County, HOC, any tenant organization, or any [[qualified entity to
 110 perform under]] County assignee to satisfy the financing
 111 contingency under paragraph (2) [[the contract]].

112 [(3)] (4) The owner and the County, HOC, [or] tenant organization, or [[any
 113 qualified entity that receives an assignment under 53A-4(g)]
 114 County assignee must complete a sale under this subsection within
 115 180 days after the County, HOC, or tenant organization receives
 116 the owner's offer unless the owner agrees to extend the 180-day
 117 period. If the County, HOC, tenant organization or County
 118 assignee exercises the right of first refusal and fails to close within
 119 the 180 day deadline, then the owner, without first providing a new
 120 offer, may transfer the rental housing to any purchaser within 365
 121 days following the date of the offer, provided that the purchase
 122 price is not less than 90 percent of the purchase price set forth in
 123 the original offer under subsection (a).

124 [(4)] (5) Before a tenant organization completes a sale under paragraph
 125 [(3)] (4), a majority of all [of the] tenants must ratify the purchase.

126 [(5)] (6) The right of first refusal applies in the following order of priority:
 127 (A) the County or County assignee;
 128 (B) [[any qualified entity that receives an assignment under
 129 53A-4(g);]]
 130 [(B)] [(C)] HOC; and
 131 (C) [(D)] any tenant organization.

132 [(6)] (7) The Executive must issue regulations that establish procedures and
 133 guidelines for exercising the County's right of first refusal.

134 (e) *Expiration of right of first refusal.* If the County, HOC, [and] any tenant
 135 organization, ~~[[or]]~~ and any [[qualified entity that receives an assignment
 136 under 53A-4(g)]] County assignee do not exercise their rights of first
 137 refusal within the applicable period under subsection (b)(4), the owner
 138 may sell the rental housing to the third-party buyer under substantially
 139 the same terms and conditions offered to the County, HOC, and any
 140 tenant organization.

141 (f) *Immunity.* The County, HOC, [and] any tenant organization, ~~[[or]]~~ and
 142 any [[qualified entity]] County assignee are not liable for any damages
 143 incurred by the owner, a third-party buyer, a tenant, or any other person
 144 in connection with a decision to exercise or not exercise a right of first
 145 refusal under this Section.

146 (g) *Assignment.*

147 (1) The County Executive may assign the right of first refusal, or a
 148 contract to purchase rental housing, to an entity qualified by the
 149 Department to receive such assignment [[that]] under this
 150 subsection. The Department may designate an entity as a qualified
 151 entity if the Department determines that the entity:

152 (A) has demonstrated expertise in acquiring, maintaining, and
 153 managing rental and affordable housing;

154 (B) is a bona fide nonprofit, [[or]] a for-profit entity, or a
 155 governmental housing agency or authority, in good
 156 standing under the laws of the State of Maryland at the time
 157 of assignment;

158 (C) is registered and licensed to do business in Maryland;
 159 [[and]]

- 160 (D) commits in writing to maintain the affordability of housing
 161 acquired under this subsection~~[[.]]~~; and
- 162 (E) commits in writing that it must not disclose any information
 163 or documentation it receives from an owner pursuant to this
 164 Chapter unless required by law.
- 165 (2) The County Executive must adopt regulations under Method
 166 ~~[[3]]~~ (2) to establish a process for qualifying and selecting entities
 167 to receive an assignment under this subsection. The regulations
 168 must establish:
- 169 (A) a process that provides entities a fair opportunity to
 170 demonstrate to the County Executive or the County
 171 Executive’s designee its qualifications to receive an
 172 assignment;
- 173 (B) factors that an entity must demonstrate to be deemed
 174 ~~[[eligible to receive an assignment]]~~ a qualified entity;
- 175 (C) affordable housing restrictions that [[an]] a qualified entity
 176 must commit in writing to maintain, if selected as [[an]] a
 177 County assignee; and
- 178 (D) criteria the County Executive or the County Executive’s
 179 designee must use for selecting County assignees from
 180 among qualified entities.
- 181 (3) An assignment by the County Executive of the County’s right of
 182 first refusal must be accomplished by a written agreement with the
 183 assignee that includes an assignment and assumption of the
 184 County’s rights and obligations under this Chapter as to its right of
 185 first refusal. The County must provide an owner with a copy of the
 186 assignment and assumption agreement within 3 business days of

187 execution. The County’s option to assign its right of first refusal to
188 a qualified entity must not extend the 60 day exercise period under
189 Section 53A-4(b)(4) or the 180 day closing deadline under Section
190 53A-4(d)(4).

191 **53-A-5. Sales not requiring right of first refusal.**

192 * * *

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

- 195 (1) under the terms of a bona fide mortgage or deed of trust;
- 196 (2) to a mortgagee in lieu of foreclosure;
- 197 (3) under a court order;
- 198 (4) from one co-tenant to another co-tenant by operation of law;
- 199 (5) under a will or intestate distribution;
- 200 (6) to the State or a local government; ~~[[or]]~~
- 201 (7) of a minority title interest; or
- 202 (8) under subsection (c).

203 (c) *Exemption for low income housing tax credit transfers.*

204 (1) *Definitions.* For purposes of this subsection, the following terms
205 have the meanings indicated.

206 *Low Income Housing Tax Credit or LIHTC* means a low income
207 housing tax credit program under:

- 208 (A) section 42 of the United States Internal Revenue
209 Code of 1986, as amended; or
- 210 (B) a comparable County or State of Maryland low
211 income housing tax credit program with occupancy,
212 rent, and income requirements at least as restrictive

213 as those under section 42 of the United States Internal
214 Revenue Code, as amended.

