

SUBTITLE 4. - MODERATE INCOME HOUSING UNITS

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Sec. 13.400. - Applicability.

This subtitle applies to:

- (a) Age-restricted adult housing, in accordance with section 131.N.1.n of the Howard County Zoning Regulations.
- (b) Mixed-use developments, in accordance with subsection 127.C.6.b of the Howard County Zoning Regulations.
- (c) Planned senior communities, in accordance with subsection 127.1.B.8 of the Howard County Zoning Regulations.
- (d) Residential mobile home developments, in accordance with subsection 113.F.2 of the Howard County Zoning Regulations.
- (e) Any development for which the provision of moderate income housing is proffered by the petitioner and made a condition of approval in a preliminary development plan approved by the Zoning Board; and
- (f) Residential developments in the R-SA-8, R-A-15, CCT, POR, R-SI, TOD, CAC Zoning Districts and any other zoning districts that may include a moderate income housing unit requirement.

(C.B. 93, 1996; C.B. 38, 2001, § 1; C.B. 59, 2001; C.B. 21, 2003, § 1; C.B. 22, 2006, § 2)

Sec. 13.401. - Definitions.

- (a) *In General.* In this subtitle, the following words have the meanings indicated:
- (b) *Commission* means the Howard County Housing Commission.

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- (c) *Department* means the Howard County Department of Housing and Community Development.
- (d) *Designee* means the Howard County Housing Commission, a nonprofit corporation, or a quasi-public housing development organization designated by the Department as eligible to operate and maintain moderate income housing units on a long-term basis.
- (e) *Director* means the Director of the Department of Housing and Community Development.
- (f) *Dwelling unit* has the meaning stated in the Howard County Zoning Regulations.
- (g) *Eligible purchaser* means a holder of a certificate of eligibility under section 13.406 of this subtitle who has been prequalified by the Department to obtain a mortgage in an amount sufficient to enable the individual to purchase a moderate income housing unit.
- (h) *First-time home buyer* means an individual who, during the three years before receiving a certificate of eligibility:
- (1) Has not owned any property used or usable as a residence; or
 - (2) Has owned a personal residence but, because of the separation or divorce of the joint tenants or the death of one of the joint tenants, needs to purchase a personal residence without the former joint tenant.
- (i) *Initial sale price* means the price set by the Housing and Community Development Board under section 13.403 of this subtitle for the first sale of a type of moderate income housing unit.
- (j) *Median income* means the median annual income of Howard County as determined by the U.S. Census Bureau.
- (k) *Moderate income* means an annual household income of up to 80 percent of the median income in Howard County.
- (l) *Moderate income housing unit* means a dwelling unit offered for sale or rent to households with moderate incomes.
- (m) *Moderate income housing unit offered for sale* means a unit that is built on a subdivided lot or subject to a condominium regime, as provided in a moderate income housing unit agreement under subsection 13.402(b) of this subtitle.
- (n) *Proffered unit* means a moderate income housing unit in a development for which the provision of moderate income housing is proffered by the petitioner and made a condition of approval in a preliminary development plan approved by the Zoning Board.
- (o) *Rehabilitated existing moderate income housing unit* means an existing residential housing unit that has been determined by the Department of Housing and Community Development to have met the specified eligibility criteria and rehabilitation requirements for such units as provided in this subtitle and that is subject to and bound to comply with all of the requirements in this subtitle applicable to newly built moderate income housing units.
- (p) *Rental unit* means a moderate income housing unit that is not a moderate income housing unit offered for sale.

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(C.B. 93, 1996; C.B. 38, 2001, § 1; C.B. 59, 2001; C.B. 21, 2003, § 1; C.B. 66, 2003, § 1; C.B. 22, 2006, § 2; C.B. 74, 2007, § 1)

Sec. 13.402. - Development procedures; moderate income housing unit agreement; alternative.

(a) *Development Procedures:*

(1) When a development is subject to this subtitle, the developer shall submit to the Department of Planning and Zoning, concurrent with the submission of the original final plat or original site development plan for approval; as applicable:

- (i) An agreement to meet moderate income housing unit requirements; and
- (ii) Recordable covenants approved by the Department and the County Solicitor.

(2) Covenants under this subsection shall be recorded among the land records of Howard County concurrently with the recordation of the final subdivision plat or site development plan approval, as applicable.

(3) Covenants under this subsection shall be extinguished in accordance with the agreement under subsection (b) of this section.

(b) *Moderate Income Housing Unit Agreement.* The moderate income housing unit agreement under this section shall be in a form prescribed by the Department and shall include:

(1) A statement of the number of moderate income housing units required under the zoning regulations;

(2) A requirement that the developer comply with the minimum specifications for moderate income housing units established by the Department;

(3) A plan for construction of moderate income housing units offered for sale and rental units, which shall, to the extent practicable, taking into account current market conditions, the needs of eligible purchasers, and planning considerations, require that each phase of the development contain its proportionate share of the total number of moderate income housing units required under the approved final plan or site development plan; and

(4) A statement of how moderate income housing units will be provided that shall include the number of units, types of units, and location of units.

(c) *Covenants.* The covenants under this section shall be in a form prescribed by the Department and shall include provisions prohibiting the sale or rental of a moderate income housing unit except to an eligible purchaser, the Commission, the County, or a designee in accordance with this subtitle.

(d) *Requirements Applicable to Moderate Income Housing Units.* Except as provided in subsections (e) and (f) of this section, and except as provided in section 13.402A of this subtitle, a developer obligated to provide moderate income housing units in accordance with the zoning regulations as part of a development shall provide all of the units:

- (1) On the site of the development project;
- (2) In the same ratio of unit types as proposed for the development; and

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(3) Evenly distributed within each phase of development.

(e) *Optional Methods:*

(1) A developer required to provide moderate income housing units under the zoning regulations may request permission to provide the required units:

- (i) At a different location; or
- (ii) As a different ratio of unit types.

