



[www.legalaiddc.org](http://www.legalaiddc.org)  
1331 H Street, NW  
Suite 350  
Washington, DC 20005  
(202) 628-1161

---

**Testimony of Simon Wentzell  
Staff Attorney, Housing Law Unit  
Legal Aid DC**

**Before the Committee on Housing  
Council of the District of Columbia**

**Performance Oversight Hearing Regarding the Department of Housing and  
Community Development and the Housing Production Trust Fund**

**March 3, 2025**

Legal Aid DC<sup>1</sup> submits the following testimony regarding the performance of the Department of Housing and Community Development (DHCD) as well as the Housing Production Trust Fund (HPTF). My testimony today will focus on the ways DHCD, through the HPTF, can empower tenants and ensure that the residents of the District have access to quality housing that is affordable and deeply affordable for tenants who live under 30% AMI. The Council can empower tenants by taking the following steps:

1. Ensure TOPA remains a powerful tool by rejecting the new exemptions proposed by the RENTAL Act;
2. Prevent landlords from evading TOPA through bankruptcy;
3. Require that the HPTF set aside thirty percent of its funds each year for projects that preserve aging housing stock that need rehabilitation; and
4. Monitor the rollout of the RentRegistry database to ensure that it is useful for tenants.

---

<sup>1</sup> Legal Aid DC is the oldest and largest general civil legal services program in the District of Columbia. The largest part of our work is comprised of individual representation in housing, domestic violence/family, public benefits, and consumer law. We also work on immigration law matters and help individuals with the collateral consequences of their involvement with the criminal legal system. From the experiences of our clients, we identify opportunities for court and law reform, public policy advocacy, and systemic litigation. For more information, visit [www.LegalAidDC.org](http://www.LegalAidDC.org).

## **TOPA is One of DC's Most Powerful Tools to Preserve Affordable Housing**

TOPA was created to empower tenants in DC. Tenants then use that power in a variety of ways to improve their community. First off, tenants use their power to preserve affordable housing. Between 2006 and 2020, 16,224 affordable housing units were developed or preserved with the help of TOPA.<sup>2</sup> This affordability is maintained through the use of subsidized funding programs, such as the Low-Income Housing Tax Credit, or agreements to preserve rent control on the property.<sup>3</sup>

Second, tenants use their power to improve their housing conditions. Almost 15,000 units were renovated or repaired under TOPA agreements from 2006 to 2020,<sup>4</sup> resulting in 15,000 households whose lives were improved simply by giving them a seat at the table when their landlord wanted to sell their home. Finally, tenants use their power to ensure they can stay in their community and are not displaced. Tenants are able to use TOPA to push back against displacement caused by gentrification and stay in their community.<sup>5</sup>

However, TOPA's effectiveness is hampered when landlords break the law by selling properties without honoring tenants' TOPA rights.<sup>6</sup> Legal Aid has seen a troubling trend of more and more landlords declaring bankruptcy to avoid tenants exercising their rights under TOPA. Landlords are also trying to evade TOPA by interfering with tenants' right to organize. Now, more than ever, stronger TOPA protections are the key to preserving affordable housing in DC. Creating new TOPA exemptions will only accelerate the loss of affordable housing.

---

<sup>2</sup> Coalition for Nonprofit Hous. and Econ. Development, "Sustaining Affordability: The Role of the Tenant Opportunity to Purchase Act (TOPA) in Washington, DC," (Nov. 15, 2023), 6, <https://cnhed.org/news/cnhed-releases-comprehensive-analysis-of-dcs-tenant-opportunity-to-purchase-act-topa/> (hereinafter "CNHED")

<sup>3</sup> CNHED, pg. 24

<sup>4</sup> CNHED, pg. 35

<sup>5</sup> CNHED, pg. 8

<sup>6</sup> See, Legal Aid DC "Legal Aid DC Sues Minnesota Commons Landlord for Violating Tenants' Rights in Property Sale" <http://www.legalaiddc.org/blogs/minnesota-commons-topa-lawsuit>

## **The Proposed Exemptions to TOPA in the Mayor's RENTAL Act Will Lead to Further Loss of Affordable Housing**

The Mayor's recently circulated RENTAL Act will weaken TOPA and lead to further loss of affordable housing. The proposed changes to subparagraph D.C. Code § 42-3404.02(c)(2)(H) and (P) would effectively exempt from TOPA any property that is owned by a partnership or limited liability company. These types of ownership structures are extremely common for large multifamily residential properties.<sup>7</sup>

