

FAIRFAX COUNTY BOARD OF SUPERVISORS'
COUNTYWIDE AND TYSONS URBAN CENTER WORKFORCE DWELLING UNIT
ADMINISTRATIVE POLICY GUIDELINES

Adopted February 23, 2021

The Countywide and Tysons Urban Center Workforce Dwelling Unit Administrative Policy Guidelines (“WDU Policies”) are established to guide the provision of affordable housing for persons with low- to moderate- incomes, as set forth in the adopted Comprehensive Plan. The WDU Policies are designed to promote a fuller range of housing choices by encouraging the proffering of Workforce Dwelling Units (WDUs) and the construction and continued existence of dwelling units affordable to households in accordance with the Guidelines for Provision of Workforce Dwelling Units in the Housing Element of the Comprehensive Plan’s Policy Plan.

The Board of Supervisors (Board) hereby adopts these WDU Policies as the preferred administrative tool to administer and regulate WDUs that are proffered in conjunction with a rezoning application. As such, proffered WDUs accepted in conjunction with a rezoning for property located Countywide and within the Tysons Urban Center must include a proffer of compliance with these WDU Policies. If a specific development warrants consideration of an alternative scheme for the administration and continued availability of WDUs, the Board will consider such variations when the applicant can clearly demonstrate that the alternate proposal furthers the WDU policies set forth in the Comprehensive Plan and offers appropriate controls to properly regulate, monitor, administer, and manage such units. Such controls must be provided in sufficient detail to clearly demonstrate that the WDUs will function in the manner intended by the provisions of the preferred administrative tools set forth below.

For any WDUs proffered or conditioned before the adoption of this Policy, the owner may elect to voluntarily comply with the provisions of this Policy, as long as that election does not conflict with any proffered conditions. To facilitate such voluntary compliance, the owner must submit a request to the Director of the Zoning Evaluation Division (ZED) of the Department of Planning and Development (DPD), who will determine whether such request conforms to the proffered conditions applicable to the property. However, if an applicant does not elect to comply with the WDU Policies, WDUs must be provided in accordance with the applicable proffers or development conditions and will be administered in accordance with the Workforce Dwelling Unit Administrative Policy Guidelines dated October 15, 2007, or the Tysons Urban Center Workforce Dwelling Unit Administrative Policy Guidelines dated June 22, 2010, as applicable.

The following specific administrative policy guidelines are forth below to administer uniformly and to ensure the continued availability of WDUs:

1. Integration and Dispersion

WDUs should be integrated into and dispersed throughout the development to the extent feasible and should be located in comparably desirable locations as market rate units. The number of WDUs is determined based on the entire number of for-sale and/or rental units within a development. Each unit type of building is not required to provide the WDU expectation on its own. Subject to adequate integration and disbursement within the development, WDUs may be distributed in a manner that permits smaller or larger percentage within a building, phase, or unit type. WDUs generated by for-sale units may be provided in rental units if the WDUs are provided at the commitment level applicable for the for-sale policy but offered for rent at the income tiers applicable of the rental policy.

2. Workforce Dwelling Unit Floor Area

The minimum gross floor area for any WDU should be in accordance with the minimum size stated in the Guidelines for Provision of Workforce Dwelling Units in the Policy Plan and below. In accordance with the Policy Plan, the bedroom mix of WDUs located in the Tysons Urban Center should be proportional to the market rate unit bedroom mix. For WDUs outside of the Tysons Urban Center, the average size (in square feet) of the WDUs should be within 10 percent of the square footage of the average market rate unit with the same number of bedrooms. Additionally, the bedroom count mix of the market rate units within the project as a whole must be noted on all such approved plats and/or plans. WDUs should meet the following minimum unit sizes:

Efficiency Unit:	450 square feet
1-Bedroom Unit:	600 square feet
2-Bedroom Unit:	750 square feet
3-Bedroom Unit	900 square feet
4-Bedroom Unit	1,050 square feet

The floor area for dwellings will be determined in accordance with the gross floor area definition of the Zoning Ordinance, as modified for cellar space in Planned Districts, except the following features will not be deemed gross floor area: balconies, porches, decks, breezeways, stoops and stairs which may be roofed but which have at least one open side; or breezeways which may be roofed but which have two open ends. An open side or open end may have up to 50 percent of the total feature area between the side(s), roof, and floor enclosed with railings, walls, or architectural features.

