

**RIGHT OF FIRST REFUSAL**  
**PROPOSED REGULATIONS**

**TO: ALL APARTMENT MULTIFAMILY RENTAL FACILITY OWNERS**

**DATE: January 9, 2014**

**RE: Request for Comments on Proposed Right of First Refusal Regulations**

On July 24, 2013, the Prince George's County Council passed CB 27-2013<sup>1</sup> (Conversion of Rental Housing). Prior to full implementation of CB 27-2013, the Director of the Prince George's County Department of Housing and Community Development ("Director of DHCD") must promulgate regulations necessary to implement the County's Right of First Refusal ("ROFR") by January 1, 2014 and shall offer proposed designated areas where the ROFR will apply to County Council no later than July 1, 2014.

**The Department of Housing and Community Development has completed the proposed Right of First Refusal Regulations and will accept comments on the regulations until 4:00 PM, January 27, 2014.** Comments can be addressed to Eric C. Brown by e-mail at [ecbrown@co.pg.md.us](mailto:ecbrown@co.pg.md.us) or sent by First Class Mail to: Mr. Eric C. Brown, Director, Prince George's County Department of Housing and Community Development, 9200 Basil Court, Suite #500, Largo, Maryland.

Copies of the proposed regulations can be obtained by visiting the Department of Housing and Community Development's website: [www.princegeorgescountymd.gov/dhcd](http://www.princegeorgescountymd.gov/dhcd) and click on Services.

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<sup>1</sup> CB-27-2013 became effective on September 23, 2013 and is codified under County Code 13-1110 et. seq.

**Prince George's County Department of Housing  
and Community Development**

**Right of First Refusal Regulations**



**2014**

**Prince George's County Department of Housing and Community Development**  
**Conversion of Rental Housing**  
**Right of First Refusal Regulations**

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## RIGHT OF FIRST REFUSAL REGULATIONS

### Section I. Summary

Subtitle 13, Housing and Property Standards, Division 14. Conversion of Rental Housing authorizes the Prince George's County Department of Housing and Community Development ("Department") to promulgate and amend, as deemed necessary, the Right of First Refusal ("ROFR") Regulations set forth herein to, as deemed necessary, to stabilize and preserve housing opportunities for low- to-moderate income households.

### Section II. Purpose

The ROFR Regulations set forth herein establish the notification, document submission, compliance and reporting criteria and processes the Department's Director, personnel and/or the County's agents and assignees shall utilize to evaluate any proposed conversions of Multifamily rental facilities that include twenty (20) or more Dwelling units; exercise or assign the County's ROFR option to purchase and rehabilitate rental housing; or as deemed appropriate or required to County Code to waive or otherwise exempt certain sales or conversions of Multifamily rental facilities subject to adequate assurances and written agreements that provide for the protection and/or continued preservation of tenancies of certain households in designated rental housing areas of the County as a means of revitalization.

### Section III. Definitions

For the purposes of this Section, the below-referenced terms are defined as follows:

(1) Convert and conversion means:

(A) subjecting of a [Multifamily rental facility] property to a condominium regime by recording in the County land records that complies with the requirements in Title 11 of the Real Property Article of the Annotated Code of Maryland;

(B) changing the use of a Multifamily rental facility to a nonresidential use;

(C) demolishing at least one-third of occupied [Dwelling] units in a [Multifamily rental facility] in a twelve (12) month period except when such demolition is related to rehabilitation and a reasonable, comparable housing alternative is offered to the impacted tenant(s) ;

(D) displacing tenants from at least one-third of occupied [Dwelling] units

in a twelve (12) month period by raising rents or preparing to rehabilitate a [Multifamily rental facility]; or

(E) any other act that ends the use of the property as a Multifamily rental facility.

(2) **Department** means the Department of Housing and Community Development.

(3) **Director** means the Director of the Prince George's County Department of Housing and Community Development or their designee.

(4) **Dwelling Unit** shall mean one (1) or more rooms arranged for the use of one (1) or more individuals living together as a single housekeeping unit, within a [Multifamily] rental facility.

(5) **Owner** means a person holding title to rental housing.

