

**Testimony of Mel Zahnd
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**Before the Committee on Housing
Council of the District of Columbia**

**Performance Oversight Hearing Regarding the Department of Housing and
Community Development and the Housing Production Trust Fund**

February 15, 2024

Legal Aid DC¹ submits the following testimony regarding the performance of the Department of Housing and Community Development (DHCD) as well as the Housing Production Trust Fund (HPTF). My testimony today will focus on the ways the HPTF could be improved to better support tenants in exercising their Tenant Opportunity to Purchase Act (TOPA) rights and preserving affordability throughout the District. TOPA is an essential tool for preserving affordable communities in DC. The Council can build on TOPA's power to preserve affordable housing by taking the following steps:

1. Requiring that the HPTF should set aside thirty percent of its funds each year for projects that preserve aging housing stock that need rehabilitation.

¹ Legal Aid DC 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.” Legal Aid is the oldest and largest general civil legal services program in the District of Columbia. Over the last 92 years, Legal Aid staff and volunteers have been making justice real – in individual and systemic ways – for tens of thousands of persons living in poverty in the District. The largest part of our work is comprised of individual representation in housing, domestic violence/family, public benefits, and consumer law. We also work on immigration law matters and help individuals with the collateral consequences of their involvement with the criminal justice system. From the experiences of our clients, we identify opportunities for court and law reform, public policy advocacy, and systemic litigation. More information about Legal Aid can be obtained from our website, www.LegalAidDC.org.

2. Encouraging the District to increase its exercise of the District Opportunity to Purchase Act (DOPA).

I. TOPA Preserves Affordable Communities

TOPA is a powerful tool for keeping low- and moderate-income DC residents in their neighborhoods. Legal Aid has seen the power of TOPA for the many tenants' associations it has represented. For example, Legal Aid recently represented a group of tenants whose landlord had been willfully neglecting their homes to try to force them to move out. The neighborhood where these tenants live is rapidly gentrifying, and the landlord knew that if it could force the tenants to leave the building, then it could rent out the apartments at much higher rates or potentially even convert the building to expensive condos.

Many of the tenants in this building are immigrants who speak English as a second language or do not speak English at all. Most have low or moderate incomes. Many have lived in the building for years and have built a tight-knit community. When their building went up for sale, the tenants' association acted quickly. They worked with a tenant organizer to send a letter of interest, the first step to exercise their TOPA rights. They also retained Legal Aid to represent them through the TOPA process.

TOPA worked well for these tenants. They decided they did not want to form a cooperative to buy the building themselves. Instead, this group of tenants did what many groups of tenants do and negotiated a favorable development agreement with a responsible buyer and assigned their TOPA rights to that buyer. In the development agreement, the purchaser promised to renovate the building, which had fallen into disrepair because of the old landlord's neglect and years of deferred maintenance. The buyer also agreed to a moderate schedule of rent increases so that tenants could afford to continue living in the building.

These tenants were able to preserve their affordable community using TOPA. Instead of luxury apartments or condominiums, a gentrifying neighborhood in DC continues to have an affordable, renovated building for years to come. In a rapidly gentrifying city, TOPA is a powerful and essential tool for keeping low- and moderate-income tenants in their homes.

TOPA is often demonized by developers as slowing down the sale process in favor of tenants who never actually buy the building themselves. However, TOPA is actually one DC's best tools for the preservation of safe and affordable housing.

II. DC Can Increase TOPA's Effectiveness by Requiring One Third of HPTF Funding be Used for Preservation Projects

At this time, one of the greatest obstacles that Legal Aid has seen to TOPA's effectiveness is the lack of long-term funding available to preserve DC's aging housing stock.

Some tenants choose to form cooperatives to purchase their own buildings and others choose to assign their TOPA rights to responsible buyers who promise to maintain affordability and repair their buildings. For either option to work in an aging building, there needs to be money available to fund repairs and renovations.

