

# DC Specific: Comparison of Tenant's Rights in the District of Columbia and Maryland

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# TOPA – What is it?

- TOPA stands for the Tenant Opportunity to Purchase Act
- Part of the Rental Housing Conversion and Sale Act of 1980
- Purpose: To protect tenant rights
- Enacted in response to the housing crisis in the District of Columbia when residents were left without housing after their rental units were converted to condominiums

# TOPA BASICS: When Does TOPA Apply?

- Before an owner of a housing accommodation may sell...or issue a notice to vacate for purposes of demolition or discontinuance of housing use, the owner shall give the tenant an opportunity to purchase the housing accommodation at a price and terms that represent a bona fide offer of sale.
- Important Underwriting Questions:
  - Did tenants occupy the property at the time the owner listed the property the property for sale?
  - Did tenants move out shortly before the property was listed for sale?
  - Why did the tenants move out?
  - Has the lease expired?
  - Did the owner return the tenant's security deposit?

# TOPA Basics: What is a sale?

- Sale is not defined.
  - But, §42-3404.02(b)&(c)(1) lists transactions that are not “sales” per se, but constitute sales under TOPA. Such as:
    - Relinquishing possession of the property;
    - An option to purchase the property for a sum certain at the end of the assignment, lease, or encumbrance;
    - Certain master leases.
    - The transfer of an ownership interest in an entity which, in effect, results in the transfer of the accommodation.

# TOPA Basics: Who is a tenant?

- Tenant
  - a tenant, subtenant, lessee, sublessee, or other person entitled to the possession, occupancy or benefits of a rental unit within a housing accommodation.

# TOPA BASICS: Exempt Transactions

- TOPA does list specific types of transactions that are exempt from TOPA
- Examples of Exempt Transactions (not inclusive):
  - Certain transfers from a decedent's estate.
  - Inter-vivos transfers between spouses, parent and child, siblings, grandparent and grandchild, or domestic partners.
  - Foreclosures, deeds in lieu of foreclosures, tax sale foreclosures.
  - Bankruptcy sales.
  - Change in entity form provided there is no consideration.
  - Transfer to a revocable trust provided there is no consideration and the transferor is the current beneficiary.
  - Transfer from a revocable trust to a beneficiary as a result of the grantor's death.

# TOPA BASICS: Exempt Transactions

## Notice of Transfer

- When an owner is transferring title or any economic interest in a housing accommodation and claims the transfer is not a sale or is an exempt transaction, the owner, in most cases, must send each tenant and DC a **Notice of Transfer**.
- Notice of Transfer General Requirements:
  - Each tenant must receive a Notice of Transfer at least 90 days.
  - A description of the transfer containing all material facts.
  - A The proposed transaction must be described.
  - Reason why the transfer may be exempt from TOPA requirements.
  - An affidavit of delivery and copy of the Notice of Transfer must be sent to DC.
  - A statement of the rights of the tenant or the tenant organization.
  - The date of the proposed transfer.

**NOTE:** A tenants or tenant organization may challenge the Notice of Transfer, if they believe the transfer is a sale or not otherwise exempt. Must file notice of intent to challenge within 45 days after DC receipt of the Notice of Transfer.

# TOPA BASICS: TOPA Provides Tenants With 2 Rights

## **2 Rights**

- Opportunity to Purchase
  - The opportunity to purchase means what it says—a tenant or tenant organization has the right to purchase the property.
- Right of First Refusal
  - The tenant or tenant organization has the right to match any third party offer.



# TOPA: TOPA Provides Tenants With 2 Rights

- Opportunity to Purchase
  - The rules regarding a tenant's opportunity to purchase vary according to the size of the housing.
  - 3 Categories of Rental Housing:
    - Single Family Accommodation
    - 2 – 4 Units
    - 5 or More Units
- Right of First Refusal
  - Size of the accommodation does NOT matter.
  - 15 Days regardless of the size of the accommodations.
  - Runs at the END of the negotiation period.

