

**Testimony of Beth Mellen Harrison
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**Before the Committee of the Whole
Council of the District of Columbia**

**Public Oversight Hearing Regarding the
Department of Consumer & Regulatory Affairs**

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The Legal Aid Society of the District of Columbia¹ welcomes this opportunity to share our thoughts about the performance of the Department of Consumer & Regulatory Affairs (“DCRA”) and possible legislative changes to improve the performance of the agency. Legal Aid provides advice, brief services, and representation to hundreds of tenants in the District every year. Many of these tenants are living in substandard conditions, in homes with serious housing code violations that threaten the health and safety of their families.

During the past two years, Legal Aid has testified at eight prior Council hearings and roundtables about DCRA’s fundamental failure to enforce the housing code and protect tenants in the District. This agency failure is an issue of critical importance to our client community. After briefly revisiting those concerns, and relaying recent examples illustrating that very little has changed, our testimony focuses on five legislative proposals that Legal Aid believes are necessary to reform housing code enforcement in the District. In sum, legislation is needed to:

- 1) Require DCRA to employ a sufficient number of housing code inspectors,
- 2) Codify and strengthen the proactive inspections program,
- 3) Require DCRA to provide housing code inspectors in the Landlord and Tenant Branch of Superior Court,
- 4) Enforce the Air Quality Amendment Act’s requirements for remediation of indoor mold, and
- 5) Ultimately, break up DCRA by creating a new agency focused on residential housing inspections and tenant protection.

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 87 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, immigration and consumer protection.

DCRA Fundamentally Fails to Enforce the Housing Code and Protect Tenants

In past testimony, we have highlighted problems that we continue to observe in DCRA's rental housing inspections program. Too often, tenants encounter obstacles in scheduling inspections, a variety of difficulties during the inspection process, and challenges obtaining reports after the inspection process. Even when violations are found, too often the agency fails to pursue fines and other remedies against landlords who have broken the law and also lacks strategic focus to target problem landlords. The result is under-enforcement of the housing code.

Many of the concerns raised by tenants and advocates in past testimony before the Committee, including by Legal Aid, were confirmed in a recent report by the D.C. Auditor:²

- DCRA does not have sufficient inspectors to carry out its mission of enforcing the housing code.
- DCRA chooses to use its discretion to show leniency to landlords.
- Because of lax enforcement by DCRA, landlords escape fines and other penalties, despite ongoing violations.
- DCRA does not calibrate its enforcement actions to target problem landlords.
- DCRA's recordkeeping practices are inadequate, leaving tenants, advocates, and the Council in the dark about the agency's enforcement track record.

While the Auditor's report focuses on the current state of enforcement at DCRA and the leadership of recently-departed Director Melinda Bolling, it is important to note that the problems identified by the Auditor have been ongoing for years. It has been over ten years since the *Washington Post's* investigative series on the systemic failures in DCRA's rental housing inspection program, including a near total failure to cite violations or assess or collect fines against landlords. The *Post's* conclusions were based on a review of thousands of court records and agency documents. DCRA's Director at the time, Linda Argo, responded by assuring the public that the agency would provide more training to employees and develop a system to better track inspections and re-inspections.³

In the decade that has followed, Legal Aid, other providers, and the Council itself have repeatedly sought data from DCRA to demonstrate that it has righted its enforcement approach, to no avail. Legal Aid continues to see far too many cases in which DCRA fails to cite landlords for violations, perform necessary re-inspections, assess fines, or collect fines, leaving tenants living in unsafe and unhealthy conditions. Through multiple directors, DCRA continues to come up short at every step in the enforcement process.

² Office of the District of Columbia Auditor, *Housing Code Enforcement: A Case Study of Dahlgreen Courts* (Sept. 24, 2018).

³ Debbie Cenziper & Sarah Cohen, A Failure in Enforcement, *Washington Post*, Mar. 11, 2008, <http://www.washingtonpost.com/wp-dyn/content/article/2008/03/10/AR2008031003193.html>.

In addition to the issues identified above, we continue to see serious gaps in DCRA's proactive inspections program. The program does not reach a sufficient number of buildings or units and continues to pass buildings where significant housing code violations exist. We also remain concerned about DCRA's ongoing refusal to inspect or cite for mold, leaving far too many tenants without options to force their landlords to make repairs. Our recommendations below focus on legislative reforms to address some of these ongoing challenges.

