



**Legal Aid Society**  
OF THE DISTRICT OF COLUMBIA

MAKING JUSTICE REAL

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**The Committee of the Whole  
Council of the District of Columbia**

**Public Oversight Roundtable on the  
Department of Consumer and Regulatory Affairs:  
Inspection and Enforcement of Tenant Housing**

**October 2, 2017**

The Legal Aid Society of the District of Columbia<sup>1</sup> submits this testimony to respectfully request that the Committee explore shifting responsibility for housing code inspection and enforcement from the Department of Consumer and Regulatory Affairs (DCRA) to another agency and implement several other changes to D.C. law and the procedures governing housing code inspections and enforcement (which Legal Aid believes should be made irrespective of which governmental agency has authority over them).

Effective enforcement of housing codes is of paramount importance in ensuring that tenants live in safe and healthy homes, promoting housing stability, and preventing displacement. Legal Aid interacts daily with tenants (including applicants at intake interviews, persons assisted throughout our Landlord and Tenant Branch courthouse project, and long-term clients) whose landlords fail to make repairs required to comply with D.C. laws.<sup>2</sup> Legal Aid's July 2017 written testimony presented to this Committee raised the possibility of moving housing code enforcement to another body within the D.C. government. Legal Aid's discussions with other advocates in the last two months have led to an even stronger determination that such a shift would be beneficial to D.C. tenants.

DCRA is currently the primary governmental organization with the power to enforce the Housing Code and Property Maintenance Code and remedy defective housing conditions. Legal Aid appreciates the willingness of DCRA to regularly meet with stakeholders to receive

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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." For 85 years, Legal Aid staff and volunteers have provided legal services to 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. More information about Legal Aid is available at our website, [www.legalaiddc.org](http://www.legalaiddc.org), or on our blog, [www.makingjusticereal.org](http://www.makingjusticereal.org).

<sup>2</sup> A substantial portion of these tenants are not aware that DCRA provides housing code violation inspections, which is also a problem. A January 2016 survey performed by Legal Aid interns found that 37% percent of surveyed tenants (29 of 78), including many who had lived with housing code violations, did not know that the DC government has housing inspectors who can be called when landlords are not fixing problems. Legal Aid is not aware of any marketing efforts by DCRA in the subsequent period that would be likely to increase awareness of its services.

feedback and share information. For the last one to two years, representatives of tenant advocacy organizations have met quarterly with DCRA management. In these meetings, we are able to raise issues we see regarding inspections and enforcement and to receive information from DCRA about its efforts. DCRA often does address individual issues. Still, the frequency with which Legal Aid attorneys have seen the same types of problems recur over the last several years has convinced us that that change is needed.

The testimony below will first explain the reasoning for a new placement for housing code inspections and enforcement. Then, it will discuss three additional changes that Legal Aid recommends regardless of what agency assumes these responsibilities: 1) requiring increased transparency in the inspection and enforcement process; 2) implementing a more effective proactive inspections process; and 3) amending D.C. law to require all fines acquired through housing code enforcement actions to be placed in the nuisance abatement fund, so that there are more resources available for governmental intervention to correct substantial housing code violations.

**1. The D.C. government should consider transferring responsibility for rental housing inspections and enforcement.**

DCRA has a broad mission which ranges from building inspections and code enforcement to business licensing and registration. Legal Aid and other members of the advocate community believe that many of the issues with DCRA arise because its primary constituency is businesses, not tenants and other consumers. The vast majority of the services offered by DCRA are intended to promote and coordinate activities by for-profit entities or property owners in the District, such as business licensing and registration, permitting, and construction inspections.

The regulation of businesses can undoubtedly protect consumers, including tenants. However, Legal Aid believes that the placement of a unit whose mission is to protect tenants against the malfeasance of property owners within DCRA, a business- and property-owner-facing organization, creates at least two main problems, which in turn contribute to an ineffective inspection and enforcement regime:

*a. Subpar Customer Service*

Legal Aid recognizes that DCRA has made strides to provide better service to tenants. However, even from the small fraction of D.C. tenants whom we meet, we hear stories about difficulty scheduling inspections, lack of follow-up after inspections (including regarding enforcement actions), and basic deficiencies in customer service.