Nothing included herein precludes the developer from providing WDUs that contain larger sized units, in terms of the square footage and/or the number of bedrooms.

3. Designation of Workforce Dwelling Units on Approved Plans

Except for multiple family rental developments under single ownership, each approved site plan, record subdivision plat, condominium plat/plan, and/or building plan must designate the specific lots or units that are the WDUs and any bonus market rate dwelling units. Such plans and/or plats must also provide a tabulation of any bonus units and/or bonus floor area achieved on the site as a result of the provision of WDUs. If there is any change in the location of a WDU after the original approval of a site plan or subdivision, the owner must amend the approved plats and/or plans to reflect the designation of the alternate WDU before a Residential Use Permit (RUP) will be issued for the new WDU.

In the case of a multiple family rental development that is under single ownership, the site plan and/or record subdivision plats must identify the development as a rental project and must note the total number of WDUs and the number of bonus market rate units and/or bonus floor area provided.

For all for-sale developments, the floor area and bedroom count of each WDU must be noted on each approved site plan, subdivision plat, condominium plats/plans and/or building plan.

For multiple phased developments where all WDUs will not be provided in the first section of the development, the site plan and/or record subdivision plat for the first section and all subsequent sections must contain a note identifying in which section(s) the WDUs will be or have been provided and a total of all WDUs for which such site plan(s) and/or record subdivision plat(s) have been approved. If WDUs are approved to be provided at a location that is not on the same lot as the market rate dwelling units with which the WDUs are associated, all site plans, subdivision plats and/or building plans for all associated properties must include a note identifying the site plan(s) and/or subdivisions(s) that include the WDUs.

Any WDU that is accepted as part of proffered conditions associated with a rezoning application and included on an approved site plan and recorded subdivision plat will be deemed a feature shown for purposes of Virginia Code §15.2-2232 and, as such, will not require further 2232 review or approval if the Board or its designee acquires or leases any such units.

4. Condominium Developments

- A. If a building is initially built as a condominium, then the WDUs within that building should also be for-sale units and should be specifically identified on the approved site plan and building plans and should be designated as such as part of the recorded condominium declaration and disclosed in the required public offering statement.
- B. If a building is initially built as a rental project and such building subsequently converts to a condominium, then:
 - (1.) The development must provide for-sale WDUs in accordance with the for-sale guidelines in terms of percentage of units and income tiers.
 - (2.) The WDUs must be specifically identified by unit number as part of the recorded condominium declaration.
 - (3.) The sales price for such WDUs being converted must be established by the County Executive under the WDU Policies. If the owner of such condominium conversion elects to renovate the WDUs, the County Executive will consider the reasonable cost of labor and materials associated with such renovation.
 - (4.) The rental tenant occupants of the WDUs subject to the condominium conversion must have the right to purchase the dwelling unit they occupy at the sales price established by the County Executive under these WDU Policies. Subsequently, the Board or its designee must have the right to purchase some or all of the WDUs that are not purchased by such rental tenants at the sales price established for such units by the County Executive under these WDU Policies. Such units must be offered to the Board or its designee and purchased by it in accordance with the provisions set forth below for for-sale WDUs.

5. Limitations on Building Permits and Residential Use Permits

Building Permits may be issued for all of the dwelling units in a development. RUPs, however, must not be issued for more than 75 percent of the total number of units in a for-sale development until RUPs have been issued for at least 75 percent of the WDUs in the applicable phase of the development. Additionally, the required Notice of Availability and Sales Offering Agreement must be submitted before issuance of the first RUP for any WDU in the development.

The limit on the issuance of RUPs does not apply to a development comprised solely of rental multiple family dwelling units. The required Notice of Availability and Sales Offering Agreement, however, must be submitted before the issuance of the first RUP for any dwelling unit in the development.