# TOPA: Opportunity to Purchase: Generally

- Delivery of Offer:
  - Seller must give tenant a written offer of sale;
  - Offer must be sent by **certified mail**;
  - If multiple units, offer must be posted in a conspicuous place of the common areas; and
  - Must provide the Mayor with a copy of the offer of sale by certified mail or hand delivery.
- The offer of sale must include:
  - The asking price and material terms of the sale;
  - A statement of tenant rights and responsibilities pursuant to the Act;
  - A statement as to whether a contract with a third party exists and that a copy of such contract will be made available to the tenant(s); and

# TOPA: Opportunity to Purchase: Single Family Accommodations

- On July 3, 2018, the TOPA Single Family Home Exemption Amendment Act of 2018 went into effect.
- Summary of the 2018 Amendment:
  - Only effects single family accommodations.
  - TOPA will only apply if:
    - Tenant(s) entered into a written lease by March 31, 2018; or
    - Took occupancy by April 15, 2018; and
    - Tenant is elderly or disabled.
  - Elderly Definition:
    - 62 years of age or older.
  - Disabled Definition:
    - Disability as defined in section 3(1)(A) of the Americans with Disabilities Act of 1990.

# TOPA: Opportunity to Purchase: Single Family Accommodations

- Summary of 2018 Amendment (cont.):
  - The definition of a single family accommodation changed.
  - The right for a qualifying tenant to assign his/her TOPA rights has been significantly curtailed.
    - Consideration may only be the right to immediately use and occupy the property for 12 months after the sale at the same rate of rent at the time the offer of sale was received.
    - Any further assignment of tenant's TOPA rights may only be without consideration to an entity of which the assignee is the owner, managing member or officer who can legally bind the entity.
  - The right for a qualifying tenant to receive consideration for waiving his/her TOPA rights is NOT affected by the 2018 Amendment.

# TOPA: Opportunity to Purchase: Single Family Accommodations

- Definition of Single Family Accommodation:
  - A single family dwelling or a single family dwelling with one accessory dwelling unit; or
  - A single rental unit in a condominium, cooperative, or homeowners association.
- Definition of Single Family Dwelling:
  - A single family dwelling means a structure that contains a room or group of rooms forming a single living space which includes a kitchen.
- Definition of Accessory Dwelling Unit:
  - The accessory dwelling unit must be secondary to the principal single family dwelling in terms of gross floor area, intensity of use, and physical character.

# TOPA: Opportunity to Purchase: Single Family Accommodations

- If the tenant moved in prior to April 15, 2018 and is elderly or disabled, then TOPA applies.
- Tenant must be provided with Forms 3A and 4
  - Or, Forms 3B, 3C (when a third party contract is obtained) and Form 4.
- Tenant will have:
  - 20 days from receipt of Form A or Form B to deliver a written statement of interest.
  - 25 days to negotiate a contract.
    - Plus a day for each day the landlord fails to provide certain requested documents.
  - 45 days to secure financing and settle.
    - 75 days if a lender states in writing that a financing decision will take 75 days.
- No lapse of time provision.

# TOPA: Opportunity to Purchase: 2- 4 Units

- Written Statement of Interest:
  - 15 days for tenants to act jointly, from the dated that the tenant or Mayor, whichever is later received the offer of sale.
  - 7 days for tenants to act individually
  - Provide statement of interest to owner and Mayor by hand or certified mail
- Negotiation Timeframe:
  - 90 days, NOT including the 22 days for written statement of interest
  - If more than 1 tenant submits a Statement of Interest, owner must negotiate with each tenant (or jointly if the tenants agree)
  - For every day the owner delays in sending the required information the timeframe is extended by 1 day
  - If the tenants jointly have not contracted with the owner at the end of 90 days, and additional 30 days is provided for the tenants to individually contract with the owner.

# TOPA: Opportunity to Purchase: 2- 4 Units

- Time to Secure Financing/Settlement:
  - 90 days after the date of contracting
  - 120 days if a lender estimates in writing that a financing decision will take 120 days.
- Lapse of Time:
  - If 240 days lapse from the date of offer, and the owner has not sold or contracted for the sale of the accommodation, the owner shall comply anew with the terms of this subchapter.
- Note: If a time period ends on a Saturday, Sunday, or legal holiday, it is extended until the next day which is not a Saturday, Sunday, or legal holiday.



