

Introduced \_\_\_\_\_  
Public Hearing \_\_\_\_\_  
Council Action \_\_\_\_\_  
Executive Action \_\_\_\_\_  
Effective Date \_\_\_\_\_

## County Council of Howard County, Maryland

2023 Legislative Session

Legislative Day No. 13

### Bill No. 43 -2023

Introduced by: The Chairperson at the request of the County Executive and  
Cosponsored by Christiana Rigby

AN ACT authorizing the County or the Housing Commission to assign the right to purchase by written agreement to certain entities who may acquire or finance the purchase of rental housing; clarifying the time that an offer shall remain open; amending the minimum number of affordable units; defining certain terms; providing that certain assignments may be recorded; requiring that certain covenants be recorded; and generally related to the notice and right to purchase rental housing.

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Introduced and read first time \_\_\_\_\_, 2023. Ordered posted and hearing scheduled.

By order \_\_\_\_\_  
Michelle Harrod, Administrator

Having been posted and notice of time & place of hearing & title of Bill having been published according to Charter, the Bill was read for a second time at a public hearing on \_\_\_\_\_, 2023.

By order \_\_\_\_\_  
Michelle Harrod, Administrator

This Bill was read the third time on \_\_\_\_\_, 2023 and Passed \_\_\_\_, Passed with amendments \_\_\_\_\_, Failed \_\_\_\_\_.

By order \_\_\_\_\_  
Michelle Harrod, Administrator

Sealed with the County Seal and presented to the County Executive for approval this \_\_\_ day of \_\_\_\_\_, 2023 at \_\_\_ a.m./p.m.

By order \_\_\_\_\_  
Michelle Harrod, Administrator

Approved/Vetoed by the County Executive \_\_\_\_\_, 2023

\_\_\_\_\_  
Calvin Ball, County Executive

NOTE: [[text in brackets]] indicates deletions from existing law; TEXT IN SMALL CAPITALS indicates additions to existing law; ~~Strike-out~~ indicates material deleted by amendment; Underlining indicates material added by amendment.

1 **Section 1. Be It Enacted** by the County Council of Howard County, Maryland, that the  
2 following provision of the Howard County Code are amended:

3

4 *Title 13. Housing and Community Development.*

5 *Section 13.1400 “Definitions”*

6

7 *Title 13. Housing and Community Development.*

8 *Section 13.1403 “Right to Purchase.”*

9

10 *Title 13. Housing and Community Development*

11 *13.1405 “Affordable units”*

12

13 **Title 13. Housing and Community Development.**

14 **Subtitle 14. Notice and Right to Purchase – Sale of Rental Housing.**

15

16 **Section 13.1400. Definitions.**

17 (A) *ASSIGNEE* MEANS A NON-PROFIT, GOVERNMENTAL AGENCY, OR OTHER THIRD-PARTY  
18 ENTITY TO WHOM THE COUNTY OR COMMISSION ASSIGNS ITS RIGHTS UNDER SECTION  
19 13.1403 OF THIS SUBTITLE.

20 ([[a]]B) *Commission* means the Howard County Housing Commission.

21 ([[b]]C) *Department* means the Department of Housing and Community Development.

22 ([[c]]D) *Owner* means an individual or entity holding title to rental housing.

23 ([[d]]E) *Rental Housing* means a multiple-family dwelling, or a group of multiple-family  
24 dwellings operated as one entity, with a total of five or more rental units.

25 ([[e]]F) *Sale, sell or selling* means:

26 (1) Transfer of title to rental housing;

27 (2) Transfer in a 12-month period of a majority interest in ownership of the rental  
28 housing; or

29 (3) Transfer in a 12-month period of a majority interest in ownership of an entity  
30 holding title to the rental housing; or

31 (4) Lease of rental housing for more than seven years.

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

3 ([[g]]H) *Tenant organization* means an association of tenants of rental housing that  
4 represents tenants of at least 30 percent of the occupied units in the rental housing.

5 ([[h]]I) *Title* means:

- 6 (1) A legal or equitable ownership interest in rental housing; or
- 7 (2) A legal, equitable, or beneficial interest in a partnership, limited partnership,  
8 corporation, trust, or other person who is not an individual, that has a legal or  
9 equitable interest in rental housing.

10

11 **Section 13.1403. Right to purchase.**

12 (a) *Right to Purchase.* An owner shall offer the County and Commission the right to buy  
13 rental housing in accordance with the requirements of this subtitle, except if the property  
14 meets the requirements under section 13.1403([[f]]H).

