



Legal Aid Society
OF THE DISTRICT OF COLUMBIA

MAKING JUSTICE REAL

**Written Testimony of Beth Mellen Harrison
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The Legal Aid Society of the District of Columbia**

**The Committee on Business, Consumer, and Regulatory Affairs
Council of the District of Columbia**

**Performance Oversight Hearing on the
Department of Consumer and Regulatory Affairs**

February 20, 2015

The Legal Aid Society of the District of Columbia¹ welcomes this opportunity to comment about the critical role that the Department of Consumer & Regulatory Affairs (DCRA) can play in ensuring that families in the District do not live in substandard housing conditions.

This testimony focuses on one area of excellent agency performance and one of serious concern. DCRA's work over the past two years on comprehensive revisions to the Property Maintenance Code and the Housing Code has been a model for effective, thoughtful agency rulemaking. Unfortunately, the same cannot be said for DCRA's inspection process, which suffers from a variety of agency failures that we believe warrants immediate consideration and reform.

DCRA Has Been Thoughtful and Responsive in Recent Rulemaking Efforts.

Legal Aid and other housing advocates have worked closely with DCRA over the last two years on important revisions to the Property Maintenance Code and the Housing Code. Both of these rulemakings were lengthy, technical, and legally-complex, but with real-world consequences for landlords and tenants across the District. DCRA listened to concerns raised by tenants' advocates, responded thoughtfully, and the end product is stronger as a result.

An overarching goal of both rulemakings is to consolidate the requirements of the Housing Code, found at Title 14 in the D.C. Municipal Regulations (DCMR), and the Property Maintenance Code, found at Title 12G in the DCMR, into a single set of requirements. While the Housing Code is a D.C.-specific code that has been in existence and largely unchanged since the 1950's, the Property Maintenance Code is a modern code developed by the International Code Council (ICC) in 1998 and continuously revised since then.² Landlords in the District have

¹ 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." For more than 80 years, Legal Aid staff and volunteers have been making justice real for tens of thousands of the District's neediest residents. Legal Aid currently works in the areas of housing, family law, public benefits, and consumer law.

² The ICC revises codes on a three-year cycle through an open process, using recommendations from code enforcing officials, industry representatives, and other interested parties. Local jurisdictions

been required to comply with the requirements of both Codes, but with deference to the Housing Code in case of any conflict. The goal of the recent rulemakings has been to consolidate existing law into a more modern code, while preserving all existing landlord obligations and tenant remedies. The proposal proceeded in two phases: revising the D.C. Property Maintenance Code, followed by eliminating large portions of the Housing Code.

Legal Aid and other advocates worked closely with DCRA on both phases. During the first phase we focused on ensuring that all existing repair and maintenance requirements in the Housing Code would be incorporated in substantial form into revisions of the Property Maintenance Code. We started with a list of over 25 areas of potential discrepancies and ended with just a few small issues on which we agreed to disagree. In the second phase of revisions to the Housing Code, we successfully worked with DCRA even before the formal rulemaking process started, and many of our proposed revisions were adopted. As a result, our comments in response to the first Notice of Proposed Rulemaking were relatively minor, and those differences have narrowed further with the Second Notice of Proposed Rulemaking.

At this point, our primary, remaining concern is that the proposed transition from the Housing Code to the Property Maintenance Code is likely to generate confusion and should be addressed with care. The vast majority of tenants, as well as many small landlords, are unlikely to be aware of this change unless DCRA makes an effort to inform and educate the public. We have made specific recommendations to DCRA on these points.³ DCRA already has implemented a key recommendation, by working with the ICC to provide a publicly-accessible website with the D.C. Property Maintenance Code. We will continue to work with DCRA as this transition is finalized in the coming months.

Legal Aid, Other Tenants' Advocates, and Our Clients Have Serious Concerns About the DCRA Inspections Process.

Legal Aid, other tenants' advocates, and the tenants we work with share serious concerns about the performance of DCRA's Inspections Division, as well as the follow-up work done by the Enforcement Division. These concerns span the range of services provided by DCRA with respect to inspections – from the scheduling of an initial inspection, to the follow-up of second or third inspections, to subsequent enforcement actions for landlords who refuse to comply. While some tenants receive excellent service from DCRA, we continue to see far too many examples of unreliable service and lack of follow-up, allowing landlords to flout the Housing Code and get away with it.

