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Before the Committee on Housing
Council of the District of Columbia

Public Hearing Regarding:

Bill 26-164
"Rebalancing Expectations for Neighbors, Tenants, and Landlords (RENTAL) Act of 2025"

Bill 26-228
"Common Sense TOPA Reform Amendment Act of 2025"

May 28, 2025

Legal Aid DC[1] submits the following testimony regarding the TOPA provisions of the RENTAL Act and the Common Sense TOPA Reform Amendment Act. TOPA works. The most thorough research on the subject found that TOPA has a meaningful impact on improving DC's affordable housing stock and preventing displacement.[2] The Council should be working to improve TOPA's effectiveness, not creating unsubstantiated exceptions to a historically proven law. As such, we oppose any new exceptions to TOPA. We are particularly concerned by the proposed exceptions laid out in the RENTAL

[1] 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.

[2] *See* The Coalition, "Sustaining Affordability: The Role of the Tenant Opportunity to Purchase Act (TOPA) in Washington, DC," 5, CNHED_TOPAStudyNov09.pdf.

Act, which will create new ambiguities and confusion. The Commonsense TOPA Act demonstrates a more rational, research-based approach to TOPA reform, although it too includes new exceptions to the law without any clear reason.

Research and Evidence Supporting TOPA's Effectiveness

The most thorough TOPA research we have supports the law's success at improving affordable housing and preventing displacement.[3] We have yet to see any data explaining why new exceptions to TOPA are warranted or what the bases for any such exceptions should be.

In 2023, the Coalition for Nonprofit Housing and Economic Development ("the Coalition"), a nonprofit that advances equitable community development, published its comprehensive study of TOPA.[4] For this study, the Coalition reviewed the majority of TOPA sales over the course of the law's history, along with qualitative interviews and focus groups with residents, developers, and legal services providers.[5] Its findings were resoundingly clear.

The Coalition's TOPA study found that the law has a meaningful impact on improving affordable housing and on reducing displacement.[6] The study found that, from 2006 to 2020, a total of 16,224 affordable units were developed or preserved through TOPA.[7]

In many successful cases, tenants exercise their TOPA rights by assigning those rights to responsible developers – not by forming cooperatives and buying the buildings themselves.[8] Opponents of TOPA sometimes claim that the law does not work because tenants rarely buy the buildings themselves. However, this argument misses the true power of the law.

Legal Aid's experience has demonstrated that TOPA often works best when tenants collaborate with outside developers to create a sustainable plan for their homes. Of the

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[3] *Id.*

[4] *Id.*

[5] *Id.*

[6] *Id.* at 6.

[7] *Id.*

[8] *Id.*

five TOPA matters that Legal Aid currently has open or has closed within the last year, all five tenant associations have decided against forming cooperatives and have instead used the TOPA process to negotiate with potential developers for credible plans to keep their homes affordable and in good repair. Ultimately, in exchange for assigning their TOPA rights to outside developers, these tenant associations have negotiated for repairs, larger-scale renovations, and long-term affordability. The result is not only preserved affordable housing, but housing that is safer, cleaner, and up to housing code.

For example, Legal Aid represented a tenant association at a small, rent-stabilized building in Ward 8. Initially, the tenants learned that their landlord had signed a Purchase and Sale Agreement with a new potential owner. The tenants at this building wanted guarantees that the new landlord would continue to comply with rent stabilization laws; they were worried the new landlord would petition for an extraordinary rent increase above what rent stabilization laws typically allow. They also wanted some basic repairs to bring their homes into compliance with the housing code.

Legal Aid initially reached out to the potential purchaser selected by the owner to see if a deal along these lines would be possible, but it was unwilling to agree to these simple demands. So, the tenants reached out to other potential developers and found one that was willing to commit to taking standard increases under rent stabilization laws and to making timely repairs to bring the building into compliance with the housing code. TOPA gave these tenants the ability to protect the conditions and affordability of their homes.

Unfortunately, when tenants cannot exercise their TOPA rights, they are often stuck enforcing their rights through litigation or with no remedies at all. For example, Legal Aid is currently representing the tenant association at Minnesota Commons.[9] In that case, the tenant association has had to sue their current and former landlords, alleging that both companies violated TOPA by selling their building without giving them an offer of sale first.[10]

Through this sale outside of TOPA, the building was sold to company backed by a known bad-actor landlord.[11] Since then, the new landlord has neglected the property until it has

[9] Legal Aid DC, " Legal Aid DC Sues Minnesota Commons Landlord for Violating Tenants' Rights in Property Sale," Legal Aid DC Sues Minnesota Commons Landlord for Violating Tenants' Rights in Property Sale.

[10] *Id.*

[11] *Id.*

become unsafe and uninhabitable.[12] The Office of the Attorney General has been forced to sue this new landlord for egregious housing code violations, disregarding stop work orders, and defrauding the Rapid Re-housing Program.[13] We are concerned that with new exceptions to TOPA, we will see more of these worst-case scenarios.

We have had TOPA in DC for forty-five years, through thriving real estate markets and through challenging ones. Yet, we have not seen any research telling us why new exceptions to TOPA are appropriate at this time. The most robust research we have seen on the subject has told us that TOPA is effective.[14] And, while developers cite TOPA as a reason for reduced investment in the District, any short-term investment the District might see from a proposed TOPA amendments potentially comes at the long-term cost of reduced quality and quantity of affordable housing.

The Ambiguity Introduced by the RENTAL Act

Despite the dearth of evidence to support it, the RENTAL Act proposes sweeping new exceptions to TOPA, including 1) limited partners or investors "who will make capital contributions;" 2) buildings with affordability covenants; and 3) new construction or buildings with significant improvements with rents above a certain threshold.