Legal Aid Has Yet to See Improvements in DCRA's Performance

DCRA has reported to the Committee that it has made or is in the process of making various changes to its policies and procedures with respect to residential housing inspections. We appreciate the agency's efforts to make changes. We also look forward to working with Interim Director Ernest Chrappah on the issues outlined in our testimony. Legal Aid and other organizations have been invited to take part in a Housing Code Enforcement and Compliance Working Group. We appreciate the invitation and look forward to working with this group to address internal agency reform. Unfortunately, we have not yet seen improvements in DCRA's performance.

Tenants still do not have access to basic information about enforcement actions being taken by DCRA regarding their own units. DCRA launched a new version of the Property Information Verification System – PIVS 2.0 – its updated online public portal, to much fanfare last year. But in our experience, the system continues to contain inaccurate information. Moreover, even the upgraded interface does not provide access to inspection reports or enforcement documents and does not tell a tenant or landlord where a case is in the enforcement process.

During the past year, Legal Aid has represented a tenant, whom we will call Tom Jackson, at Oak Hill Apartments, part of the Sanford Capital portfolio. Mr. Jackson works full-time in the District and lives in the unit with his partner and their children. DCRA inspected his unit in late 2016 and issued a notice citing multiple violations. His unit should have been re-inspected in 2017, as part of DCRA's review of the entire Sanford portfolio.

In looking up his building in PIVS, however, no records appear. More information is available in a *City Paper* article about his building than on PIVS. Moreover, DCRA has had no contact with Mr. Jackson since the inspections of his unit took place. He has no way of knowing if DCRA issued a notice of infraction, issued or collected fines, or otherwise took any enforcement actions. He does not know if DCRA found violations in any of his neighbors' units. What Mr. Jackson does know is that two years later, his family continued to have to live in a unit with dozens of serious housing code violations, including the same issues cited by DCRA in 2016. Among the more serious issues, his unit had an unabated roach infestation, water damage from multiple floods, insecure front and balcony doors, and insufficient heat.

Thankfully, Mr. Jackson came to Legal Aid for help. We were able to negotiate with the receiver for the property for comprehensive repairs to be performed on his unit. Without our intervention, however, this tenant and his family would still be living in unsafe, unhealthy conditions.

Just this week, Legal Aid met with another client we are representing, whom we will call Jane Jones, along with her landlord and landlord's attorney, to talk about needed repairs in her unit. DCRA inspected Ms. Jones' unit in early December 2018 and issued a notice of violation citing a handful of issues. When we met, both Ms. Jones and her landlord agreed that the DCRA report was woefully inadequate and that there are at least a couple dozen issues that need to be repaired in her unit and the common areas of her building, many of which are serious and yet were not cited.

DCRA came back out for a second inspection of Ms. Jones' unit at the beginning of February 2019. We understand that DCRA found at least some of the previously-cited violations were not abated, but neither the landlord nor Ms. Jones has received any kind of follow-up report from DCRA. Ms. Jones was told at the time that her case has been sent to enforcement to prepare a notice of infraction, but neither she nor the landlord have been contacted by DCRA since then. No further information is available from PIVS. It is worth noting that because PIVS only displays the most recent action on a particular case, it does not allow Ms. Jones or her attorney to track the overall progress of her case over time. At this point, we can see when the case was sent to enforcement, but we cannot tell when the first or second inspection occurred.

As noted, Legal Aid also continues to encounter serious problems with the proactive inspections program. Buildings are passing proactive inspections despite ongoing, substantial housing code violations in multiple units. We are concerned that because DCRA continues to rely on outside contractors and inspects only a small percentage of the units, the proactive inspections often do not provide a reliable measure of the overall condition of a building.

Legal Aid currently is working with one such multifamily rental property in Columbia Heights. This fall, a Legal Aid inspector visited over twenty units in the building (representing over two-thirds of the property) and found hundreds of potential housing code violations, including issues such as water damage to ceilings and walls, roach and mice infestation, and entry doors that are not secure. Two months later, this same property passed a proactive inspection with DCRA. While the landlord initially claimed that the certificate of compliance must mean all housing code violations have been abated, they have now acknowledged that is not the case. We are in the process of following up with the landlord and these tenants to address the violations found by our inspector.