6. Workforce Dwelling Unit Specifications

- A. The Director of the Department of Housing and Community Development (DHCD) may develop specifications for the prototype WDU products both for -sale and rental. All building plans for

WDUs are to comply with such prototype standards for design and construction specifications. Any applicant or owner may voluntarily construct WDUs to a standard that exceeds such specifications. If WDUs are constructed in unit types other than multiple family dwelling units that exceeds the minimum specifications, only 50 percent of any added cost for exterior architectural compatibility upgrades (such as brick façade, shutters, bay windows, etc.) and additional landscaping on the WDU lot may be included within recoverable costs, up to a maximum of two percent of the sales price of the WDU. The allowance for additional landscaping may not exceed one-half of the above-noted two percent maximum.

- B. In the administration of WDUs, the design and construction specifications established in both rental and sales prices will be structured to make the units affordable to households whose incomes are subject to the income tiers specified in these WDU Policies.

7. Administration of For-Sale Workforce Dwelling Units

- A. On October 30, 2018, the Board delegated its authority to administer and regulate the sale of WDUs to the Fairfax County Redevelopment and Housing Authority (FCRHA). The delegation of authority to the FCRHA includes the Board's right to acquire certain WDUs under the Workforce Dwelling Unit Policies. The FCRHA may adopt reasonable rules and regulations to assist in the regulation and monitoring of the sale and resale of WDUs, which may include giving a priority to persons who live or work in Fairfax County.
- B. The FCRHA has an exclusive right to purchase up to one-third of the for-sale WDUs within a development for a 90- day period beginning on the date that a complete Notice of Availability and Sales Offering Agreement, submitted by the owner, is executed by the DHCD. The notice must advise the FCRHA that a particular WDU or units are or will be completed and ready for purchase. The notice must be in the form prescribed by the DHCD and identify the unit(s) being offered; the number of bedrooms, the floor area, and amenities for each unit; the approved sales price for each unit; and the evidence of issuance of a building permit for the unit(s). Such written notice may be sent by the owner at any time after the issuance of a building permit for the WDU and approval of the sales price for the unit by the County Executive, but it must be sent before the issuance of the first RUP for any WDU in the development. If the FCRHA elects to purchase a particular WDU, the DHCD must so notify the owner in writing and an all-cash closing must occur within 30 days from the end of the respective ninety day period, as long as a RUP has been issued for the unit before closing.
- C. The remaining two-thirds of the for-sale WDUs within a development, and any units that the FCRHA does not elect to purchase, are to be offered for sale exclusively for a 90-day period to persons who meet the income criteria established by the DHCD, and who have been issued a Certificate of Qualification by the DHCD. This 90-day period begins on the date that a complete Notice of Availability and Sales Offering Agreement, submitted by the owner, is executed by the DHCD. The notice must advise the DHCD that a particular WDU or units are or will be completed and ready for purchase. The notice must be in the form prescribed by the DHCD and include the information described in Paragraph B above. In addition, the owner must provide marketing materials concerning the units and the development to be used in the sale of the units. Such written notice may be sent by the owner at any time after the issuance of a building permit for the WDU and approval of the sales price for the unit by the County Executive. After the first 30 days of the 90 day period referenced in this paragraph, the FCRHA may elect to purchase up to one-half of the WDUs offered under this paragraph by giving written notice of its election to do so for those units

then available within the 90-day period, which notice must provide for an all-cash closing within 30 days from the end of the 90-day period, as long as a RUP has been issued before closing.