At bottom, these issues have led to a fundamental breakdown of trust in DCRA by District residents. Many tenants with whom we work express fears that inspectors must be in the landlord's pocket or otherwise showing favoritism to the landlord. Unfortunately, issues that

can adopt the International Property Maintenance Code and subsequent revisions with whatever changes are necessary to suit local conditions.

³ Our recommendations are included in comments submitted by Legal Aid, Legal Counsel for the Elderly, and the Children's Law Center in response to the Second Notice of Proposed Rulemaking for revisions to Title 14. A copy is attached to this testimony.

more likely relate to training and professionalism are ascribed to improper motives, cementing a lack of trust in DCRA.

The observations shared below are based on my own experiences and those of my colleagues, but they are far from unique. I have been representing tenants and working with other tenant advocates in the District for nearly ten years. Throughout that period, my colleagues – both at Legal Aid and at other organizations – and many of my clients have shared similar stories of their own frustrations with DCRA.⁴

Tenants Requesting Inspections Face Various Barriers.

Tenants contacting DCRA to schedule an initial inspection can experience long waits on hold, delays before an inspection can be scheduled, and various barriers being raised before DCRA will inspect. Wait times on hold with the telephone call center can reach 20 to 30 minutes.⁵ Tenants may wait over a week for an inspection for emergency conditions, such as lack of heat in the dead of winter, and over two weeks for a non-emergency inspection.⁶ Voicemail messages left for inspectors to coordinate scheduling may go unanswered.

Of greater concern to advocates, tenants calling for an inspection are told they must notify their landlord of conditions before DCRA will inspect, even if the tenant reports having no good way to contact the landlord. In discussions with DCRA on this issue, we have been told that DCRA must ensure landlords are provided with “due process.” But DCRA’s role is to inspect and cite conditions, not to wade into legal issues of notice and due process. Existing law ensures ample notice and process to protect the landlord: initial notices of violation provide 30 days for landlords to abate conditions, landlords can and do request extensions, and an administrative process must be followed before any fines may be imposed.

Similarly, tenants calling because utilities have been shut off have been told DCRA will not inspect unless the tenant can produce a written lease showing that any utility in question is the responsibility of the landlord; a tenant’s word is not enough. This approach ignores the reality that many tenants have oral leases, which are equally valid under D.C. law. More to the point, the question of whether a landlord or is a tenant is responsible for a particular utility often may be a contested and legally-complicated issue. Tenants calling DCRA for an inspection should receive an inspection, not a legal analysis of their claims.

⁴ The stories shared here are simply illustrative examples of numerous similar stories that other tenants’ advocates and residents of the District could tell. None of the examples shared below are active issues that require action from DCRA. We simply want to share real-world examples of problems we have encountered. All of these examples are from FY2014.

⁵ When a Legal Aid administrative assistant assisted a client with scheduling an inspection, it took multiple phone calls with a collective wait time of nearly an hour to reach a scheduler.

⁶ Legal Aid clients waited nine calendar days for an inspection for no heat in winter, and 18 days for an inspection for non-emergency issues.

Experiences with Individual Inspectors Are Uneven.

Tenants report to us a range of experiences with individual DCRA employees. While some schedulers and inspectors are polite and responsive to tenants, in too many instances tenants feel that their questions or concerns are simply dismissed. Tenants are told that they must have caused poor conditions and that their complaints are not serious. We see similar discrepancies in the thoroughness of inspection reports produced by DCRA when compared to photographs taken by our inspectors documenting potential violations. While some inspectors are exceedingly thorough, other inspectors fail to cite numerous items that appear to be Housing Code violations. DCRA already has quality control procedures in place for auditing inspectors; these efforts should be improved and expanded.

The Proactive Inspections System Has Had Mixed Results for Tenants.

Since 2010, DCRA has been operating a system of proactive inspections in which all residential buildings in the District are inspected on a rolling basis at least once every five years. During a proactive inspection, DCRA inspects a percentage of the building's units.⁷ Once the inspected units pass, DCRA issues a certificate of compliance good for up to five years. While the proactive inspection system undoubtedly is having positive results for some buildings and tenants, it is far from a silver bullet.