(6) **Multifamily rental facility** mean any building, structure, or combination of related buildings, structures, and appurtenances, operated as a single entity, housing cooperative ("COOP"), or a condominium, in which the landlord provides for a consideration twenty (20) or more rental Dwelling units; but shall not be construed to mean any transient facilities such as boarding houses, tourist homes, inns, motels, hotels, school dormitories, hospitals or medical facilities, any other facilities operated for religious or eleemosynary purposes, continuing care facilities regulated by the State pursuant to Article 70B of the Maryland Annotated Code, and projects authorized under 10 U.S.C. 2828, which allows the U.S. Government to lease housing facilities at or near a military installation for assignment, without rental charge, as family housing for members of the Armed Forces.

(7) **Sale, sell, or selling** means:

(A) transfer of title to rental housing;

(B) transfer in a 12-month period of a majority interest in Owner; or

(C) lease of Multifamily rental facility for a period of more than seven (7) years.

(8) **Site Plan** means a graphic depiction which at a minimum shows property lines existing buildings, distance between building, structures, setbacks, easement, surrounding streets, parking lots, driveways and landscape areas.

(9) **Tenant** means any person having a leasehold right to occupy a Dwelling unit in a Multifamily rental facility.

(10) **Title** means a legal or equitable ownership interest in a Multifamily rental facility ; or a legal, equitable, or beneficial interest in a partnership, Limited Liability Company, limited partnership, corporation, trust or other person who is not an individual, that has a legal or equitable ownership interest in rental housing.

#### **Section IV. Designated Areas**

The Right of First Refusal (ROFR) shall apply to all areas of Prince George's County with priority consideration given to designated Transit Oriented Development areas, Transforming Neighborhood Initiative areas and Inner Beltways areas.

#### **Section V. Proposed Sale or Conversion of Multifamily Rental Facility**

##### A. Notice to the Tenant

Within five (5) business days after an Owner enters into a bona fide<sup>1</sup> contract of sale or makes an initial determination to apply for financing and/or construction permits but no later than sixty days (60) prior to entering into any written agreement to transfer title and/or a majority ownership interest within twelve (12) months; lease of rental housing for a period of seven (7) years or more, any conversion of rental housing property to a condominium regime by recording in the County's land records, changing the use of the Multifamily rental facility to a non-residential use; demolishing at least one-third of the occupied Dwelling units within a twelve (12) month period or displacing tenants from at least one-third of the occupied Dwelling units in a twelve (12) month period or any act that ends the use of the identified Multifamily rental facility, the Owner must provide written notice ("Notice") of the proposed sale or conversion to each tenant in the Multifamily rental facility by hand or by certified mail, return receipt requested. When giving notice to tenants by hand delivery, this requirement is satisfied when hand delivered to each occupied Dwelling unit.

##### B. Notice to Department

Within five (5) business days after an Owner enters into a bona fide<sup>2</sup> contract of sale or makes an initial determination to apply for financing and/or construction permits, but no later than ninety days (90) prior to entering into any written agreement to

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<sup>1</sup> As referenced herein, a "bona fide" contract of sale, deed of trust, mortgage or other transactional document shall be defined as a contractual agreement that includes

<sup>2</sup> As referenced herein, a "bona fide" sales contract, deed of trust, mortgage or other transactional document shall be defined as a contractual agreement that includes

transfer title and/or a majority ownership interest within twelve (12) months; lease of rental housing for a period of seven (7) years or more, convert rental housing property to a condominium regime by recording in the County's land records, change the use of a Multifamily rental facility to a non-residential use; demolish at least one-third of the occupied Dwelling units within a twelve (12) month period; displace tenants from at least one-third of the occupied Dwelling units in a twelve (12) month period or any act that ends the use of an identified Multifamily rental facility, the Owner must provide written notice ("Notice") and all required offer of ROFR documents, which are collectively herein referenced as the "ROFR Documents", to the Director of the Department by certified mail, return receipt requested.