- D. After the expiration of the 60 days of the 90-day period(s) referenced in Paragraphs B and C above, the WDUs not sold are to be offered for sale to nonprofit housing groups, as designated by the County Executive, subject to the established WDU prices and the requirements of the applicable proffered conditions. The nonprofit housing groups must have a 30-day period within which to commit to purchase the units. This 30-day period begins on the date of receipt of written notification from the owner, sent by registered or certified mail, advising them that a particular WDU is or will be ready for purchase. The notice must state the number of bedrooms, floor area and amenities for each unit offered for sale. Such written notice may be sent by the owner any time after the commencement of the 90-day period referenced in Paragraphs B and C above. If a nonprofit housing group elects to purchase a particular WDU, it must so notify the owner in writing and an all-cash closing must occur within 30 days from the end of the 30-day period, as long as a RUP has been issued before closing.
- E. After the expiration of the time period(s) referenced in Paragraphs B, C, and D above, any WDU not sold may be offered to the general public as a for-sale unit, subject to established WDU prices and the requirements of the proffered conditions.
- F. A schedule of County-wide cost factors and the cost calculation formula used to determine sales prices will be established and may be amended periodically by the County Executive, based upon a determination of all ordinary, necessary, and reasonable costs required to construct the various WDU prototype dwellings by private industry in Fairfax County, after consideration by the County Executive of written comment from the public, the DHCD, and other information that may be available, such as the area's current real estate market and economic conditions.
- G. The sales price will include, among other costs, a marketing and commission allowance of one and one-half (1 ½) percent of the sales price for the WDU, provisions for builder-paid permanent mortgage placement costs and buy-down fees, and closing costs, except pre-paid expenses required at settlement, but will not include the cost of land associated with the WDU. The distribution of for-sale WDUs among income affordability tiers must be in accordance Guidelines for the Provision of WDUs in the Policy Plan or, as applicable, the recommendations in the Area Plans.
- H. There will be a semiannual review and possible adjustment in WDU sales prices that will be applied to the WDU sales prices initially established by the County Executive adjusted according to the percentage change in the various cost elements as indicated by the U.S. Department of Commerce's Composite Construction Cost Index and/or such other comparable index or indices selected by the County Executive.

8. Administration of Rental Workforce Dwelling Units

- A. On October 30, 2018, the Board delegated its authority to administer and regulate rental WDUs to the FCRHA. The FCRHA may adopt reasonable rules and regulations to assist in the regulation and monitoring of the rental of WDUs, which may include giving a priority to persons who live or work in Fairfax County. The regulation and monitoring of rental WDUs be by the FCRHA on behalf of the Board.

For the initial rentals of units, the owner must send the FCRHA a Notice of Availability and Rental Offering Agreement in a form prescribed by the DHCD, to advise that a particular WDU or units

are or will be completed and ready for rental. The FCRHA has an exclusive right to lease up to one-third of the rental WDUs. Such Notice of Availability and Rental Offering Agreement must be submitted to the DHCD before the issuance of the first RUP for any dwelling within the development. The notice must state the number of bedrooms, floor area, amenities, and rent for each unit offered for rental. Such written notice may be sent by the owner at any time after the issuance of a building permit for the WDU(s) that is being offered for rental. If the FCRHA elects to assume control for a particular WDU, the FCRHA must so notify the owner in writing within 30 days from the execution of the notice by the FCRHA. At the owner's option, the FCRHA may lease additional rental units at the WDU rent or market rent as appropriate.

The remaining two-thirds of the rental WDUs within a development are to be offered to persons who meet the established income criteria.

- B. Any WDUs required pursuant to the proffered conditions that are not leased by the FCRHA are to be leased for a minimum 6-month period with a maximum renewable term of lease for 1 year to tenants who meet the eligibility criteria established by the DHCD. The lease agreements for such units must include conditions that require the tenant to occupy the unit as his or her domicile, that prohibit the subleasing of the unit, that require continued compliance with the applicable eligibility criteria, and that require the tenant to annually verify under oath, on a form approved by the DHCD, his or her annual income and such other facts that the landlord may require in order to ensure that the tenant continues to meet the applicable eligibility criteria. WDUs not leased by the FCRHA may not be subleased.
- C. Eligible tenants must continue to meet the income criteria established by the DHCD to continue occupancy of the WDU. However, a tenant who no longer meets such criteria may continue to occupy a WDU until the end of the lease term.
- D. By the end of each month, the owner of a development containing rental WDUs leased to individuals other than the FCRHA must provide the DHCD with a statement verified under oath that certifies the following as of the first of such month:
 - (1.) The address and name of the development and the name of the owner.
 - (2.) The number of WDUs by bedroom count and floor area, other than those leased to the ~~Board~~ FCRHA, which are vacant.
 - (3.) The number of WDUs by bedroom count and floor area that are leased to individuals other than the FCRHA. For each such unit, the statement must contain the following information:
 - (i) The unit address, bedroom count and floor area.
 - (ii) The tenant's name and household size.
 - (iii) The effective date of the lease.
 - (iv) The tenant's (household) income as of the date of the lease.
 - (v) The current monthly rent.
 - (4.) That to the best of the owner's information and belief, the tenants who lease WDUs meet the eligibility criteria established by the DHCD.