On a number of occasions, Legal Aid has had to have a legal assistant or intern call DCRA to schedule an inspection with a tenant, because the tenant was rebuffed on his or her first try. (This is especially true for tenants who have some sort of housing subsidy.) DCRA inspectors sometimes take many days or even weeks to prepare and provide inspection reports to tenants, which leaves tenants in the dark about their findings. Late inspection reports mean that tenants are unsure of what violations inspectors have found. Further, as landlords have 30 days to repair most issues (even something as serious as a lack of hot water), late reports further delay

needed repairs. This lack of communication can extend throughout the inspection process, as DCRA also often falls out of view after re-inspection, leaving tenants unaware of what, if anything, DCRA is doing to enforce notices of infraction issued to landlords (through the collection of fines or otherwise). In many cases, it is not clear that DCRA is using its power to force landlords to fix violations, and tenants do not have the information they need to monitor any efforts that DCRA might be making or make an informed decision about whether to pursue legal action themselves. In these cases, tenants only see the lack of action by their landlords and seemingly ad hoc extensions for repairs given by DCRA.

Legal Aid believes that, to a large degree, these problems can be attributed to the fact that tenants comprise only a small portion of DCRA's customers. Housing code enforcement would be much more effective if affected tenants were elevated as valuable constituents and partners in enforcing the law.

b. *Potential for Regulatory Capture*

While Legal Aid does not suggest that DCRA intentionally favors landlords over tenants, its structure makes it vulnerable to the effects of regulatory capture. Regulatory, or agency, capture holds that an agency created to act in the public interest may instead advance the interests of special interest groups in the sector it is charged with regulating. This effect may occur simply because the special interest groups are able to focus their attention on influencing the agency's actions in a way that the general public is not. Given the makeup of DCRA's constituency, in which businesses predominate over tenants, the agency is at least vulnerable to be influenced by the focused attention of landlords, and it may unwittingly favor landlords with respect to small, yet important decisions—such as whether to grant an ad hoc extension to a landlord to make repairs—as a result. Moreover, the appearance of bias can have just as negative of an effect as actual bias on combating and deterring future housing code violations. A tenant who has a negative experience with DCRA is unlikely to call again when a new, even larger, problem emerges. Trust is essential for housing code inspections, which involve an incursion by a stranger into the most intimate of spaces, to be successful.

DCRA's enforcement of the Housing Code and Property Maintenance Code does have certain synergies with the rest of its mandate, which includes other types of building and construction inspections. And it in many ways is ideal for the same agency to promulgate and enforce all related regulations. The Council should consider whether to move responsibility for promulgating housing code regulations along with the inspections and enforcement unit to another agency, or to separate the two functions and leave the rulemaking authority with DCRA. Either approach would have costs; however, Legal Aid and many other advocates think that the benefits of moving housing code enforcement to another governmental organization would outweigh the possible costs.

In its prior written testimony, Legal Aid put forward the Department of Housing and Community Development as one candidate for the new home for housing code inspections and enforcement. After further conversations with other groups, Legal Aid has not settled on a preferred candidate within the D.C. government. However, Legal Aid urges the Council to vigorously pursue this possibility.

**2. Changes should be made to the laws and procedures governing housing code inspections and enforcement.**

No matter who enforces the Housing Code and Property Maintenance Code, changes must be made. Legal Aid advocates for the following changes:

*a. Increased transparency in the inspections and enforcement process*

As discussed above, tenants and advocates alike encounter problems in learning what violations inspectors have found, both after the initial inspection and any re-inspections, and whether enforcement efforts against the landlord have proceeded. Increased transparency is needed.

This lack of transparency leaves tenants in a difficult position. Further, a lack of clear communication complicates private efforts to ensure compliance with the housing code. Judges and litigants all look to inspection reports to help determine what compliance with the housing code means. When neither the landlord nor the tenant has readily available information about the inspector's findings, no one benefits. A lack of information impairs good faith efforts by landlords and tenants to settle their differences and adds cost and delay to private enforcement efforts.

The stated policy of sending out reports within two business days of an inspection should be formalized and adhered to. Further, the agency should keep tenants updated as to their enforcement efforts and involve them more in the enforcement process. Tenants usually have no idea what happens once the inspection reports are generated, even when repairs are not made. Involving tenants in enforcement actions would be helpful, as tenants could be better advocates for themselves. It would also help to build trust.