### C. ROFR Documents

The ROFR Documents that must be submitted to Department for the Director's evaluation of a proposed sale or conversion of a Multifamily rental facility should include, but are not limited to, the following:

- 1) A copy of the bona fide sales contract; any existing loan, mortgage, deed of trust, loan commitment; resolutions or other written documents that provide for the Owner's authorization to transfer a majority interest in ownership [with]in a twelve (12) month period; transfer title, lease rental housing for more than seven (7) years; demolish at least a one-third of occupied [Dwelling] units in 12-month period; displace tenants from at least one-third of occupied [Dwelling] units in a twelve (12) month period by raising rents or in preparation to rehabilitate a Multifamily rental facility or another act that ends the use of a property as a Multifamily rental facility.
- 2) Site and/or [Construction] Plan[s], if available.
- 3) Income and Expense Statement for the three (3) prior years of operation
- 4) Current rental schedule showing date of last rent increase.
- 5) Current rent roll showing the names of current tenants addresses and telephone numbers and current rent.
- 6) Expected re-rent rates, if any.
- 7) Copy of the current rental license.
- 8) Copy of the Use and Occupancy Permit.

- 9) Names of Mortgage holder, existing Mortgage balances, and terms, repayment terms interest rates, loans for which Dwelling units are used as collateral, liens covenants easements and any other documents recorded against the property.
- 10) Security Deposit Schedule and identification of escrow accounts.
- 11) Any other agreements and information the Owner may have concerning the rental housing that may materially affect a decision to purchase the rental housing.

The County's timeline to exercise any ROFR offer will not commence or otherwise begin to run until an Owner, buyer or other interested party has submitted a written Notice and all applicable ROFR documents listed above to the Department for the Director's review.

Any Notices and ROFR Documents submitted by an Owner, Buyer or other interested person will not pursuant to these Regulations be disclosed by the Department or the County except as otherwise required to exercise or assign an RORF and/or as comply with local, State of federal laws.

An Owner's request and/or the Director's sole discretion to reject or otherwise waive an Owner's ROFR offer or requirement to make an ROFR offer for the sale or conversion of a Multifamily rental facility shall be evaluated in accordance with the Owner's timely Notice and submission of ROFR Documents to the Department as set forth in this Subsection and any applicable requirements set forth below in Section VIII, Exceptions to Right of First Refusal.

## **VI. Right of First Refusal Offer**

### **A. Initial Evaluation**

Within seven (7) business days of the Director's receipt of a written Notice and all applicable ROFR Documents, the Director shall make an initial evaluation as to whether the County will exercise its option to accept , waive or exempt a proposed Multifamily rental facility sale or conversion from or provide a ROFR determination to waive or exempt a proposed sale or conversion of a Multifamily rental facility pursuant to Section 13-1114 of the Prince George's County Code and shall notify the Owner, buyer and/or interested party in writing of the County's determination to exercise or waive the County's ROFR or otherwise exempt a proposed sale or conversion of a

Multifamily rental facility pursuant to the requisite criteria and requirements set forth in Sections VIII below.

**B. Additional ROFR Documents**

An Owner must provide the following information, if available, within five (5) business days of the Department's request for the submission of additional information and/or documentation as follows:

- 1) Any architectural, engineering, mechanical, structural, general construction plans and specifications.
- 2) Lead Certification.
- 3) Phase I Environmental Survey
- 4) Information concerning underground storage tanks.
- 5) Copies of all service contracts that include, but are not limited to, property management, maintenance security, construction, or other agreements related to the sale or conversion of the identified Multifamily rental facility.
- 6) Any existing warranties on any major components of the apartment including but not limited to roof, HVAC, boilers, hot water heaters, etc.

**C. Right to Inspection**

Within (5) business days of receiving the Department's ROFR request for Inspection of a Multifamily rental facility, an Owner must provide access to the Director and/or the County's designated personnel, agents and/or perspective assignee(s) to inspect the property and conduct reasonable tests. An Owner may have a representative present at the time of any inspections.

**D. Offer Period**

An Owner's ROFR offer to sell a Multifamily rental facility to the County must remain open for a period of sixty (60) business days after it is received by the Department. At the Director's discretion, the ROFR evaluation period may be extended to remain open one (1) additional day for each day that any required ROFR Document and/or additional requested documents are received by the Department after the (5) business day response time. An Owner shall further be required to immediately notify the Department of any proposed or accepted alternation and/or revision that materially changes a term or condition including, but not limited to, the price or financing set forth in any pending contract or if an Owner desires to enter into new contract of sale before the County has made a determination to exercise, reject or otherwise waive its ROFR, the Owner shall be required to make a new ROFR to the County that includes the new material

terms and conditions. Each new ROFR offer must remain open for (60) additional days following receipt by the Department.