(5.) The owner will provide the DHCD with a copy of each new or revised annual tenant verification obtained from the renters of WDUs under Paragraph B above.

E. Countywide and Tysons rental prices will be established by the County Executive such that rental WDUs are affordable to households, as set forth in this policy. The distribution of WDUs among affordability tiers must be in accordance with the Guidelines for the Provision of Workforce Dwelling Units in the Policy Plan or, as applicable, the recommendations in the Area Plans.

Nothing in these WDU Policies may preclude an owner/developer from providing a higher percentage of Workforce Dwelling Units or from providing required units to serve households in the lower income tiers than those required. The base figures must be adjusted by the following factors for different Workforce Dwelling Unit sizes based on the number of bedrooms in the dwelling unit:

The WDU maximum rents are calculated based on the AMI, adjusted for unit size, and household size. The 2020 AMI for a household of four is \$126,000 as set by the US Department of Housing and Urban Development.

The maximum rents are calculated by multiplying the AMI by the income tier served by the household size adjustment factor and dividing the product by 12, then multiplying the result by 25 percent and rounding up to the nearest dollar.

The example below shows the maximum rent for an efficiency at 60 percent of the AMI.

1. $\$126,000 \times 60\% \times 70\% = \$52,920$
2. $\$52,920 / 12 = \$4,410$
3. $\$4,410 \times 25\% = \$1,103$

Monthly Rent (Excluding Utilities)

Unit Size (Number of Bedrooms)	Household Size Adjustment Factor	60% AMI	70% AMI	80% AMI
Efficiency	70%	\$1,103	\$1,286	\$1,470
1 Bedroom	85%	\$1,339	\$1,562	\$1,785
2 Bedroom	100%	\$1,575	\$1,838	\$2,100
3 Bedroom	115%	\$1,811	\$2,113	\$2,415
4 Bedroom	130%	\$2,048	\$2,389	\$2,730

An owner/developer may provide a higher percentage of WDUs or units to serve households in the lower income tiers than those required.

F. There will be a semiannual review and possible adjustment in WDU rental prices that will be applied to the WDU rental prices established by the County Executive, adjusted according to the percentage change in the various cost elements as indicated by the U. S. Department of Commerce's Composite Construction Cost Index and/or such other comparable index or indices that are selected by the County Executive. In setting adjusted rental prices, the County Executive may establish different rental classifications and prices that reflect the age and condition of the various rental developments within Fairfax County.

9. Term of Price Control of Workforce Dwelling Units

- A. For for-sale WDUs, the price for subsequent resale will be controlled for a period of 30-years after the initial sale. However, upon any resale, conveyance, and/or transfer to a new owner of such WDU within the initial 30-year period of control, the prices for each subsequent resale and/or transfer to a new owner will be controlled for a new 30-year period commencing on the date of such resale, conveyance, and/or transfer of the WDUs. Each initial 30-year control period and each renewable subsequent 30-year control period may be referred to as a sales price control period. For any WDU that is owned for an entire 30-year control period by the same individual(s), the sales price control term will expire at the end of that period and the first sale of the unit after such expiration must be in accordance with the provisions of these WDU Policies.
- B. For rental WDUs, the rents will be controlled for a period of 50 years from the date of issuance of the RUP for each WDU in the development.
- C. For condominium conversion WDUs, regardless of the length of time the unit was offered as a workforce rental unit, the initial term of price control for the first sale of the unit after the conversion from a rental unit must be for a period of thirty (30) years from the date of the initial sale. Subsequent resale of such units must be administered under the provisions of Paragraph A above.