The Committee Should Consider Further Legislative Changes to Strengthen Housing Code Enforcement

The Committee Should Consider Passing Legislation Mandating That DCRA Employ a Sufficient Number of Inspectors

The District has over 160,000 renter-occupied housing units.⁴ Yet, DCRA's Housing

⁴ American Community Survey Data, Physical Housing Characteristics for Occupied Housing Units, 2017 1-Year Estimates, *available at* <https://factfinder.census.gov/faces/nav/jsf/pages/index.xhtml>.

Inspections and Housing Code Enforcement sections employ only 14 housing code inspectors, 4 housing code specialists, and 3 contact representatives to perform this work. This is simply insufficient. In recent years, DCRA has conducted approximately 12,000 residential housing inspections each year – meaning that each inspector is responsible for conducting 3 to 4 inspections each work day, as well as all of the preparation and follow-up stemming from each such inspection.⁵ Legal Aid is concerned that the repeated problems we have seen with the quality of DCRA housing code inspections, as well as the lack of enforcement follow-up, is related to this chronic understaffing.⁶

Reducing the workload on overtaxed inspectors should improve the quality of the housing code inspections and enforcement process. Inspectors would have more time to prepare for and conduct each individual inspection, ensuring a comprehensive report. More inspectors would be available to conduct follow-up inspections promptly. Each inspector would have more time to work up cases and thoroughly but promptly prepare them for legal enforcement when landlords do not abate violations. Legal Aid’s clients continue to experience problems with each of these aspects of the housing code inspection and enforcement process.

DCRA has under-staffed its housing inspections program for years. The Committee should consider passing legislation that would mandate a minimum number of housing inspectors for every 10,000 renter-occupied housing units, to ensure that this problem does not persist.

The Committee Should Considering Passing Legislation That Codifies and Strengthens the Proactive Inspections Program

The Omnibus Tenant Protections Act of 2008, Bill 17-1037, introduced in November 2008, would have required the Mayor to inspect every rental housing property in the District every two years. DCRA responded to this proposal by creating its own proactive inspections program, launched in August 2010. DCRA never codified the program in statutory or regulatory provisions and has revised its basic parameters several times over the intervening years. As currently envisioned, the goal of the proactive inspections program is to select properties randomly for scheduled inspections, ensuring that each of the approximately 4,300 rental housing properties in the District with 3 or more units is inspected every two years. For properties with 3 to 4 units, half of the units are inspected; for properties with 5 to 49 units, 30

⁵ In Fiscal Year 2018, DCRA performed 12,226 housing inspections; in Fiscal Year 2017 the figure was 11,510 inspections. 2019 Agency Performance Oversight Responses Department of Consumer & Regulatory Affairs at 135.

⁶ Other cities with comparable populations employ many more inspectors than the District. For example, Boston, which has over 170,000 renter-occupied housing units, employs 3 supervisors and 30 inspectors in its Inspectional Services Department. https://www.cityofboston.gov/images_documents/housing-inspectors_tcm3-34907.pdf.

percent are inspected; and for properties with 50 or more units, 15 percent are inspected.⁷ DCRA utilizes contractors to perform these proactive inspections.⁸

Legal Aid has seen many problems over the years with the implementation of the proactive inspections program. Although the program has been in operation for over eight years, many rental properties have only been inspected once. At least some rental properties have not been inspected at all, while some have been inspected two or three times. Our understanding is that until recently properties were chosen randomly for inspection, and DCRA has not used the program to target problem actors or properties. We have also seen properties receive certificates of compliance despite serious housing code violations, a problem that may be attributable to the quality of inspections by private contractors but also to the low percentage of units targeted in each building. Moreover, once a property receives a certificate of compliance, tenants sometimes encounter resistance when they contact DCRA to request a complaint-based inspection.