(2) A developer may use an optional method under this subsection if the Director, upon recommendation from the Housing and Community Development Board and in consultation with the Director of Planning and Zoning and the Director of Citizen Services, determines that:

- (i). The number of moderate income housing units to be constructed in the development will render the development economically unfeasible; or
 - b. The development proposes an indivisible package of services and facilities to all residents that would cost the moderate income housing unit owners so much that the units would be rendered unaffordable to eligible purchasers; and
- (ii) The optional method results in geographic distribution of moderate income housing units throughout the County.

(3) A developer who uses an optional method of providing moderate income housing units in accordance with paragraph (1) of this subsection shall calculate the number of units to be provided as set forth below:

.....

(i) For every one moderate income single-family detached housing unit required by the zoning regulations, the requirement shall be increased by the multiplier in the following chart:

Type of Unit	On-site	Off-site
Single Family Detached	Not Applicable	1.5 Moderate Income Units
Single Family Attached	1.5 Moderate Income Units	1.75 Moderate Income Units
Apartment	1.75 Moderate Income Units	2.0 Moderate Income Units

(ii) For every one single-family attached moderate income housing unit required by the zoning regulations, the requirement shall be increased by the multiplier in the following chart:

Type of Unit	On-site	Off-site
Single Family Attached	Not Applicable	1.5 Moderate Income Units
Apartment	1.5 Moderate Income Units	1.75 Moderate Income Units

(iii) For every one moderate income apartment required by the zoning regulations, the requirement shall be modified by the multiplier in the following chart:

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Type of Unit	On-site	Off-site, Apartment Units
Apartment	Not Applicable	1.5 Moderate Income Units
Single Family Attached	Not Applicable	.67 Moderate income Units

.....

(f) *Alternative Compliance to Optional Methods.*

(1) A developer may request permission from the Director to use a method other than those set forth in subsection (e) of this section to provide moderate income housing units.

(2) A request shall include the following information:

(i) A description of the alternative compliance proposal, including a comparison of the required and proposed units, in terms of the location, numbers, types, bedrooms, and square footage; and

(ii) The projected fair market value of the required and proposed units.

(3) In determining whether to approve a request under this subsection, the Director, upon recommendation from the Housing and Community Development Board and in consultation with the Director of Planning and Zoning and the Director of Citizen Services, shall consider whether:

(i) The phasing of moderate income housing units will be provided sooner than would be required by the phasing of market rate units;

(ii) The units present innovative architecture or site design features that contribute to affordability;

(iii) The design reduces operating and maintenance costs;

(iv) The location of the proposed alternative is part of a mixed-use development with existing or potential transit service; and

(v) The development provides a package of services or amenities for the benefit of moderate income residents.

(4) In granting a request under this subsection, the Director may reduce the number of units that would have been required under subsection (e) of this section, but may not reduce the number of units below the number required by the zoning regulations.

(g) *Alternative of Providing Rehabilitated Existing Moderate Income Housing Units.* The developer of a housing development subject to this subtitle may provide up to five rehabilitated existing moderate income housing units if the developer's requirement is for 29 or fewer moderate income housing units or, if the developer's requirement is for 30 or more moderate income housing units, the developer may provide a maximum of 20 percent of the required moderate income housing units by providing rehabilitated existing moderate income housing units provided that:

(1) Prior to approval of a final subdivision plat or, if the property is not being subdivided, a site development plan:

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- (i) The developer provides:
 - a. One rehabilitated existing moderate income housing unit certificate approved by the Department as provided below for each moderate income housing unit required by this subtitle; or
 - b. Two rehabilitated existing moderate income housing unit certificates for condominium apartment units approved by the Department as provided below for each moderate income housing unit required by this subtitle; and
- (ii) The developer executes all of the required agreements and covenants relating to the provision of newly built moderate income housing units in this subtitle.

(2) (i) If a developer is required to provide age-restricted moderate income housing units by the zoning regulations, the developer may use the alternative of providing rehabilitated units as permitted by this subsection.

(ii) A developer may use a non-age-restricted rehabilitated unit instead of an age-restricted rehabilitated unit under this subsection if the Director, with the concurrence of the Chief Administrative Officer:

- a. Has made a good faith effort to find, but is unable to find, any eligible purchaser who meets the criteria for the age-restricted moderate income housing unit consistent with Federal discrimination law exemptions; or
- b. Has determined that the unit is not physically suited for use by an age-restricted eligible purchaser.

(iii) The total number of non-age-restricted rehabilitated units that are substituted for age-restricted units shall not exceed ten.

(3) Except as provided in subsection (i) of this section, the rehabilitated existing moderate income housing units are subject to all of the requirements applicable to newly built moderate income housing units in this subtitle.

(h) *Approval of Certificates for Rehabilitated Existing Moderate Income Housing Units; Sale of Certificates.* The application, approval and sale of certificates for rehabilitated existing moderate income housing units shall be governed by the following criteria and procedures:

(1) (i) The owner of a residential housing unit or units or an Applicant acting on their behalf may apply to the Department for eligibility to apply for a certificate for a rehabilitated existing moderate income housing unit.

(ii) Within 20 business days following application, the Department shall approve such a unit as eligible for a certificate application if it finds:

- a. That the unit is in need of substantial repairs based on an itemized estimate of cost of repairs submitted by the Applicant;
- b. That the unit shall not be or previously have been a moderate income housing unit approved pursuant to this subtitle; and

