

Transmittal Sheet

Proposed Action on Regulations	
Date Filed with AELR Committee July 3, 2024	Date Filed with Division of State Documents Document Number 24-089-P Date of Publication in MD Register

1. Desired date of publication in Maryland Register: August 9, 2024

2. COMAR Codification

Title	Subtitle	Chapter	Regulation
05	22	01	01
05	22	01	02
05	22	01	03
05	22	01	04
05	22	01	05
05	22	01	06
05	22	01	07

3. Promulgating Authority

Department of Housing and Community Development

4. Name of Regulations Coordinator

Kristine Zaleski

Telephone Number

301-429-7481

Mailing Address

7800 Harkins Road
Lanham, MD 20706

Email

kristine.zaleski@maryland.gov

5. Name of Person to Call About this Document

Mark Petrauskas

Telephone Number

301-429-7487

Mailing Address

7800 Harkins Road
Lanham, MD 20706

Email

mark.petrauskas@maryland.gov

6. Check applicable items:

<input checked="" type="checkbox"/>	New Regulations
<input type="checkbox"/>	Amendments to Existing Regulations
<input type="checkbox"/>	Repeal of Existing Regulations
<input type="checkbox"/>	Recodification
<input type="checkbox"/>	Incorporation by Reference of Documents Requiring DSD Approval

7. Is there Emergency text that is identical to this Proposal:

___ Yes X No

8. Incorporation by Reference

<input type="checkbox"/>	Incorporation by Reference (IBR) approval form(s) attached and 16 copies of documents proposed for incorporation submitted to DSD. (Submit 16 paper copies of IBR document to DSD and one copy to AELR.)
--------------------------	--

9. Public Body - Open Meeting

<input type="checkbox"/>	OPTIONAL - If promulgating authority is a public body, check to include a sentence in the
--------------------------	---

☐ Notice of Proposed Action that proposed action was considered at an open meeting held pursuant to General Provisions Article, §3-302(c), Annotated Code of Maryland

☐ OPTIONAL - If promulgating authority is a public body, check to include a paragraph that final action will be considered at an open meeting

10. Children's Environmental Health and Protection

☐ Check if the system should send a copy of the proposal to the Children's Environmental Health and Protection Advisory Council

11. Certificate of Authorized Officer

I certify that the attached document is in compliance with the Administrative Procedure Act. I also certify that the attached text has been approved for legality by Mark Petrauskas, Assistant Attorney General, telephone #301-429-7487, on July 2, 2024. A written copy of the approval is on file at this agency.

Name of Authorized Officer

Jacob Day

Title

Secretary

Telephone No.

301-429-7925

Date

July 2, 2024

Title 05

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

Subtitle 22 Tenant's Exclusive Negotiation Period and Right of First Refusal 05.22.01 Procedure

Authority: Housing and Community Development Article, §5-104 and Real Property Article, §8-119, Annotated Code of Maryland

Notice of Proposed Action

[24-089-P]

The Secretary of Housing and Community Development proposes to:
adopt new Regulations .01–.07 under a new subtitle, COMAR 05.22 Tenant's Exclusive Negotiation Period and Right of First Refusal, Chapter 01 Procedure.

Statement of Purpose

The purpose of this action is to describe policies and procedures for the content, delivery and receipt of required notices during a residential tenant's exclusive negotiation period and right of first refusal established under Ch. 124 (H.B. 693), Acts of 2024.

Estimate of Economic Impact

I. Summary of Economic Impact. The budget for the Office of Tenant and Landlord Affairs within DHCD, which will be handling the receipt and processing of forms, notices, and other materials related to tenants' exclusive negotiation period and right of first refusal, has been appropriated and this action will not require additional expenditure by DHCD. There will be an impact on regulated industries or trade groups and on residential tenants.

II. Types of Economic Impact.

Impacted Entity	Revenue (R+/R-) Expenditure (E+/E-)	Magnitude
A. On issuing agency:	NONE	
B. On other State agencies:	NONE	
C. On local governments:	NONE	
	Benefit (+) Cost (-)	Magnitude
D. On regulated industries or trade groups:		
(1) Regulated Industries or trade groups	(+)	Indeterminable
E. On other industries or trade groups:	NONE	
F. Direct and indirect effects on public:		
(1) Public	(+)	Indeterminable

III. Assumptions. (Identified by Impact Letter and Number from Section II.)

D(1). The notice requirements will likely require some minor additional labor and or expenditure by landlords and property management companies. For landlords that reach an agreement on sale with a tenant, both parties should benefit by the reduced time and effort to achieve a sale of the home. However, the magnitude of the impact cannot be determined.

