

**Testimony of Beth Mellen Harrison
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**Committee on Housing & Neighborhood Revitalization
Council of the District of Columbia**

**Hearing on B22-100
“Preservation of Affordable Rent Control Housing Amendment Act of 2017”**

June 28, 2017

The Legal Aid Society of the District of Columbia¹ supports Bill 22-100, the Preservation of Affordable Rent Control Housing Amendment Act of 2017, which would prohibit an increasingly common practice of housing providers inducing tenants to enter voluntary agreements or settlement agreements authorizing large rent increases that only future tenants will pay. This practice effectively circumvents the protections of rent control and threatens the future affordability of many buildings that fall under the law’s protections.

Rent Control Is Vital to Maintaining Housing Affordability in the District.

Rent control was implemented in the District to address the severe shortage of affordable housing available, particularly for low- and moderate-income renters. *See* D.C. Code § 42-3501.01. The purposes of the rent control law include “protect[ing] low- and moderate-income tenants from the erosion of their income from increased housing costs,” “protect[ing] the existing supply of rental housing from conversion to other uses,” and “prevent[ing] the erosion of moderately priced rental housing while providing housing providers and developers with a reasonable rate of return on their investments.” *Id.* § 42-3501.02.

Rent control is vitally important today, as the District faces a housing affordability crisis of historic proportions. Recent D.C. Fiscal Policy Institute reports put this crisis in stark relief:

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.” Over the last 85 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. More information about Legal Aid can be obtained from our website, www.LegalAidDC.org, and our blog, www.MakingJusticeReal.org.

- 26,000 extremely low-income households in the District (those earning below 30 percent of area median income) spend more than 50% of their income on housing costs.²
- 70% of the renters in this category are working or looking for work.³
- Rising rents have eliminated nearly all private market, low-cost housing options in the District over the past decade, and moderate-cost options are also shrinking.⁴
 - In 2002, there were approximately 58,000 units with rent and utility costs of less than \$800 per month (in 2012 dollars).⁵
 - By 2013, only 33,000 of such units existed. It is believed that the vast majority of these remaining units are those in which housing subsidies are in place, meaning very few market-rate affordable units remain.⁶
 - The number of moderate-cost units—with rent and utility costs between \$800 and \$1,000 per month—decreased from 28,000 in 2002 to 20,000 in 2013.⁷

Although there are several reasons for this drastic reduction in the number of affordable units over the past ten years, one contributing factor has been rising rents in rent-controlled units. Without amendments to the rent control law, this trend will continue.

Voluntary Agreements & Settlement Agreements Requiring Other Tenants to Pay Rent Increases Threaten Housing Affordability.

Bill 22-100 prohibits a technique that housing providers increasingly are using to win approval for dramatic rent increases. Here’s how it works: a housing provider files a

² Claire Zippel, D.C. Fiscal Policy Inst., *A Broken Foundation: Affordable Housing Crisis Threatens D.C.’s Lowest-Income Residents* 3 (Dec. 8, 2016), available at <http://www.dcfpi.org/wp-content/uploads/2016/12/DCFPI-Broken-Foundation-Housing-Report-12-8-16.pdf> [hereinafter *A Broken Foundation*].

³ *Id.* at 5.

⁴ Wes Rivers, D.C. Fiscal Policy Inst., *Going, Going Gone: D.C.’s Vanishing Affordable Housing* 4 (Mar. 12, 2015), available at <http://www.dcfpi.org/wp-content/uploads/2015/03/Going-Going-Gone-Rent-Burden-Final-3-6-15format-v2-3-10-15.pdf>.

⁵ *Id.* \$800 is an affordable housing cost (based on the “affordability” definition used by the Department of Housing and Urban Development) for someone making \$32,000 per year, or working a full time job at \$15.38 per hour.

⁶ *Id.*

⁷ *Id.*

petition or proposes a voluntary agreement that includes substantial rent increases, often well above current market rents. The housing provider then offers current tenants a deal they cannot refuse: agree to the rent increases, but *you will never have to pay them*. A proposed settlement or voluntary agreement will provide that only future tenants (or, at times, current tenants who are not members of the signing tenant association) will have to pay the increased rents.

What this practice does is externalize the costs of rent increases by shifting them to future and other tenants who are not party to the agreement, giving current tenants little to no incentive to challenge such increases. Legally or factually insufficient housing provider petitions, that otherwise would be denied or significantly decreased if contested, are approved without objection. As a result, entire buildings of affordable units become unaffordable. Rent control still theoretically applies, but the law's restrictions are meaningless once substantial rent increase are locked in through settlement agreements or voluntary agreements.