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- c. That the unit will add to the stock of needed moderate income housing units in the County.
- (2) (i) If the Department approves a unit as being eligible for certificate application, the owner of the unit or an Applicant acting in his behalf may apply for that certificate.
- (ii) The Department shall approve the application and issue a certificate for a rehabilitated existing moderate income housing unit if it finds that the Applicant has executed the required moderate income housing unit covenants and agreements and met the following rehabilitation requirements for the unit:
- a. Kitchen and bath cabinets shall be new or updated in the last ten years and in good condition; kitchen and bath fixtures shall conform to current maximum water usage standards; and all major kitchen appliances shall be new and warranted for at least one year;
 - b. All carpets and flooring shall be new except for hardwood flooring that is new or newly refinished;
 - c. The heating and cooling systems shall be new or have been replaced in the last ten years and be in good working order;
 - d. All drywall or other wall materials shall be in good condition with no outdated finishes;
 - e. All doors and locks shall be in good working order;
 - f. All windows shall be new or replaced in the last ten years, have insulated glass or storm windows and be in good condition;
 - g. The roof shall be new or replaced in the last ten years, be in good condition, and have at least a 20-year manufacturer's warranty remaining at the time of sale;
 - h. Facia, gutters and downspouts shall be in good condition;
 - i. The Applicant shall certify that the unit complies with all applicable asbestos and lead paint laws;
 - j. Exterior paint shall be new and siding shall be new or replaced in the last ten years and be in good condition;
 - k. Decks shall be power washed and stained and be in good condition;
 - l. The yard shall be in good condition with adequate and appropriate ground cover, trimmed trees and bushes, if any, fences in good condition, if any, and with any sidewalks and driveways in good condition and not in need of repairs; and
 - m. The Applicant shall provide the following items for the purchaser of the moderate income housing unit:
 - i. A new power mower, for units having a lawn;
 - ii. Pruning shears, for units having shrubs or other similar landscaping;

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- iii. A power edger, for units having a lawn;
- iv. A rake, for units having a lawn;
- v. One gallon of interior paint in each color used;
- vi. One gallon of exterior paint in each color used, where appropriate; and
- vii. Paint brushes and rollers for interior and exterior surfaces.

All rehabilitation done to the outside of apartment units pursuant to this section shall be consistent with other units in the structure.

(3) The Department shall have the unit inspected by an independent inspector who will certify that the unit meets the above rehabilitation requirements prior to the Department's decision on the application. The Applicant shall pay the costs of this inspection before the Department makes a decision on the application.

(4) The owner of the rehabilitated existing moderate income housing unit is the holder of the certificate for that unit once it is issued by the Department and may:

(i) Receive credit for providing alternative moderate priced housing units pursuant to subsection (g) of this section, which units shall be sold and, except as provided in subsection (i) of this section, otherwise subject to all of the requirements applicable to newly built moderate priced housing units in this subtitle; or

(ii) Sell the certificate and the unit to which it applies to a developer of moderate income housing units at a price to be agreed to by the holder and developer who shall then receive credit for providing alternative moderate income housing units pursuant to subsection (g) of this section, which units shall be subject to all of the requirements applicable to newly built moderate priced housing units in this subtitle.

(i) *Initial Sale Price for Units Sold through the Moderate Income Housing Unit Community Revitalization Program.* The Housing and Community Development Board shall:

(1) Establish the initial sale price for rehabilitated units provided through the moderate income housing unit community revitalization program; and

(2) Adopt regulations setting the standards to be used for establishing the initial sale price.

(j) *Annual Analysis of the Moderate Income Housing Programs.* The Director shall complete an annual analysis of the moderate income housing unit programs and shall submit the analysis to the County Executive and to the County Council. The analysis shall include:

(1) The number, types, and location of moderate income housing units provided on-site and as required by the zoning regulations;

(2) Moderate income housing units provided as an optional method under subsection (e) of this section and as an alternative compliance under subsection (f) of this section;

(3) The number of moderate income housing units that have been renovated and the financial costs of renovating the unit;

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(4) The range of sale prices and rental rates, including the average sales price and rental rate;
and

(5) Income information on the home buyers and renters participating in the program.

(k) *Alternative of Satisfying Moderate Income Housing Unit Requirement in Residential Mobile Home Development.* The developer of a housing development in an R-MH zoning district which is subject to this subtitle may satisfy all, or a portion of, its moderate income housing unit requirement by providing for the sale of lots in an adjoining subdivision to the Commission or designee as defined in this subtitle at below market price by an agreement with the Commission or designee as defined in this subtitle provided that:

(1) The housing development and the adjoining subdivision were part of the same original sketch plan;

(2) The adjoining subdivision shall be zoned residential-mobile home and shall consist of previously leased pad sites in a mobile home park;

(3) The residential mobile home development and the adjoining subdivision share a stormwater management facility;

(4) The lots shall be sold to the Commission or designee as defined in this subtitle at below market price for either conveyance through shared equity financing to an eligible purchaser or rental to an individual of moderate income;

(5) Each lot sold to the Commission or designee as defined in this subtitle shall equal one moderate income housing unit required in the adjacent housing development;

(6) Concurrent with, prior to, or within 120 days subsequent to the approval of a site development plan or the final plat of subdivision for the housing development, the developer and the Commission or designee as defined in this subtitle shall execute an agreement which satisfies the requirements of this section;

(7) The agreement shall provide that any covenant to provide moderate income housing units which is already recorded shall be extinguished upon the sale of the same number of lots to the Commission or designee as defined in this subtitle; and

(8) An existing resident in the adjoining subdivision who meets the eligibility requirements of this subtitle shall be given first priority as an eligible purchaser of a lot or as a tenant of a lot owned by the Commission or designee as defined in this subtitle.

(l) *Prohibited Transfers.* A developer using an optional or alternative method of compliance may not provide the required moderate income housing units on property:

(1) Wholly owned by the Howard County Housing Commission; or

(2) Owned by a limited partnership or limited liability company formed solely for the purpose of obtaining the benefit of low income housing tax credits under section 42 of the Internal Revenue Code and in which the Commission is the general partner or managing member; or

(3) Owned by the County.

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(m) *Calculations—Fractions of a Unit.* If a calculation to determine the number of moderate income housing units a developer is required to provide under the Zoning Regulations results in a fraction of a moderate income housing unit, the developer shall provide an additional moderate income housing unit.