The existing provisions of TOPA currently create a narrow exemption allowing a landlord to use the Low-Income Housing Tax Credit to bring in new capital investments. The proposed exemption would swallow TOPA altogether. Under this proposed exemption, TOPA would not apply when any new partner or investor provides capital contributions. It also allows partners and investors to exit ownership without triggering TOPA so long as they had at some point made a capital contribution.<sup>8</sup> This change would allow for the sale of a property if the buyer promises to inject just enough capital to replace the front door while the seller replaces the back door before they leave. That new ownership would have no further responsibilities to the tenants. Without entering into any agreement in the TOPA process, new ownership would be able to raise tenants rent to unaffordable levels, further displacing tenants, once any LIHTC or other affordability covenants have expired. One of the findings of the CNHED study was that the agreements can ensure onsite temporary relocation to prevent displacement during renovations.<sup>9</sup>

In the past, we have seen landlords try to use these kinds of tactics to get around TOPA. For example, in one case, a landlord tried to avoid complying with TOPA by creating a holding company.<sup>10</sup> Then, in two separate transactions, the landlord transferred

---

<sup>7</sup> See e.g., Nat'l Multifamily Hous. Council, "NMHC 50 Largest Apartment Owners," <https://www.nmhc.org/research-insight/the-nmhc-50/top-50-lists/2024-top-owners-list/>

<sup>8</sup> "Rebalancing Expectations for Neighbors, Tenants, and Landlords (RENTAL) Act of 2025," <https://rentalact.dc.gov/dc/sites/rentalact/RENTALActLegislation2.12.25.pdf>

<sup>9</sup> CNHED, pg. 34

<sup>10</sup> *Richman Towers Tenants' Ass'n v. Richman Towers LLC*, 17 A.3d 590, 594 (D.C. 2011)

ownership of that holding company to a developer and a broker.<sup>11</sup> The landlord refused to issue a TOPA notice, claiming that this transaction was not a sale.<sup>12</sup> In that case, the Court of Appeals ultimately found that the tenants were entitled to their TOPA rights.<sup>13</sup> These broad new exemptions in the RENTAL Act would open the door to more TOPA evasions and would create confusion about what kinds of transactions entitle tenants to TOPA.

New subparagraph 42-3404.02(c)(2)(R) exempts TOPA from the sale of properties where some of the most vulnerable tenants in the District live. Subparagraph 42-3404.02(c)(2)(R) exempts the sale of properties where there is an affordability covenant which requires that at least 50% of the units in the building shall be affordable to households earning 80% or less of the area median income.<sup>14</sup> Properties with such affordability covenants are coveted by tenants as they provide affordable housing to tenants who have the fewest options available and thus are the most vulnerable in terms of being displaced. Further, these properties are often neglected by their ownership who pockets the profits instead of reinvesting them into the property. A sale through the TOPA process provides crucial leverage to tenants in those properties to gain promises of repairs or extensions of the affordability covenants. Allowing these properties to be sold without the TOPA process would allow the new ownership to continue to neglect the property while profiting off of the District's poorest residents. A CNHED study found that TOPA helped maintain Low Income Housing Tax Credits in properties under this program.<sup>15</sup>

Finally, subparagraph 42-3404.02(c)(2)(S) exempts properties from TOPA if they were constructed within the last 25 years and if the average rent for over half the units over the prior six months is greater than 80% of area median income.<sup>16</sup> This section seems particularly difficult to properly implement. It would create yet another broad exemption

---

<sup>11</sup> *Richman Towers Tenants' Ass'n*, 17 A.3d at 594

<sup>12</sup> *Richman Towers Tenants' Ass'n*, 17 A.3d at 594

<sup>13</sup> *Richman Towers Tenants' Ass'n*, 17 A.3d at 601

<sup>14</sup> RENTAL Act

<sup>15</sup> CNHED, pg. 6

<sup>16</sup> RENTAL Act

that could add confusion to the TOPA process. Tenants in newer buildings are already at a disadvantage compared to tenants of older buildings when considering that buildings built since 1975 are not subject to rent control.<sup>17</sup> Finally, such an exemption would create a perverse incentive for landlords at these properties to steeply increase rent levels in the six months leading up to a contemplated sale. This exemption would lead to further loss of affordable units.

### **Landlords Are Using Bankruptcy to Evade TOPA**

Under current law, tenants are not entitled to the TOPA process when a property is sold through bankruptcy proceedings.<sup>18</sup> Many multifamily rental properties in DC are owned by LLCs whose sole asset is the property. While exact numbers are hard to know, Legal Aid has seen more and more single asset LLCs declare bankruptcy seemingly to avoid the TOPA process. Through this process, the rental property is sold to a new buyer without the tenants having an opportunity to influence the sale and gain valuable concessions and there is virtually no downside to the owner because the property is the only asset in the LLC. This is a very different reality than the one in which TOPA was enacted.