This practice is not just theoretical, it is well-documented. Through FOIA requests made on behalf of the Rent Control Coalition, Legal Aid has compiled all hardship petitions and related orders since October 1, 2006, the last time the Council implemented a major overhaul of the rent control law.⁸ Our analysis shows just how many hardship petitions have been resolved in recent years with the type of settlement agreement described above. This phenomenon, which has significantly exacerbated the affordable housing crisis in the District, has in some ways been hidden in plain sight, because it has been "hidden" in private settlement agreements.

Since October 1, 2006, tenants filed objections and fought proposed rent increases in 26 hardship petition cases filed.⁹ Tenants proceeded through a full hearing in four cases, each time defeating the hardship petition with no rent increase granted. In the

⁸ Legal Aid submitted these requests to the Department of Housing & Community Development (DHCD) and the Office of Administrative Hearings (OAH) on behalf of the Rent Control Coalition. The documents numbered over 2,500 pages. Using intern and attorney time, we have created a database of the results. We currently have an outstanding FOIA request to DHCD for the same documents for all housing provider petitions types and for voluntary agreements during the same time period.

⁹ During this same period, housing providers filed 95 hardship petitions. In most cases, tenants never filed objections (47) or the Rent Administrator rejected the petition in full (14). Many petitions may have gone unchallenged because of the lack of attorneys available to represent low-income tenants, particularly in earlier years. Since mid-2009, tenants have found counsel and filed objections in 21 of 34 hardship petitions. In prior years, tenants filed objections in only 5 of 61 petitions.

remaining 16 cases that proceeded,¹⁰ tenants entered settlement agreements withdrawing their objections and agreeing to the housing provider's proposed rent increases.¹¹ The settlement agreements available for review¹² all have the same structure - current tenants are protected from the rent increases they are authorizing.¹³ As result of these 16 petition cases, over 500 rental units in the District have had rents increased from a little over \$700 per month - affordable by District standards – to rents just shy of \$1,200 per month. A chart detailing figures from our hardship petition analysis is attached.

Legal Aid is in the process of compiling similar data on all voluntary agreements filed since 2006. To date, the Department of Housing & Community Development has provided us with only a partial response to our FOIA request for these agreements, covering 2006 through 2012.¹⁴ The agreements that have been produced show a similar trend. In many cases, voluntary agreements are entered in buildings that are at least half vacant, with a small number of tenants authorizing large rent increases on an entire building. A number of these agreements also protect the signing tenants from ever having to pay the rent increases that they are authorizing. All told, voluntary agreements during the past 10 years have rendered hundreds of low- and moderate-cost units in the District unaffordable.

Bill 22-100 addresses these issues, by prohibiting any voluntary agreement or settlement agreement in which a tenant or tenant association agrees to authorize rent increases but shift the costs to future or other tenants. This change to the law is needed to prevent housing providers from entering into these cost-shifting agreements, which are destroying long-term affordability for buildings across the District. By exploiting this and other loopholes left open after the 2006 amendments to the Rent Stabilization Program, housing providers continue to subvert the purposes of rent control with potentially devastating consequences for low- and moderate-income tenants.

¹⁰ In four cases, the final outcome of the hardship petition is missing. In two more cases, tenants filed objections but their cases were rejected by OAH.

¹¹ In two cases, the approved rent increases were slightly lower than the amounts requested; in 14 of the 16 cases, tenants agreed to rent increases in the amount requested *or higher amounts*.

¹² The final settlement agreements are available in 10 of the 16 cases.

¹³ Most of these agreements provide signing tenants with complete protection from the rent increases – they will never have to pay them. Several of the agreements also protect signing tenants from any future housing provider petition rent increases.

¹⁴ Legal Aid submitted a FOIA request to DHCD in July 2016 requesting a copy of all voluntary agreements filed since October 1, 2006. Despite numerous attempts to follow up with the agency over the past year, we have only received voluntary agreements filed through 2012; agreements filed in more recent years are still missing.

Cost-Shifting Voluntary Agreements & Settlement Agreements Are Not Preserving Affordable Housing for Current Tenants.

Critics of Bill 22-100 undoubtedly will argue that the practice of shifting rent increases to future tenants is necessary to preserve housing affordability for current tenants while allowing housing providers to make badly-needed repairs. While there is some truth in this argument, the cost is simply too high: too often we see long-term housing affordability sacrificed so that a small group of remaining tenants can avoid rent increases. Our experience tells us that the narrative portrayed by critics of the Bill is incomplete, and the reality of these agreements is far bleaker.

At the outset, it is important to note that Bill 22-100 does not limit housing providers and tenants from entering traditional voluntary agreements or settlement agreements in which current tenants agree to pay rent increases themselves in exchange for housing providers making improvements or providing other benefits. These are the types of voluntary agreements that the Rental Housing Act envisioned,¹⁵ and they will be preserved. But very few voluntary agreements entered in the past 10 years include this kind of fair and equal bargaining.