(C.B. 93, 1996; C.B. 38, 2001, § 1; C.B. 59, 2001; C.B. 58, 2002, § 1; C.B. 13, 2003, § 1; C.B. 21, 2003, § 1; C.B. 66, 2003, § 1; C.B. 29, 2004, § 1; C.B. 14, 2005, § 1; C.B. 78, 2004, § 1; C.B. 22, 2006, § 2; C.B. 61, 2006, § 2; C.B. 74, 2007, § 1; C.B. 6, 2008, § 1; C.B. 10, 2011, § 1)

Editor's note— Section 2 of C.B. 74, 2007 provided that the prohibition of subsection (m) of section 13.402 shall not apply to transfers approved on or before January 1, 2010 for which site development plans are technically complete on or before January 1, 2008.

Sec. 13.402A. - Market-based required alternatives to moderate income housing unit obligation.

(a) *Application.* This section shall apply when the base sales price for a moderate income housing unit, as determined by the Department at the time the seller offers the unit for sale pursuant to section 13.404 of this subtitle, is 90 percent or more of the market price. For purposes of this section, market price is the net price offered to the public by the seller for a comparable unit within the development. In this instance, instead of providing moderate income housing units as required by section 13.402 of this subtitle, the developer shall pursue one or a combination of the alternatives set forth in subsection (b), (c), or (d) of this section.

(b) *Units in Foreclosure.* The developer shall substitute units by purchasing, rehabilitating, and offering for sale existing housing units that are in foreclosure and are located throughout the County as follows:

- (1) A substitute unit is eligible under this option if it:
 - (i) Has had mortgage or tax foreclosure proceedings initiated;
 - (ii) Has not had a mortgage or tax payment made for at least 90 days; and
 - (iii) Has been offered for sale by the owner to the public;
- (2) The Department must approve each substitute unit before purchase by the developer, and shall ensure that the developer provides the same number of bedrooms;
- (3) The rehabilitation of each substitute unit shall meet the Department's minimum standards, as determined by regulation of the Department;
- (4) Upon completion of rehabilitation, the Department must approve each completed unit;
- (5) A developer shall purchase and rehabilitate the unit and request a priority period, as set forth in section 13.404 of this subtitle, within one year of the developer's initial notification of sale under section 13.404
- (6) The sales price for a substitute unit shall be the lowest of the following:
 - (i) The moderate income housing unit price determined by the Department at the time of the developer's request for a priority period for the substitute unit;
 - (ii) Ninety percent of the appraised value of the substitute unit, as rehabilitated; or

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(iii) The developer's actual cost of purchasing, rehabilitating, and selling the substitute unit, including carrying costs; and

(7) A developer shall purchase substitute units of the following types and at the following ratio:

TYPE OF
 REQUIRED

MIHU:

TYPE OF

SUBSTITUTE

UNIT:

	RATIO:	
Apartment	Apartment	1:1
Apartment	Single-family, attached	3:2
Apartment	Single-family, detached	2:1
Single-family, attached	Apartment	2:3
Single-family, attached	Single-family, attached	1:1
Single-family, attached	Single-family, detached	3:2
Single-family, detached	Apartment	1:2
Single-family, detached	Single-family, attached	2:3
Single-family, detached	Single-family, detached	1:1

(c) *Offer to Low-Income Purchasers.* The developer shall substitute units by offering one-third of the moderate income housing units required under this subtitle to eligible low-income purchasers who shall have an annual household income of up to 60 percent of the median income. The purchase price for these units shall be established in the same manner as set forth in section 13.403 of this subtitle, except that the base price shall be affordable to a purchaser with a household income equal to the following percentages of median income, adjusted by family size appropriate to the size and number of bedrooms in the unit:

- (1) Fifty-five percent for proffered units and single-family homes;
- (2) Fifty percent for semi-detached (duplexes) and single-family attached (townhomes); and
- (3) Forty-five percent for apartments (condominiums).

(d) *Fee-In-Lieu.* The developer shall pay a fee-in-lieu to the Department for each moderate income housing unit required by this subtitle as follows:

- (1) The fee-in-lieu shall be calculated as the difference between the prevailing market price for the same unit type and the sale price for the moderate income housing unit provided, however, the fee-in-lieu shall not be less than seven and one-half percent of the sale price for the moderate income housing unit;

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- (2) The prevailing market price shall be determined by a survey of sales prices of units of the same type sold in the County within the previous 12 months;
- (3) Sales of the following units shall be excluded from the survey:
 - (i) Townhouses less than 1,200 square feet and more than 2,000 square feet;
 - (ii) Single-family detached homes less than 1,500 square feet and more than 2,800 square feet;
 - (iii) Apartments less than 650 square feet and more than 1,300 square feet;
 - (iv) Units in poor condition or in need of significant repair or renovation; and
 - (v) The three highest and three lowest sales prices;
- (4) A developer shall pay the fee-in-lieu before use and occupancy permits may be issued for the units designated as moderate income housing units by the development's moderate income housing unit agreement; and
- (5) The fee-in-lieu collected by the Department shall be used for housing programs operated by the Department.

(C.B. 10, 2011, § 1)

Sec. 13.403. - Prices for moderate income housing units offered for sale; rates for rental units.

(a) *Base Prices for Moderate Income Housing Units Offered for Sale.* The base sale price for a moderate income housing unit shall be determined by the Housing and Community Development Board in accordance with this subsection.

- (1) Twice a year, the Board shall establish the base sale price for each type of moderate income housing unit offered for sale.
- (2) Before establishing the base sale price under this subsection, the Board shall provide information concerning the real property tax, insurance, and interest rate factors it proposes to use in establishing the base sale price on the County's website.
- (3) Before establishing the base sale price for moderate income housing units located in planned senior communities and age-restricted adult housing developments, the Board shall consult with the Office on Aging.
- (4) The Department shall provide to the Board information concerning current real property tax and insurance rates.
- (5) The base sale prices for moderate income housing units shall be based upon:
 - (i) A base size unit of the following types:

Typ e

Number of

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Bedrooms

Moderate Income
 Units—Base Size

(sq. ft.)		
Single-family detached	2	1,540
	3	1,680
	4	1,820
Semi-detached (duplex) and single-family attached (townhouse)	2	1,500
	3	1,640
	4	1,780
Back-to-back single-family attached (townhouse)	2	1,400
	3	1,540
Apartments	1	750
	2	950
	3	1,100

(ii) Factors established annually by the Board, for:

- a. Real property taxes; and
- b. Insurance rates;

(iii) Factors established twice a year by the Board for:

- a. Interest rates on FHA 30-year mortgages; and
- b. FHA mortgage insurance premiums, as determined by the United States Department of Housing and Urban Development; and

(iv) An average of the homeowners' association fees or condo fees charged for similar units in the market, based on an annual survey of fees.