Many tenants' advocates have had the experience of working with tenants experiencing serious housing code violations in a property that recently passed a proactive inspection. We have also heard stories of tenants at home during a proactive inspection being told their unit cannot be inspected, because they are not on "the list."⁸ One possible explanation for these issues is that proactive inspections are conducted by outside contractors, and performance may be uneven. We encourage DCRA to increase its auditing of proactive inspectors to ensure quality control.

Even more troubling, at times DCRA has refused to inspect individual units at a property that has recently received a certificate of compliance after a proactive inspection. Advocates have been told that the law does not allow an inspection in these circumstances, that violations must not exist, and that the tenants must have caused any current violations.⁹

⁷ For 3- or 4-unit buildings, DCRA inspects 50 percent of units. For buildings with 5 to 49 units, DCRA inspects 30 percent of units. For buildings with 50 or more units, DCRA inspects 15 percent.

⁸ Legal Aid currently is working with several tenants in a building that passed a proactive inspection last year in which one of the tenants was refused an inspection by the proactive inspectors. She was not referred anywhere else or scheduled for a code enforcement inspection, and the building received its certificate of compliance. Meanwhile, this tenant and her neighbors continued to experience serious housing code violations – confirmed by an inspector sent to the property by Legal Aid only a few months later.

⁹ Attorneys at Legal Aid working with a building of tenants, many experiencing serious housing code violations, ran into fierce resistance when trying to coordinate inspections of individual units at a property that recently had received a certificate of compliance. After multiple back-and-forth

Landlords With Failed Inspections May Not Face Consequences.

Tenants able to cross the initial barriers and get an inspection scheduled may find that there is insufficient follow-up to ensure a landlord cited for violations comes into compliance. For some tenants, DCRA comes to inspect once but never returns for a second inspection. For other tenants, DCRA may come back two or three times, but if the landlord still fails to abate conditions, there does not appear to be any further action.¹⁰ Because tenants do not receive notice of the enforcement efforts that do occur, it is hard to tell exactly when and how the system breaks down. But the end result is clear – even when DCRA does inspect a unit or building and cite violations, in too many cases the landlord is able to ignore violation notices and get away with it.¹¹

The Above Problems Interfere with Private Enforcement Efforts.

DCRA, like many government agencies, certainly has to deal with overwhelming need balanced against real-world budget constraints. Private enforcement by tenants can play a critical role in filling this gap. When tenants seek representation from a legal services provider such as Legal Aid, our attorneys are able to get relief for tenants – orders for repairs, rent abatement for periods of past violations, and so on – so long as we can prove the existence of the housing code violations to a court. DCRA could play a critical role in supporting these private enforcement efforts while conserving its own public enforcement dollars. Where tenants have called DCRA, inspections have been conducted, and notices of violation have been issued, tenants walk into court with the evidence they need.

Indeed, DCRA plays exactly this role in the Housing Conditions Court, where tenants can file a lawsuit alleging housing code violations and requesting a court order for repairs. The presiding judge often will send a DCRA inspector assigned to the Court to inspect the tenant's home. Follow-up inspections are conducted until the inspector finds the landlord has brought the unit into compliance. DCRA's support of private enforcement efforts ultimately results in repairs being completed. The Housing Conditions Court certainly is a bright spot in our interactions with DCRA's inspections process.

Unfortunately, advocates do not experience the same continuity and effectiveness when tenants are litigating housing code claims in Landlord Tenant Court or at the Office of

communications with the head of proactive inspections, our attorneys eventually gave up and used our Legal Aid inspectors instead.

¹⁰ Legal Aid currently is working with a group of tenants at a building that had two proactive inspections in recent years. DCRA found that conditions had not been abated and issued notices of violation. Still most repair work did not happen, and as far as we can tell there has been no further enforcement action from DCRA.

¹¹ A landlord can throw DCRA off the trail with a phone call. DCRA inspected a tenant's home in response to her complaint and cited numerous violations. When the time for a follow-up inspection rolled around, the landlord called DCRA and reported that the tenant was not cooperating with repairs. The tenant vigorously denies these allegations, and several judges later discredited similar claims from the landlord. Unfortunately, DCRA simply cancelled the re-inspection without contacting the tenant or following up further, and repairs remained incomplete for several more years.