To ensure that the proactive inspections program is as effective as possible, its requirements should be codified by statute or regulation and strengthened:

- Agency inspectors, not contractors, should perform all proactive inspections.
- All residential buildings in the District (or at least all built before a certain year) should be inspected at least every 4 years.
- The agency should prioritize buildings with “risk factors,” such as a certain number of violations found during complaint or proactive inspections during a certain period, for more frequent proactive inspections every 2 years.
- The agency should ensure that proactive inspectors visit a substantial percentage of units in every building. Specifically, we recommend inspecting at least 50 percent of units for buildings under 25 units, at least 40 percent for buildings between 25 and 49 units, and at least 30 percent for buildings with 50 or more units.
- A “pass” on a proactive inspection should not be an impediment to subsequent complaint inspections, either for individual units or entire buildings.
- The agency should follow up on violations found during proactive inspections in the same way as a complaint-based inspection and refer an owner to enforcement if it does not abate the violations during the prescribed time period. Similarly, all proactive inspection data should be available publicly through PIVS.

⁷ DCRA, “Proactive Inspections,” *available at* <https://dcra.dc.gov/service/dcra-proactive-inspections>.

⁸ DCRA does not appear currently to have the resources to implement a program of this scope. The District has approximately 13,995 renter-occupied housing units in building with 3-4 units; 17,670 such units in buildings with 5-9 total units; and 101,689 such units in buildings with 10 or more units. American Community Survey Data, Physical Housing Characteristics for Occupied Housing Units, 2017 1-Year Estimates, *available at* <https://factfinder.census.gov/faces/nav/jsf/pages/index.xhtml>. Conservatively, this amounts to over 27,500 inspections every two years. In recent years, DCRA reports conducting 3-4,000 proactive inspections every year. 2019 Agency Performance Oversight Responses, Department of Consumer & Regulatory Affairs, at 135.

Unless DCRA is willing to strengthen and codify the proactive inspections program by regulation, the Committee should consider passing legislation to do so.

The Committee Should Considering Passing Legislation Requiring DCRA to Provide Housing Inspectors in the Landlord and Tenant Branch of D.C. Superior Court

In 2010, the D.C. Superior Court created the Housing Conditions Calendar, allowing a tenant to file a summary process complaint seeking a court order for their landlord to make required repairs to address housing code violations. The Court worked in cooperation with DCRA for the agency to provide a housing code inspector attached to the Court. This inspector attends all court hearings, performs inspections when directed to do so by the Court, prepares reports, and reports back to the Court on the findings. This process has worked reasonably well – the inspectors attached to the Court over the years have performed high-quality inspections, issued detailed reports, and frankly made the inspection process more accessible to tenants.

Tenants facing eviction in the Landlord and Tenant Branch of D.C. Superior Court would benefit from a similar program. Landlords in the District file over 30,000 new eviction cases in this Branch every year, most alleging nonpayment of rent by tenants.⁹ Housing code violations are a defense in these cases, but most tenants are not represented by an attorney and enter consent judgments that typically require the tenant to pay back rent in full without requiring the landlord to make necessary repairs. Based on Legal Aid’s experience representing hundreds of tenants in eviction cases each year through an office sited in the Branch, we believe that the overwhelming majority of tenants facing eviction for nonpayment of rent also have repair needs in their unit – and in many cases, substantial housing code violations.¹⁰

DCRA should establish a cooperative program with the Landlord and Tenant Branch of D.C. Superior Court to provide one or more housing code inspectors attached to the Court who can perform inspections when requested by a landlord, tenant, or the Court, and then report back to the Court on the findings. Should DCRA fail to act, the Committee should consider legislation mandating this kind of program and also codifying the current program with the Housing Conditions Calendar.

⁹ District of Columbia Courts, Statistical Summary 2017 6, *available at* <https://www.dccourts.gov/about/organizational-performance/annual-reports>.

¹⁰ A study of Rent Court in Baltimore City found that nearly 80 percent of surveyed renters in court were living with serious housing code violations, and over 70 percent of those tenants had provided notice to their landlords of the conditions before coming to court. *Justice Diverted* 14-15 (Dec. 2015), *available at* http://www.publicjustice.org/uploads/file/pdf/JUSTICE_DIVERTED_PJC_DEC15.pdf

The Committee Should Move Forward to Enact B23-0132, Indoor Mold Remediation Enforcement Amendment Act of 2019 - And Should Take a Similar Approach to Lead

In 2015, the Council enacted one of the most protective laws in the country addressing mold in residential housing, the Air Quality Amendment Act, licensing mold assessors and remediators and requiring landlords to remediate indoor mold. Unfortunately, the law has not been fully effective, because no agency currently has the budgetary resources or legal authority to inspect, cite violations, and issue penalties such as fines. As a result, tenants living with unabated indoor mold and facing landlords who refuse to remediate have few options. The Indoor Mold Remediation Enforcement Amendment Act, B23-0132, squarely addresses this problem by requiring DCRA inspectors to be licensed as mold assessors and authorizing DCRA to issue citations and penalties for landlords who violate the law.

