Legal Aid Society
OF THE DISTRICT OF COLUMBIA

July 8, 2011

By electronic and first-class mail

Helder Gil
Legislative Affairs Specialist
Department of Consumer and Regulatory Affairs
1100 Fourth Street SW, Room 5164
Washington, D.C. 20024
helder.gil@dc.gov

Re: Proposed Rulemaking on Notices of Violation and Orders to Vacate Imminently Dangerous and Unsafe Premises (published June 10, 2011)

Dear Mr. Gil:

Thank you for the opportunity to comment on DCRA's proposed regulations governing closure of dangerous premises. The proposed rules address a significant gap in the District's housing code enforcement process, and ultimately should help all parties – owners, occupants, and the District – understand their rights and responsibilities regarding unsafe premises.

That said, we have several concerns regarding the proposed rules. As drafted, the regulations do not adequately describe what premises qualify as "imminently dangerous," such that immediate closure is appropriate. The draft rules also are unclear as to the processes for closing a property and for pre- and/or post-closure hearings. In addition, the regulations should include more information about the contents of any notice to owners, tenants, or occupants of a property subject to closure.

More detail on each of these concerns follows. Although we undoubtedly will have additional comments regarding the language of these regulations as the process moves forward, we believe it would be more productive to address these conceptual issues first.

1) Closure for reasons other than "imminently dangerous" conditions (§ 116)

At the outset, it is not clear to us why DCRA would have the authority to close an occupied structure for a reason other than imminent danger to the occupants or the surrounding community. As you know, closure of an occupied building leads to chaos for its residents: families are displaced – often with little warning – from their homes, their communities, and often their only source of affordable rental housing. At best, closure creates temporary but traumatic upheaval for the building's renters; at worst, it is a disaster that leaves them homeless.

Given these inevitable consequences of any building closure, it is unclear to us why DCRA would take this step in any but the most dire circumstances. We certainly appreciate the agency's goals of keeping residents safe, and we recognize that the agency must have the

authority to take action when conditions present an immediate danger. But in cases without that immediate threat, the agency can and should use the other tools at its disposal to force correction of the conditions, including the enforcement process and/or the nuisance abatement fund.

We suggest that Section 116 be deleted in its entirety.

Definition of "Imminently Dangerous" versus "Unsafe" Premises (§§ 115 and 116)

If the agency retains Section 116 in the regulations, that section and the one preceding it should be revised for clarity. As written, the regulations lack any guidance as to what conditions would render a property "imminently dangerous" as opposed to merely "unsafe." The relevant provisions, Sections 115 and 116, are virtually identical. Although Section 115.1 provides that the property must "present an imminent danger to the inhabitants or the surrounding community," the factors upon which the agency would base this determination are the same as those that would make a property "unsafe": "an unsafe structure, a structure unfit for human occupancy, an unlawful structure, or a structure in which there is unsafe equipment." See proposed regulations at §§ 115.1, 116.1.

In order to ensure consistent enforcement of these rules, and to place owners and tenants on notice of their obligations, it is critical that the regulations specify in greater detail what conditions warrant closure of a premises as "imminently dangerous." At the very least, the definition should limit this classification to conditions presenting an immediate threat to the life, health, or safety of the occupants or the surrounding property. It should also include that the Department has determined that it cannot correct the condition(s) using the nuisance abatement fund.

Appeal and Hearing Procedures (§ 107)

This section is extraordinarily confusing as to the timelines for appeal and the parties' hearing rights in various situations. Points on which the section lacks clarity include, in no particular order:

- What are the appeal and hearing rights for a closure pursuant to Section 116? This provision mentions only orders pursuant to Section 115. If a main goal of these proposed regulations is to specify parties' hearing rights in closure situations, we assume that the agency intends to cover all such cases, and that the omission of § 116 was an oversight.
- What is the relationship between the service of a notice of violation and the timing of the closure? Likewise, what is the relationship between the filing of an appeal, the timing of a hearing, and the timing of the closure?
- Why would the "public interest" dictate a shorter time for appeal (§ 107.3) – an administrative proceeding that can take place before or after closure, depending on the circumstances – rather than simply a shorter time before closure?
- Under what circumstances must a hearing take place prior to closure, and when would the hearing take place afterward?

- What is the difference between a "determination" (§ 107.1) and an "order" (§ 107.2)? If they are the same, then the language should be consistent.
- The term "exigent circumstances" (§ 107.5) is not used anywhere else in the regulations and is not defined. Is the intent of Section 107.5 to address "imminently dangerous" situations? If so, then the regulation should use that precise term.

We suggest that this section be rewritten to address these questions. One way to increase clarity might be to create two sections: one addressing pre-closure hearings – which presumably would be authorized in all but the "imminently dangerous" cases – and one for post-closure proceedings. Each section should include the deadline by which a party must file an appeal and the timeframe in which a hearing will take place. In addition, the rules should make clear, particularly in Section 107.1, that parties who may appeal a decision or order include tenants or occupants of an occupied rental property.

Finally, in rewriting this section, the agency should remove any requirement that parties file an appeal "within 24 hours" of a particular action. We can envision no circumstances in which such a requirement would be appropriate; even in cases presenting imminently dangerous conditions, the agency presumably would close the property before any hearing takes place, meaning that little harm would result from giving the parties a longer time after the closure to challenge the action.

As a practical matter, moreover, a 24-hour deadline is simply unworkable. It is unrealistic to expect that tenants who are being displaced from their homes with little notice will spend their limited time before closure investigating how to file an appeal, rather than packing their belongings and securing alternate lodgings. In any event, government agencies are not open 24 hours a day – so if, for example, the closure is ordered on Friday afternoon, the tenants would be unable to file any appeal with OAH within the required timeframe. Any revised version of this section should account for these realities, and should include more rational deadlines for parties to exercise their appeal rights.

Contents of orders (§ 117)

This provision does not include sufficient information regarding the contents of any notice issued pursuant to Sections 115 or 116. First, in Section 117.1(a), the notice should state not merely the "nature of the violation" but also "the factual basis for the finding of a violation." Including the factual basis will help both owners and occupants understand exactly what the problem is and how to correct it. Orders should also include the following information: a) if the building is to be closed, the date such closure will take place; b) the parties' appeal and hearing rights; and c) the date by which any such appeal must be filed, the place for filing, and the procedure for filing.

This section should also make clear that any order will be served on the tenants or occupants of the premises at the same time that it is served on the owner.

Finally, it is not clear whether the service requirements set forth in this section are distinct from those in Section 106, and if so, why. If they are intended to be the same, then we

suggest either that the language in this section conform to Section 106, or that the two service sections be combined.

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We would welcome the opportunity to meet with you to discuss these comments and the structure of the closure process more generally. Please contact Julie Becker at (202) 661-5946, or jbecker@legalaiddc.org, to schedule a meeting. We look forward to hearing from you soon.

Sincerely,

Julie Becker
Legal Aid Society of D.C.

Patricia Mullahy Fugere
Misty Thomas
Washington Legal Clinic for the Homeless

Rebecca Lindhurst
Bread for the City Legal Clinic