Administrative Hearings. In too many cases, the inspection records are incomplete – second or third inspections simply did not occur, despite ongoing, unabated conditions – and advocates must rely on our own inspectors to fill the gaps. Indeed, advocates sometimes find that we cannot obtain full DCRA records in the first place; records that appear in DCRA’s online system do not materialize in response to subpoenas.¹²

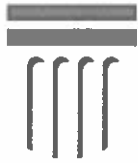
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In sum, while Legal Aid’s interactions with DCRA on rulemaking have been overwhelmingly positive, we have serious concerns about the work of the Inspections Division. We believe fundamental change is needed at the staff level. In our interactions with leadership, we often are assured that certain problems are anomalies and will not recur, only to see the same issues arise again. The problems with the DCRA inspections process have created a fundamental breakdown in the public trust with DCRA, not only by Legal Aid and other advocates, but – most important – by residents of the District. DCRA’s mission to enforce housing standards cannot and will not succeed once this public trust is lost.

Legal Aid and other tenants’ advocates already participate in regular stakeholders’ meetings with DCRA on a quarterly basis, and just yesterday we made plans to meet more frequently. While we appreciate this opportunity to raise concerns and discuss important issues, we believe that a more sustained focus on the work of the Inspections Division is warranted. We are open to discussing our concerns in greater detail with DCRA leadership, developing a working group focused on these issues, or other ideas that the Director may have on ways to improve the performance of the agency in this and future fiscal years.

Thank you for this opportunity to share our thoughts on the performance of DCRA.

¹² In one recent experience, DCRA could produce only one of three proactive inspection reports listed online in response to a subpoena.



Legal Aid Society
OF THE DISTRICT OF COLUMBIA

MAKING JUSTICE REAL

February 10, 2015

Via regular mail & electronic mail

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Re: Tenant Advocate Comments on Second Notice of Proposed Rulemaking – Title 14 DCMR Revisions (Published January 9, 2015)

Dear Mr. Orlins:

We are writing to provide comments to the proposed regulations published on January 9, 2015, to revise the Housing Code (Title 14 DCMR, Chapters 1 to 13). We appreciate the opportunity to continue our dialogue with the Department of Consumer and Regulatory Affairs on these important regulations.¹

We continue to believe that the proposed transition from the Housing Code to the Property Maintenance Code is likely to generate confusion and should be addressed with care. The vast majority of tenants, as well as many small landlords, are unlikely to be aware of this change unless DCRA makes an effort to inform and educate the public. Equally important, the Property Maintenance Code, like the Housing Code, must be accessible to all District residents. Without a thoughtfully-executed transition plan, landlords and tenants alike may be left in the dark about how and where to turn for information about their rights and responsibilities.

This letter summarizes our concerns and suggestions about the proposed transition, as well as several areas in which we believe the proposed regulations should be revised. Also attached is a section-by-section description of our suggested revisions.

Consolidation of the Housing and Property Maintenance Codes

The most significant change in the revisions to Title 14 is the proposed elimination of large portions of the Housing Code relating to standards for safe and sanitary rental housing. DCRA proposes to eliminate these requirements in favor of similar requirements found in the existing Property Maintenance Code. This will ensure that maintenance requirements for rental housing are uniform and can be found in one place, eliminating potential confusion and conflicts. While this is a laudable goal, we believe the plan requires thought and careful execution.

¹ In July 2013, we submitted informal comments on draft revisions to the Housing Code. Many of our organizations also submitted joint comments on the revised Property Maintenance Code. We also have met with Jill Stern of DCRA and others to discuss our concerns about these proposals, and we submitted formal comments in response to the first Notice of Proposed Rulemaking in June 2014. We appreciate the time that DCRA has spent considering and responding to our comments, many of which have been incorporated into the current draft. Our comments here focus on the areas in which our prior concerns remain unaddressed.

Any effort to merge the two codes must consider the important place of the Housing Code under current law. The "Housing Code" is referenced in 29 different provisions in the District of Columbia Code² and in 28 provisions in the District of Columbia Municipal Regulations³ (outside of Titles 12 and 14). Nearly 200 cases issued by either the District of Columbia Court of Appeals or the U.S. Circuit Court of Appeals for the District of Columbia reference the "Housing Code."⁴ The requirements of the Housing Code are foundational to landlord-tenant law in the District.