10. Initial Sale and Re-Sale of Workforce Dwelling Units

- A. The initial sale of a WDU, including the initial sale of a condominium conversion unit, must be for a sales price that is approved by the County Executive and must be made only to a person or household that meets the applicable income qualifications for the occupancy of a WDU and have been issued a Certificate of Qualification by the Director of the DHCD. It is a violation of the proffered conditions associated with a WDU to purchase a unit or to sell it or otherwise transfer or pledge it as security for an amount higher than the approved sales price during any period of price control.
- B. The owner of each unit to be resold, conveyed, or otherwise transferred to another owner or to be converted from a rental to a condominium must provide the DHCD with written notification sent by certified mail that the WDU is being offered for resale, conveyance, or conversion. The FCRHA has the exclusive right to purchase such unit at a purchase price that does not exceed the control price of the unit at that time. The DHCD must notify the owner in writing within 30 days after receipt of the written notification from the owner advising whether FCRHA will enter into a contract to purchase the unit on the form approved by the DHCD and subject to certain conditions, such as acceptable condition of title and acceptable physical and environmental conditions. An all-cash closing must occur within 90 days after receipt by the DHCD of the written notification of the owner offering the unit for sale, conveyance, or conversion, if all such conditions of the contract are satisfied.

If the FCRHA does not elect to purchase an available for-sale WDU, for the first 60 days thereafter that each such individual WDU is offered, the for-sale unit is to be first be offered exclusively through the DHCD to persons who meet the DHCD's criteria, and who have been issued a Certificate of Qualification by the DHCD. Upon the expiration of the 60-day period, the unit may be offered for sale to the general public to persons who meet income requirements of these WDU policies and at the current controlled price.

- C. Units offered for sale must not be offered for a price greater than the original selling price plus a

percentage of the unit's original selling price equal to the increase in the U. S. Department of Labor's Consumer Price-Urban Area Index or such other index selected by the County Executive, plus the lesser of the current fair market value or the actual original cost of certain improvements as determined by the DHCD in accordance with applicable regulations to be (a) substantial and appropriate replacements or improvements of existing housing components and/or (b) structural improvements made to the unit between the date of original sale and the date of resale, plus an allowance for payment of closing costs on behalf of the subsequent purchaser that are paid by the seller. Those features deemed to be substantial and appropriate replacements or improvements of housing components and structural improvements are as set forth by the DHCD. No increase in sales price is allowed for the payment of brokerage fees associated with the sale of the unit, except that with respect to units purchased and resold by the FCRHA, an increase of one and one half percent of the resale price is allowed for marketing and transaction costs, and with respect to resale by other owners, an increase of one and one-half percent of the sales price is allowed as a fee to be paid to a real estate broker or agent licensed to conduct residential real estate transactions in the Commonwealth of Virginia who meets the qualifications determined by the DHCD and who serves as a dual agent for both the qualified buyer and the seller in the resale of the WDU in accordance with sales procedures approved by the DHCD. The one and one-half percent fee must be paid to such real estate broker or agent by the seller at the time of settlement of the resale of the WDU as part of the disbursement of settlement proceeds.

- D. For the initial sale of a WDU after the expiration of the term of price control established for the unit, the FCRHA has the exclusive right to purchase the unit. The owner of each such unit must provide the DHCD with written notification sent by registered or certified mail that the unit is for sale. If the FCRHA elects to purchase such unit, the DHCD must so notify the owner in writing within 30 days of receipt of the written notification from the owner and the all cash closing must occur within 60 days thereafter.

In all instances, whether or not the FCRHA elects to purchase such unit, one-half of the amount of the difference between the net sales price paid by the purchaser at such sale and the owner's purchase price plus a percentage of the unit's selling price equal to the increase in the U.S. Department of Labor's Consumer Price-Urban Area Index, plus the lesser of the current fair market value or the actual original cost of certain improvements as determined by the DHCD in accordance with applicable regulations to be (a) substantial and appropriate replacements or improvements of existing housing components and/or (b) structural improvements made to the unit between the date of the owner's purchase and the date of resale is to be contributed to the Fairfax County Housing Trust Fund to promote housing affordability in Fairfax County as part of the disbursement of settlements proceeds. Notice of such equity interest of the Fairfax County Housing Trust Fund may be evidenced by a document recorded among the land records of Fairfax County, Virginia, encumbering any WDU. Net sales price must exclude closing costs such as title charges, transfer charges, recording charges, commission fees, points, and similar charges related to the closing of the sale of the property paid by the seller. All amounts necessary to pay and satisfy any and all liens, judgments, deeds of trust, or other encumbrances on the unit, other than the equity interest of the Fairfax County Housing Trust Fund, must be paid by the seller out of proceeds of the seller from such sale, as determined in accordance with this paragraph, or must be paid otherwise by the seller. In no event may any such amounts required to be paid by the seller reduce the amount, as determined in accordance with this paragraph, which is to be contributed to the Fairfax County Housing Trust Fund pursuant to this paragraph.