(6) The Department shall provide to the Board the price at which an eligible purchaser with a household income equal to the following percentages of median income, adjusted by family size appropriate to the size and number of bedrooms in the dwelling unit, can afford to purchase a dwelling unit:

- (i) Seventy percent for proffered units and single-family homes;
- (ii) Sixty-five percent for semi-detached (duplexes) and single-family attached (townhomes); and
- (iii) Fifty percent for apartments (condominiums).

(7) For the purposes of this subsection:

- (i) A purchaser can afford to purchase a dwelling unit if the purchaser's monthly income would qualify the purchaser to obtain a 30-year fixed rate mortgage at the prevailing interest rate in an amount sufficient to pay 97 percent of the purchase price of the unit;

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- (ii) A purchaser's monthly income qualifies for a mortgage if the monthly payment required to pay (1) the monthly principal and interest of the mortgage loan, plus (2) the monthly payment of taxes and insurance on the property, calculated in accordance with the factors established by the Department under subsection (a) of this section, plus (3) the monthly payment of homeowners or condominium association fees, plus (4) the monthly payment of the FHA mortgage insurance premium, does not exceed 28 percent of the purchaser's monthly income; and
 - (iii) The prevailing interest rate is the prevailing mortgage interest rate for FHA-insured 30-year fixed-rate mortgages in the Baltimore Metropolitan Area with zero points. The Department shall calculate the prevailing interest rate by surveying, twice a year, at least three mortgage lenders and two banks for at least three consecutive business days.
- (8) The Board shall determine the prevailing interest rate as of December 1 and June 1 of each year.
- (9) As determined by the regulations of the Department and subject to paragraph (11) of this subsection, an increase in the base sales price of a moderate income housing unit may be made for the following upgrades in size, design, or amenities provided that the Board determines that they are necessary to ensure the compatibility of the moderate income housing unit with the development's market rate units:
- (i) Single-family attached (townhouse) units that are larger than the base size established by this section;
 - (ii) Additional bathrooms or powder rooms;
 - (iii) Finished basements;
 - (iv) Garages in single-family attached (townhouse) units; and
 - (v) Other upgrades in design or amenities that are necessary to ensure architectural compatibility with the development's market rate units.
- (10) As determined by regulations of the Department and subject to paragraph (11) of this subsection, an increase in the base sales price of a moderate income housing unit may be made if the homeowners' association or condominium association fees applicable to the unit are less than the average of the homeowners' association fees or condominium fees charged for similar units in the market, as determined by the Department.
- (11) Any increase in the base sales price of a moderate income housing unit may not exceed:
- (i) Fifty percent of the base sales price for apartment (condominium) units;
 - (ii) Twenty percent of the base sales price for semi-detached (duplex) and single-family attached (townhouse) units; and
 - (iii) Ten percent of the base sales price for single-family detached and proffered units.
- (12) As determined by regulations of the Department, a reduction in the base sales price of a moderate income housing unit shall be made:

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- (i) For units that are smaller than the base size established by this section;
- (ii) For single-family detached units, semi-detached (duplex) units, and single-family attached (townhouse) units without basements; or
- (iii) If the homeowners' association or condominium association fees applicable to the unit are more than the average of the homeowners' association fees or condominium fees charged for similar units in the market, as determined by the Department.

(b) *Rates for Rental Units:*

- (1) The Department shall establish maximum rates for rental units, by bedroom size, that are equal to 30 percent of the monthly income of a household whose annual income does not exceed 60 percent of the median income.
- (2) The maximum rental rates shall include an allowance for utilities paid by the tenant. The allowance shall be calculated by the Department based upon the average utility costs prevailing for similar sized units in Howard County. If required by the lease, all utility costs, including those in excess of the allowance, shall be paid by the tenant.

(C.B. 93, 1996; C.B. 38, 2001, § 1; C.B. 59, 2001; C.B. 21, 2003, § 1; C.B. 22, 2006, § 2; C.B. 74, 2007, § 1; C.B. 10, 2011, § 1)

Sec. 13.404. - Sale of moderate income housing unit.

(a) *Initial Sale of Moderate Income Housing Unit—Priority Period.*

- (1) (i) Except as provided in section 13.407 of this subtitle, the seller of a moderate income housing unit offered for sale shall offer the unit for initial sale for a 120-day priority period through the Department to an eligible purchaser.
 - (ii) During the priority period, the price for the moderate income housing unit shall not exceed the initial price established for the unit under section 13.403 of this subtitle.
- (2) (i) A seller shall notify the Department of the proposed offering and the proposed date on which the priority period will begin.
 - (ii) The notice shall set forth the number of units offered, the location of each unit, a description of the amenities offered in each unit, the sales price and information regarding any mortgage financing available to buyers.
 - (iii) The seller shall also provide a vicinity map of the offering, a copy of the approved subdivision or site development plan, and such other information as required by the Department.
 - (iv) If the Department determines that the notice is incomplete, the Department shall notify the seller within five business days of receipt of the notice. The seller shall submit a complete notice before the priority period begins.
- (3) Within the priority period, the Department shall provide the seller with the name of an eligible purchaser for each unit.

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(4) The seller shall make a good faith effort to enter into a contract with the eligible purchaser within the priority period. The contract shall allow the purchaser at least 60 days from the date of the notice provided in paragraph (3) of this subsection to obtain a financing commitment. The contract shall require the seller to make a good faith effort to complete construction of the moderate income housing unit within the time set forth in the purchaser's financing commitment.

