

Policy Briefs: Transfer of Private Rental Housing to Public or Community Control

Right of First Refusal (Tenant Opportunity to Purchase Acts)
(updated 4-13-20)

The District of Columbia’s Tenant Opportunity to Purchase Act (TOPA) was enacted in 1980 and is designed to help tenants stay in their homes if an owner decides to sell their rental property. Under TOPA, tenants in multi-family buildings with 5 or more units have the right of first refusal. Under this provision, the owner of a rental property must offer tenants the option to purchase the property before soliciting an offer from a third party.¹ In 2018, the law was amended to largely exempt single-family homes. In practice, the law has helped some residents achieve homeownership through the conversion of properties to condominiums and cooperatives while others who go through the process choose to assign their purchase rights or enter into a joint venture with a third-party developer to make improvements and restrict rent to affordable levels.² However, navigating the process can be a struggle for many tenants and tenant associations and a shortage of affordable housing remains a chronic problem in the city.³ A similar ordinance exists in the city of Baltimore.⁴

A public right of first refusal gives governments the opportunity to directly acquire property. For example, Montgomery County, Maryland has an ordinance that requires owners of all rental properties with 4 or more units to offer a right of first refusal to the county government, the county’s PHA, or to a certified tenant organization.⁵ The county government or PHA can also immediately sell acquired property to a nonprofit organization. In practice, the county’s PHA usually exercises its right of first refusal in cases where it has identified a nonprofit that will then buy and manage the property.⁶ The right of first refusal can help preserve the total supply of housing while allowing current tenants to stay in their homes. Furthermore, the right of first refusal can give governments leverage to prevent rent increases. Under Montgomery County’s ordinance, the county will waive its right of first refusal if a prospective buyer agrees to a rent freeze for three

¹ D.C. Code § 42–3404.01 et seq. (2018).

<https://code.dccouncil.us/dc/council/code/titles/42/chapters/34/subchapters/IV/>

² Aaron O’Toole and Benita Jones, *Tenant Purchase Laws as a Tool for Affordable Housing Preservation: The D.C. Experience*, 18 J. AFFORDABLE HOUSING & CMTY. DEV. 367, 375 (2009), available at <https://www.jstor.org/stable/25782856?seq=1>

³ Julie Lawton, *Tenant Purchase as a Means of Creating and Preserving Affordable Homeownership*, 20 GEO. J. ON POVERTY L. & POL’Y. 55, 69-70 (2012), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2202575

⁴ Baltimore City Code, Art. 13 §6-1 et seq.

<http://legislative.reference.baltimorecity.gov/sites/default/files/Art%2013%20-%20Housing.pdf>

⁵ Montgomery County, MD. Code §53A-4. (2018). http://www.montgomeryco-md.elaws.us/code/coor_ptii_ch53a_sec53a-4

⁶ Peter Damrosch, *Public Rights of First Refusal*, 129 Yale L.J., 812, 825 (2020), available at https://www.yalelawjournal.org/pdf/DamroschNote_fqh9sjjo.pdf

years.⁷ A similar ordinance has been enacted in neighboring Prince George's County, Maryland as well.⁸ At the local level, several municipalities such as Denver have implemented ordinances that create a public right of first refusal and are specifically targeted at properties with affordable housing restrictions.⁹ Several states have also passed right of first refusal statutes aimed at preserving affordable housing.¹⁰ For example, under Massachusetts's law, owners of publicly assisted housing must allow the state Department of Housing and Community Development or its designee the opportunity to purchase such housing.¹¹

⁷ *Id.* at 842.

⁸ Prince George's County, Md. Code §13-113. (2020).
https://library.municode.com/md/prince_george's_county/codes/code_of_ordinances?nodeId=PTIITU17PULOLAPRGECOMA_SUBTITLE_13HOPRST_DIV14COREHO_S13-1113CORIFIRE

⁹ Damrosch, *supra* note 6 at 853.

¹⁰ National Housing Law Project, *State & Local Preservation Initiatives*, <https://www.nhlp.org/our-initiatives/state-local-preservation-initiatives/>

¹¹ Edward J. Sullivan, Edward J. and Karin Power, *Coming Affordable Housing Challenges for Municipalities After the Great Recession* 21 J. AFFORDABLE HOUSING & CMTY. DEV. 298, 311 (2013), available at <https://ssrn.com/abstract=2265498>