One answer to the problem with transparency is to make more information readily available to tenants and the public using DCRA's Property Information Verification System (PIVS) application or another platform. Legal Aid understands that DCRA is working on updating its systems, and these efforts should be expedited. The system should allow the public to easily track complaints for any rental unit from the time that a complaint is made to the landlord's payment of a fine or the enforcement division's placing of a lien on the property. The system should have all relevant documents in one place, including inspection reports. Although there may be some privacy concerns with such a system, complaining parties' information could easily be redacted. While many members of our client community do not have access to the internet, meaning that a web-based system should not completely replace the current approach, such a system would help many tenants obtain more timely and complete information about DCRA's enforcement efforts. Armed with better information, tenants and advocates can be better partners in the fight to ensure that landlords maintain their housing portfolios in compliance with the law.

b. *More effective proactive inspections*

Recent press concerning the deplorable conditions of essentially a landlord's entire housing portfolio is proof of the failure of the current proactive inspection regime.<sup>3</sup> The mayor has announced the development of an algorithm that will allow the proactive inspections department to target buildings most likely to be at risk. This is a positive step. For this algorithm to be effective, it should weigh not only the number of housing code violations found at the building in the past and its age, but also factors such as whether the building is in a neighborhood experiencing displacement and whether the owner (including individuals who may be behind a number of LLCs)<sup>4</sup> owns other buildings where housing code violations have been found. Moreover, the inspectors should visit a large percentage of the units in any building or complex to ensure that landlords are not able to avoid showing the worst units to inspectors. Finally, because even the most efficient proactive inspection process is not perfect, tenants in a recently-inspected building should not be rebuffed when they call for complaint inspections.

c. *Fines added to the nuisance abatement fund*

One potential way of generating more resources to directly address housing code violations is by updating the statute governing the nuisance abatement fund. The fund is a powerful tool at the agency's disposal. DCRA is empowered to make repairs needed to correct substantial housing code violations in certain circumstances. The repairs are paid for out of the nuisance abatement fund, and DCRA then can either put a lien on the property, levy a tax, or obtain an administrative judgment to recoup the expenses.<sup>5</sup> This fund ensures that at least some tenants whose landlords refuse to make repairs are still able to live in habitable conditions, but the fund is limited in size.

Currently, although the statute provides that some of the fines collected from landlords go to the fund, it explicitly excludes fines obtained through administrative proceedings.<sup>6</sup> Most fines are collected by DCRA in administrative proceedings before the Office of Administrative Hearings. Amending the statute to direct these fines to the nuisance abatement fund would serve two important purposes. First, it would increase the size of the fund. Second, if the agency were able to keep the fines collected and use them for a salutary purpose, it should have a greater incentive to pursue enforcement actions vigorously.

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<sup>3</sup> See Fenit Nirrapil, *Sanford Capital faces \$539,500 in fines after D.C. inspects some of its buildings*, Washington Post (Apr. 3, 2017), [https://www.washingtonpost.com/local/dc-politics/sanford-capital-faces-539500-in-fines-after-dc-inspects-its-buildings/2017/03/31/10237796-0f21-11e7-9d5a-a83e627dc120\\_story.html?utm\\_term=.08bd11cea875](https://www.washingtonpost.com/local/dc-politics/sanford-capital-faces-539500-in-fines-after-dc-inspects-its-buildings/2017/03/31/10237796-0f21-11e7-9d5a-a83e627dc120_story.html?utm_term=.08bd11cea875).

<sup>4</sup> For this reason, Legal Aid believes the currently proposed legislation, B22-0381, or the "Landlord Transparency Amendment Act of 2017" should go a step further and require any LLC that owns property which it rents for residential use to disclose the major individuals who are behind it. Any privacy interests are far outweighed by the interest in ensuring that properties are kept in good condition, and there is no reason why the government or tenants should have to wait for a subpoena to find out who actually owns a building.

<sup>5</sup> See generally D.C. Code § 42-3131.01.

<sup>6</sup> See D.C. Code § 42-3131.01(b)(2).

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Thank you for this opportunity to share our thoughts regarding DCRA's tenant housing inspection and enforcement divisions. Legal Aid is pleased that the Council held this roundtable session and hopes that it is the first of many as the District seeks to ensure that all tenants are provided with safe and healthy homes.