(5) If the seller fails to make a good faith effort under paragraph (4) of this subsection, the settlement date shall be extended until ten days after the date construction is actually completed.

(6) If the eligible purchaser fails to comply with the conditions of the commitment for mortgage financing or fails to enter into a purchase contract, the Department may substitute another eligible purchaser.

(7) Any earnest money collected from an eligible purchaser may not exceed \$500.00.

(b) *Same—Settlement.*

(1) (i) An eligible purchaser who enters into a contract to purchase a moderate income housing unit shall settle on the property after completion of the construction of the unit.

(ii) For purposes of this subsection, a moderate income housing unit shall be deemed complete on the date that a use and occupancy permit for the unit is issued by the Department of Inspections, Licenses and Permits.

(iii) The seller shall notify the purchaser at least ten days prior to the settlement date.

(iv) The purchaser shall settle on the property within two business days of the settlement date, unless extended by the parties.

(v) The seller shall make a good faith effort to settle with the purchaser within the time set forth in the notice.

(2) (i) If a purchaser fails to settle on the property by the agreed upon settlement date, the seller shall notify the Department and offer to extend the priority period for 60 days from the agreed upon settlement date.

(ii) The Department shall accept or reject the offer within five business days of receipt of the notice.

(iii) If the Department accepts the offer to extend the priority period, the Department shall pay to the seller the seller's reasonable and actual carrying costs, such as interest, insurance, taxes, utilities, homeowners' association fees, and maintenance costs for the moderate income housing unit for the period of the extension.

(iv) The Department shall notify eligible households and priority purchasers of the availability of the moderate income housing unit in accordance with sections 13.406 and 13.407 of this subtitle.

(c) *Same—Sale after Priority Period:*

(1) After the priority period or extension the seller may offer a moderate income housing unit for sale to the general public without restriction as to price if:

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- (i) After the priority period expires an eligible purchaser has not signed a purchase contract;
- (ii) An eligible purchaser has not settled on the property by the settlement date and the Department has not accepted the seller's extension offer under subsection (b)(2)(i) of this section; or
- (iii) The extension of the priority period expires and an eligible purchaser has not signed a purchase contract.

(2) If the moderate income housing unit is offered for sale to the general public without restriction as to price, the seller shall pay to the County an amount equal to 50 percent of the difference between:

- (i) The sale price of the moderate income housing unit, less a seven percent reduction for the seller's cost of sale, and less the seller's reasonable and actual carrying costs from the end of the initial priority period, if applicable; and
- (ii) The initial price established for the moderate income housing unit under section 13.403 of this subtitle.

(d) *Subsequent Sale of Moderate Income Housing Unit.* A subsequent sale of a moderate income housing unit shall be:

- (1) Offered through the Department to an eligible purchaser at the sale price established under section 13.403 of this subtitle;
- (2) Subject to the covenants required under subsection 13.402(c) of this subtitle; and
- (3) Subject to regulations adopted by the Department under this subtitle.

(C.B. 93, 1996; C.B. 38, 2001, § 1; C.B. 59, 2001; C.B. 22, 2006, § 2; C.B. 74, 2007, § 1; C.B. 10, 2011, § 1)

Sec. 13.405. - Rental of moderate income housing units.

(a) *Duration of Rental Restrictions.* Except as provided in subsection (f) of this section, the restrictions on the rental of moderate income housing units set forth in this subtitle shall apply to each rental moderate income housing unit development in perpetuity beginning on the date of initial offering as set forth in subsection (c) of this section.

(b) *Application of Rental Restrictions:*

- (1) The owner of any rental development subject to this subtitle shall ensure that the number of moderate income housing units required under the approved final plan or site development plan are rented or available for rent as moderately priced dwelling units to persons determined to be eligible under section 13.406 of this subtitle.
- (2) The owner is not required to permanently designate particular units as moderate income housing units in order to meet this requirement.

(c) *Rental During Priority Period:*

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(1) A moderate income housing unit offered for rent must first be offered for a 60-day priority period to an eligible applicant or to a designee. During the priority period, the moderate income housing unit shall be offered at a rent not to exceed the rent established for the unit under section 13.403 of this subtitle.

(2) (i) Before offering a moderate income housing unit for rent, the owner must notify the Department of the proposed offering and the proposed date on which the priority period will begin.

(ii) The notice must set forth the number of units offered, the location of each unit, the unit type, bedroom size and floor area of each unit, a description of the amenities offered in each unit and the rental rate.

(iii) The owner shall also provide a vicinity map of the offering, a copy of the approved subdivision or site development plan, and such other information as the Department finds necessary.

(iv) If the Department determines that the notice is incomplete, the Department shall notify the owner within five business days of receipt of the notice. The owner shall submit a complete notice before the priority period may begin.

(3) The owner shall make a good faith effort to enter into a lease with an eligible applicant within the priority period.

(d) *Rental after Priority Period:*

(1) After the priority period expires, a unit in the development may be offered for rent to the general public without restriction as to rent if:

(i) An eligible applicant has not signed a lease agreement for the unit; and

(ii) As provided in the moderate income housing unit agreement, the required number of units in the development are rented or, at the time the priority period expired, were available for rent as moderate income housing units.

(2) If, because an owner rents one or more units under paragraph (1) of this subsection, the number of units in the development that are rented as moderate income housing units is below the number required in the moderate income housing unit agreement. The owner shall offer to rent the next available unit to an eligible applicant and shall continue to do so until:

(i) The number of rental units equals the number required under the agreement; or

(ii) The Department cannot provide the owner with the name of an eligible applicant to rent the unit.

(e) *Reports:*

(1) The owner of rental units shall submit a report to the Department, in a form prescribed by the Department, listing the occupants of moderate income housing units in the development and the rental rates charged, and certifying that the occupants are eligible under section 13.406

(2) A report under this subsection shall be submitted monthly until the required number of moderate income housing units are occupied and annually thereafter.