The Department may exercise the ROFR by accepting the offer within sixty (60) business days of receiving an initial offer or any applicable ROFR extension period.

## **VII. Acceptance and Assignment of Right of First Refusal**

### **A. Acceptance of ROFR Offer**

Any agreement to accept or assign the County's ROFR offer to purchase a Multifamily rental facility that includes must include: (a) substantially the same terms and conditions set forth in an Owner's original offer with the proposed buyer and include any bona fide real estate commission payable to an independent broker and (b) may provide for up to one hundred eighty (180) days financing contingency pursuant to this Subsection and Section 13-1113(e) of the County Code.

The Director's or any designated assignee for the County must complete an ROFR to purchase a Multifamily rental facility within (180) days of receipt of the Owner's offer or any subsequent offer presented to the County, unless a longer time is otherwise agreed to by the Owner, Director or the County's designated assignees subject to the Director's approval. The Director's or the County's designated assignee acceptance of a ROFR offer pursuant to this Subsection and Section 13-1110 et. seq. of the County Code shall create a legally enforceable obligation for an Owner to sell an identified Multifamily rental facility to the County or its designated assignee.

Any sale of a Multifamily rental facility that materially violates a Section of 13-1110 et. seq. of the County Code or Regulations set forth herein may be voided at the County's option and the current Owner of record shall be required to extend an initial or new ROFR offer to the County that includes the same terms and conditions offered to the original purchaser.

### **B. Assignment of ROFR Offer**

The Director is authorized to designate assignees to evaluate and/or exercise the County's ROFR offers to purchase Multifamily rental facilities. In such cases, the Owner will receive written notice within 10 (ten) business days of the County's assignment. The County's option to assign its ROFR shall not otherwise extend the sixty (60) business day evaluation period.

## **Section VIII. Right of First Refusal Waivers and Exceptions**

### **A. Waivers**

The Director may waive Owner's ROFR offer or make determination that an Owner may sell or convert a Multifamily rental facility without providing the County a ROFR offer pursuant to the criteria set forth in this Subsection and Section 13-1114 of the County Code, if the Department approves a written agreement or the County elects to enter into an Agreement to Not Convert a Multifamily rental facility that provides for the following:

1. the buyer is prohibited from converting a Multifamily rental facility for at least three (3) years after the sale and agrees to record the County's Certificate of Compliance with the Prince George's County Office of Land Records; or
2. the buyer agrees that at least twenty percent (20%) of the Dwelling units in the Multifamily rental facility shall be maintained as Dwelling Units for fifteen (15) years from the date of acquisition for households that 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
3. the Department received the written agreement from the prospective Buyer or otherwise agreed to enter in an Agreement Not to Convert a Multifamily rental facility at least thirty (30) days before the proposed sale.
4. any general agreement or specific Agreement Not to Convert a Multifamily rental facility may only be approved or rejected by the Department or a designated assignee for the County before consideration is given to the following:
  - i. the physical condition of the Multifamily rental facility including any rehabilitation necessary to correct dangerous defects; and
  - ii. the current tenants' ability to afford rent increases; and
  - iii. the need to preserve low-to-moderate income rental housing in the County; and
  - iv. pending or subsequent request by the buyer to increase the rents above Department established limits that may only be granted if the Department determines that the increase is justified by unforeseen

circumstances beyond the buyers control; or necessary rehabilitation to rental housing

5. Within thirty (30) days of an Owner, buyer or the County entering into an Agreement Not to Convert, the Owner or buyer of an identified Multifamily rental facility must provide the Department with the following:

- i. A copy of the current lease for each tenant; and
- ii. 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; and
- iii. The Owner or Buyer expressly agrees to submit an annual compliance report, which shall be due on the anniversary date of the Agreement Not to Convert or the settlement date as approved by the Department and include the following:
  - a.. Current rent roll;
  - b.. Copy of any lease for any tenant that leased in the past 12 months
  - c. A list of any tenants vacating the rental housing in the last 12 month and any rent increase in the last 12 months.