15 (B) *ASSIGNMENT OF RIGHTS.* BY WRITTEN AGREEMENT, THE COUNTY OR COMMISSION MAY  
16 ASSIGN ITS RIGHT TO PURCHASE TO AN ASSIGNEE. THIS ASSIGNMENT SHALL BE IN WRITING,  
17 MAY BE RECORDED, AND SHALL REQUIRE THAT THE ASSIGNEE ACCEPT ALL  
18 RESPONSIBILITIES OF THE COUNTY OR COMMISSION AS IF THE COUNTY OR COMMISSION  
19 WERE PURCHASING THE RENTAL HOUSING.

20 (C) *SOLICITATION PROCESS.* ON AN ANNUAL BASIS, THE COUNTY SHALL UNDERGO A  
21 SOLICITATION PROCESS OR EXPRESSION OF INTEREST TO RETAIN A QUALIFIED LIST OF  
22 ASSIGNEES THAT SHALL BE IN ACCORDANCE WITH TITLE 4, SUBTITLE 1 OF THIS CODE .

23 ([[b]]D) *Requirements for Offer.* An offer required by subsection (a) shall:

- 24 (1) Be in writing;
- 25 (2) Be on commercially reasonable terms and include substantially the same terms  
26 and conditions upon which the owner will offer the property for sale on the  
27 commercial market or which are contained in a contingent bona fide contract of  
28 sale executed by the owner and a third party; and
- 29 (3) Remain open for [[45]]50 days after it is received [, for the County and  
30 Commission]] IN THE FOLLOWING ORDER:

- 1 (I) TO THE COMMISSION OR THE COMMISSION’S ASSIGNEE FOR THE FIRST 25  
2 DAYS; AND  
3 (II) TO THE COUNTY OR THE COUNTY’S ASSIGNEE FOR THE REMAINING 25  
4 DAYS.

5 ([[c]]E) *Information and Inspection.* The owner shall give the County OR THE COUNTY’S  
6 ASSIGNEE and Commission OR THE COMMISSION’S ASSIGNEE:

- 7 (1) Any information about the rental housing relevant to exercising the right of  
8 purchase, such as architectural and engineering plans and specifications, and  
9 operating data; and  
10 (2) Access to the rental housing to inspect the property and conduct reasonable tests  
11 at reasonable times after reasonable notice.

12 The County OR THE COUNTY’S ASSIGNEE or Commission OR THE COMMISSION’S  
13 ASSIGNEE shall pay the owner a reasonable deposit not to exceed the actual cost  
14 of reproducing any architectural and engineering plans that the owner is requested  
15 to provide. The owner shall refund the deposit when the plans are returned to the  
16 owner.

17 ([[d]]F) *Exercise of Right to Purchase.*

18 (1) The County OR THE COUNTY’S ASSIGNEE or Commission OR THE COMMISSION’S  
19 ASSIGNEE may exercise the right to purchase by accepting the offer within the  
20 applicable period under subsection [[(b)(3)]](C)(3).

21 (2) The owner shall sell the rental housing under the right to purchase if the  
22 acceptance includes substantially the same terms and conditions contained in the  
23 owner's bona fide offer or contingent contract of sale with a third party, including  
24 any contract term that provides for a real estate commission payable to an  
25 independent broker, not to exceed three percent of the sales price.

26 Notwithstanding this general requirement or any term of the contract, the County  
27 OR THE COUNTY’S ASSIGNEE or Commission OR THE COMMISSION’S ASSIGNEE  
28 may condition its acceptance on obtaining financing at any time before the  
29 deadline in paragraph (3) for completing the sale.

30 (3) The owner and the County OR THE COUNTY’S ASSIGNEE or Commission OR THE  
31 COMMISSION’S ASSIGNEE shall complete a sale under this subsection within 180

1 days after the County OR THE COUNTY'S ASSIGNEE or Commission OR THE  
2 COMMISSION'S ASSIGNEE receives the owner's offer unless the parties agree in  
3 writing to extend the 180-day period.

4 [(4) The right to purchase applies in the following order of priority:

5 a. The County; and

6 b. Commission.]]