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(f) *Condominium Conversions:*

(1) Before a rental development is converted to a condominium regime, the owner of the development shall give notice to the Department.

(2) The notice shall be given concurrently with the registration of the public offering statement with the Secretary of State under section 11-127 of the Real Property Article of the Annotated Code of Maryland.

(3) The owner shall execute and record a revised moderate income housing unit agreement governing the sale of the condominium units, which shall provide that the number of units for sale as moderate income housing units will be at least the number required under the approved final plan or site development plan.

(g) *Authority to Assign.* When issuing a certificate of eligibility for a moderate income housing unit offered for rent, the Department may assign its responsibility for accepting applications and certifying eligibility under subsection 13.406(b) of this subtitle to an apartment complex that contains moderate income housing units offered for rent.

(h) *Duties upon Assignment.* When the Department assigns responsibility under subsection (g) of this section:

(1) The Department shall annually notify the apartment complex of the applicable income limits and other eligibility criteria; and

(2) The apartment complex shall, upon request of the Department, submit their application form, lease form, and leasing procedures to the Department for review and approval.

(C.B. 93, 1996; C.B. 38, 2001, § 1; C.B. 59, 2001; C.B. 74, 2007, § 1; C.B. 6, 2008, § 1; C.B. 10, 2011, § 1)

Sec. 13.406. - Eligibility to purchase or rent.

(a) *Application Required.* Unless the Department assigns authority under subsection 13.405(g) of this subtitle, to be eligible to purchase or rent a moderate income housing unit, an individual shall apply to the Department.

(b) *Qualifications.* An individual shall be eligible to purchase or rent a moderate income housing unit if the individual has a verifiable source of income, agrees to occupy the moderate income housing unit as the principal place of residence, and:

(1) Has applied to purchase a moderate income housing unit and has an annual household income equal to or less than 80 percent of the median income; or

(2) Has applied to rent a moderate income housing unit and has an annual household income equal to or less than 60 percent of the median income.

(c) *Prospective Purchasers—Notification.* An individual seeking to purchase a moderate income housing unit shall apply to the Department for placement on the waiting list maintained by the Department. The Department shall maintain the waiting list by date of application and household size. When a moderate income housing unit becomes available, the Department shall notify each eligible purchaser identified in accordance with subsection (f) of this section of the availability.

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(d) *Same—Ability to Purchase.* An individual who is notified by the Department of the availability of a moderate income housing unit shall contact the Department within ten days to indicate that the individual is ready and willing to buy the moderate income housing unit.

(e) *Same—Selection by Department:*

(1) The Department shall select an eligible purchaser to purchase each available moderate income housing unit.

(2) In selecting an eligible purchaser the Department shall give priority to those:

(i) With the lowest incomes who qualify for mortgage financing available at the time;

(ii) Who are first-time home buyers applying to purchase a moderate income unit;

(iii) Who reside and work in Howard County;

(iv) Who work in Howard County;

(v) Who reside in Howard County;

(vi) Who are employed by:

a. Howard County Government;

b. Board of Education of Howard County;

c. Howard Community College;

d. Howard County Library Board of Trustees;

e. Howard County Economic Development Authority;

f. Howard County Health Department;

g. Howard County Department of Social Services; or

h. A nonprofit entity that is:

1. Organized or operated for the purpose of providing health and human services to any group of persons residing in Howard County; and

2. Designated as an entity eligible to receive this preference by Department regulations;

(vii) Who are displaced, within one year prior to application for a certificate of eligibility, by the closure of a mobile home park adjacent to Route 1;

(viii) Who are participants in the Federal Family Self-Sufficiency Program authorized by 42 U.S.C. 1437U and 24 C.F.R. Part 984 as administered by the Commission; and

(ix) Who have been on the waiting list for the longest duration.

(f) The Department shall adopt regulations establishing a process for pre-qualifying eligible

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purchasers from those identified by the Department under subsection (e) of this section and providing for a lottery to determine which of the prequalified eligible purchasers will have the option of purchasing a moderate income housing unit.

(C.B. 93, 1996; C.B. 38, 2001, § 1; C.B. 59, 2001; C.B. 9, 2004, § 1; C.B. 33, 2004; C.B. 22, 2006, § 2; C.B. 66, 2007, § 1, C.B. 74, 2007, § 1; C.B. 6, 2008, § 1; C.B. 10, 2011, § 1)

Editor's note— C.B. 10, 2011, § 1, adopted April 8, 2011, amended § 13.406 title to read as herein set out. Former § 13.406 title pertained to certificate of eligibility.

Sec. 13.406A. - Continuing Care Retirement Communities.

(a) *Authority to Establish Subsidy Fund.* Instead of providing moderate income housing units as required by this subtitle or the zoning regulations, a Continuing Care Retirement Community that is certified by the Maryland Department of Aging may establish a subsidy fund:

- (1) In accordance with regulations adopted by the Department; and
- (2) To be used to defray the rental component of any fee charged for the occupancy of a moderate income housing unit such that the unit will be affordable to a household with an annual household income equal to or less than 60 percent of the median income.

(b) *Authority to Assign.* The Department may assign its responsibility for determining if a person is eligible to occupy a moderate income housing unit within a Continuing Care Retirement Community.

(c) *Duties upon Assignment.* When the Department assigns responsibility under subsection (b) of this section:

- (1) The Department shall annually notify the Continuing Care Retirement Community of the applicable income limits and other eligibility criteria; and
- (2) The Continuing Care Retirement Community shall, upon request of the Department, submit their application form, occupancy agreement form, and admissions and occupancy procedures to the Department for review and approval.

(C.B. 6, 2008, § 1)

Sec. 13.407. - Purchase or rent by designee.

(a) *Option to Rent.* A designee shall have the option to rent a moderate income housing unit in a development.

(b) *Commission Purchase Option.* The Commission has the option to buy, for its own programs or programs administered by it, the available moderate income housing units in a development before the end of the priority period for the initial or subsequent sale of the units.