F(1). Residential tenants to whom the regulations apply will benefit from the option to purchase the home in which they reside rather than facing the uncertainty associated with a new owner. However, the magnitude of the impact cannot be determined.

Economic Impact on Small Businesses

The proposed action has minimal or no economic impact on small businesses.

Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

Opportunity for Public Comment

Comments may be sent to Jordan Gilmore, Senior Policy Analyst, Office of Policy Development, Department of Housing and Community Development, 7800 Harkins Road, Lanham, MD 20706, or call (443) 571-2147, or email to jordan.gilmore@maryland.gov. Comments will be accepted through September 9, 2024. A public hearing has not been scheduled.

JACOB DAY
Secretary

Economic Impact Statement Part C

A. Fiscal Year in which regulations will become effective: **FY 2025**

B. Does the budget for the fiscal year in which regulations become effective contain funds to implement the regulations?

Yes

C. If 'yes', state whether general, special (exact name), or federal funds will be used:

General Funds - S00. A2003 subprogram 1350

D. If 'no', identify the source(s) of funds necessary for implementation of these regulations:

E. If these regulations have no economic impact under Part A, indicate reason briefly:

F. If these regulations have minimal or no economic impact on small businesses under Part B, indicate the reason and attach small business worksheet.

The procedures and notice requirements outlined in the regulations are already required by statute. To the extent small business are landlords that are selling a home, they would benefit by having a sale of the home within a short period of time and possibly less selling costs.

G. Small Business Worksheet:

none

Title 05 DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

Subtitle 22 Tenant's Exclusive Negotiation Period and Right of First Refusal ***Chapter 01 Procedure***

Authority: Housing and Community Development Article, §5-104 and Real Property Article, §8-119, Annotated Code of Maryland

.01 Purpose.

The purpose of this chapter is to prescribe the policies and procedures relating to the tenant's exclusive negotiation period and right of first refusal as outlined in Real Property Article, §8-119, Annotated Code of Maryland.

.02 Definitions.

A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined.

(1) "Commercially reasonable" means terms and pricing that are reasonably consistent with what an experienced real estate professional would expect to see in similar transactions.

(2) "Department" means the Department of Housing and Community Development, a principal department of the State.

(3) "Material terms" includes the sales price, settlement date, inspection terms, financing terms, escrow deposit, seller credit to buyer (if any), and seller repairs.

(4) "Offer to purchase" means a good faith offer for the purchase of a residential rental property for a price that a willing buyer would pay to a willing seller in an arm's length transaction, with neither party under any compulsion to buy or sell.

(5) "Office" means the Office of Tenant and Landlord Affairs within the Department of Housing and Community Development.

(6) "Secretary" means the Secretary of Housing and Community Development.

(7) “Tenant” means an individual who has occupied a residential rental property for at least 6 months and who is a named lessee in the written lease.

(8) “Tenant’s exclusive negotiation period” means the period of time prescribed in Real Property Article, §8-119(c), Annotated Code of Maryland, after a tenant is notified about the tenant’s right to purchase a residential rental property during which the tenant may negotiate exclusively with the owner to enter into a contract of sale.

.03 Notice Requirements in Tenant’s Exclusive Negotiation Period.

A. Before a residential rental property may be offered for sale to the public or a third party, including through a listing for sale, the owner of the property shall send each tenant of the property a written notice of the tenant’s right to deliver an offer to purchase the property.

B. A notice sent to a tenant under this chapter shall be delivered by:

- (1) First-class U.S. Mail, with a certificate of mailing; or
- (2) A delivery service providing delivery tracking and confirmation.

C. The owner shall send a copy of a notice sent to a tenant under this chapter to the Office by a submission form on the Office’s website.

D. The owner shall notify the Office by submission form on the Office’s website if:

- (1) A tenant delivers a timely written offer to purchase the property that contains the same or more favorable material terms as those contained in the notice sent under this chapter;
- (2) A tenant fails to make an offer to purchase in response to the notice sent under this chapter within the time prescribed by law;
- (3) A tenant affirmatively declines to make an offer to purchase the property;
- (4) A tenant fails to make a timely response to, or rejects, a counteroffer made by the owner under Real Property Article, §8-119(c)(5)(ii), Annotated Code of Maryland; or
- (5) A tenant accepts a counteroffer made by the owner under Real Property Article, §8-119(c)(5)(ii), Annotated Code of Maryland.

.04 Form of Notice and Counteroffer.

