

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.

Expired 1-16-2024 Michelle Harrod

Introduced and read first time Nov 6, 2023. Ordered posted and hearing scheduled.

By order Michelle Harrod
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 Nov 20, 2023.

By order Michelle Harrod
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.

Tabled 12-4-2023 Michelle Harrod
1-2-2024 Not Removed From Table MPet

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.*



Howard County

Internal Memorandum

Subject: Testimony on Council Bill No. __-2023, an ACT authorizing the County or Commission to assign the right to purchase to certain entities who may acquire or finance the purchase of rental housing.

To: Brandee Ganz, Chief Administrative Officer

From: Kelly Cimino, Director of Department of Housing and Community Development
K. Cimino

Date: October 25, 2023

Summary

Bill __-2023 supports an amendment to the existing Right of First Refusal bill (CB13-2020) to allow the County or Commission to assign the right to purchase to certain entities to acquire or finance the purchase of rental housing, clarifying the amount of time that an offer shall remain open and amending the minimum number of affordable units required when an assignment is made.

Background

The County Council approved CB13-2020 on July 6, 2020. This bill amended the County Code to establish a Notice and a Requirement to provide an offer to the County and Housing Commission to Purchase Rental Housing offered for sale in the County.

Owners of existing rental housing are required to provide a Notice of Sale to the County and Commission. Since October 2020, the County and Commission have received 31 notices of sale. As of 10/1/23, the Commission has exercised that right to purchase one time for a 135-unit development in Columbia. The County has declined to exercise its right to purchase any units during this time. This bill would allow the County or Commission to assign its right to purchase to an assignee by written agreement. This assignment will require the assignee to accept all responsibilities of the County or Commission as if the County or Commission were purchasing the rental housing.

This bill establishes an affordability requirement and a recorded covenant on the property. At least 20 percent and no more than 50 percent of the units of any rental housing purchase by the County or the Commission or an assignee shall be maintained as affordable for at least 40 years for households with income at levels at or below the moderate-income level as defined in Section 13.1303(i) of County Code.



Howard County

Internal Memorandum

Fiscal Impact

The Department will work with an approved County vendor to complete an annual solicitation for assignees that are interested in accepting an assignment from the County or Commission. An eligible assignee may be a non-profit, governmental agency or other third-party entity. The assignee must agree to sign a written agreement with the County or Commission to accept the assignment and accept the terms of the recorded covenant related to the 40-year affordability period and number of affordable units required in a rental housing development. The cost of the yearly solicitation process is estimated to be \$7500. The Community Renewal fund would be used to pay this cost.

Conclusion

This bill provides an opportunity to support the creation and preservation of healthy and inclusive communities and increase access to housing for current and future residents of all income levels in the County. This bill could increase the availability of affordable rental units for low- and moderate-income households without the lengthy time associated with new housing unit construction and without an investment of County funds. It should also not negatively impact school capacity in existing schools.

If there are any questions, please contact my office. Thank you for your consideration.

Cc: Christiana Rigby, Council Chair
Opel Jones, Council Vice Chair
Elizabeth Walsh, Councilperson
Deb Jung, Councilperson
David Yungmann, Councilperson
Michelle Harrod, Administrator
Craig Glendenning, County Auditor

Amendment 2 to Council Bill No. 43-2023

BY: The Chairperson at the request
of the County Executive

Legislative Day 1
Date: January 2, 2024

Amendment No. 2

(This amendment:

1. Amends the definition of “assignee”.
2. Makes a technical correction for word choice.
3. Makes the solicitation process discretionary but requires the solicitation process in order for the County to assign its rights and adds criteria for what potential assignees shall demonstrate as part of the bid process.
4. Provides that the offer will be provided to the Commission, or the Commission’s Assignee for 50 days. However, if the County exercises its right to purchase, the offer to the commission shall be null and void.
5. Clarifies the timing surrounding length of time that the must pass before the offer can be considered by the County or the County’s Assignee.
6. Removes references to the County’s or Commission’s Assignees in certain instances.
7. Prohibits the assignment of the right to purchase where the purchase will result in the increase in certain poverty rates.
8. Provides that the owner will also be required to record covenants.)

1 On page 1, in line 17, strike “A NON-PROFIT, GOVERNMENTAL AGENCY, OR OTHER THIRD-PARTY”
2 AND SUBSTITUTE “AN”.

3

4 On page 1, in line 19, after “SUBTITLE”, insert “, INCLUDING, WITHOUT LIMITATION, ANY JOINT
5 VENTURE BETWEEN (1) THE COMMISSION, ITS AFFILIATE, OR SUBSIDIARY, AND (2) ANOTHER
6 ENTITY”.

7

8 On page 2, in line 12, strike “buy” and substitute “PURCHASE”.

9

10 On page 2, in line 20, strike “SHALL” and substitute “MAY”.

11

1 On page 2, in line 22, after “CODE.”, insert “THE COUNTY MAY ONLY ASSIGN ITS RIGHTS UNDER THIS
2 SUBTITLE IF IT HAS UNDERTAKEN SUCH A SOLICITATION PROCESS. AS PART OF THE SOLICITATION
3 PROCESS, POTENTIAL ASSIGNEES SHALL DEMONSTRATE:”

4 (1) FAMILIARITY WITH THE TERMS AND CONDITIONS OF THIS SECTION AND CORRESPONDING
5 RIGHT TO PURCHASE REGULATIONS.