(c) *Designee Purchase Option.* A designee other than the Commission has the option to buy the available moderate income housing units in a development before the end of the priority period for the initial or subsequent sale of the units. The Department shall adopt regulations governing allocation of units if more than one designee applies to exercise an option under this subsection.

(d) *Same Price Negotiation.* If a designee exercises its purchase option, the designee may make the purchase for the initial sale price per unit or negotiate a different price for a larger or enhanced unit.

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(e) *Assignment of Option.* An option under this section may be assigned to persons of moderate income who are eligible for housing assistance under any Federal, State or local program.

(f) *Notice of Availability.* The Department shall notify all designees promptly after receiving notice from a seller of the availability of moderate income housing units. Within ten days of receiving notice from the Department, the designee shall notify the seller and the Department of its intent to exercise its option.

(g) *Limit on Rental Units:*

(1) If moderate income housing units are sold or leased to a designee other than the Commission, the designee may not offer for rent more than 40 percent of the units. The 40 percent limit does not apply to moderate income housing units in planned senior communities or age-restricted adult housing developments.

(2) If the Commission is the designee or if the County retains ownership of moderate income housing units, the Commission or the County may not offer for rent more than 25 percent of the units. The 25 percent limit does not apply to moderate income housing units in planned senior communities or age-restricted adult housing developments.

(h) *Units Offered through Department.* A moderate income housing unit offered for sale or rent by a designee must be offered through the Department to holders of a certificate of eligibility. Except as provided in subsection (j) of this section the moderate income housing unit must be offered at a price or rental rate not to exceed the initial price or rental rate established under section 13.403 of this subtitle.

(i) *Units to Be Maintained.* A designee offering a moderate income housing unit for rent shall maintain the unit in good condition at all times. The designee shall comply with any applicable home owner association restrictions or covenants concerning improvements to or maintenance of the unit.

(j) *Co-Ownership Purchases:*

(1) If a designee purchases a moderate income housing unit the designee may sell the unit without restriction as to price if the designee enters into a written agreement with the Department providing that:

(i) The designee will sell a co-ownership interest in the unit to a holder of a certificate of eligibility for a price not to exceed the initial sale price;

(ii) Upon resale of the unit, any net proceeds received by the designee shall be used to purchase a unit for resale or rent to an eligible purchaser or another designee;

(iii) The designee may resell its interest in the unit only if the development includes, at the time of resale by the designee, at least the minimum number of moderate income housing units required by the zoning regulations when the development was constructed.

(2) The resale of a unit subject to a co-ownership agreement is not subject to the restrictions of this subtitle.

(3) The Department shall prepare a standard agreement to be used by a designee that wishes to enter into an agreement under this subsection. The standard agreement shall not be used until approved by resolution of the County Council. If the Council fails to act on the standard agreement within 60 days after receiving it, the failure to act constitutes approval.

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(C.B. 93, 1996; C.B. 38, 2001, § 1; C.B. 59, 2001; C.B. 22, 2006, § 2; C.B. 74, 2007, § 1)

Sec. 13.408. - Foreclosures; waiver.

(a) *Notice to Department.* Before a moderate income housing unit is sold in foreclosure proceedings, the person authorized to make the sale shall notify the Department by certified mail of the time, place, and terms of the sale. The notice shall be set not later than ten days before the date of the sale.

(b) *Restrictions Terminate after Sale.* If a moderate income housing unit is sold in foreclosure proceedings, the restrictions of this subtitle shall terminate and, if notice was received under subsection (a) of this section, the County Executive shall execute a release of the covenants on the property. Proceeds of the sale of the moderate income housing unit are paid to the County as follows:

(1) For a unit originally offered for sale, all proceeds in excess of the initial sale price at the time of the foreclosure sale, plus the reasonable and actual costs and fees of foreclosure; and

(2) For a rental unit, all proceeds attributable to the unit that are in excess of the initial sale price that would have been permitted if the unit had been originally offered for sale, as determined by the Department, plus the reasonable and actual costs and fees of foreclosure attributable to the rental unit.

(c) *Variance or Waiver of Restrictions.* The County Executive may vary or waive the restrictions on the resale price or subsequent rental rates for a moderate income housing unit sold at foreclosure sale if the restrictions conflict with the requirements of a Federal or State housing program that affords eligible households the opportunity to buy or rent a moderate income housing unit.

(C.B. 93, 1996; C.B. 38, 2001, § 1; C.B. 59, 2001; C.B. 22, 2006, § 2)

Sec. 13.409. - Regulations.

The Department shall adopt, in accordance with the Administrative Procedure Act, the regulations necessary to implement and administer this subtitle, including regulations to establish:

- (1) The form of a co-ownership agreement;
- (2) Criteria for determining the eligibility of prospective purchasers or renters of moderate income housing units;
- (3) A process for the selection and notification of eligible purchasers;
- (4) Standard terms of moderate income housing unit agreements;
- (5) Criteria for determining the resale price of a moderate income housing unit and procedures for the subsequent resale;
- (6) Criteria for determining designees;
- (7) Minimum specifications for moderate income housing units;
- (8) Criteria governing allocation of units if more than one designee applies to exercise an option under subsection 13.407(c) of this subtitle;
- (9) A co-ownership program for designees in accordance with subsection 13.407(j) of this

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subtitle;

(10) Criteria for the sale or rental of a moderate income housing unit under section 13.407 of this subtitle;

(11) Criteria for administering the moderate income housing unit community revitalization program; and

(12) Criteria for subsidy funds created by Continuing Care Retirement Communities under subsection 13.402(l) of this subtitle.

(C.B. 93, 1996; C.B. 38, 2001, § 1; C.B. 59, 2001; C.B. 66, 2003, § 1; C.B. 22, 2006; C.B. 74, 2007, § 1)

Sec. 13.410. - Appeals.

A party aggrieved by a decision of the Department issued under this subtitle may, within 30 days of the decision, appeal the decision to the Howard County Board of Appeals according to its rules of procedure.

(C.B. 93, 1996; C.B. 38, 2001, § 1; C.B. 59, 2001)