7 ([[e]]G) *Expiration of Right to Purchase.* If the County OR THE COUNTY'S ASSIGNEE and  
8 Commission OR THE COMMISSION'S ASSIGNEE do not exercise their rights to purchase  
9 within the applicable period under subsection [(b)(3)](C)(3), the owner may sell the  
10 rental housing to the third-party buyer under substantially the same terms and conditions  
11 offered to the County OR THE COUNTY'S ASSIGNEE and Commission OR THE  
12 COMMISSION'S ASSIGNEE.

13 ([[f]]H) *Sales not Requiring Right to Purchase.* An owner does not have to provide a  
14 right to purchase for the sale of the following transfers of a rental facility:

15 (1) Any transfer made pursuant to the terms of a bona fide mortgage or deed of trust  
16 agreement, excluding an indemnity deed of trust;

17 (2) Any transfer to a mortgagee in lieu of foreclosure or any transfer pursuant to any  
18 other proceedings, arrangement or deed in lieu of foreclosure;

19 (3) Any transfer made pursuant to a judicial sale or other judicial proceeding brought  
20 to secure payment of a debt or for the purpose of securing the performance of an  
21 obligation;

22 (4) Any transfer of the interest of one co-tenant to another co-tenant by operation of  
23 law or otherwise;

24 (5) Any transfer made by will or descent or by intestate distribution;

25 (6) Any transfer made to any municipal, county or state government or to any  
26 agencies, instrumentalities or political subdivisions thereof;

27 (7) Any transfer to an owner's spouse or child; or

28 (8) Any transfer into a partnership or corporation wholly owned by the person(s) so  
29 transferring.

30 ([[g]]I) *Forgoing the Right to Purchase for Affordable Units.* If a rental housing owner  
31 enters a binding agreement with the County OR THE COUNTY'S ASSIGNEE or Commission

1 OR THE COMMISSION'S ASSIGNEE to designate and maintain the greater of either the  
2 existing percentage or at least 20 percent of the units in the rental housing offered for sale  
3 classified as affordable to persons of eligible income (as defined in section 13.1303(i) of  
4 the County Code) for at least 40 years, then the owner does not have to offer a right to  
5 purchase as provided in this section.

6 ([[h]]J) *Forgoing the Right to Purchase in a Timely Manner.* The County OR THE  
7 COUNTY'S ASSIGNEE or Commission OR THE COMMISSION'S ASSIGNEE shall, within seven  
8 days of the notice of the sale under section 13.1402(a) or (b), notify the owner of a rental  
9 housing development:

- 10 (1) That neither will purchase the property offered for sale if the purchase would:
- 11 a. Increase the poverty level in a census tract block group if the poverty level in  
12 the census tract block group is ten percent or greater; or
  - 13 b. Increase the poverty rate of a census tract block group to ten percent or  
14 greater;

15 Or if there is no intent to pursue the purchase of the property.

16 ([[i]]K) *Certification to Department of Finance.* The Department of Finance shall develop  
17 a method to certify that the transaction meets the requirements of this section.

18  
19 **Section 13.1405. Affordable units.**

20 (A) *AFFORDABILITY REQUIREMENT.* At least 20 percent AND NO MORE THAN 50 PERCENT  
21 of the units of any rental housing purchased by the County [[or]]; the Commission; AN  
22 ASSIGNEE OF THE COUNTY, OR AN ASSIGNEE OF THE COMMISSION AS ALLOWED UNDER  
23 SECTION 13.1403(B)[[, under]] OF this subtitle, shall be maintained as affordable, for at  
24 least 40 years, to households with income at levels at or below the moderate-income  
25 level as defined in section 13.1303(i) of this Code.

26 (B) *RECORDED COVENANT.* THE COUNTY, THE COUNTY'S ASSIGNEE, THE COMMISSION,  
27 OR THE COMMISSION'S ASSIGNEE SHALL EXECUTE AND RECORD COVENANTS ON THE  
28 PROPERTY, IN A FORM ACCEPTABLE TO THE COUNTY, THAT REQUIRES THE PURCHASER  
29 AND ALL SUBSEQUENT OWNERS OF THE PROPERTY TO ADHERE TO THE REQUIREMENTS OF  
30 THIS SECTION FOR A PERIOD OF NOT FEWER THAN 40 YEARS FROM THE DATE OF THE  
31 CLOSING ON THE PROPERTY.

1

2 ***Section 2. And Be It Further Enacted*** by the County Council of Howard County,  
3 *Maryland, that this Act shall become effective 61 days after its enactment.*