215 LIHTC transfer means:

216 (A) a transfer of interest in a partnership or limited liability
217 company that owns rental housing as its sole or principal
218 asset, if the sole purpose of the transfer is to admit one or
219 more limited partners or investor members who will make
220 capital contributions and receive tax benefits under the
221 LIHTC;

222 (B) a transfer of interest in an entity that owns rental housing, or
223 a transfer of title to rental housing, if each of the following
224 conditions is satisfied:

225 (i) the credit period for the rental housing under the
226 LIHTC has ended;

227 (ii) immediately prior to the transfer, the rental housing
228 is subject to an extended low-income housing
229 commitment under the LIHTC;

230 (iii) before and after the transfer, the owner of the rental
231 housing is controlled, directly or indirectly, by the
232 same person or entity; and

233 (iv) immediately following the transfer, the rental
234 housing must, for a term of not less than 10 years,
235 remain subject to, or become subject to, an extended
236 low-income housing commitment under the LIHTC;

237 (C) a transfer of interest in a partnership or limited liability
238 company that owns rental housing as its sole or principal
239 asset, if the sole purpose of the transfer is to allow for the

240 exit of one or more limited partners or investor members
 241 who have made capital contributions and received tax
 242 benefits under LIHTC; or

243 (D) a transfer of interest in an entity that owns rental housing as
 244 its sole or principal asset, or a transfer of title to rental
 245 housing, if the sole purpose of the transfer is to qualify for
 246 and enter into a new credit period under the LIHTC for
 247 purposes of the rehabilitation of the rental housing if, before
 248 and after the transfer, the owner of the rental housing is
 249 controlled, directly or indirectly, by the same person or
 250 entity.

251 LIHTC transfer notice means the notice under paragraph (2)(C).

252 (2) LIHTC transfer notice – required. An owner may sell rental
 253 housing without providing any right of first refusal under Section
 254 53A-4 if:

255 (A) the property is financed or to be financed by the LIHTC;

256 (B) the sale or transfer is a LIHTC transfer; and

257 (C) not less than 90 days prior to the projected transfer date of
 258 the property or interest in the property, the owner provides
 259 written notice to the Department of such transfer, which
 260 notice must contain:

261 (i) the draft transfer agreement;

262 (ii) the existing low income tax credit covenant recorded
 263 on the property or, if none is recorded on the
 264 property, the draft low income tax credit covenant to
 265 be recorded on the property; and

266 (iii) the proposed date of closing.

267 (3) Agreement not to convert for LIHTC. Upon receipt of the LIHTC
 268 transfer notice, the Department must have 30 days to approve or
 269 deny the LIHTC transfer under the notice. If the Department
 270 denies the LIHTC transfer, the owner may pursue an agreement
 271 not to convert as set forth in Section 53A-5(a).

272 (4) Properties funded by LIHTC and the County – no additional notice
 273 required. An owner may sell rental housing without providing any
 274 right of first refusal under Section 53A-4, and without providing a
 275 LIHTC transfer notice, if:

276 (A) the property is financed or to be financed by the LIHTC; and

277 (B) either:

278 (i) the sale or transfer is a LIHTC transfer and,
 279 immediately prior to the transfer, the rental housing
 280 is subject to a regulatory agreement or deed of trust
 281 with the County that requires the owner to provide
 282 the County with notice and approval rights over any
 283 transfer; or

284 (ii) the sale or transfer is a LIHTC transfer and,
 285 simultaneously with the transfer, the rental housing
 286 will become subject to a regulatory agreement or
 287 deed of trust with the County that requires the owner
 288 to provide the County with notice and approval rights
 289 over any transfer.

290 **Sec. 2. Expedited Effective Date.** The Council declares that this legislation is
 291 necessary for the immediate protection of the public interest. This Act takes effect on
 292 the date on which it becomes law and applies retroactively to any right of first refusal
 293 offer of sale received by the County after January 1, 2024.

294 **Sec. 3. Transition.** As to any offer of sale received by the County after January
295 1, 2024, and prior to the effective date of Method (2) regulations adopted by the
296 Council under this Act, the County Executive, by executive order, may assign to an
297 entity qualified by the Department the right of first refusal if the entity:

298 (a) demonstrates that the entity is either a bona fide nonprofit or for-profit
299 entity in good standing under the laws of the State of Maryland, or a
300 designated entity under Section 52A-2;

301 (b) certifies in writing that for the past 10 years the person or each principal
302 in the entity has complied with all laws related to the acquisition,
303 maintenance, and management of rental and affordable housing;

304 (c) demonstrates that the entity has expertise and experience acquiring,
305 owning, operating, managing, and developing multi-unit affordable
306 rental housing projects in the last five years, including a certification that
307 the entity has never been in financial default as either a borrower or
308 guarantor, or if to the contrary, explaining in complete detail all the
309 circumstances;

310 (d) demonstrates proof of readiness to purchase the property; and

311 (e) demonstrates a commitment to community engagement, such as working
312 with community-based organizations or tenant counseling organizations
313 on anti-displacement activities.

314 **Sec. 4. Sunset.** Section 3 must sunset, and must have no further force or effect,
315 90 days after this Act becomes law.

Approved:



Andrew Friedson, President, County Council

February 13, 2024

Date

Approved:

Marc Elrich, County Executive

Date

This is a correct copy of Council action.

Sara R. Tenenbaum, Clerk of the Council

Date