Mold is a serious threat to public health in the District, warranting a strong public enforcement response. Legal Aid estimates that at least half of the tenants that we meet may have issues with mold or mildew in their homes. Exposure to mold has been linked to upper respiratory tract symptoms, coughing, and wheezing in otherwise healthy individuals, potentially increasing their risk for developing asthma. For individuals already living with asthma, other chronic lung illnesses, or compromised immune systems, exposure to mold can worsen their symptoms and cause more severe reactions.¹¹ In the District – where asthma rates are higher than national averages – the effects of mold growth can be expected to be even more serious.¹²

Legal Aid supports the Indoor Mold Remediation Enforcement Amendment Act and looks forward to working with the Committee as this legislation moves forward. We also recommend amending the bill to add similar requirements for DCRA inspectors to be trained, certified, and authorized to cite violations of the District’s lead law.

The Committee Should Move Forward to Enact B23-0091, the Department of Buildings Establishment Act – and Should Strengthen the Proposal

We believe that a comprehensive approach to reforming housing code enforcement in the District is needed to fully address the problems identified at this and past hearings, including establishment of an independent rental housing inspections agency. Legal Aid supports moving rental housing inspections out of DCRA altogether, as envisioned by B23-0091, the Department of Buildings Establishment Act, and believes the Act should go even further.

¹¹ See Centers for Disease Control and Prevention, “Facts About Mold and Dampness,” at http://www.cdc.gov/mold/dampness_facts.htm; see also World Health Organization, *WHO Guidelines for Indoor Air Quality: Dampness and Mold* (2009).

¹² It is estimated that asthma affects 15.8 percent of adults and 31 percent of teenagers in the District of Columbia. DC Health Matters, “Adults with Asthma,” “Teens with Asthma,” available at <http://www.dchealthmatters.org/index.php>. These numbers are above national averages. See *id.*

At the end of the day, Legal Aid believes that many of DCRA's challenges with respect to rental housing inspections stem from a broken agency culture. DCRA does not have a clear sense of mission to enforce the housing code, and it brings neither a public health nor strategic perspective to its work. The focus of DCRA's overall mission is business development and regulation, and far too often it appears that landlord interests are trumping tenant interests in the realm of rental housing inspections. There are numerous steps DCRA could take to improve its inspections process and enforcement process. But without a transformation in agency mission and culture, we fear that real change never will be realized, and tenants throughout the District will continue to live in unsafe conditions.

Legal Aid has come to a similar conclusion as the many members of the Council who signed onto the Department of Buildings Establishment Act: the wide breadth of DCRA's mission and its lack of a strong enforcement and consumer protection culture has impaired its efficacy. However, Legal Aid suggests that the Council go further and establish an independent agency specifically tasked with rental housing inspections and enforcement. Should the Council choose to proceed with the current framework for a Department of Buildings, as envisioned in Bill 23-0091, it should ensure that the Department's structure and procedures will lead to an effective inspections and enforcement regime. Legal Aid provided more detailed comments on how a new agency should be structured in our April 2018 testimony on the previously-introduced version of the Department of Buildings Establishment Act, Bill 22-0669.¹³

Conclusion

Thank you for this opportunity to share our thoughts on the performance of DCRA and the need for fundamental agency reform, including legislative changes. We are eager to continue working with the Council, DCRA, and other stakeholders to realize a more effective system of housing code inspections and enforcement.

¹³ Written Testimony before the Committee of the Whole Council of the District of Columbia, Public Hearing Regarding Bill 22-0669 "Department of Buildings Establishment Act of 2018", <https://www.legalaiddc.org/wp-content/uploads/2018/04/Legal-Aid-Testimony-re-B22-0669-FINAL.pdf>.