In many TOPA cases, the tenants' goal is to find a responsible buyer for their building who will make repairs and keep the building affordable. Due to a combination of factors – including inflated, speculative prices and years of deferred maintenance – it can be difficult or even impossible to find responsible buyers to do this without adequate funding to renovate and repair older housing stock.² Because of the deteriorating housing conditions in many older buildings, if tenants cannot find a responsible developer to repair or renovate their homes, then they may be forced to leave altogether.³ Without options to keep their buildings affordable and in decent condition, tenants are sometimes forced to accept “buyouts,” money to leave behind their homes.⁴ These buyouts displace long-time tenants and disrupt communities.⁵

² See Coalition for Nonprofit Housing and Economic Development, “Sustaining Affordability: The Role of the Tenant Opportunity to Purchase Act (TOPA) in Washington, DC,” (Nov. 15, 2023), 66, <https://cnhed.org/news/cnhed-releases-comprehensive-analysis-of-dcs-tenant-opportunity-to-purchase-act-topa/>.

³ See Eliana Golding, DC Fiscal Policy Institute, “A Holistic and Reparative Agenda for Ending Displacement in DC,” (Nov. 15, 2023), https://www.dcfpi.org/all/agenda-for-ending-displacement/?link_id=5&can_id=24e984d2805d0ec55bc9dcf1a567686e&source=email-how-dc-funds-its-public-schools&email_referrer=email_2201000&email_subject=funding-priorities-for-the-fiscal-year-2025-budget.

⁴ See Coalition for Nonprofit Housing and Economic Development at 66.

⁵ See *id.*

Currently, the only designated funding to preserve aging housing stock is the Affordable Housing Preservation Fund (AHPF).⁶ The AHPF provides only short-term financing for initial purchase and for emergency repairs.⁷ At the end of these short-term loans, developers need “take out” financing (i.e. long term financing to renovate and maintain these affordable buildings). But, this funding is nearly impossible to come by unless developers can also access the HPTF.

There is an easy fix to this problem, though. To ensure that there is enough money set aside to adequately fund the necessary renovation and rehabilitation for DC’s aging housing stock, HPTF should be required to allocate at least thirty percent of its funds each year for these preservation projects, and this money must be available when developers need it. This required set-aside will give responsible buyers the funding and certainty they need to keep DC’s housing affordable and in good repair.

III. DC Should Put DOPA to Greater Use

DC can further extend its ability to preserve affordable communities by using DOPA more frequently, a program with the stated purpose of preserving affordable housing.⁸ When tenants are unable to, or choose not to, exercise their TOPA rights, DC can exercise a similar right to purchase a residential property through DOPA if at least a quarter of the units at the property are affordable.⁹

Up until recently, DC had not used this powerful tool to preserve affordable housing. However, DHCD recently issued a request for proposals to identify potential developers who would keep a property on R Street, NW affordable.¹⁰ Legal Aid recommends that DC exercise its DOPA rights in more cases when the city risks

⁶ Golding.

⁷ *Id.*

⁸ Department of Housing and Community Development, “District Opportunity to Purchase Act (DOPA),” <https://dhcd.dc.gov/service/district-opportunity-purchase-act-dopa> - :text=The District Opportunity to Purchase,rental units within the District.

⁹ See D.C. Code § 42-3404.31(a) (2024).

¹⁰ Department of Housing and Community Development, “Request for Proposals: Potential Assignment of DOPA Right,” (Jan. 16, 2024), <https://dhcd.dc.gov/sites/default/files/dc/sites/dhcd/publication/attachments/801-811 R Street NW DOPA RFP 1.3.2024 v4.pdf>.

losing affordable housing. If DC pairs an increased use of DOPA with investment in preservation projects, then it will be able to keep more affordable housing in good repair, maintaining safe communities for DC's low- and moderate-income residents.

IV. Conclusion

Thank you for this opportunity to testify about how DHCD, HPTF, and this Committee can preserve affordable communities for DC residents with low and moderate incomes. We look forward to working with DHCD, HPTF, and this Committee on the path forward.