# TOPA: Opportunity to Purchase: 5 or More Units

- Tenant Organization:
  - Only the tenant organization has the right to purchase the property.
  - Definition:
    - Organization that represents at least a majority of the heads of household in the housing accommodation excluding those households in which no member has resided in the housing accommodation for at least 90 days and those households in which any member has been an employee of the owner during the preceding 120 days.
- If a tenant organization does not exist in a form desired by the tenants, the tenants shall:
  - Form a tenant organization with the legal capacity to hold real property, elect officers, and adopt bylaws;
  - File articles of incorporation; and
  - Deliver an application for registration to the Mayor and the owner by hand or by certified mail.

# TOPA: Opportunity to Purchase: 5 or More Units

- **Written Statement of Interest:**
  - 45 days, if a tenant organization does NOT exist, from the dated that the tenant or Mayor, whichever is later received the offer of sale.
  - 30 days, if a tenant organization does exist, from the dated that the tenant or Mayor, whichever is later received the offer of sale.
- **Negotiation Timeframe:**
  - 120 days from the date of receipt of the statement of registration.
  - For every day the owner delays in sending the tenant requested information the timeframe is extended by 1 day.
- **Time to Secure Financing/Settlement:**
  - 120 days after the date of contracting.
  - 240 days, if a lender estimates in writing that a financing decision will take 240 days.

# TOPA: Opportunity to Purchase: 5 or More Units

- Time to Secure Financing/Settlement (cont.):
  - 180 days, if the purpose of the tenant organization is to convert the accommodation to a nonprofit housing cooperative with appreciation of share value limited to a maximum of the annual rate of inflation.
- Lapse of Time:
  - If 360 days lapse from the date of offer, and the owner has not sold or contracted for the sale of the accommodation, the owner shall comply anew with the terms of this subchapter.
  - The tenant organization shall also comply anew with respect to delivery of a registration statement.

# DOPA: Overview

- District Opportunity to Purchase Act (DOPA)
- Only applies to properties that are 5 or more units.
- DOPA became effective December 24, 2008.
- In November 2018, DOPA regulations became final.
- The District's opportunity to purchase is subordinate to the right of a tenant.

# DOPA: Overview

- The Mayor can only exercise the opportunity to purchase IF at least 25% of the rental units in the housing accommodation are affordable units.
- **MUST** provide the Mayor with an opportunity to purchase, **REGARDLESS** of how many units are affordable housing units.
- The Mayor may assign the opportunity to purchase
- The Mayor has the same remedies and rights to enforce owner compliance as a tenant or tenant organization would have against an owner for violation of this chapter.

# Takoma Park: Tenant Opportunity to Purchase Law

- Most similar to DC's TOPA law
- Enacted by Takoma Park's City Council in 1986
- Section 6.32 of Takoma Park's Municipal Charter
- Applies to sales of all rental properties with a few exceptions.
- All contracts with third parties are subject to the rights of the tenant(s), a tenant association or the City.
- Third-party purchasers are presumed to act with full knowledge of tenant rights.
- A court may declare any transfer that does not comply with the law void and set aside the transfer.
- Ambiguities should be resolved to strengthen the legal rights of the tenant or tenant organization to the maximum extent permissible under law.

# Takoma Park: Tenant Opportunity to Purchase Law

- Before settlement, the owner must provide an offer of sale to:
  - To each tenant in the rental facility;
  - To any registered tenant association within the rental facility; and
  - To the City of Takoma Park, Maryland.
- An offer of sale must state:
  - The asking price and material terms of the sale.
  - The tenant(s), registered tenant association and the City have the right to purchase the property at the same price and on substantially the same terms and conditions as the third-party contract, if a third-party contract exists at the time the offer of sale is made.
  - That within seven calendar days of receiving a written request for the information, the owner will provide:
    - For multifamily rental facilities:
      - A complete copy of any third-party contract to purchase the rental facility;
      - A floor plan or other architectural and engineering plans or specifications of the rental facility;
      - All documents required under Chapter 6.28 (annual rent stabilization reports, licensing inspection reports, City of Takoma Park Rental housing laws, etc.); and
      - An itemized listing of monthly operating expenses and capital expenditures for each of the two preceding years.
      - A rent roll, a list of tenants, and a list of vacant apartments.
    - For single-family rental facilities:
      - a complete copy of any third-party contract to purchase the rental facility and all documents required under Chapter 6.28.
  - Every day there is a delay in providing this information, timeframes are extended by 1 day.

