

**Testimony of Julie Becker  
Legal Aid Society of the District of Columbia**

**Committee on Economic Development  
Council of the District of Columbia**

**B20-052: “Rent Control Voluntary Agreement Procedure Amendment Act of 2013”**

**B20-074: “Residential Lease Omnibus Amendment Act of 2013”**

**B20-830: “Rent Control Amendment Act of 2014”**

**B20-837: “Rent Control Improvement and Protection Amendment Act of 2014”**

**B20-895: “Rent Control Hardship Petition Amendment Act of 2014”**

**B20-915: “Tenant Opportunity to Purchase Bona Fide Offer Clarification  
Amendment Act of 2014”**

**October 14, 2014**

The Legal Aid Society of the District of Columbia<sup>1</sup> supports the six bills before the Committee today, which together will make a significant contribution to preserving affordable housing in the District of Columbia. In particular, the “Rent Control Hardship Petition Amendment Act of 2014” targets many of the most serious abuses of the petition process and creates important protections for tenants in rent-controlled properties.

In our experience, hardship petitions have appeared with increasing frequency in the District in recent years. When it is difficult to sell a building or convert it to condominiums, a hardship petition is one of the most straightforward ways to increase the property’s income potential. The law guarantees landlords a 12 percent rate of return on their investment, and if a building’s current rents do not result in that return, the law permits increases up to a level that would support the 12 percent figure.<sup>2</sup>

The rent increases to tenants available under the hardship law can be drastic. We have had cases in which landlords have sought increases ranging from 60 percent to well over 100 percent of the existing monthly rents. For the low-income tenants that Legal Aid represents, these increases inevitably result in displacing them from their homes.

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<sup>1</sup> The Legal Aid Society of the District of Columbia was formed in 1932 to “provide legal aid and counsel to indigent persons in civil law matters and to encourage measures by which the law may better protect and serve their needs.” Over the last 82 years, tens of thousands of the District’s neediest residents have been served by Legal Aid staff and volunteers. Legal Aid currently works in the areas of housing, family law, public benefits, and consumer protection.

<sup>2</sup> It should be noted that at least in the current economic climate, 12 percent is a far greater rate of return than one might reasonably expect for an investment. The portion of the bill reducing the rate of return to 8 percent would address this imbalance.

We have also litigated cases in which the landlord's purpose in submitting the hardship petition is not to increase the landlord's rate of return, as the Rental Housing Act contemplates. It is to empty the building of some or all of its tenants.

The bill under consideration addresses this problem in several ways:

Elimination of the conditional increase. The "conditional increase" offers the most serious potential for injustice in the current statutory scheme. If the Rent Administrator fails to rule on the petition within 90 days, then the increase sought in the hardship petition automatically goes into effect on a "conditional" basis, without any review from the agency at all. Tenants then must pay the increase pending review, and if the agency ultimately disapproves the petition, the landlord must return the overpaid rent to the tenants.

This setup, which might function well in some properties, is wholly unworkable for tenants of low and moderate incomes. For those tenants, the requested hardship increases are typically well beyond what they can afford.<sup>3</sup> This means that when the conditional increase takes effect, they cannot simply pay the increase while waiting for the agency to make a decision. But if they do not pay it, they will be forced to move out.

The result of this process is that tenants may be displaced based on rent increases that the Rent Administrator and/or OAH have never reviewed and that ultimately may be declared unlawful. At best, this situation creates unfairness. At worst, it poses great potential for abuse: landlords who may have motives other than increased rental profit – i.e., a desire, for whatever reason, to empty the building – can submit a wholly unsupported hardship petition, secure in the knowledge that the tenants will be displaced as a result of the conditional increases before the agency ever gets around to reviewing the matter on its merits.

By eliminating the conditional increase, the bill would simply remove this tool for emptying buildings. We recognize that this change would transfer the cost of delay from tenants to landlords, and we agree with the housing providers that the hardship petition process in its current state is dysfunctional for all parties. A large part of this problem is attributable to the Rental Housing Commission, which takes years – not months, but years – to adjudicate most rental housing disputes. But as between landlords and low-income renters, we believe that the balance falls in favor of preventing tenants' displacement while the parties litigate the increase.

Preventing abuse of delayed rent increases. This provision targets a new and troublesome tactic under the rent stabilization law: landlords who obtain rent increases have interpreted current law to permit them to delay or withhold implementation of these increases entirely at their discretion. While this practice on its face appears to allow tenants a brief reprieve of increased rents, we have worked with several tenants and buildings where this "rent concession"

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<sup>3</sup> Research indicates that already, more than one in four of the District's renters spend more than half of the household income on rent. Among the lowest-income tenants – those at or below 30 percent of the area median income – 66 percent spend more than half their income on rent; among those of slightly higher income – 30 to 50 percent of AMI – nearly one-quarter devote more than half their income to rent. See Urban Institute, *Housing Security in the Washington Region: District of Columbia*, at 4 (July 15, 2014) (available at <http://www.urban.org/uploadedpdf/413161-District-of-Columbia-Housing-Security-Profile.pdf>).

is essentially held over the heads of individual tenants as an ongoing threat: if the tenant does anything to displease the housing provider, the “concession” may be “revoked,” subjecting the tenant to an immediate and unaffordable rent increase.

This approach echoes the old “rent ceiling” scheme that the Council eliminated in 2006 – but it is even worse. Because these concessions are completely unregulated, landlords may employ them in any way, with any frequency, and for almost any reason. Tenants lack any certainty about how often the rent may increase and by how much.

For these reasons, we strongly support the provision in the bill that would prevent a landlord from reporting to RAD a different rent figure than it is charging to the tenant. With that said, we hope that once the provision becomes law, the Rental Housing Commission will move speedily to create rules regulating rent concessions. Abuses aside, there are certainly situations where “concessions” are a useful and appropriate way of keeping rent affordable. We are confident that with input from landlords and tenants, the Commission can create regulations that strike the right balance.

Protecting elderly and disabled tenants from the increase. We strongly support the provision in the bill that would expand the protections in the capital improvement law to all housing provider petitions. Elderly and disabled tenants are some of the most vulnerable parties in the petition process. They typically survive on fixed incomes, and, in the case of elderly renters, have often occupied their homes for many years, making a move that much more traumatic. And because the housing provider may take a tax credit in the amount of the uncollected increase, the bill would have little impact on the landlord’s bottom line.

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Finally, while today’s testimony has focused on the hardship petition bill, Legal Aid also supports the provisions in the other bills under consideration, which will plug gaps in existing law; will prevent the erosion of affordable housing through the use of voluntary agreements; and will add important clarifying language to the Tenant Opportunity to Purchase Act. We applaud the Committee for taking up these issues and look forward to final passage.