6 (2) THE ABILITY TO REVIEW RIGHT TO PURCHASE OFFER PACKAGES SUBMITTED TO THE
7 DEPARTMENT TO DETERMINE IF THEY ARE WILLING TO EXERCISE THE RIGHT TO
8 PURCHASE ON BEHALF OF THE DEPARTMENT.

9 (3) THE ABILITY TO CONDUCT AN INITIAL EVALUATION OF A SUBJECT PROPERTY WITHIN
10 TWO WEEKS OF NOTIFICATION BY THE DEPARTMENT TO DETERMINE IF THEY ARE
11 INTERESTED IN MATCHING THE TERMS AND CONDITIONS OF THE BUYER’S OFFER
12 PACKAGE AS THE DEPARTMENT’S ASSIGNEE AND PERFORM DUE DILIGENCE WITHIN THE
13 TIMEFRAMES SPECIFIED BY THIS SECTION AND RELATED REGULATIONS.

14 (4) THE ABILITY TO OBTAIN REASONABLE FINANCING AND CLOSE ON THE PURCHASE
15 WITHIN THE TIMEFRAMES SPECIFIED BY THIS SECTION AND RELATED REGULATIONS.

16 (5) THE ABILITY TO OWN, OPERATE, REHABILITATE, AND MAINTAIN QUALITY MULTIFAMILY
17 RENTAL HOUSING WITH AFFORDABILITY RESTRICTIONS.

18 (6) THE ABILITY TO WORK WITH THE DEPARTMENT AND EVALUATE RENT LEVELS IN
19 ACCORDANCE WITH THE COUNTY’S PRIORITIES AND INITIATIVES.

20 (7) THE ABILITY TO IMPLEMENT DEVELOPMENT ACTIVITIES AND SECURE FINANCING
21 NECESSARY TO ACQUIRE AND REHABILITATE, OR IF NECESSARY, REDEVELOP THE
22 PROPERTY WITH THE FOUNDATIONAL GOAL OF PROVIDING QUALITY AFFORDABLE AND
23 MIXED-INCOME RENTAL HOUSING ENABLING LONG-TERM OCCUPATION BY HOUSEHOLDS
24 WITH LOWER INCOMES.

25 (8) EXPERIENCE AND FAMILIARITY WITH THE FINANCING PROGRAMS OF THE UNITED
26 STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT OR THE STATE
27 DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT, MORE PARTICULARLY
28 LOW-INCOME HOUSING TAX CREDITS (“LIHTC”), HOME, CDBG, OR ANY PUBLICLY
29 FUNDED FINANCING, TRUST FUND, OR GRANT PROGRAM.

1 (9) THEIR RECORD OF ENGAGING MBE/WBE/VOBE/DBE BUSINESS INTERESTS AND
2 BUSINESS INTERESTS OWNED BY RESIDENTS OF HOWARD COUNTY, OR EFFORTS TO
3 ENGAGE MINORITY, WOMEN, VETERAN-OWNED AND DISABLED- AND LOCALLY OWNED
4 BUSINESSES IN THE JURISDICTIONS IN WHICH THEY HAVE OPERATED.”

5
6 On page 3, in line 1, strike “THE FIRST 25” and substitute “50”.

7
8 On page 3, in line 2, after “DAYS;” insert “HOWEVER, IF THE COUNTY ELECTS TO EXERCISE OR
9 ASSIGN ITS RIGHT TO PURCHASE BY SUBMITTING A CONTRACT, AS SET FORTH IN SUBSECTION (II) OF
10 THIS SECTION, AT ANY TIME AFTER THE FIRST 25 DAYS THAT THE OFFER HAS BEEN IN EFFECT, THE
11 COMMISSION’S RIGHT TO EXERCISE OR ASSIGN ITS RIGHT TO PURCHASE SHALL BE NULL AND
12 VOID;”.

13
14 On page 3, in line 3, strike “FOR THE REMAINING 25”.

15
16 On page 3, in line 4, strike “DAYS” and substitute “FROM THE 26TH DAY AFTER THE OFFER WAS
17 RECEIVED”.

18
19 On page 4, in line 1, strike ““OR THE COUNTY’S ASSIGNEE” and, in the same line, strike “OR THE”.

20
21 On page 4, in line 2, strike “COMMISSION’S ASSIGNEE”.

22
23 On page 4, in line 31, strike “OR THE COUNTY’S ASSIGNEE”.

24
25 On page 5, in line 1, strike “OR THE COMMISSION’S ASSIGNEE”.

26
27 On page 5, in line 6, strike “OR THE”.

28
29 On page 5, in line 7, strike “COUNTY’S ASSIGNEE” and, in the same line, strike “OR THE
30 COMMISSION’S ASSIGNEE”.

- 1
- 2 On page 5, in line 10, after “purchase” insert “OR ASSIGN”.
- 3
- 4 On page 5, in line 21, strike both semicolons and substitute a comma, in each instance.
- 5
- 6 On page 5, in line 27, after “ASSIGNEE” insert “OR THE OWNER IF IT OPTS TO DESIGNATE THE
- 7 REQUIRED AFFORDABLE UNITS UNDER 13.1403(I) OF THIS SUBTITLE,”.
- 8
- 9 On page 5, inline 28, strike “REQUIRES” and substitute “REQUIRE”.

Amendment 1 to Council Bill No. 43-2023

BY: David Yungmann

Legislative Day 15

Date: December 4, 2023

Amendment No. 1

(This Amendment reduces the time an offer is open from 50 days to 45 days.)

- 1 On page 2, line 29, strike “50” and substitute “45”.
- 2
- 3 On page 3, line 3, strike “25” and substitute “20”.