# Takoma Park: Tenant Opportunity to Purchase Law

- An offer of sale must:
  - Be sent by first-class mail or personally delivered.
  - Be posted in a conspicuous place in the common area or on the entry doors, except for single-family rental facilities.
  - Allow the tenant(s) to purchase only the rental facility even if the third-party contract to purchase the rental facility includes other real or personal property.
- Change in the Sales Price or Contract Entered into After Offering.
  - If there is a subsequent third-party contract after the initial offer of sale that results in a material change, or if the terms of a third-party contract to purchase the rental facility materially change between the time an offer of sale is made and the settlement, then the owner shall give each tenant(s), tenant association, and the City a new offer of sale.
    - If the initial time period to express interest has expired, the tenants shall have 7 days from the receipt of the new offer of sale period to express an interest in purchasing the property.
  - An owner shall not be required to give a new offer of sale if there is an increase in the sales price.



# Takoma Park: Tenant Opportunity to Purchase Law

- Contract Negotiation

- The tenant(s), tenant association and the City shall bargain in good faith for the sale of the rental facility.
- The owner may not require the tenant(s), tenant association or the City to prove financial ability to perform, as a prerequisite to entering a contract.

- Earnest Money Deposit

- The owner may require an earnest money deposit of up to:
  - 1% of the contract sales price for single-family units and properties with 2 – 6 units; and
  - ½% of the contract sales price for rental facilities with 7 or more rental units
- The earnest money deposit shall be refundable within 30 calendar days if the tenant(s), tenant association or the City fail to perform.

# Takoma Park: Tenant Opportunity to Purchase Law

- Exercise or Assignment of Rights
  - Tenants may assign or sell their rights to any party; and
  - May be for any consideration which the tenant finds acceptable.
- Waiver of Rights
  - An owner shall not request, and a tenant may not waive the right to receive an offer of sale or any other right under this chapter except in exchange for consideration which the tenant, in its sole discretion, finds acceptable.

# Takoma Park: Tenant Opportunity to Purchase Law

- Single Family Rental Facilities
  - Written Statement of Interest
    - The tenant has 7 calendar days from receipt of a written offer of sale to deliver a written statement of interest to the owner and to the City Manager.
    - If the tenant does not submit a statement of interest, the City has 7 additional calendar days to deliver a written statement of interest to the owner.
  - Contract Negotiations
    - The tenant or the City has 14 days after the written statement of interest to submit a written contract.
  - Settlement/Financing
    - The tenant has not less than 30 days between the execution of the contract and settlement to secure financing.
      - If the tenant is obtaining financing through a government or other loan program for low or moderate income persons or for first-time homebuyers and the government agency or lender estimates in writing that a decision with respect to financing will be made within 60 calendar days after the date of the contract, then the owner shall afford an extension of time consistent with that written estimate.
  - Lapse
    - If six months elapse from the offer of sale to a tenant and the and the owner has not gone to settlement, the owner shall comply anew with the provisions of this chapter before selling the property.