11. Financing Control and Foreclosure of Workforce Dwelling Units

- A. The total aggregate amount of principal and accrued interest for all financing secured by an individual for-sale WDU must not exceed the owner's purchase price (as adjusted in accordance with these WDU Policies). Any financing in excess of the owner's purchase price, as adjusted, must not be secured by any interest in the applicable individual for-sale WDU.
- B. In developments containing WDUs, WDU covenants are required to be recorded in the Fairfax County land records pursuant to the covenant provisions in section 12. The WDU covenants required under the WDU Policies must be senior to all instruments securing financing, and the covenants must be binding upon all assignees, mortgagees, purchasers, and other successors in interest, except that the covenants may be released for an individual for-sale WDU in the event of foreclosure by an Eligible Lender, as such term is defined in Paragraph C below, as and only to the extent provided for in these WDU Policies. In the event of foreclosure of a development comprised solely of rental multiple family dwelling units, where such development contains WDU, the covenants must not be released.
- C. An Eligible Lender is defined as an institutional lender holding a first-priority purchase money deed of trust on an individual for-sale WDU or a refinancing of such institutionally financed purchase money deed of trust by an institutional lender. The refinancing of a WDU may not exceed the outstanding principal balance of the existing purchase money first trust indebtedness on the unit at the time of refinancing. An Eligible Lender must have the right to foreclose on a rental project or a WDU, and the covenants on an individual WDU may terminate upon such foreclosure by the Eligible Lender or upon the sale of the WDU by a trustee on behalf of the Eligible Lender to a bona fide purchaser for value at a foreclosure sale if all the requirements set forth in these WDU Policies, the applicable proffers or development conditions, the covenants, and all other applicable regulations with respect to such foreclosure sale are satisfied. Such requirements include, but are not limited to, providing the County Executive and the FCRHA with written notice of the foreclosure sale proposed and the Right to Acquire, as such term is defined in these WDU Policies.
- D. No sale, pledge of a security interest in, or other transfer or foreclosure of a WDU will affect the validity of the covenants, except as set forth in these WDU Policies.
- E. Each Eligible Lender and any other lender secured by an interest in the WDU is required to provide written notice of a foreclosure to the County Executive and the DHCD at least 90 days prior. At any time during such 90-day period, the FCRHA or a nonprofit agency designated by the County Executive must have the Right to Acquire any individual for-sale WDU. The Right to Acquire entitles the FCRHA or a nonprofit agency designated by the County Executive to acquire the WDU (s) at or before any foreclosure sale for which such notice has been given upon payment in full of the outstanding indebtedness on the WDU owed to the lender, including principal, interest, and fees that together in the aggregate do not exceed the amount of the owner's purchase price, as adjusted in accordance with this Policy, and other reasonable and customary costs and expenses (the Outstanding First Trust Debt), with no owner, prior owner, or other party, whether secured or not, having any rights to compensation under such circumstances.
- F. In the event that neither the FCRHA nor the nonprofit agency designated by the County Executive exercises the Right to Acquire and the individual for-sale WDU is sold for an amount greater than the Outstanding First Trust Debt, the remaining amount in excess of the Outstanding First Trust Debt must be paid to the Fairfax County Housing Trust Fund to promote housing affordability in Fairfax County as part of the disbursement of settlement proceeds.