One such bankruptcy case is that of Marbury Plaza.<sup>19</sup> For years due to neglectful ownership by MP PPH, LLC, health and safety issues mounted, including leaks, mold, and lack of heat, hot water, and air conditioning. Even after being held in contempt of court in April 2023 by DC Superior Court Judge Neal Kravitz for failing to maintain the property, conditions did not improve. If the 674-unit property had gone through a normal sales process, TOPA would have given the tenants more say in selecting a development partner. Because MP PPH, LLC declared bankruptcy and then moved to sell the property, the tenants lost the opportunity to select their preferred buyer.

When properties are sold in bankruptcy, tenants are at a severe disadvantage to ensure the sale of their home has a favorable outcome. Compared to the TOPA sale process, sales in bankruptcy give tenants less time, less transparency, and no ability to match a

---

<sup>17</sup> D.C. Code § 42-3502.05(a)(2)

<sup>18</sup> D.C. Code § 42-3404.02(c)(2)(E)

<sup>19</sup> Legal Aid DC, In Marbury Plaza Bankruptcy, Tenants Secure \$810K Settlement, Eviction Protections, <https://www.legalaiddc.org/blogs/marbury-plaza-bankruptcy-settlement>.

contract for sale. Under the bankruptcy sale process, once a property is put up for auction, there is often only 30-60 days for any interested buyer to submit a bid.<sup>20</sup>

Meanwhile, TOPA ensures that the tenants have 165 days to find a preferred buyer and ensure conduct due diligence.<sup>21</sup> Second, in bankruptcy a prospective buyer does not have to interact with the tenants in any way and is not required to submit a purchase agreement before the buyer is selected.<sup>22</sup> In the TOPA process, any contract of sale must be provided to the tenants, if one exists.<sup>23</sup> This allows tenants to conduct due diligence on the buyer and engage with them before the sale is completed. Finally, the buyer is usually the highest or best offer submitted.<sup>24</sup> There is no ability for tenants to select a preferred bidder and allow that bidder to submit a matching offer like there is in TOPA.<sup>25</sup>

The Council can effectively close this loophole by enacting the “TOPA Bankruptcy Tenant Displacement Prevention Act of 2018.”<sup>26</sup> This bill restores TOPA rights to tenants whose landlord sold their home through bankruptcy. Tenants with these renewed TOPA rights would have an opportunity to determine what happens to their homes after the bankruptcy sale is completed. An agreement could be reached with either the purchaser

---

<sup>20</sup> See, Michael H. Goldstein et al., “Top 10 Questions About Bankruptcy Sales – A Primer on Sales Under Section 363 of the Bankruptcy Code”  
<https://www.goodwinlaw.com/en/insights/publications/2024/05/insights-finance-frg-top-10-questions-about-bankruptcy-sales> (hereinafter “Goldstein”)

<sup>21</sup> “Tenant Opportunity to Purchase Act of 1980”  
<https://code.dccouncil.gov/us/dc/council/code/titles/42/chapters/34/subchapters/IV>.

<sup>22</sup> See Jeremy B. Coffey “Section 363 Sales Procedures”  
<https://www.bloomberglaw.com/external/document/X16FRHS8000000/bankruptcy-overview-section-363-sales-procedures>.

<sup>23</sup> D.C. Code § 42–3404.03

<sup>24</sup> See, Goldstein

<sup>25</sup> “Tenant Opportunity to Purchase Act of 1980”  
<https://code.dccouncil.gov/us/dc/council/code/titles/42/chapters/34/subchapters/IV>

<sup>26</sup> TOPA Bankruptcy Tenant Displacement Prevention Amendment Act of 2018  
<https://lims.dccouncil.gov/Legislation/B22-0739>

through the bankruptcy process or a prospective buyer. Ensuring tenants have these rights would also dissuade unscrupulous owners from using the bankruptcy court to circumvent TOPA while *bona fide* debtors would be unaffected.

### **DC can Increase TOPA's Effectiveness by Requiring one Third of HPTF Funding be Used for Preservation Projects**

Another major obstacle that Legal Aid has seen to TOPA's effectiveness is the lack of long-term funding available to preserve DC's aging housing stock.

When tenants do go through the TOPA process, some tenants choose to form cooperatives to purchase their own buildings and others choose to assign their TOPA rights to responsible buyers who promise to maintain affordability and repair their buildings. For either option to work in an aging building, there needs to be money available to fund repairs and renovations.