# Takoma Park: Tenant Opportunity to Purchase Law

- 2 – 6 Rental Units
  - Written Statement of Interest
    - A group of tenants acting jointly shall have 14 days from receipt of an offer of sale to provide the owner and the City Manager with a written statement of interest.
    - Any individual tenant shall have 7 additional calendar days to submit a written statement of interest.
    - If no individual tenant has submitted a statement of interest, the City has 7 additional calendar days to submit a written statement of interest to the owner.
  - Contract Negotiation Period.
    - A tenant group, tenant, or the City has 30 calendar days after the date the written statement of interest is delivered to submit a contract.
      - If more than one individual tenant submits a written statement of interest, the owner shall negotiate with each tenant separately or jointly if the tenants agree to negotiate jointly.
    - If, at the end of the 30 calendar day contract negotiation period, the tenant group has not contracted to purchase the property, individual tenants have an additional 30 calendar days to enter a contract.
    - If, at the end of the additional 30 calendar day contract negotiation period, no individual tenant has contracted to purchase the rental facility, the City shall have an additional 30 calendar days to enter a contract.
    - If the owner is required to negotiate with more than one tenant group or tenant pursuant to this section, the owner may decide which contract to accept without liability to any other tenant group or tenant.
  - Settlement/Financing
    - The tenant has not less than 90 days between the execution of the contract and settlement to secure financing.
  - Lapse
    - If eight months elapse from the date an owner has given notice of an offer of sale to tenants or the City under this section and the owner has not gone to settlement on the sale of the rental facility, the owner shall comply anew with the provisions of this chapter before selling the property.

# Takoma Park: Tenant Opportunity to Purchase Law

- 7 or more Rental Units
  - Written Statement of Interest
    - The tenants may respond to an owner's offer of sale only through a registered tenant association that represents at least one-third of the occupied rental units in the rental facility.
    - Upon receipt of an owner's offer of sale, the tenant association and the City shall have 45 calendar days to:
      - Deliver a written statement of interest.
      - The tenant association must deliver to the owner and to the City Manager a registration statement listing the names, addresses and telephone numbers of all member tenants, officers, legal counsel and other confirmation that the tenant association represents at least one-third of the occupied rental units at the time of registration.
  - Contract Negotiations
    - The tenant association has 120 calendar days after the date the tenant association delivered the written statement of interest to the owner to enter a contract
  - Settlement/Financing
    - The tenant association has at least 120 calendar days to secure financing and settle. If a lending institution or agency estimates in writing that a decision with respect to financing will be made within 240 calendar days after the date of the contract, the owner shall afford an extension of time consistent with that written estimate.
    - Conversion to Limited Equity Housing Cooperative.
      - If tenant association intends to convert the rental facility to a limited equity housing cooperative, the tenant association has not less than 180 calendar days after the date of the contract in order to secure financing and settle.
      - The owner shall cooperate and assist the tenant association in converting the rental facility to a limited equity housing cooperative.
  - Lapse
    - If one year elapses from the date an owner has given notice of an offer of sale under this chapter and the owner has not gone to settlement on the sale of the rental facility, the owner shall comply anew with the provisions of this chapter before selling the property.

# Takoma Park: Tenant Opportunity to Purchase Law

- Exempt sales:
  - To a family member;
  - Limited by the terms of a bona fide mortgage or deed of trust;
  - To a mortgagee in lieu of foreclosure;
  - Under a court order;
  - From one co-tenant to another by operation of law;
  - To the State or a local government;
  - Of a minority title interest; or
  - Of an accessory apartment.

# Takoma Park: Tenant Opportunity to Purchase Law

- **Obligations Upon Foreclosure**

- A lender's trustees or the lender's attorney shall give notice of the time, place, and terms of sale to the tenants in the rental facility.
- Notice also shall be provided to the City Manager and to any registered tenant association.

# Baltimore City: Tenant's Rights of First Refusal

- Baltimore City Charter, Article 13, Subtitle 6
- ONLY applies to single-family residential rental property.
- Tenant must have resided in the property for at least 6 months prior to the sale.
  - A tenant that has lived in the property during the 6 months prior to the sale of property has the right of first refusal regardless of whether the tenant is living in the property at the time the property is sold.
- Does not apply to tenants evicted for non-payment of rent.