The proposed regulations include language to address this issue, by maintaining pieces of the Housing Code with cross-references to the Property Maintenance Code.⁵ We appreciate the inclusion of this language, which we believe is critical. We previously suggested that DCRA and the CCCB also may want to include an explanatory note in the Property Maintenance Code itself and to consult with the Counsel to the City Council about whether any further legislation is warranted to address this issue.

The Housing Code also has a special historical and cultural significance in the District. It has become part of the vocabulary that many tenants and landlords use. Tenants are aware of the Housing Code and the fact that it protects them from bad housing conditions. Likewise, landlords understand that the Housing Code imposes requirements on rental housing and can be enforced in various ways. Based on our experience, we do not believe the Property Maintenance Code enjoys the same broad-based understanding, even though it has been in place for a number of years. It is critical that the transition to reliance on the Property Maintenance Code is accompanied by broad public education and outreach efforts for both landlords and tenants.

Related to this point, DCRA also has taken and should continue to take steps to ensure that the Property Maintenance Code will be as accessible to the public as the Housing Code. DCRA already has launched a publicly-accessible website with provisions of the International Property Maintenance Code, as well as D.C.-specific revisions, integrated into one document. This is a vital first step to ensuring public access, and we appreciate DCRA's hard work to make it happen.⁶

² See, e.g., D.C. Code § 6-751.09 (authorizing penalties under the Housing Code for failure to comply with smoke detector requirements).

³ See, e.g., 10B DCMR §§ 2205, 2206 (requiring relocation housing to comply with the requirements of the Housing Code).

⁴ See, e.g., *Bridges v. Clark*, 59 A.3d 978, 984 (D.C. 2013) (holding that a tenant presented sufficient evidence at trial to support her retaliation defense to an eviction suit based on her complaints of Housing Code violations to the D.C. Housing Authority).

⁵ Proposed 14 DCMR § 100.2 reads in relevant part: "The provisions of the Property Maintenance Code. . . shall apply to any residential premises or part of any premises [that is offered for rent, lease or occupancy], and are incorporated by this reference."

⁶ This integration and publication responds to several challenges with reliance on the International Property Maintenance Code. Subtitle 12G – where the Property Maintenance Code is located – is not part of the D.C. Code that is available online for free public access. Even if a member of the public can get access through other means, it is difficult to follow. Subtitle 12G incorporates provisions of the International Property Maintenance Code without re-printing them. To find those provisions, a reader

We believe that DCRA should design and implement a broad public education campaign to accompany the ultimate transition to the Property Maintenance Code. Tenants' advocates from our organizations and others would be happy to collaborate with DCRA on this effort. Specifically, we recommend that DCRA provide:

1. **Hard Copy Access:** Work with the International Codes Council to publish paper copies of the D.C.-specific version of the Property Maintenance Code. Sufficient copies should be ordered to provide multiple copies to the D.C. Public Libraries for distribution in branches across the District. In addition, DCRA should obtain paper copies or the rights to download/print electronic copies for: several copies to the Office of the Tenant Advocate, the Department of Housing and Community Development, the D.C. Superior Court (including at least two copies for the Landlord and Tenant Branch judges and at least one copy for the Landlord Tenant Resource Center), and the Office of Administrative Hearings (including at least two copies for the administrative law judges and at least one copy for the OAH Resource Center).⁷
2. **Targeted Publicity:** Use existing stakeholder meetings to reach out to landlords and tenants alike about the transition to the Property Maintenance Code. Tenant leaders could be reached through OTA's monthly stakeholders meetings.⁸ Landlord leaders could be reached through the small landlord stakeholder meetings coordinated by DHCD.
3. **Broad Publicity:** Design and implement a campaign of public service announcements and advertising to publicize the transition to the Property Maintenance Code. This could include segments on Sound Advice (UDC) and/or the Kojo Nnamdi Show (NPR), segments or public service announcements on local radio stations, and advertisements or public service announcements in local newspapers, including those serving LEP communities. DCRA also should publish posters and flyers that could be distributed to stakeholders, including the Office of the Tenant Advocate and other tenants' advocates, for distribution to members of the public.