**B. Exceptions**

Upon the Department's receipt of the Notice and any ROFR Documents submitted by an Owner, buyer or interested party, the Department may make a determination that the Owner does have to offer a ROFR to the County for a sale, transfer or conversion of following:

1. a Multifamily rental facility with less than ten (10) rental Dwelling units;
2. under the terms of a bona fide mortgage or deed of trust;
3. to a mortgage in lieu of foreclosure or any other proceedings, arrangement or deed in lieu of foreclosure;
4. under a court order or judicial sale;
5. from one co-tenant to another co-tenant by operation of law;
6. under a will or descent or intestate distribution;
7. to the State or local government;

8. to a spouse, son or daughter;
9. made pursuant to the liquidation of a partnership, limited liability company, or corporation; or
10. into a partnership, limited liability company, or corporation wholly owned by the person(s) so contributing.

## **Section IX. Certificate of Compliance**

The Department will issue a Certificate of Compliance for rental housing to the Owner, buyer, or any other interested party, in a form that is appropriate for recordation in the land records, once the Department determines that the requirements of ROFR set forth herein and Section 13-1115 of the County Code have been satisfied or otherwise waived by the Director. The Certificate of certificate will be conclusive evidence of compliance.

Upon the Director's determination that a proposed sale or conversion of a Multifamily rental facility does not require an Owner to offer the County a ROFR option or subject to the Director's approval of the Owner's or Buyer's written agreement to utilize a Multifamily rental facility in accordance with the criteria set forth in Section VIII above and Section of 13-1114 of the County Code, the Director may issue a Certificate of Compliance. The Certificate of Compliance shall be in form that is appropriate for recordation in the Prince George's County Office of Land Records and shall incorporate by reference any approved written agreements and documentation the Director relied upon as conclusive incorporate by reference any written agreement and/or documentation that evidences Owner's or Buyer's compliance with the ROFR Regulations.

## **Section X. Complaints and Enforcement**

### **A. Complaints**

Any person harmed by the Owner, buyer or another person who violates any Sections of these Regulations may file a written complaint with the Department as authorized pursuant to Section 13-1116 of the County Code.

### **B. Enforcement**

A violation of any Regulation set forth herein shall be deemed to be a violation under Section 28-221 of the County Code and shall be punishable as separate

violations for each Dwelling unit in a Multifamily rental facility affected by the violation for each day the violation exists. The Department's authority to enforce compliance of the Regulations set forth herein includes the following:

- (1) investigating any alleged violation;
- (2) issuing a summons or subpoena to compel the attendance of a person or the production of documents or other evidence;
- (3) enjoining a violation;
- (4) revoking a rental license issued under this Subtitle;
- (5) reporting a violation to any other appropriate government agency;
- (6) informal conciliation between a complainant and an alleged violator;
- (7) dismissing a complaint when the Director of the Department determines that there is insufficient evidence of a violation;
- (8) obtaining injunctive or other appropriate judicial relief, such as an order to:
  - (i) require compliance with a summons or a subpoena;
  - (ii) require an alleged violator or witness to attend a Department meeting or other proceeding concerning an alleged violation;
  - (iii) require production of documents or other evidence;
  - (iv) require transfer of documents or other evidence to the Court; or
  - (v) prohibit the destruction of documents or other evidence;
- (9) recovering costs and fees of an investigation or a lawsuit if the Department finds a violation occurred and prevails in any appeal;
- (10) ordering any appropriate financial, legal, or equitable relief to a tenant injured by a violation of this subdivision;
- (11) any other applicable enforcement action that the Department could take to enforce a violation of this Subtitle;
- (12) developing, conducting, or assisting in educational and information programs concerning the requirements of this subdivision; and

(13) adopting regulations to implement this subdivision (14)Any sale of a Multifamily rental facility in violation of these Regulations and/or Section 13-1110 et. seq. of the County Code is void.

(14)These Regulations shall not limit the County from exercising or otherwise pursuing any other legal or equitable rights and remedies.

#### **Section XI. Annual Report to the Council**

Pursuant to the Section 13-1118 of the County Code, the administrative reporting requirements shall be as follows:

- A. By December 31 of each year, the County Executive or Department shall report to the County Council on activities under this division for the prior fiscal year, including:
- B. any offer of a right of first refusal received by the County;
- C. any agreement not to convert that the Department approved; and
- D. any conversion of rental housing in the County.

#### **Section XII. Severability**

If any Section or Subsection of the Regulations set forth herein shall be declared to be invalid, unenforceable or void for any reason, the remaining Sections and Subsections of the Regulations set forth herein shall survive and remain enforceable.