# Baltimore City: Tenant's Rights of First Refusal

- Exemptions.
  - A transfer of title in which:
    - the property is listed for sale with a bona fide third-party licensed real estate broker; and
    - the tenant is notified in writing that:
      - the right of first refusal under this subtitle does not apply because of the exemption under this subsection;
      - the tenant may negotiate for the purchase of the property on the same basis as other members of the general public; and
      - the tenant may contact the Homeownership Institute in the Department of Housing and Community Development for information about the process of purchasing and financing a home; and
    - the notice must be sent to the tenant at his or her last known address, by certified mail, return receipt requested, within 48 hours after the listing of the property with a real estate broker. With the notice to the tenant, the landlord or the real estate broker shall send a copy of all information included in the public offering for sale.

# Baltimore City: Tenant's Rights of First Refusal

- Exemptions (Cont.—not inclusive)
  - Transfer of title to a spouse, child or children, parents, siblings, or in-laws of the landlord;
  - Transfer of title by will or through inheritance laws;
  - A gift to any religious, charitable, or benevolent, tax-exempt donee;
  - Transfer of title to a government agency; and
  - Transfer of title in lieu of foreclosure of a mortgage or deed of trust.

# Baltimore City: Tenant's Rights of First Refusal

- Affidavit on transfers to third parties.
  - In any transfer of real property subject to this subtitle to a party other than a tenant, the owner shall file in the land records of Baltimore City an affidavit certifying that the requirements of this subtitle have been met, as a part of the deed conveyance.
- Transferee's rights protected.
  - Where an affidavit has been filed, the rights and title of a third party transferee, his heirs, successors or assigns shall be free of any restriction or claim arising in favor of a tenant.

# Baltimore City: Tenant's Rights of First Refusal

- An affidavit affirming compliance with the requirements of this subtitle shall incorporate one of the following statements as appropriate:
  - “The property known as (street address) in Baltimore City has not been occupied by a tenant since (date).”
  - “The property known as (street address) in Baltimore City, had been let to (name of last tenant), as a single-family residence, and an offer of sale as required by § 6-4(a) of Article 13 of the Baltimore City Code was sent on (date of mailing) to (last known address), being the last address known to me (us) of the aforementioned tenant and I (we) have received no response to said offer of sale.”
  - “(Name of tenant), being the tenant of the property known as (street address) in Baltimore City, following an offer of sale as required by § 6-4(a) of Article 13 of the Baltimore City Code, sent on (date of mailing), has failed to enter into a contract to purchase said property in the manner and time provided by Subtitle 6 of Article 13 of the Baltimore City Code.”
    - Add if applicable
      - “Notice pursuant to § 6-4(b) of Article 13 of the Baltimore City code was subsequently sent to said tenant on (date of mailing), and tenant subsequently failed to contract to purchase said property in lieu of (name of third party) within the period of time provided by said § 6-4(b), that period being days.”
  - “(Name of tenant), being the tenant of the property known as (street address) in Baltimore City, following an offer of sale as required by § 6-4(a) of Article 13 of the Baltimore City Code, sent date of mailing), has executed a waiver of the right of first refusal in a manner consistent with § 6-6(c) of Article 13 of the Baltimore City Code.”
- Where a property subject to this section is owned by a corporation, the required affidavit shall be made by the president and the secretary of the corporation.

# Howard County: Notice and Right To Purchase

- Howard County Code of Ordinances, Chapter 13, Subtitle 14-NOTICE AND RIGHT TO PURCHASE
- Individual tenants **do not** have rights.
- Only the County and the Howard County Housing Commission have the right to purchase the property.
- Only applies to properties with 5 or more units.
- The County, the Commission, and the tenants must receive a notice of intent to sell and a copy of the contract.
- Notice Compliance.
  - The owner shall issue a certificate of notice compliance for the sale of rental housing to the County in a form appropriate for recordation in the land records.

# Howard County: Notice and Right To Purchase

- Notice of Intent to Sell.
  - No later than 3 days after offering the rental housing for sale, the owner shall provide by first class mail to the department, the commission, and tenants of the rental housing written notice of the owner's intent to sell the property.
- Notice Upon the Execution of a Bona Fide Contract of Sale.
  - Unless otherwise provided by law, no later than ten days after the execution of a bona fide contract of sale of rental housing, the owner shall provide written notice of the sale:
    - To each tenant in the rental housing by first-class and to any tenant organization, if any, by certified mail, return receipt requested;
    - By conspicuously posting the notice in public areas of the rental housing; and
    - To the Department of Inspections, Licenses and Permits by certified mail, return receipt requested; and
    - To the Department and the Commission by certified mail, return receipt requested with a list identifying each tenant and the tenant's address.