Changes in the Second Notice of Proposed Rulemaking

The Second Notice of Proposed Rulemaking adds a requirement that tenants 1) provide a separate receptacle for recyclable materials in the tenant's rental unit (§ 501.2(e)); and 2) place all recyclable materials from the tenant's rental unit in that receptacle and then transfer the

must find the International Property Maintenance Code itself, and then cross-reference the District regulations against the IPMC, bearing in mind that the District has not adopted certain provisions. Even for a lawyer or government expert trained in housing law, it is extremely difficult to read through and understand the provisions of the Property Maintenance Code.

⁷ Many of our organizations already have been provided with hard copies of the integrated D.C. Property Maintenance Code. We appreciate these efforts by DCRA to ensure broad public access. Other tenants' advocates should be able to receive copies of the D.C. Property Maintenance Code upon request.

⁸ DCRA staff conducted a training session at the Office of the Tenant Advocate's Annual Tenant Summit in September 2014. A similar session could be planned for next year's summit, which will fall after the proposed regulations likely will be in effect.

materials to the landlord's designated place on the premises (§ 501.2(f)). In other words, tenants will now be required to recycle and could be evicted if they fail to comply. *See* 42-3505.01(b) (authorizing eviction for violation on an obligation of tenancy); 14 D.C.M.R. § 4301.4 (defining obligations of tenancy to include any violation of the Housing Code). We believe imposing the penalty of eviction for a tenant's failure to recycle is harsh and unwarranted.

The District of Columbia Solid Waste Management and Multi-Material Recycling Act of 1988 and its implementing regulations already impose detailed requirements on both landlords and tenants related to recycling, with small civil fines for violations. *See* D.C. Code §§ 8-1007, 8-1017; 21 D.C.M.R. §§ 2001, 2003, 2010, 2021, 2036, 2061. There is no need to add the possibility of additional penalties for tenants to this comprehensive legislative scheme. Just as landlords should not lose their housing business license or face additional penalties if they violate the District's recycling requirements, tenants should not face eviction.

Technical Suggestions

We submitted a variety of technical suggestions related to how certain terms are defined and used within the regulations in response to the first Notice of Proposed Rulemaking. DCRA has addressed our top concern, by revising the definitions of owner and operator to make clear that agents of each are covered. Some of our other technical suggestions were accepted while others were not. We have reviewed our suggestions from last time and are including here those that remain unaddressed and that we believe remain noteworthy. These technical suggestions are summarized in our attached section-by-section comments.

* * *

We appreciate this opportunity to continue our dialogue on these important regulations. We would be happy to meet in person again to discuss our concerns in greater detail. You can reach us through Beth Harrison of Legal Aid at (202) 661-5971 or bharrison@legalaiddc.org. Thank you for your consideration.

Sincerely yours,



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Julie H. Becker
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TENANT ADVOCATE COMMENTS ON REVISIONS TO TITLE 14 BY SECTION

Comments on Transitory Provisions (Section 108)

In this second notice of proposed rulemaking, DCRA has added a provision to address the transition between the Housing Code and the Property Maintenance Code and the question of retroactivity. Section 108.2 reads:

The laws and regulations in force on the date of adoption of this amendment to 14 DCMR shall apply with respect to violations or infractions committed prior to said date, whether the prosecutions or adjudications of those violations or infractions are begun before or after said date.

We agree with DCRA's policy choice that conduct occurring before the transition should be covered by prior law, while conduct occurring after the transition should be covered by the new law. However, we fear that turning the analysis on when a violation was "committed" may raise difficult questions, particular where violations have been ongoing for some period of time. We suggest instead focusing on when the conditions or conduct at issue occurred:

The laws and regulations in force on the date of adoption of this amendment to 14 DCMR shall apply with respect to ~~violations or infractions committed~~conditions or conduct occurring prior to said date, whether the prosecutions or adjudications of those violations or infractions are begun before or after said date.