A. The notice delivered to tenants at the commencement of the tenant’s exclusive negotiation period shall contain, at minimum, the following information:

- (1) The material terms that the owner would agree to incorporate into a contract of sale with the tenant;
- (2) A conspicuous statement that the notice is a solicitation of an offer to purchase and is not intended as and may not be construed as a binding contract of sale; and
- (3) Any information regarding deadlines for the tenant to submit an offer to purchase, including the duration of the tenant’s exclusive negotiation period.

B. The material terms stated in the notice delivered to tenants under this chapter:

- (1) Shall be commercially reasonable and made in good faith;
- (2) Shall adhere to generally accepted residential real estate practices; and
- (3) May not include restrictions on financing methods or the right of inspection.

C. The notice delivered to tenants under this chapter shall be in the form provided in Appendix “A” of this subtitle.

D. A counteroffer delivered to tenants under Real Property Article, §8-119(c)(5)(ii), Annotated Code of Maryland, shall be in the form provided in Appendix “B” of this subtitle.

E. The Office shall make the forms provided in Appendix “A” and Appendix “B” of this subtitle available on its public website in a format allowing residential rental property owners to populate the blank sections of the forms, download the forms, and print the forms for delivery to tenants.

F. The Office may, from time to time, with the approval of the Secretary, edit or amend the forms provided in Appendix “A” and Appendix “B” of this subtitle to facilitate compliance with Real Property Article, §§8-119(c) and 8-120, Annotated Code of Maryland, or other applicable law, as appropriate.

.05 Notice Requirements for Tenant’s Right of First Refusal.

A. Before accepting an offer to purchase a residential rental property from a third party, the owner of the property must provide written notice to any tenants of the property of the tenants’ right of first refusal, and give the tenant an opportunity to exercise the right of first refusal within 30 days after receipt of the notice, if:

- (1) The proposed transfer to the third party is not a transfer listed in Real Property Article, §8-119(b), Annotated Code of Maryland;
- (2) The owner intends to accept an offer from a third party to purchase the property for an amount at least 10 percent lower than the lowest price offered to the tenant in any previous notice, offer, or counteroffer made during the tenant’s exclusive negotiation period; or
- (3) The owner, without having offered the property for sale to the public or any third party, receives an offer to purchase the property from a third party.

B. A notice sent to a tenant under this chapter shall be delivered by:

- (1) First-class U.S. Mail, with a certificate of mailing; or
- (2) A delivery service providing delivery tracking and confirmation.

C. The owner shall send a copy of a notice sent to a tenant under this chapter to the Office by a submission form on the Office's website.

D. The owner shall notify the Office by submission form on the Office's website if:

- (1) A tenant delivers a timely written offer to purchase at the same sales price as the third-party offer;*
- (2) A tenant does not deliver a timely offer to purchase the property at the same sales price as the third-party offer; or*
- (3) The owner accepts an offer to purchase from a tenant and enters into a contract of sale, but the contract of sale is terminated before settlement.*

.06 Form of Notice of Right of First Refusal.

A. The notice delivered to tenants under this chapter shall contain, at minimum, the following information:

- (1) The sales price proposed in the third-party offer to purchase;*
- (2) A conspicuous statement that the notice is a solicitation of an offer to purchase and is not intended as and may not be construed as a binding contract of sale; and*
- (3) Any information regarding deadlines for the tenant to submit an offer to purchase.*

B. The notice delivered to tenants under this chapter shall be in the form provided in Appendix "C" of this subtitle.

C. The Office shall make the form provided in Appendix "C" of this subtitle available on its public website in a format allowing residential rental property owners to populate the blank sections of the form, download the form, and print the form for delivery to tenants.

D. The Office may, from time to time, with the approval of the Secretary, edit or amend the form provided in Appendix "C" of this subtitle to facilitate compliance with Real Property Article, §§8-119(d) and 8-120, Annotated Code of Maryland, or other applicable law, as appropriate.

.07 Information Provided to Department.

A. Upon entry into a contract of sale with a tenant to purchase a residential rental property, the termination of a tenant's exclusive negotiation period, or the termination of a tenant's right of first refusal as provided in Real Property Article, §8-119, Annotated Code of Maryland, the owner shall provide the following information to the Office by submission form on the Office's website:

- (1) The physical address of the property, including the county (or Baltimore City) in which the property is located;*
- (2) The legal description of the property;*
- (3) The material terms proposed in any notice, offer, or counteroffer made to or by the tenant under Real Property Article, §8-119(c), Annotated Code of Maryland, whether accepted or rejected;*
- (4) If applicable, the material terms of the contract of sale;*
- (5) The length of time the tenant resided in the property before the owner sent the notice required by this chapter; and*
- (6) The periodic rent amount under the most recent lease entered by the tenant.*