# Howard County: Notice and Right To Purchase

- Sales not Requiring Right to Purchase.
  - An owner does not have to provide a right to purchase for the sale of the following transfers of a rental facility:
    - Any transfer made pursuant to the terms of a bona fide mortgage or **deed of trust** agreement, excluding an indemnity deed of trust;
    - Any transfer to a mortgagee **in lieu of foreclosure** or any transfer pursuant to any other proceedings, arrangement or deed in lieu of foreclosure;
    - Any transfer made pursuant to a **judicial sale** or other judicial proceeding brought to secure payment of a debt or for the purpose of securing the performance of an obligation;
    - Any transfer of the interest of **one co-tenant to another co-tenant** by operation of law or otherwise;
    - Any transfer made by **will or descent or by intestate distribution**;
    - Any transfer made to any **municipal, county or state government** or to any agencies, instrumentalities or political subdivisions thereof;
    - Any transfer to an **owner's spouse or child**; or
    - Any transfer into a **partnership or corporation wholly owned by the person(s)** so transferring.

# Howard County: Notice and Right To Purchase

- Forgoing the Right to Purchase for Affordable Units.
  - If a rental housing owner enters a binding agreement with the County or Commission to designate and maintain the greater of either the existing percentage or at least 20% of the units in the rental housing offered for sale classified as affordable to persons of eligible income (as defined in section 13.1303(i) of the County Code) for at least 40 years, then the owner does not have to offer a right to purchase as provided in this section.
- Certification to Department of Finance.
  - The Department of Finance shall develop a method to certify that the transaction meets the requirements of this section.



# Prince George's County: Conversion of Rental Housing

- PG Code 13-1110 et seq.
- Does not apply to rental properties with less than 20 units.
- Notice of Sale
  - Within 5 days after an owner enters a bona fide contract of sale to sell rental housing, the owner must:
    - Provide written notice of the sale to each tenant in the multifamily rental facility by hand or by certified mail, return receipt requested;
    - Post a written notice of the sale in the public areas of the multifamily rental facility; and
    - Provide written notice of the sale to the Director of the Department by certified mail, return receipt requested.
- The Right of First Refusal only applies to properties located entirely within an area specifically designated by resolution of the County Council with concurrence of the County Executive.

# Prince George's County: Conversion of Rental Housing

- County Right of First Refusal
  - An owner shall offer the Department the right to buy a multifamily rental facility before selling the rental housing to another party.
  - An offer must:
    - Be in writing;
    - Be sent by certified mail, return receipt requested, within 5 business days after the execution of a bona fide contract of sale, to the Department;
    - Include substantially the same terms and conditions as a pending bona fide contract of sale from a third party to buy the multifamily rental facility;
  - Within 7 business days of receipt of the offer, the Department shall make an initial evaluation whether it will exercise its right of first refusal or waiver and shall notify the owner in writing;
  - If the Department determines that it will exercise its right of first refusal the offer shall remain open for 60 days for a multifamily rental facility after it is received for the Department pursuant to this section.

# Prince George's County: Conversion of Rental Housing

- Exceptions to County Right of First Refusal
  - An owner may sell a multifamily rental facility without providing any right of first refusal, if the Department approves a written agreement that:
    - Prohibits the buyer from converting the multifamily rental facility for at least 3 years after the sale; or
    - At least 20% of the units, for 15 years from the date of acquisition, do not exceed the applicable income eligibility figures established under Section 11-138 (b)(4)(ii) of the Real Property Article of the Annotated Code of Maryland; and
    - The Department received the written agreement from the prospective buyer at least 30 days before the sale.