Comments on New Requirements on Recycling (Section 510.2)

The Second Notice of Proposed Rulemaking adds a requirement that tenants 1) provide a separate receptacle for recyclable materials in the tenant's rental unit (§ 501.2(e)); and 2) place all recyclable materials from the tenant's rental unit in that receptacle and then transfer the materials to the landlord's designated place on the premises (§ 501.2(f)). In other words, tenants will now be required to recycle and could be evicted if they fail to comply. *See* 42-3505.01(b) (authorizing eviction for violation on an obligation of tenancy); 14 D.C.M.R. § 4301.4 (defining obligations of tenancy to include any violation of the Housing Code). We believe imposing the penalty of eviction for a tenant's failure to recycle is harsh and unwarranted.

The District of Columbia Solid Waste Management and Multi-Material Recycling Act of 1988 and its implementing regulations already impose detailed requirements on both landlords and tenants related to recycling, with small civil fines for violations. *See* D.C. Code §§ 8-1007, 8-1017; 21 D.C.M.R. §§ 2001, 2003, 2010, 2021, 2036, 2061. There is no need to add the possibility of additional penalties for tenants to this comprehensive legislative scheme. Just as landlords should not lose their housing business license or face additional penalties if they violate the District's recycling requirements, tenants should not face eviction.

General Comments on Definitions (199)

Owner/Operator

In our prior comments, we noted that there are inconsistencies within Title 14 as to whether requirements are imposed on the “owner or operator” of a property, just the owner, or just the operator. We understand there are places where singling out the owner may make sense. We also appreciate that with revisions to the definition of “owner,” it is now clear this terms includes any agent, and therefore presumably any operator. Nonetheless, we continue to believe there are several places where changes should be made, either for uniformity or to reinforce the message that operators share responsibility:

- Section 104.18 places responsibility on the owner and operator while the rest of section 104 references only the owner. This should be made uniform.
- Section 203.5 currently references only the owner but should also include the operator, because it references back to violations of 203.1, which itself imposes obligations on both the owner and the operator.
- Section 304.3 bars any lease provision exempting an owner from certain liabilities. This restriction applies equally to operators and that should be spelled out to reinforce this important policy.
- Section 305.1 requires the owner to obtain a certificate of compliance prior to re-letting a rental unit once an owner has been found responsible for housing code violations. Because operators often may be the party found responsible for housing code violations and also might be the party responsible for obtaining a certificate of compliance and for re-letting the rental unit, this section should refer to owners and operators.
- Section 401.7 imposes a prohibition only on the operator but the rest of section 401 imposes obligations on the owner or operator. This should be made uniform.

Habitation/Housing Accommodation

In our prior comments, we noted two instances where the term “habitation” is used but the term “rental unit” is more appropriate. This stems from a revision to the definition of “habitation” from focusing on a single unit to covering an entire building. DCRA changed one of these references, but not the other.

The relevant part of section 100.1 that still uses the term “habitation” reads:

The provisions of Chapters 1-78 of this title shall apply to every residential premises or part of any premises (including those owned by the District of Columbia government) that is offered for rent, lease or occupancy, or is occupied or used, as a habitation by a person other than the owner or the owner’s invitees

In this passage, we read the term “habitation” as clearly intended to apply to a single unit, not the entire building. We therefore suggest revising this provision to use “rental unit” in place of “habitation.”

Household

The definitions now include the term “household” and limit a household to six unrelated persons living together, or up to 15 in the case of a religious community. The term household previously did not appear in Title 14, and it does not appear to be a necessary addition. In addition, we do not believe any numerical limits are necessary or appropriate in this context. We suggest eliminating the term and re-wording the few provisions where it is used.

Comments on Other Sections

100.2 and 401.1: While we support these cross-references to the Property Maintenance Code, we believe listing certain sections but not others may be confusing. We suggest deleting the exemplary list at the end.

401.2: We are concerned that the current language about enforcement remedies does not include private enforcement, which is covered in part in Chapters 1 and 3 of the Housing Code. We therefore suggest including a cross-reference to Chapters 1 and 3 of the Housing Code, as well as a general statement including any other legal remedies available. The revised language would read:

The provisions of the Property Maintenance Code are intended to supersede any property maintenance provisions now or previously set forth in Title 14 applicable to housing businesses, and, any such property maintenance provisions shall be enforced pursuant to the administrative and enforcement provisions set forth in Chapter 1 of the Property Maintenance Code, Chapters 1 and 3 of this title, and any other enforcement remedies available under District of Columbia law.