12. Covenants and Deed Notification

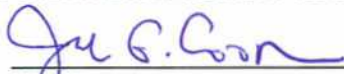
- A. In developments containing covenants that apply to WDUs and that run in favor of the FCRHA and are in the specific form prescribed by the Director of the DHCD providing, among other things, that the WDUs are subject to the provisions of these WDU Policies and any other policies established through the proffered conditions, the covenants must be recorded upon approval of the site plan or simultaneously with the recordation of the final subdivision plat or, in the case of a condominium, recorded simultaneously with the condominium declaration.
- B. The covenants must be senior to all instruments securing financing, and the covenants must be binding upon all assignees, mortgagees, purchasers, and other successors-in-interest.
- C. In developments containing for-sale WDUs, at the time of the initial sale of an individual WDU, the owner/applicant must provide in the sales contract for each WDU offered for sale a copy of the recorded covenant in favor of the FCRHA. The owner/applicant include in the deed for each WDU sold an express statement that the WDU is subject to proffered conditions setting forth specific terms and conditions and the covenants recorded pursuant to these WDU Policies with a specific reference to the deed book and the page where such covenants are recorded. Such deed may also attach a copy of the covenants. At the time of the initial sale and any resale of an individual WDU, the owner/applicant must also include in the deed for each WDU sold an express statement that the total aggregate amount of indebtedness that may be secured by the WDU is limited and that other terms and conditions apply, including, but not limited to, a right for the FCRHA or a nonprofit agency designated by the County Executive to acquire the WDU on certain terms in the event of a pending foreclosure sale.
- D. In the case of a rental project, before the issuance of the first RUP for the development and the offering for rent of any WDUs, the owner must record a covenant running with the land in favor of the FCRHA and which is on the specific form prescribed by the DHCD that provides that the WDUs are subject to proffered conditions setting forth specific terms and conditions, that no such unit may be rented for an amount that exceeds the limits set by the County Executive, that the covenant must be senior to all instruments securing permanent financing, and that the covenant must be binding upon all assignees, mortgagees, purchasers and other successors in interest.

13. Occupancy of Workforce Dwelling Units

- A. Before an individual may purchase a WDU, he or she must obtain a Certificate of Qualification from the Director of the DHCD. Before issuing a Certificate of Qualification, the DHCD will make the determination that the applicant meets the criteria established by the DHCD for low- and moderate- income persons applicable to for-sale WDUs.
- B. Before an individual may rent a WDU, he or she must meet the eligibility criteria established by the DHCD for persons of low and moderate income. The landlord/owner is responsible for determining that the tenant meets the eligibility criteria applicable to tenants in rental WDUs.
- C. Except for circumstances specifically set forth in these WDU Policies, it is a violation of these WDU Policies for someone to sell a WDU to an individual who has not been issued a Certificate of Qualification by the DHCD.

- D. Except for circumstances specifically set forth in these WDU Policies, it is a violation of these WDU Policies for someone to rent or continue to rent a WDU to an individual who does not meet or fails to continue to meet the income eligibility criteria established by the DHCD.
- E. Purchasers or renters of WDUs must occupy the units as their domicile and must provide an executed affidavit on an annual basis certifying their continuing occupancy of the units. Owners of for-sale WDUs must forward such affidavit to the DHCD on or before June 1 of each year that they own the unit. Renters must provide such affidavit to their landlords/owners by the date that may be specified in their lease or that may otherwise be specified by the landlord/owner.
- F. In the event the renter of a WDU fails to provide his or her landlord/owner with an executed affidavit as provided for in the preceding paragraph within 30 days of a written request for such affidavit, then the lease will automatically terminate, become null and void, and the occupant will must vacate the unit within 30 days of written notice from the landlord/owner. It is a violation of these WDU Policies for an owner of a WDU to fail to provide the executed affidavit required by Paragraph E above.
- G. In the event a renter of a WDU no longer meets the eligibility criteria established by the DHCD, as a result of increased income or other factors, then at the end of the lease term, the occupant will vacate the unit.
- H. If a renter fails to occupy a WDU for a period in excess of 60 days, unless such failure is approved in writing by the DHCD, a renter will be in default. The lease will automatically terminate and the occupant must vacate the unit within 30 days of written notice from the landlord/owner.
- I. Notwithstanding the provisions of Paragraphs F, G, and H above, if the landlord/owner of a rental project immediately designates an additional comparable unit as a WDU to be leased under the controlled rental price and requirements of these WDU Policies, the renter of such unit referenced in Paragraphs F, G, and H above may continue to lease such unit at the market value rent.

THIS BOARD POLICY for the Countywide and Tysons Urban Center Workforce Dwelling Unit Administrative Guidelines is effective on this 23rd day of February, 2021.



Jill Cooper

Clerk to the Board of Supervisors