# Prince George's County: Conversion of Rental Housing

- Exemptions—An owner does not have to provide a right of first refusal for a sale or transfer:
  - In a multifamily rental facility with less than 20 rental dwelling units;
  - Under the terms of a **bona fide mortgage or deed of trust**;
  - To a mortgagee **in lieu of foreclosure** or any other proceedings, arrangement or deed in lieu of foreclosure;
  - Under a **court order or judicial sale**;
  - From **one co-tenant to another co-tenant** by **operation of law**;
  - Under a **will or descent or intestate distribution**;
  - To the **State or a local government**;
  - To a **spouse, son or daughter**;
  - Made pursuant to the **liquidation of a partnership, limited liability company, or corporation**;  
or
  - Into a **partnership, limited liability company, or corporation wholly owned by the person(s)** so contributing.

# Prince George's County: Conversion of Rental Housing

- Certificate of Compliance
  - The Department must issue a certificate of compliance for a multifamily rental facility to the owner, the buyer, or any other interested party, in a form appropriate for recordation in the land records, when the Department determines that the requirements of this division have been satisfied.
  - The certificate is conclusive evidence of compliance with this division.

# Montgomery County: Right of First Refusal

- Applies to properties with at least 4 units.
- Notice of sale.
  - Within 5 days after an owner enters a bona fide contract of sale to sell rental housing, the owner must:
    - Provide written notice of the sale to each tenant in the rental housing by first class mail;
    - Post a written notice of the sale in the public areas of the rental housing; and
    - Provide written notice of the sale to the Department of Housing and Community Affairs with a list identifying each tenant and the tenant's address.
  - The notice of sale must offer to sell the rental housing to any tenant organization, and include any other information required by Executive regulations.
- Tenant organization.
  - If there is no certified tenant organization for the rental housing when the notice of sale is due, 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.

# Montgomery County: Right of First Refusal

- Right of first refusal.
  - An owner must offer the County, Housing Opportunities Commission (“HOC”), and any tenant organization the right to buy rental housing before selling the rental housing to another party.
- Requirements for offer.
  - An offer must:
    - Be in writing;
    - Be sent by certified mail, return receipt requested, within 5 business days after:
      - The execution of a bona fide contract of sale, for the County, HOC, and any existing tenant organization; or
      - The Department certifies a tenant organization;
    - Include substantially the same terms and conditions as a pending bona fide contract of sale from a third party to buy the rental housing; and
    - Remain open for:
      - 60 days after it is received, for the County and HOC; and
      - 90 days after it is received by any tenant organization.

# Montgomery County: Right of First Refusal

- The right of first refusal applies in the following order of priority:
  - The County;
  - HOC; and
  - Any tenant organization.
- Expiration of right of first refusal.
  - If the County, HOC, and any tenant organization do not exercise their rights of first refusal within the applicable period, the owner may sell the rental housing to the third party buyer under substantially the same terms and conditions offered to the County, HOC, and any tenant organization.



# Montgomery County: Right of First Refusal

- Sales not requiring right of first refusal.
  - Agreement not to convert.
    - An owner may sell rental housing without providing any right of first refusal, if the Department approves a written agreement that:
      - Prohibits the buyer from converting the rental housing for at least 5 years after the sale;
      - The Department received from the prospective buyer at least 30 days before the sale; and
      - Requires the buyer to follow the voluntary rent increase guidelines published annually under Section 29-53 during:
        - The first 3 years of the agreement, for all tenants who resided in the rental housing when the Department approved the agreement; and
        - The last 2 years, for each of these tenants who qualifies as a low- or moderate-income tenant under Department regulations.

# Montgomery County: Right of First Refusal

- Sales not requiring right of first refusal (Cont.)
  - An owner does not have to provide a right of first refusal for a sale:
    - Under the terms of a bona fide mortgage or deed of trust;
    - To a mortgagee in lieu of foreclosure;
    - 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; or
    - Of a minority title interest.

# Montgomery County: Right of First Refusal

- Certificate of compliance.
  - The Department 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, when the Department determines that the requirements of this Chapter have been satisfied. The certificate is conclusive evidence of compliance with this Chapter.

Thank You