Cost-shifting voluntary agreements and settlement agreements, on the other hand, do not share this fair exchange of costs and benefits. In many situations, tenants in these buildings have been denied basic maintenance for years, allowing buildings to fall into critical disrepair. In these circumstances, housing providers too often can secure voluntary agreements offering no benefit except bringing properties up to code, and in exchange housing providers are rewarded with massive rent increases on future tenants. Many of the tenants and other advocates testifying in support of Bill 22-100 will offer stories illustrating this point.

Enforcement of promises made in these agreements also can be challenging. Legal Aid has stepped in to enforce voluntary agreements that we did not negotiate, where the housing provider is refusing to implement or complete the limited repairs that were promised. A tenant in one such building, Delma Elaine Fagan Gaisey, President of the 1825 Maryland Ave Tenants Association, Inc., is submitting her own testimony to the Committee today. She had to work for years to obtain promised repairs and improvements. Even where Legal Aid has represented tenants or a tenant association from the outset, we have found that pressuring a housing provider to make promised

¹⁵ The Rental Housing Act allows seventy percent or more of the tenants of a housing accommodation to enter into a voluntary agreement with the housing provider “(1) To establish the rent charged; (2) To alter levels of related services and facilities; and (3) To provide for capital improvements and the elimination of deferred maintenance (ordinary repair).” D.C. Code § 42-3502.15.

repairs can be a months-long process. Tenants should not need lawyers in order to force housing providers to hold up their end of these bargains.

Our experience also teaches us that voluntary agreements and settlement agreements too often do not preserve affordability for current tenants. Once cost-shifting agreements are reached, housing providers have a powerful incentive to encourage current tenants to vacate – or even to force them out via eviction or other means – because a new tenant moving in will pay a much higher rent. “Success” under a cost-shifting voluntary or settlement agreement often means a small handful of current tenants are able to remain for a limited period of time, while long-term affordability for the entire building is lost.

One of the buildings Legal Aid has worked with illustrates this point. Legal Aid and organizers from Housing Counseling Services represented tenants at the Carrollton Apartments, 1615 and 1625 Franklin Street NE, to defend against two hardship petitions. The buildings contain 75 units in Ward 5 near the Rhode Island Avenue Metro station, a rapidly-gentrifying area.

The housing provider and the tenant association ultimately entered into a settlement agreement to resolve both hardship petitions that shifted all approved rent increases onto future tenants. Importantly, “success” in this case preserved only 30 out of 75 units for current tenants. Despite herculean efforts by Housing Counseling Services to organize tenants and Legal Aid’s representation, many tenants had been evicted or agreed to vacate for very little money before we could intervene.

Moreover, the attrition of current tenants has continued, despite our successful negotiation of a deal that protected current tenants from the proposed hardship petition increases and any future petition rent increases. The housing provider has renewed its efforts to offer moveout deals, and two years later only 23 out of 75 units remain affordable and are occupied by the current tenants protected by the deal. It is not hard to imagine that within a few more years, most of the affordability preserved by our agreement will have evaporated, and long-term affordability already has been lost.

Our experience with the Carrollton Apartments also provides a powerful example of how cost-shifting agreements warp incentives for fair bargaining. The housing provider at this property ultimately filed two hardship petitions, because there was an intervening change in ownership, and both remained pending at the time of settlement. When reviewing the petitions, Legal Aid found a variety of problems with the accounting in the two petitions such as large amounts of capital expenses that were included, vacancy losses that were claimed when units were not offered for rent, and expenses claimed that did not represent a 12-month period. If we had litigated these cases, current

tenants would have ended up with some level of rent increase, but likely one much lower than the housing provider was seeking.

Instead, the housing provider required in settlement that the current tenants agree to both sets of increases proposed in the two petitions, more than doubling the rents - a level of increase that the housing provider likely would never have achieved before a judge, where only one of the two petitions should have gone forward. While the current tenants understood that doubling the rents would completely change the building over time, and that the rent increases they were agreeing to were unwarranted, they really had no choice but to accept these terms. Put simply, it was an offer to good to refuse.

This is precisely the problem. The Rental Housing Act envisioned voluntary agreements as the result of arms-length bargaining in which a fair compromise would be had. Tenants were provided with the right to contest housing provider petitions so that the adversarial process would ensure that resulting rent increases were warranted, and exaggerated claims for large rent increases were ferreted out. These incentives for fair and reasonable outcomes are completely undermined when one party does not have to pay the costs of the resulting agreement. This practice must be stopped.

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The bottom line is simple. Housing providers should not be allowed to ask current tenants to protect their own short-term interests by giving up the future, long-term affordability of a building. The Council has the power to stop this destructive practice by enacting Bill 22-100. Legal Aid offers its strong support for the Bill, which is necessary to ensure that the District's rent control laws remain an effective tool for preserving long-term housing affordability for low- and moderate-income residents of the District.

Thank you for this opportunity to testify.