It is unclear what tethers any of these proposed exceptions to any particular policy goals. These exceptions are particularly concerning because they will create new ambiguities and contested questions over when TOPA applies. These contested questions will mean more sales end up in litigation over whether TOPA applies. This confusion is not in the interests of tenants or of landlords and developers. Without rigorous enforcement, these exceptions could become so broad that they would threaten to sweep away TOPA entirely.

Capital Contributions

First, the RENTAL Act transforms an exception that had been narrowly cabined for the Low-Income Housing Tax Credit (LIHTC) program into an ambiguous and possibly

[12] *Id.*

[13] Office of the Attorney General for the District of Columbia, "Attorney General Schwalb Sues District Slumlord for Egregious Housing Code Violations, Disregarding Stop Work Orders & Defrauding Rapid Re-Housing Program," Attorney General Schwalb Sues District Slumlord for Egregious Housing Code Violations, Disregarding Stop Work Orders & Defrauding Rapid Re-Housing Program.

[14] The Coalition at 5.

capacious exception that applies when new limited partners or investors make any "capital contribution" to a property. Under the current law, the LIHTC exception provision of TOPA is limited and allows developers to use the statutorily defined LIHTC program to finance their properties.

The revisions in the RENTAL Act would alter this exception to the point of making it unrecognizable. It excises any reference to LIHTC, or any limitation at all on what kind of "capital contribution" would qualify for the exemption. Nor does it define "capital contribution." This change will lead to confusion and likely disagreements between tenants and landlords as to what constitutes a "capital contribution." Ultimately, these disagreements would need to be resolved through litigation.

Landlords and developers have a history of constructing tortured financial deals to disguise sales of rental properties and to try to evade TOPA.[15] These deals have spawned litigation and appeals. The proposed new exception for capital contributions will open the door to further confusion and to an exception that – if not carefully enforced – could swallow the entirety of TOPA. While we trust that the Council does not intend to eviscerate TOPA's functionality, we are concerned that this exception could have devastating unintended consequences.

Affordability Covenants

The RENTAL Act's proposed exception for properties under affordability covenants threatens the heart of TOPA. One of TOPA's primary purposes is to preserve affordable housing for low-income tenants.[16] TOPA as it currently exists gives tenants living in affordable units the ability to preserve those units.[17] In Legal Aid's experience, this could mean negotiating for longer affordability periods than would otherwise be required or deeper affordability. This could also mean negotiating repairs or renovations to ensure that currently existing affordable units remain safe and habitable. This proposed exception for units with affordability covenants would take this essential tool away from a number of properties that are currently covered by affordability covenants.

[15] *See, e.g.*, *Richman Towers Tenants' Ass'n v. Richman Towers LLC*, 17 A.3d 590 (D.C. 2011).

[16] *See* D.C. Code § 42-3401.02(2).

[17] The Coalition at 6.

New Construction or Significant Improvements with Rents Above a Certain Threshold

Finally, the proposed exception for new construction or properties with significant improvements where rents exceed a certain threshold is troubling both because of its ambiguity and because it will create perverse incentives on landlords to increase rents in the months leading up to a planned sale.

This proposed exception is difficult to parse. First, the exception is based on "[t]he average achieved rent" for the property. There is no definition of "average achieved rent," and it is unclear what this term might mean. Like the exception for capital contributions, this exception will also lead to confusion and needless litigation.

Equally troublingly, the exception is available if the threshold number of rents exceed 80% of area median income or median family income. This requirement creates a perverse incentive for landlords to artificially inflate rents in the lead up to a sale in an effort to qualify the property for a TOPA exemption.

Finally, this exception would apply to any property that was constructed or "substantially improved" within the prior twenty-five years. This exception would pull an unacceptably large number of buildings out of TOPA, and it is not clear what the rationale is for making this exemption extent back so far in time. This proposed exception is confusing, overly broad, and creates perverse incentives which will further undermine DC's affordable housing ecosystem.

The Commonsense TOPA Act's More Rational Approach

The Commonsense TOPA Act applies a more rational approach to TOPA reform but still includes some provisions that do not further DC's goal of preserving affordable housing and preventing displacement. Unlike the RENTAL Act, the Commonsense TOPA Act bases a number of its proposed reforms in research. A number of its provisions come out of the recommendations in the Coalition's TOPA report.[18]

Nevertheless, the Commonsense TOPA Act does include several troubling provisions. Most significantly, it creates a new exception to TOPA for buildings within the first three years of their construction. While this exception at least provides more clarity than any of the proposals in the RENTAL Act, it still, without support in data or research, proposes a new exception to TOPA, even though this law has been an affordable tool for preserving affordable housing in the District.

[18] The Coalition at 66-69.

In addition, the Commonsense TOPA Act calls on DHCD to promulgate new templates for buyout agreements and purchase contracts. While we understand the impulse to provide standard forms for these agreements, we are concerned that DHCD has not been provided with the necessary resources to do this effectively. Without carefully set aside resources to make this successful, this could result in agreements that bear the government's imprimatur but include confusing or even harmful provisions.

While the Commonsense TOPA Act includes some important reforms, we ask the Council to remove the exception for new construction as well as the requirement that DHCD promulgate templates for buyout agreements and purchase contracts.

Conclusion

DC has over four decades of evidence showing TOPA's effectiveness at preserving affordable housing and preventing displacement. It would be reckless to pass the ambiguous new exemptions currently before the Council. For the reasons stated above, Legal Aid opposes any new exemptions to TOPA.