In many TOPA cases, the tenants' goal is to find a responsible buyer for their building who will make repairs and keep the building affordable. Due to a combination of factors – including inflated, speculative prices and years of deferred maintenance – it can be difficult or even impossible to find responsible buyers to do this without adequate funding to renovate and repair older housing stock.<sup>27</sup> Because of the deteriorating housing conditions in many older buildings, if tenants cannot find a responsible developer to repair or renovate their homes, then they may be forced to leave altogether.<sup>28</sup> These buyouts displace long-time tenants and disrupt communities.<sup>29</sup>

Currently, the only designated funding to preserve aging housing stock is the Affordable Housing Preservation Fund (AHPF).<sup>30</sup> The AHPF provides only short-term financing for initial purchase and for emergency repairs.<sup>31</sup> At the end of these short-term loans, developers need "take out" financing (i.e., long term financing to renovate and maintain

---

<sup>27</sup> See CNHED, pg. 66

<sup>28</sup> See *id.*

<sup>29</sup> See *id.*

<sup>30</sup> See Eliana Golding, DC Fiscal Policy Institute, "A Holistic and Reparative Agenda for Ending Displacement in DC," (Nov. 15, 2023), <https://www.dcfpi.org/all/agenda-for-ending-displacement/email-how-dc-funds-its-public-schools?subject=funding-priorities-for-the-fiscal-year-2025-budget>.

<sup>31</sup> *Id.*

these affordable buildings). But this funding is nearly impossible to come by unless developers can also access the HPTF.

The Council can easily solve this problem: it can enact legislation requiring HPTF to allocate at least thirty percent of its funds each year for these preservation projects, and this money must be available when developers need it. This would ensure that there is enough money set aside to adequately fund the necessary renovation and rehabilitation of DC's aging housing stock and give responsible buyers the funding and certainty they need to keep DC's housing affordable and in good repair.

It is particularly important that, in the coming year, DHCD actually spend all allocated HPTF money quickly so that it can be used to preserve affordable housing. We were disturbed to learn about DHCD's failure to spend allocated funds in past years and question why HPTF had \$64 million in unspent funds that had carried over from past years.<sup>32</sup> It is essential that HPTF money be used to continue to preserve DC's affordable housing.

### **The RentRegistry Database Must Be a Tool for Tenants**

On January 17, 2025, the Rental Housing Commission announced that the long awaited DHCD Rental Accommodations Division ("RAD") database, called RentRegistry, will be publicly released this spring.<sup>33</sup> The Council required first RAD and then OTA to develop a user-friendly database of rental housing in the District nearly a decade ago.<sup>34</sup> This is information that has long been collected by RAD but has been kept on paper forms that have to be individually pulled up and manually searched through.<sup>35</sup> With no easy way to look through this information, tenants have been kept in the dark about rental units across the District. Meanwhile, housing providers have allegedly colluded and kept rents

---

<sup>32</sup> See Jon Banister, "Bowser Pushes Sweeping Reforms to D.C. Housing and Tenant Laws," bisnow.com <https://www.bisnow.com/washington-dc/news/multifamily/bowser-proposes-comprehensive-reforms-to-dc-housing-laws-awards-new-funding-128010>.

<sup>33</sup> Commission, Certification and Notice of Application Fee Limits, <https://dcregs.dc.gov/Common/NoticeDetail.aspx?NoticeId=N139303>.

<sup>34</sup> "Fiscal Year 2016 Budget Support Act of 2015" [https://lims.dccouncil.gov/downloads/LIMS/33645/Signed\\_Act/B21-0158-SignedAct.pdf](https://lims.dccouncil.gov/downloads/LIMS/33645/Signed_Act/B21-0158-SignedAct.pdf)

<sup>35</sup> DHCD, Public Records, <https://www.dhcdrecords.org/DHCDnavigator/?desktop=DHCDPublic>.



artificially high by sharing amongst themselves information about their rental units.<sup>36</sup> The launch of RentRegistry is an important step to empower tenants.

When RentRegistry goes live, it is critical that this tool is both user friendly and has useful information. If it succeeds, it will allow tenants to search for and find affordable housing by seeing the base rent for each rental unit in a building; it will increase pressure on housing providers to ensure they provide safe, habitable housing by listing outstanding violations of the housing regulations; and it will make it easier to hold housing providers to account by providing contact and licensing information on the housing provider and property manager.

It is also important that this tool is well publicized and easily accessible. A database that no one can find is not an improvement on the current situation. This cannot just be a repository of information for the sake of collecting data but must truly be a publicly available tool and accessible tool, including to non-English speakers. We hope that RAD and DHCD will prominently display RentRegistry on their website and conduct outreach to inform tenants about this new tool.

## **Conclusion**

Thank you for this opportunity to testify about how DHCD, HPTF, and this Committee can preserve affordable communities for DC residents with low and moderate incomes. We look forward to working with DHCD, HPTF, and this Committee on the path forward.

---

<sup>36</sup> Attorney General Schwalb Sues RealPage & Residential Landlords for Rental Price-Fixing, Illegally Raising Thousands of District Residents' Rents, <https://oag.dc.gov/release/attorney-general-schwalb-sues-realpage-residential>.